

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1 (Phase II)

**LEPAGE'S 2000, INC. AND LEPAGE'S PRODUCTS, INC.'S  
SUBMISSION IN SUPPORT OF USPS' MOTION FOR A STAY OF  
ORDER NO. 392**

LePage's 2000, Inc. and LePage's Products, Inc. (collectively "LePage's") respectfully file this submission in response to the Postal Regulatory Commission's ("PRC") Order No. 392, issued on January 14, 2010.<sup>1</sup> Specifically, LePage's requests that the PRC: [REDACTED]

[REDACTED]

[REDACTED] In the alternative, LePage's requests that the PRC stay its Order until LePage's appeal is resolved.

**I. INTRODUCTION**

The License Agreement between LePage's and USPS should not be terminated by the PRC. In making its previous determination, the PRC did not have the benefits of the information contained in LePage's submission herein (some of which did not even exist at the time), which

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<sup>1</sup> The Declaration of Sunir Chandaria ("S. Chandaria Decl.") is also submitted in support of LePage's position. Other witnesses, including Azeezaly Jaffer, former Vice President of Public Affair and Communications for the USPS, have relevant information related to the economic hardship LePage's will suffer due to the premature termination of the License Agreement. LePage's may seek to subpoena these persons for testimony to further support LePage's submission.

demonstrates that in sharp contrast to the ink cartridge license that was the focus of the PRC's January 14, 2010 decision, the LePage's and USPS licensing relationship has two critical benefits:

- 1) [REDACTED]; and
- 2) [REDACTED].

Indeed, in light of the new information contained herein, LePage's urges the PRC to consider that the License Agreement meets the public needs test under Section 404(e) because USPS-branded mailing and shipping products enhance the USPS' ability to: (a) compete for its core mission of mailing and shipping service; (b) influence the quality of mailing and shipping products. The licensing of mailing and shipping products to LePage's is a competitive nonpostal service and should continue under the grandfather authority set forth in the PAEA. In fact, LePage's has aligned its mission and products with helping to implement the goals of the USPS and the Postmaster General starting with the 2002 Transformation Plan through and including the 2010 New Action Plan.

Overall, LePage's USPS-branded products:

- Are supported by numerous patents that validate the uniqueness of the products, and are not mere commodities as the PRC's decision would indicate;
- Assist the USPS with increasing mail traffic and give the USPS an edge over its competition, FedEx and UPS, [REDACTED];
- Have a demonstrated positive impact on the USPS mail volume and lead to increasing competition and sales for all mailing and shipping products as shown with the [REDACTED]; and

- Are shown to be proprietary, of higher quality than competitors' brands, [REDACTED] [REDACTED]), thereby encouraging other manufacturers to improve the quality of their own products.

Moreover, should the PRC prematurely terminate the License Agreement, LePage's will suffer severe economic hardship resulting from [REDACTED]

[REDACTED]. Thus, based on the PRC's stated "desire to mitigate potential economic loss to the licensees," LePage's respectfully requests that the PRC reconsider its January 14, 2010 Order terminating the License Agreement and allow the License Agreement to proceed under its terms and conditions.

In the alternative, LePage's respectfully requests that the PRC, at the very least, stay its January 14, 2010 Order and allow LePage's to continue its operation under the License Agreement until the appellate court makes a ruling on LePage's appeal. There are exceptionally compelling reasons to issue a stay of the January 14, 2010 Order, given the imminent and severe harm to LePage's from the early termination of the License Agreement and the relative lack of harm to any others.<sup>2</sup> Accordingly, the PRC should avoid imposing such a draconian measure at this time.

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<sup>2</sup> Given that the PRC found no evidence of anti-competitive behavior, allowing the License Agreement to continue until a decision is reached by the appropriate appeal court would not result in any harm. (January 14, 2010 Order at p. 22).

