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Postal Regulatory Commission
Submitted 5/26/2010 4:04:58 PM
Filing ID: 68238
Accepted 5/26/2010

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF GAMEFLY, INC.)
)
) Docket No. C2009-1

**THIRD DISCOVERY REQUESTS OF THE UNITED STATES
POSTAL SERVICE TO GAMEFLY, INC.
(USPS/GFL-63 through -83)
(May 26, 2010)**

Pursuant to Rules 25 through 27 of the Postal Regulatory Commission's
Rules of Practice and Procedure, the Postal Service respectfully submits the
following discovery requests to GameFly, Inc.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:
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May 26, 2010

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INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. These discovery requests impose a continuing obligation to respond and to provide additional information as it becomes available.
2. If no information or documents are responsive to any of these discovery requests, please indicate the lack of responsive information or documents.
3. For each discovery request, please identify the preparer or the person who supervised the response.
4. Please specify the discovery request to which each document applies. If a document or narrative response applies to more than one request, please provide a cross reference.
5. For a discovery request calling for the production of documents, please provide legible, true and complete copies of the documents. If a responsive document has been lost or destroyed, or is otherwise unavailable, please follow Instruction 12 below.
6. Where a discovery request solicits a narrative response rather than the production of documents alone, a narrative response is required and the production of documents does not substitute for a narrative response.
7. These discovery requests are to be construed broadly to elicit all requested information which is discoverable under the Commission's Rules of Practice. Accordingly,
 - (a) The present tense includes the past tense and the past

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tense includes the present tense; and

- (b) The singular includes the plural and the plural includes the singular.

8. If any responsive information is not available in the form requested, please provide the available information or documents which best respond to the discovery request.

9. The time period covered by each question is limited to the period after September 8, 2002 unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which GameFly relies in support of a statement, claim or proposition.

10. These discovery requests apply to all responsive information and documents in your possession, custody and control, or in the possession, custody or control of your attorneys, witnesses or other agents, from all files, wherever located, including active and inactive files and including electronic files.

11. If any responsive information or document is not in your possession, custody or control, but you know or believe that it exists, please identify the information or document and indicate to the best of your ability the location and custodian of the information or document.

12. If any document responsive to any of these discovery requests has been destroyed or is otherwise unavailable, please identify and describe:

- (a) The subject matter and content of the document;
- (b) All persons involved in the destruction or removal of the document;
- (c) The date of the document's destruction or removal; and

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- (d) The reasons for the destruction or other unavailability of the document.

13. If you assert any claim of privilege or discovery immunity in response to any discovery request, please identify each document withheld and state:

- (a) The document's title and type;
- (b) The privilege or immunity claimed and the basis for claiming such privilege or immunity;
- (c) Each person who prepared, signed or transmitted the document;
- (d) Each person to whom the document, or any copy of the document was addressed or transmitted;
- (e) The date of the document; and
- (f) The subject matter of the document.

14. For each response which is generated by a computer or electronic data storage mechanism, please state:

- (a) The name of the file from which the response came;
- (b) How the data are stored (disks, tapes, etc.);
- (c) How the data are transmitted and received; and
- (d) The name of each person who collected the data or entered the data into the computer or electronic data storage mechanism.

15. For any request with subparts, please provide a complete separate response to each subpart as if the subpart was propounded separately.

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16. If information or documents responsive to any of these discovery requests has previously been provided in this proceeding in response to a discovery request by any participant, please provide a specific cross-reference. There is no need to make a duplicate response.

17. If you perceive any ambiguity in interpreting any discovery request or any instruction or definition applicable to a discovery request, please secure a clarification from counsel for the United States Postal Service as soon as the ambiguity is perceived.

B. Definitions

1. “Complaint” refers to the Complaint of GameFly, Inc. submitted on April 23, 2009.

2. “Communication” means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.

3. “Document” means any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any reason, including but not limited to marginal notations or deletions, is a separate document.

