

PUBLIC VERSION

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

**SUPPLEMENTAL ANSWERS OF GAMEFLY, INC., TO
USPS DISCOVERY REQUESTS
USPS/GFL-5, 8, 16, 38, 46, 49, 51, 54 AND 60
(June 9, 2010)**

GameFly, Inc., ("GameFly") respectfully submits these supplemental answers to discovery requests USPS/GFL-5, 8, 16, 38, 46, 49, 51, 54 and 60. GameFly is providing these supplemental answers to resolve or narrow its disputes with the Postal Service over these discovery requests. Each discovery request is quoted verbatim and then followed by GameFly's supplemental answer.

Respectfully submitted,

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June 9, 2010

SUPPLEMENTAL ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
(June 9, 2009)

USPS/GFL-5. Please produce all documents and communications related to actual or alleged theft of GameFly DVDs, the mail piece design of each such piece, and efforts to address or remediate actual or alleged theft.

Supplemental Answer:

GameFly is producing responsive emails of Don Judge, David Barthel, Sam Guttman, Dave Hodess, Mike Gimlett, and Terri Luke, the GameFly employees most likely to have information regarding the investigation and remediation of the theft of GameFly DVDs, in response to USPS/GFL-5. All significant communications regarding the theft of GameFly DVDs should have one of these individuals as a sender or recipient. These emails have been filed under seal in as Library Reference GFL-LR-C2009-1-8-GameFly Emails Responsive to USPS/GFL-5. GameFly has also searched its files and found additional responsive material, filed under seal as Library Reference GFL-LR-C2009-1-2-Material Responsive to USPS/GFL-5.

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USPS/GFL-8. Please describe in detail the production of mail pieces, starting with procurement of stock and all mailing/shipping supplies and extending to the point actual mail is inducted or entered. If changes in mail piece design triggered or coincided with any change in the production process, please explain completely before and after processes and why such changes were undertaken.

Supplemental Answer:

As GameFly does not produce its mailers in-house, but rather purchases them from a vendor, it cannot describe the production process of each mailer. The following is a description of how GameFly assembles the purchased mailers from GameFly's inventory in its warehouse to prepare the mailers for entry into the mailstream.

Mailers are ordered every two to six weeks from the same supplier. GameFly maintains an eight week supply at any given time.

When GameFly assembles its product, it places each unit/disc in its own protective Tyvek sleeve and inserts into a cardboard outer sleeve for additional protection. The closed end of both the Tyvek sleeve and cardboard are in opposing directions in order to encapsulate the disc preventing the disc from coming loose.

Specifically, when assembling, the operator takes one piece of cardboard and one shipped mailer, and performs the following:

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1. Unfolds mailer
2. Places disc inside of cardboard so the sleeve opening is in the fold of the cardboard with the disc title facing up
3. Folds the cardboard over and slides the entire item into the mailer opening with arrow facing down
4. Peels off the clean-tac strip in the middle of the loose flap of the mailer and folds over aligning the loose end with the top clean-tac fold
5. Peels off the top clean-tac adhesive strip and folds over the remaining flap
6. Stacks the sealed mailers in a pile.

The above steps are repeated for each rental shipment.

When the mailers are sealed, the operators stack them into a mail bin (775) and perform the following:

1. Mailers in the bin must all face the same direction for the USPS machines
2. Bins are prepared for acceptance based on local USPS presentation preferences
3. Once prepared, the Bins are placed in an APC or hamper cart per local USPS preferences

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4. APC or Hampers are loaded onto the GameFly truck and secured using e-track straps

5. GameFly truck delivers mail to the BMEU using assigned dock. APC/Hampers are rolled off of truck and placed into designated acceptance area for acceptance clerk to inspect

.Attached as Appendix USPS-GFL-8 are a purchase order, invoice, and pricing overview for GameFly's mailers.

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USPS/GFL-16. Separated by each 5-digit ZIP Code, please describe the frequency with which GameFly has taken the actions described in the response to USPS/GFL-15.

Supplemental Answer:

GameFly does not maintain the requested information separated by 5-digit ZIP code. If it wishes, the Postal Service can tabulate by ZIP Code the information GameFly is providing in response to USPS/GFL-5.

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USPS/GFL-38. Please produce all records of all meetings between GameFly and postal employees. Please include the topics discussed and the meeting minutes prepared by GameFly employees.