**II. FACTUAL BACKGROUND**

**A. *Background of USPS' Licensing Relationship with LePage's***

**1. *LePage's begins developing a relationship with USPS***

In May of 2000, LePage's purchased the assets of LePage's, Inc. a 130-year old, nearly bankrupt entity.<sup>3</sup> LePage's established itself as a minority business enterprise certified by the National Minority Supplier Development Council. (S. Chandaria Decl. attached as Exhibit 1 at ¶5). Shortly after acquiring the company, LePage's completed collaboration with the U.S. Military for the development of shipping tape, in accordance with the standards set forth in the Domestic Mail Manual ("DMM").<sup>4</sup> (*Id.* at ¶6) LePage's then developed a business plan that focused on the following:

- [REDACTED];
- [REDACTED]; and
- [REDACTED]. (S. Chandaria Decl. ¶8).

After developing this business plan, in late 2002, LePage's approached the USPS. Soon thereafter, LePage's and the USPS' Licensing Department developed a licensing venture in which LePage's would [REDACTED]

[REDACTED]

[REDACTED] The LePage's product innovations

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<sup>3</sup> LePage's is a U.S. Company with its warehouse distribution center located in Romulus, Michigan.

<sup>4</sup> [REDACTED]

were actually formally presented before the USPS Board of Governors in December 2003 and the Board had no objection to the prospect of a licensing agreement with LePage's. (S. Chandaria Decl. at ¶11).

**2. LePage's and USPS begin licensing relationship**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (*Id.*)

The USPS agreed to keep LePage's abreast of any new developments in USPS standards or distribution methodologies. In addition, the USPS noted that many suppliers in the market use the USPS name and deceptively state that their product meets U.S. Postal Regulations. The USPS asked that LePage's continue to forward to them similar products that appear to be "unauthorized" so that the "legal department c[ould] continue to monitor" the practice. (*Id.*)

In addition, the USPS encouraged LePage's to "promote this new program and share [its] business plan with retailers." (*Id.*) The USPS also offered to forward current and future potential retailer inquiries. (*Id.*) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

### 3. USPS' strategic transformation plans

In April of 2002, the USPS launched a strategic plan to enable the USPS to continue providing affordable universal postal services while addressing its decreasing revenue. (*See* 2002 Transformation Plan attached as Exhibit C to S. Chandaria Decl.). As part of its strategy, the USPS looked into expanding access to customers, while reducing infrastructure and operating costs. (*Id.* at p. 13). The main goal was to provide customers with easier and more convenient retail access to postal services. (*Id.*) To do so, the USPS looked at developing “new low-cost solutions using technology, partnerships and product simplification.” (*Id.*) This included: (1) moving simple transactions out of post office; (2) creating low-cost retail alternatives; (3) optimizing the retail network; and (4) developing new retail services that increase customer value and postal revenue. (*Id.* at p. 14). The plan also detailed expanding self-service capabilities to include more than stamp machines and announced the testing of self-serve automated postal centers (“APCs”). (*Id.* at p. 15). By introducing APCs, the USPS was expanding self-service postal service capabilities to “allow the [USPS] to serve its customers where they work, shop and live.” (*Id.*)

In furtherance of its strategic planning objectives, the USPS published a Strategic Transformation Plan for 2006-2010 (“2005 Transformation Plan”) in September 2005. Again, an important aspect of this Transformation Plan was to improve customer service across all access points. (2005 Transformation Plan attached as Exhibit D to S. Chandaria Decl. at p. 59). The USPS also wanted to build customer awareness of its new quick and easy ways to obtain access to postal services without visiting a postal branch. (*Id.* at p. 61).