4. “DVD” means an optical disc storage medium also known as “Digital Versatile Disc” or “Digital Video Disc.” As used in these questions, the

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term encompasses movie, music and game DVDs, and next-generation High Definition optical formats (such as Blu-ray Disc) as well as the standard definition format.

5. “DVD mailer” and “lightweight mailer” mean a mail piece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert.

6. “Each” includes the term “every” and “every” includes the term “each.” “Any” includes the term “all” and “all” includes the term “any.” “And” includes the term “or” and “or” includes the term “and.”

7. “Identify” means to state as follows:

- (a) With respect to a document and to the extent that the following information is not readily apparent from the document itself: (i) the document’s title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (e.g. letter, memorandum, agreement, invoice) its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.
- (b) With respect to a communication and to the extent the following information is not readily apparent: (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.

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- (c) With respect to a person and to the extent the following information is not readily apparent: (i) the person's full name; (ii) the person's employer, job title, and a description of the person's current duties and those duties at the time of deletion or destruction; and (iii) the person's business address.

8. "GameFly" refers to GameFly, Inc. This definition includes the officers, directors, agents and employees of GameFly, Inc.

9. "You" and "your" refers to GameFly, as indicated by the context of the question.

10. The terms "related to," "relating to" or "in relation to" mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.

11. The terms "state," "describe" and "explain" call for answers independent from any documents that are required in response to these discovery requests. Such answers should be in a form (e.g., narrative, tabular) appropriate for a complete response to the request.

12. "Business Reply Mail" or "BRM" refers to a domestic service that allows a mailer to receive First-Class Mail back from customers and pay postage only for the pieces returned to the mailer from the original distribution of BRM pieces. These pieces must have a specific address and format. Postage and fees are collected when the mail is delivered back to the original mailer.

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13. “USPS” or “Postal Service” refers to the United States Postal Service, including USPS Headquarters and any subordinate department, division, or office of the USPS, whether at the national, area, district or local level. This definition includes the officers, directors, agents and employees of the United States Postal Service and its Board of Governors.

14. The “GameFly Memo” refers to the Memorandum of GameFly, Inc., Summarizing Documentary Evidence filed under seal with the Postal Regulatory Commission on April 12, 2010.

15. “Destinating GameFly Facility” refers to each of the four distribution centers operated by GameFly. The Destinating GameFly Facility is the location to which GameFly brings its BRM mail pieces after it picks them up at the plant caller service location.

QUESTIONS

USPS/GFL-63. Please produce a copy of “GameFly’s document retention policies,” referenced in your answers to USPS/GFL-41, 43, 44, and 45 together with any documentation showing or recommending compliance or non-compliance with such policy.

USPS/GFL-64. Your answers to USPS/GFL-41, 43, 44, and 45 state “[a]ny other written or electronic communications relating to this issue were created long enough ago to have been deleted in the ordinary course of business pursuant to GameFly’s document retention policies.” For the deleted communications referenced in your answers to USPS/GFL-41, 43, 44, and 45, please provide the information listed below.

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- (a) The subject matter and content of the document or communication;
- (b) All persons involved in the destruction or removal of the document or communication;
- (c) The date of the destruction or removal of the document or communication;
- (d) The reasons for the destruction or other unavailability of the document or communication;
- (e) Any destruction log associated with the document or Communication;
- (f) All documentation showing when the document retention policy commenced; and
- (g) All documents showing or exemplifying how the policy is administered, including reminders, training records and materials, and the method(s) for document destruction.

USPS/GFL-65. Please provide the information listed below for each mail piece identified in Appendix USPS-GFL-1.

- (a) piece weight;
- (b) price or rate category for outgoing and return trips; and
- (c) postage paid.

USPS/GFL-66. Please explain why your answer to USPS/GFL-1, including Appendix USPS-GFL-1, provides no information related to mail pieces used from 2005 and earlier. If you lack hard data on earlier designs, please provide (1) a

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qualitative description of pieces used and (2) the strengths and weaknesses of the outgoing design compared to its replacement.

