

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1 (Phase II)

NOTICE OF THE UNITED STATES POSTAL SERVICE  
OF THE FILING OF THE LEPAGE'S LICENSE AGREEMENT  
AND APPLICATION FOR NONPUBLIC TREATMENT  
(June 30, 2010)

In Order No. 480, issued on June 25, 2010, the Commission ordered the Postal Service to file a copy of the LePage's license agreement, which the Commission noted could be filed under seal if necessary. The Postal Service hereby provides notice of the filing of the agreement. The full agreement is being filed under seal, while a redacted version of the agreement is being filed concurrently with this notice. An application for nonpublic treatment is also appended hereto.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Richard T. Cooper  
Chief Counsel, Business & Finance Law

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William J. Trumpdour  
Keith E. Weidner

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1135  
(202) 268-6252, Fax -5628

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,<sup>1</sup> the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials constitute a license agreement with LePage's. The agreement is being filed separately under seal with the Commission. A redacted copy of the agreement is being filed publicly along with this Notice.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

### **(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>2</sup> Because the portions of materials filed non-publicly in this docket fall

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<sup>1</sup> PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

<sup>2</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement

within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of a license agreement, the Postal Service believes that the only party with a proprietary interest in the materials is the licensee with whom the contract is made. LePage's has been informed of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The contact information for LePage's is as follows:

Raymond W. Henney  
HONIGMAN MILLER SCHWARTZ AND COHEN LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, Michigan 48226-3506  
(313) 465-7410  
[RHenney@honigman.com](mailto:RHenney@honigman.com)

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

In connection with its Notice filed in this docket, the Postal Service has filed a complete copy of its license agreement with LePage's. The Postal Service maintains that the redacted portions of the agreement should remain confidential. The redacted versions contain information that was specifically negotiated by the parties prior to

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interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

entering into the agreement. They include matters concerning renewal of the agreement, royalty payments, the need for and amount of insurance, the amount of advertising, the assignment of the agreement, the termination of the agreement, the use of licensed properties, the sell-off period, the resolution of disputes, and other negotiated terms. All of these redactions protect important, negotiated terms and conditions of the agreement.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the portions of the contract that the Postal Service has determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. As noted above, the information that has been redacted includes negotiated contract terms, such as renewal of the agreement, royalty payments, the need for and amount of insurance, the amount of advertising, the assignment of the agreement, the termination of the agreement, the use of licensed properties, the sell-off period, the resolution of disputes, and other matters. This information, the product of negotiations between the Postal Service and LePage's, is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Other potential licensees (providing products that fall within the "promotional" category allowed by the Commission in Order No. 154) could use this information to their advantage in negotiating the terms of their own licensing agreements. The Postal Service considers this to be a highly probable outcome that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Public disclosure of negotiated terms of the agreement could be used by other potential licensees to the Postal Service's detriment.

Hypothetical: A prospective licensee, considering entering into a license agreement with the Postal Service, is able to review the specific negotiated terms in the LePage's agreement regarding royalties or other important matters. That licensee insists that it will not agree to any terms that are less advantageous than those given to LePage's, diminishing the Postal Service's bargaining leverage, and potentially precluding the Postal Service from negotiating an agreement that provides the best value to the organization based on the specific circumstances.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that no public disclosure should be allowed of the redacted portions of the materials filed under seal, but especially with regard to the actual or potential licensees of the Postal Service.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The sufficiency of this period depends in part on

whether the Commission grants relief to the Postal Service and LePage's regarding continuation of the agreement. If the Postal Service believes that the ten year period is not sufficient, it will make an appropriate filing at the appropriate time.

**(8) Any other factors or reasons relevant to support the application.**

None.