The USPS' goal was to double the percentage of retail transactions via alternative access postal service channels to 40 percent by 2010. (*Id.*) As a result, increasing awareness about the use of these alternative access options was a high priority and the USPS set out to meet these

goals by pursuing strategic alliances. (*See id.*) By doing so, the USPS furthered its purpose of promoting its enhanced internet and self-service capabilities to further reach out to customers. (*Id.*)

The USPS also wanted to tailor improvements to retail mailing and shipping products to better serve customer needs and maintain the security of the mail system. (*Id.* at p. 64; *see also* December 11, 2003 LOI, Ex. A) However, the USPS did not have the required capital internally to perform such research and development. (*Id.*) Accordingly, the USPS set out to work collaboratively with external partners to develop new mailing and shipping products that enhanced safety and privacy, and thus provide consumer confidence while satisfying their personal and business needs. (*Id.*)

**B. License Agreement and Key Terms**

Pursuant to the USPS' goal to use third parties to both design and develop new products under the USPS-brand and to compete for mailing and shipping traffic at alternative access sites, the USPS signed its initial License Agreement with LePage's [REDACTED]. [REDACTED]. (S. Chandaria Decl., ¶14 and Ex. B).

**1. USPS maintains control over product quality and overall design**

The License Agreement has various provisions that ensure that the USPS maintains significant control over the use of the USPS name and trademark and, in some instances, controls which are uniquely required of LePage's and not other licensees. For example, under Exhibit B

– Standard Terms and Conditions<sup>5</sup> -- the USPS maintains controls over the design, packaging and overall quality of mailing and shipping products sold under the USPS-brand:

5. Approvals and Quality Control: USPS shall control the nature and quality of all products or services offered for sale under this Agreement, the appearance and use of the Licensed Properties, and the appearance and use of all advertising and promotion for the Licensed Articles and/or the Licensed Properties.

(a) USPS Approval of Licensed Articles: **Licensee must obtain USPS written approval of the styles, designs, packaging, contents, workmanship, and quality of all Licensed Articles and associate materials prior to the distribution or sale thereof.** USPS maintains the rights to take all actions that it deems necessary to ensure that **Licensed Articles manufactured or sold hereunder are consistent with the high quality and reputation of the Licensed Properties.** (S. Chandaria Decl., Ex. B, p. 15-16) (emphasis added).

The USPS may direct LePage’s to submit samples of the products it develops to an independent test facility for inspection, testing and analysis for quality control and review:

(iii) **At the direction of the USPS, Licensee shall submit samples of the Licensed Articles to an independent laboratory or other test facility jointly selected and approved by USPS and the Licensee.** All costs associated with such inspection, testing and analysis shall be borne by Licensee and the results of such Inspection, testing and analysis shall be submitted to USPS. Upon reasonable request by USPS, such testing shall be conducted throughout the Term and any renewal of this Agreement.

\* \* \*

(v) For the purpose of quality control and review, **upon request by USPS, Licensee shall, at its own expense, provide a reasonable number of samples of Licensed Articles to USPS at the beginning of each Contract Period or at any other time during the Term and renewal.** Each Licensed Article shall be shipped in its usual container with all packaging, tags, instructional, promotional, or other materials that usually accompany the product. (*Id.* at p. 17) (Emphasis added).

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<sup>5</sup> While the USPS has similar provisions in other licensing agreements, these provisions are particularly significant with respect to mailing and shipping products because of those products relevance to the USPS core mission.

## 2. USPS gains rights to LePage's intellectual property

LePage's also agreed to utilize its own patents and trademarks for use with the USPS-brand.<sup>6</sup> As part of the arrangement with USPS, LePage's agreed to make its trademark assets available to USPS at no additional cost to the USPS and LePage's withdrew its trademark application for "The Shipping Standard." trademark.<sup>7</sup> (S. Chandaria Decl. ¶19). Specifically, the License Agreement provides:

**(g) Licensee agrees to withdraw its trademark application for "The Shipping Standard." USPS will trademark "The Shipping Standard" and grant an exclusive, no-fee license to Licensee to use such trademark on Licensed Articles.** USPS shall reimburse Licensee for all reasonable costs associated with Licensee's application for such trademark. Upon termination of this Agreement pursuant to Section 9 herein, neither Party shall use the trademark "The Shipping Standard" unless and until, upon expiration of such trademark, either Party reapplies for and receives the trademark for "The Shipping Standard"; in which case the Party receiving such trademark shall be entitled to the full use and enjoyment of such trademark. (*Id.* at ¶ 8(g) of Ex. B to License Agreement, p. 19) (emphasis added).