USPS/GFL-67. In your answer to USPS/GFL-4, you state “[t]he two individuals who managed these changes (Steve Brown and Jeff Kawasugi) left GameFly in December 2007 and August 2009, respectively, and GameFly did not retain the two employees’ files on these matters.” Did GameFly impose a litigation hold on the files of the two employees described above? Please describe the litigation hold, including the effective dates and the preserved content, and produce all documents related to the litigation hold. If you did not impose a litigation hold on the files of the two employees described in your answer to USPS/GFL-4, please explain the reasoning for this decision.

USPS/GFL-68. In your answer to USPS/GFL-4, you provide a partial email thread dated 6/2/2009. Please produce the complete email thread and the attachments referenced in that email thread.

USPS/GFL-69. In your answer to USPS/GFL-6, you provide Appendix USPS-GFL-6, which includes a PowerPoint document titled “Mailer Performance Update.” Please identify who prepared this document and when.

USPS/GFL-70. **REDACTED**

USPS/GFL-71. Please provide the position titles for the GameFly personnel identified in Appendix USPS-GFL-38A.

USPS/GFL-72. In your answer to USPS/GFL-41, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal

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Service on this subject in discovery.” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

USPS/GFL-73. In your answer to USPS/GFL-43, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

USPS/GFL-74. In your answer to USPS/GFL-44, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

USPS/GFL-75. In your answer to USPS/GFL-45, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

USPS/GFL-76. In your answer to USPS/GFL-56, you state “GameFly bases the quoted statements on documents produced by the Postal Service in discovery in this case.” Please identify the documents produced by the Postal Service that you assert support the quoted statements.

USPS/GFL-77. What percentage of the GameFly DVDs entered into the mail stream is damaged before entering the mail stream by the actions of GameFly or customers? Please produce all documents related to damage of GameFly DVDs before entering the mail stream or in processing subsequent to return from customers.

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USPS/GFL-78. In your answer to USPS/GFL-9, you state “[a] GameFly employee ... transports the pieces by truck to the GameFly Distribution Center served by the Postal Service facility.” Please describe how the GameFly mail pieces are arranged for transportation on the trucks. In your answer, please describe any procedures undertaken by GameFly to ensure that GameFly mail pieces are not damaged in transit from the postal facility to the GameFly Distribution Center, or when in transit from a GameFly Distribution Center to a postal facility.

USPS/GFL-79. Your answer to USPS/GFL-55(a) indicates that GameFly does not monitor the type and number of uses by its subscribers or other customers for each of its DVDs. Please identify what, if anything, GameFly keeps track of regarding each individual DVD in its inventory.

USPS/GFL-80. Please describe the actions taken by GameFly to comply with the Postal Service’s move/update requirements.

USPS/GFL-81. Please identify what information about customers GameFly routinely records or keeps specifically including any breakage or damage each customer reports, or any breakage or damage noted by GameFly when receiving a DVD back from a customer. Please specify each data element GameFly can record, and any text fields used for any purpose. For each such text field, please provide a representative sample of customer records so that a reviewer understands how each is used by GameFly.

USPS/GFL-82. Your answer to USPS/GFL-57 states, in pertinent part, “[t]he Postal Service presumably separates undeliverable pieces” from other returns.

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This language expressly refers to a presumption rather than the fact the question seeks.

- (a) In preparing the answer to USPS/GFL-57, was GameFly management asked by anyone, counsel or on behalf of counsel, whether management had ever made a request of the type referenced in that question?
- (b) What percentage of DVD mail pieces that GameFly receives are UAA returns?
- (c) What, if anything, does GameFly do with respect to UAA pieces it receives?

USPS/GFL-83. Your answer to USPS/GFL-58 relies, for documentation, only upon Bates stamped documents provided by the Postal Service. In preparing your answer to USPS/GFL-58, was GameFly management asked whether any individual manager had a personal recollection of the fact of testing, or of not testing?