Supplemental Answer:

Library Reference GFL-LR-C2009-1-1-Material Responsive to USPS/GFL-38, -46, and -49 contains records of meetings with Postal Service employees contained in the files of Dave Hodess, Don Judge, David Barthel, Sam Guttman, Mike Gimlett, and Terri Luke. These individuals are the most knowledgeable about the information that the Postal Service seeks and most likely to have responsive information. This library reference also contains the emails of GameFly's consultant, Sander Glick, that are responsive to USPS/GFL-38, 46, and 49. A separate library reference, GFL-LR-C2009-1-4-GameFly Emails Responsive to USPS/GFL-46, contains emails between these individuals (minus Mr. Glick) with the Postal Service, Postal Inspectors, or Office of Inspector General.

Also included in Library Reference GFL-LR-C2009-1-1-Material Responsive to USPS/GFL-38, -46, and -49 are copies of presentations given to the Postal Service during meetings with GameFly personnel.

GameFly continues to withhold on grounds of privilege the emails and meeting minutes concerning any settlement discussions between the parties. And GameFly also continues to withhold the written "meeting minutes" and other meeting "records" created by GameFly employees and agents after such

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meetings but not disclosed to the Postal Service. These documents were communications among GameFly's legal counsel, economic consultant and senior executives in anticipation of litigation. Those communications are covered by attorney-client privilege and the work product doctrine. A listing of these documents is included in the privilege log GameFly is producing today.

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USPS/GFL-46. Please produce all records of all emails between GameFly and postal employees.

Supplemental Answer:

Please see supplemental answer to USPS/GFL-38 and library reference GFL-LR-C2009-1-4-GameFly Emails Responsive to USPS/GFL-46.

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USPS/GFL-49. Please provide a listing of all meetings and communications with Postal Service employees in which mail piece design, performance, including breakage and theft results, and rates and classification of GameFly mailings of DVDs were discussed. Please include dates and locations of each meeting, a list of GameFly employees attending, and a list of Postal Service employees attending.

a. For each meeting and communication please provide a description of the discussion, including recommendations made by the Postal Service, and each response by GameFly.

b. For each meeting and communication, please provide a description of any physical tests conducted on GameFly actual mail pieces or any prototype mail pieces that were considered.

c. For each meeting and communication, please produce all documents and written communications, whether directed to the Postal Service or not, related to the meetings and communications referred to in your answer.

d. For each response by GameFly to suggestions made by the Postal Service described above, please discuss the reasons why GameFly responded as it did, including any analysis employed to formulate the response.

Supplemental Answer:

Please see supplemental answer to USPS/GFL-38.

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USPS/GFL-51. Has GameFly conducted tests to determine mailability or machinability, including susceptibility to breakage and frequency of breakage on its own mail pieces? For each mail piece design listed in your answer to USPS/GFL-1, please describe any tests conducted, including dates, and the results of each test, including any quantitative analysis performed. Please produce all documents and communications related to any tests discussed in this answer, including any communications with the Postal Service.

Supplemental Answer:

In addition to the responsive documents already produced, GameFly is producing as Library Reference GFL-LR-C2009-1-6-GameFly Emails Responsive to USPS/GFL-51 a number of emails discussing mailer design, breakage, and Postal Service tests of mailers. Additionally, some of the emails produced in response to USPS/GFL-46 as Library Reference GFL-LR-C2009-1-4-GameFly Emails Responsive to USPS/GFL-46 touch on tests conducted on GameFly mailers.

Finally, any responsive documents GameFly possesses that are covered by (1) attorney-client privilege or (2) attorney work product protection are included in the privilege log GameFly is providing along with these responses.

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USPS/GFL-54. Please produce all weekly or other periodic reports, including reports internal to GameFly and reports provided to the Postal Service, related to the Postal Service's processing of GameFly mail.

Supplemental Answer:

GameFly has already produced the last twelve months of responsive reports as Appendix USPS-GFL-54. GameFly is now supplementing its answer to this request with all responsive reports in GameFly's possession dating back to 2002. The reports are included in Library Reference GFL-LR-C2009-1-7-Weekly Reports Responsive to USPS/GFL-54.

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USPS/GFL-60. [REDACTED]

Supplemental Answer:

[REDACTED]

[Appendix USPS-GFL-8 REDACTED]