In addition, and as a reflection of the unique nature of the relationship between the two organizations, to the extent that new trademarks and/or copyrights were jointly developed by LePage's and USPS during the term of the Agreement, USPS retains the sole right to apply for appropriate intellectual property protection. (*Id.* at ¶ 8(d) of Ex. B to License Agreement, p. 19). Upon termination of the License Agreement, absent a mutual agreement neither party can use the intellectual property that was jointly developed. (*Id.* at ¶ 8(f) of Ex. B to License Agreement, p. 19).

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<sup>6</sup> LePage's also was responsible for royalty payments to the USPS. (License Agreement at p. 4-5).

<sup>7</sup> While initially LePage's was allowed to continue using The Shipping Standard™ in its branding of USPS-brand products, the USPS later requested that LePage's remove it.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This would, in turn, allow the USPS-branded products to ensure that they encouraged customers to use the USPS, and not its competitors, for their mailing and shipping needs. (As set forth below, there is data that supports the logical proposition that a customer who purchases a USPS-branded product is more likely to use the USPS for mailing and shipping items at locations outside the post office.)

**3. Pursuant to the License Agreement, LePage's Branding Is Controlled by the USPS**

Under the License Agreement, the USPS controls the use of its trademarks. (License Agreement at p. 15-16). Initially, in 2005, LePage's branding stated "United States Postal Service®, the Eagle Logo, USPS formatives and The Shipping Standard™ are among the many trademarks and logos belonging to the United States Postal Service and are used by LePage's with permission. All rights reserved." (See S. Chandaria Decl. at ¶19). This branding is not the same branding that the PRC found objectionable with respect to the ink cartridges, in that LePage's is listed as the manufacturer. (See January 14, 2010 Order at p. 23).

In 2007, the USPS directed and required that LePage's change the branding to take out the reference to LePage's and specified that the label read "© 2007 United States Postal Service. United States Postal Service and Eagle Design are trademarks of the U.S. Postal Service. All rights reserved." (See S. Chandaria Decl. at ¶20). Later, in 2009, the USPS again required that LePage's change the label to read: "© 2009 United States Postal Service. All Rights Reserved.



[REDACTED]

*C. LePage's USPS-Branded Products and Innovations*

Before the license agreement with the USPS, LePage's already was a leading manufacturer that adhered to the DMM specifications.<sup>8</sup> From early in its relationship with the USPS, at a presentation in December 2003, LePage's was recognized before the USPS Board of Governors for the quality of the innovations in its products. LePage's has since continued to work to improve its user-friendly designs for greater quality, security, safety, and mail processing efficiency. LePage's has dozens of patented products and intellectual property, many of which have been shared with the USPS-branded products, which, contrary to the PRC's statements in the January 14 decision, demonstrate the inherent uniqueness of the LePage's products. Furthermore, a number of innovations and developments are consistently in the pipeline for future rollout.

[REDACTED]

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<sup>8</sup> The principals of LePage's have a long history of innovation and creating valuable intellectual property. (S. Chandaria Decl. at ¶3).



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

A significant proportion of the LePage’s USPS-branded products offer a superior quality to complement the incumbent market offering and create the opportunity for consumers to have access to USPS-approved quality and secure products under the USPS brand. (*Id.* at ¶29). LePage’s evaluates additional product improvements on an ongoing basis and is in the process of developing further improvements. (*Id.* at ¶30).

***D. LePage’s Participation in Retail Based Self-Serve Shipping Pilots***

In early 2009, LePage’s began participating in a pilot retail self-service shipping concept that integrates and markets its USPS-branded mailing and shipping products at nonpostal retail outlets where customers can mail through the USPS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (S. Chandaria Decl. at ¶39-40).

At different times during the period of 2004 through 2008, [REDACTED] tried to establish a sustainable in-store guest shipping solution. (S. Chandaria Decl. at ¶41). In its efforts, [REDACTED] collaborated with various shipping services like [REDACTED] to no avail. In 2009, [REDACTED] met with LePage's to discuss this integrated solution. In conjunction with discussions with LePage's and others, [REDACTED] determined that this approach could solve the previous issues with the other proposed shipping solutions, while providing a consumer-centric platform that was profitable for all parties. (See S. Chandaria Decl. at ¶42).

The pilot retail self-service shipping concept is currently in use [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Initial studies show [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>9</sup> There is empirical data from LePage's pilot programs that demonstrates the success of the programs. However, LePage's is unable to provide this data with its submission due to a non-disclosure agreement with a third party. LePage's will try to gain the permission of the third-party to disclose this information should the PRC wish to review the underlying data.

[REDACTED]

[REDACTED]. In fact, customer surveys from the [REDACTED]

Second, contrary to the PRC's concern regarding the possible negative impact of USPS-brand mailing and shipping products on competition, the pilot programs have shown a [REDACTED]

[REDACTED] Therefore, there does now exist significant evidence addressing two matters discussed above concerning which the PRC found to be speculative or unsupported: (1) whether USPS-branded mailing and shipping products increased use of the USPS for mailing and shipping business; and (2) the impact of USPS-branded products on competitors. (*See* January 14, 2010 Order at p. 14, 18-19). As discussed below in more detail, the market data demonstrates that: [REDACTED]

**III. LEPAGE'S LICENSE AGREEMENT SHOULD NOT BE TERMINATED**

**A. *Order No. 392 and the License Agreement***

The PRC ruled that the USPS failed to demonstrate: (1) that LePage's products increased the use of USPS mail service; and (2) that the quality of LePage's products is better than competing brands due to the USPS oversight as provided in the License Agreement.

**1. The USPS' unsupported but logical assertion that USPS-branded mailing and shipping products promotes the use of the USPS mail services**

The PRC considered the USPS' argument that the sale of mailing and shipping supplies at nonpostal retail outlets maintains a connection with the USPS that: (a) leverages the brand; (b) adds convenience for customers; and (c) facilitates and promotes the use of the mail by assisting in mail preparation. (*See* January, 14, 2010 Order at p. 12). The USPS argued that the retail services of USPS-branded mailing and shipping products were more likely to generate a mail piece for the USPS than a competitor and, therefore, increased the USPS' "footprint." (*Id.*) In support of its position, the USPS noted that it is currently doing the same with its Ready Post brand at postal branches. (*Id.*)

The PRC determined that, based upon the then current record, the public need for the licensing of mailing and shipping products had not been demonstrated. (*Id.* at p. 14). Specifically, the PRC stated that the "suggested benefits" either lacked sufficient evidentiary support or were mitigated by factors inapplicable to the promotional licenses reviewed in Phase I. (*Id.*) At the time of the submission for Phase II, the USPS set forth only one argument concerning the public need for the licensing of mailing and shipping products, which was that the USPS is the only entity that can provide this USPS branding connection, as recognized by the Commission in Order No. 154, which authorized promotional licensing. (*Id.* at p. 12-13). Thus, in evaluating the effect of such branded products on mail volume, the PRC stated that any such effect was "speculative and in the absence of more complete supporting information, can be given little weight." (*Id.* at p. 18-19). As set forth in this submission, in the year since the USPS' submission, there has developed data that supports the common sense propositions that

USPS-branded products cause greater use of the USPS mail services and facilitate the USPS' efforts to compete for mail and package business at non-post office locations.

**2. No evidence presented about the quality of LePage's products**

The PRC further reasoned that to the extent that USPS-branded products displaced private sector competitors' products, the recorded sales do not provide a clear indication of the need for the USPS-branded products vis-à-vis competitors. The PRC assessed that "the USPS-branded products appear to be the same, if not identical to, those sold by competitors that are otherwise readily available in retail markets." (*Id.* at p. 16). The PRC stated that if there were differences in quality from other competitive products, the USPS failed to allege or offer evidence of such differences. (*Id.*)

With respect to any supposed convenience attributed to such products, the PRC reasoned that "the ability to shop for USPS-branded mailing and shipping products at mass merchandise outlets has little convenience for customers who can, in this mature market, already purchase similar mailing and shipping supplies at those locations." (*Id.*) Further, the PRC opined that the "variety of mailing and shipping items necessary or useful for mailpieces is also cited as a convenience, but the current variety of USPS-branded mailing and shipping products is not extensive and consists of commonly available mailing and shipping items." (*Id.* at p. 17-18). The PRC opined that the benefit of increased brand recognition for marketing the USPS-brand was accompanied by offsetting disadvantages; particularly, the potential of misleading customers that there was a product warranty. (*Id.* at p. 20).

As also set forth in this submission, the PRC did not have before it the actual facts concerning the quality of LePage's products and how these products develop and contribute to setting standards desirable to the USPS for mailing and shipping products.

### 3. The PRC's concern about competition

In Order No. 392, the PRC recognized that the USPS can legitimately compete for mail and package business with the private sector. (*Id.* at p. 22). However, as set forth above, the PRC found that the USPS failed to provide evidence that USPS-branded mailing and shipping products promoted the use of the USPS over private sector competitors, such as FedEx and UPS. (*Id.* at p. 12-14). Consequently, the PRC only focused upon the competition in the private sector among producers of mailing and shipping products. For this prospective, the PRC noted that there was no specific showing of anti-competitive behavior with respect to USPS-branded products. (*Id.* at p. 22). However, it stated that “the nature of the competition the Postal Service brings to the marketplace for mailing and shipping products can be unfair in several respects. Substantial commercial harm may result to private companies in the marketplace.” (*Id.*) As set forth in this submission, the PRC's concerns appear to be unjustified as the data shows t

[REDACTED]

[REDACTED]

### 4. PRC's termination of the License Agreement

With respect to the License Agreement [REDACTED], the PRC ruled that permitting sales until [REDACTED] would be inconsistent with the Postal Accountability and Enhancement Act (PAEA) section regarding the termination of contracts that did not meet the provisions of Section 404(e). (*Id.* at p. 27). Accordingly, the PRC said that it “will balance the need to terminate these sales as soon as reasonable to avoid further potential for consumer confusion and market impact with the desire to mitigate the potential economic loss to the licensees.” (*Id.*) The PRC did state that to the extent that the early termination of the contract by December 31, 2010 created a hardship, the USPS was allowed to request an extension by filing “detailed information explaining the circumstances.” (*Id.*)

**B. USPS-Branded Products Are Important to the USPS**

The New Action Plan explains an urgent need to expand the USPS' alternative access programs to modernize access for customers at self-service devices. (USPS' March 2010 "Expanded Access and Products" Fact Sheet attached as Exhibit F, *see also* New Action Plan, Ex. F). As evidenced by the January 26, 2009 audit report drafted by the Deputy Assistant Inspector General for Support Operations, there is a benefit to deploying or leasing APCs to more convenient nonpostal service locations. (*See* January 26, 2009 Audit Report attached as Exhibit E). These benefits include the potential reduction of window clerk work hours, generation of additional revenue, and enhancement of customer service. (*See id.*)

The retail self-service shipping station pilots at [REDACTED] are clear validated examples of the benefits of the USPS' strategic plan of expanding alternative access to postal services at retail centers where customers work, shop and live. (*See* 2002 Transformation Plan, Ex. B at p. 15; USPS' March 2010 "Expanded Access and Products" Fact Sheet, Ex. F; *see also* New Action Plan, Ex. F at p. 1 attached to S. Chandaria Decl.). The data [REDACTED]

[REDACTED]

demonstrates the need for USPS-branded mailing and shipping products for the USPS to compete for mail and shipping business.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. *Quality of Mailing and Shipping Products Has Improved Due to Increased Adherence to Mailing Standards Via Market Competition***

USPS used the License Agreement as an opportunity to work with LePage's to help direct product innovation and increase the quality of mailing and shipping products. In so doing, the USPS can influence postal standards in general mail traffic. By licensing its brand and maintaining control over the quality of USPS-branded mailing and shipping products, the USPS had LePage's expend LePage's own capital to design and develop new products calculated to increase mail security and mail processing efficiencies.

The majority of LePage's products are in compliance with the DMM specifications (with remaining product compliance in progress). (See S. Chandaria Decl. at ¶6). [REDACTED]

[REDACTED]

Moreover, the presence of LePage's products in the market has forced competitors to produce better quality products that come closer to meeting the DMM standards for safety and efficiency. (S. Chandaria Decl. at ¶33). LePage's mission is [REDACTED]

[REDACTED]

**D. *PRC's Termination of License Agreement Creates a Hardship for USPS***

The USPS is currently in an economic crisis. Not only is the USPS unable to continue to sustain its growing operating deficit, but mail volume is steadily declining due to market

competition and technological advances. (See New Action Plan, Ex. F). Overall, the USPS has very little capital available to perform its basic mail processing function, let alone regulate domestic mail and shipping standards or influence the innovation, quality or security of mailing and shipping products utilized around the globe.

**1. The PRC ruling makes it difficult for the USPS to influence quality or security of mailing and shipping products in the market**

By terminating the License Agreement, the PRC has eliminated an important aspect of the USPS' ability to establish and influence mailing and shipping standards. The USPS does not currently have a program that directly regulates the quality of mailing or shipping products sold in nonpostal retail outlets. LePage's understands that to develop such a program would not only be costly, but ineffective, and currently, the USPS lacks the capital necessary to conduct its own research and development. (See e.g. New Action Plan, Ex. F). USPS' suggested quality specifications are unlikely to be voluntarily adhered to given the additional costs associated with compliance. The License Agreement permitted [REDACTED]

[REDACTED]

Under the License Agreement, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2. USPS no longer has a competitive brand to influence consumer use of U.S. mail system**

The termination of the USPS-brand also eliminates the availability of a cost-effective market model to compete with private sector carriers such as UPS and FedEx to influence consumers at alternative access sites. FedEx, UPS and other competitors for mail and package traffic are present at many retail locations, such as Staples or Office Depot stores. (See S. Chandaria Decl. at ¶41). As its strategic plan shows, the USPS needs to compete effectively for mail and package business at such alternative access sites for its sustained viability. (See January 26, 2009 Audit Report, Ex. E and New Action Plan, Ex. F at p. 21, 26-27, 32-33).

Logically, a person is less likely to use a USPS-branded box to ship an item by FedEx or UPS. Moreover, [REDACTED]

[REDACTED]

Simply, LePage's products are important to the USPS' inherently postal services. By terminating the License Agreement, the PRC is significantly harming the USPS' ability to compete at important alternative access locations for mailing and shipping business. LePage's products are far different than the ink cartridge, the primary subject of the PRC's January 14, 2010 ruling.

***E. LePage's Will Suffer Undue Hardship Due to the Premature Termination of the License Agreement***

Termination of the License Agreement creates substantial hardship for LePage's due to

[REDACTED]

[REDACTED]

In addition, LePage's will suffer significant damage to its goodwill and business reputation because of the harm premature termination will cause to its relationships with retail owners and suppliers with whom commitments are properly in place beyond December 31, 2010. Moreover, from a broader perspective, because LePage's is a minority-owned business enterprise, the termination of the License Agreement will likely have a dampening effect on other minority-owned businesses' desire to contract with the USPS.<sup>10</sup>

**1. LePage's will lose capital investment and profit due to termination of License Agreement**

LePage's has expended substantial resources in its performance under the License Agreement, including [REDACTED]. These responsibilities are in addition to manufacturing, sales and logistical programs, which are ordinary in producing mailing and shipping products. Specifically, LePage's has spent [REDACTED]

[REDACTED]

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<sup>10</sup> The USPS continues to have procurement policies supporting increased contract activity with minority-owned and women-owned businesses and the PRC Order may well undermine those policies.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Due to the PRC's termination of the License Agreement, LePage's is no longer able to market its USPS-branded products. (*Id.* at ¶52). As a result, [REDACTED]

[REDACTED]

In total, LePage's stands to lose [REDACTED]

## 2. Enterprise Value Damages

Although the specific loss of enterprise value may be difficult to quantify six months prior to the December 31, 2010 termination date, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This number represents the lost value to LePage's overall business due the premature termination of the License Agreement.

All together, [REDACTED]

[REDACTED] (*Id.*)

## 3. Goodwill/reputational damages from ancillary contracts

LePage's also has spent considerable time and energy in developing relationships with various retail outlets, postage meter manufacturers, and others in an effort to sell USPS-branded products. (S. Chandaria Decl. at ¶56). LePage's fears that its relationships with various retailers such as [REDACTED]

[REDACTED], are now at risk. [REDACTED]

[REDACTED]

[REDACTED] The family-owned businesses affiliated with LePage's have served retailers with various consumer products for over 30 years, and those years of relationships and customer goodwill and trust will be severely compromised by the premature license termination. LePage's and the family businesses risk being locked out of the retail market.

Furthermore, LePage's supplier relationships also are seriously at risk. In order to produce the USPS-branded products, LePage's uses [REDACTED]

[REDACTED]

[REDACTED] Due to the PRC's premature termination of the License Agreement, LePage's supplier relationships will be severely affected as it will not be able to perform its obligations with respect to its USPS-brand related supply contracts. Further,

[REDACTED]

[REDACTED]

#### IV. CONCLUSION

The License Agreement between LePage's and USPS should not be terminated by the PRC. In sharp contrast to the ink cartridge license that was the focus of the PRC's January 14, 2010 decision, LePage's has demonstrated with respect to its licensing relationship that:

- 1) LePage's USPS-branded products increase the use of USPS mailing and shipping service;
- 2) The quality of LePage's USPS-branded mailing and shipping products is better than competing brands due to LePage's overall quality and innovative design and the USPS' oversight provided under the License Agreement; and

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<sup>11</sup> LePage's also manufactures hardware tapes and sticky notes as well as mailing and shipping products under Seal-it, LePage's and the private label brands.

3)



Given these facts, the License Agreement is a competitive nonpostal service that meets the public needs test under 404(e), and the License Agreement should be allowed under the grandfather provisions set forth in the PAEA.

**Moreover, should the PRC prematurely terminate** the License Agreement, LePage's will suffer severe economic hardship resulting from LePage's tremendous investment in time and resources in reliance upon the long-term duration of the License Agreement. Thus, based on the PRC's stated "desire to mitigate potential economic loss to the licensees," LePage's respectfully requests that the PRC reconsider its January 14, 2010 Order terminating the License Agreement and allow the License Agreement to proceed under its terms and conditions.

In the alternative, LePage's respectfully requests that the PRC, at the very least, stay its January 14, 2010 Order and allow LePage's to continue its operation under the License Agreement until the appellate court makes a ruling on LePage's appeal.

