

PUBLIC (REDACTED) VERSION

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

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

ANSWERS OF GAMEFLY, INC., TO USPS DISCOVERY REQUESTS USPS/GFL-84 through -103 (July 1, 2010)

GameFly, Inc., (“GameFly”) respectfully submits its answers to discovery requests USPS/GFL-84 through -103, which the Postal Service served on June 17, 2010. Each discovery request is quoted verbatim and then followed by GameFly’s answer. Except as otherwise indicated, preparation of these responses was supervised by David A. Hodess.

Respectfully submitted,

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July 1, 2010

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USPS/GFL-84. Please refer to your responses to USPS/GFL-65 and 80. Please explain how the UAA return rate of GameFly's outbound DVD mailings has varied over time and why.

Answer:

GameFly does not have any responsive information. The UAA data produced in response to discovery requests USPS/GFL-65 and 80 were the result of a special study performed in response to those discovery requests. GameFly did not collect UAA data before being served with those discovery requests.

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USPS/GFL-85. The response to USPS/GFL-66 claims that GameFly lacks any quantitative data on the mailpiece designs that it used before 2005 and believes the mailpiece was identical to or similar to the design identified as Mailer #1 in Appendix USPS-GFL-1. Please explain in what ways the mailpiece design used before 2005 was not identical to the design identified as Mailer #1 in Appendix USPS-GFL-1.

Answer:

To the best recollection of the GameFly employees who were involved in mailpiece design before 2005, the mailpiece design used before 2005 was very similar, if not identical, to the design identified as Mailer #1. GameFly personnel have no recollection of any differences between the two designs.

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USPS/GFL-86. In your response to USPS/GFL-73, you state:

Perhaps the most telling document is GFL1484-85, an email exchange between Netflix and USPS personnel. In this exchange, Netflix states that “70% of our scrap is focused on our rental return product” and “[c]urrently the only viable solution to scrap reduction is the culling of our returns prior to getting into the automation stream.”

Please provide a complete listing of all sources of GameFly “scrap,” including those involving sources of damage to GameFly’s DVDs that are not directly the result of mail processing. Include in this listing estimates of the proportions of all damaged DVDs attributable to each source (*e.g.*, damage incurred extracting a factory-produced DVD prior to entering the DVDs in the mail).

Answer:

Disc breakage is possible in theory during any of the following steps. GameFly has not performed a statistical or empirical study of the breakage rates of its DVDs while in the possession of GameFly or its customers. In the judgment of GameFly personnel with experience in GameFly’s operations, however, these breakage rates are extremely low.

1. Discs occasionally arrive broken from the manufacturer. GameFly believes that this breakage rate is de minimis.
2. Discs may be broken during the opening of packages from the manufacturer at GameFly facilities. GameFly believes that this breakage rate is de minimis.
3. Discs may break during the outbound trip. See Response to USPS/GFL-20 and Appendix USPS-GFL-20.

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4. Discs may be broken by the customer. See GameFly's Response to USPS/GFL-77 and Appendix USPS-GFL-77A (indicating the percentage of damaged discs that were damaged by customers).
5. Discs may break on the inbound trip. See GameFly's Response to USPS/GFL-20, Appendix USPS-GFL-20, and Appendix USPS-GFL-77B.
6. Discs may be broken after their return to GameFly as a result of handling by GameFly personnel in the course of opening the return mailers, restocking the pieces in inventory, retrieve the pieces from inventory, and inserting the pieces in mailers for new outbound shipments. GameFly believes that this breakage rate is de minimis.
7. Finally, discs may be broken during repair or refinishing process. GameFly believes that this breakage rate is de minimis.

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USPS/GFL-87. Please refer to your response to USPS/GFL-77.

- (a) Prior to the evaluation at the Pittsburgh distribution center, had GameFly evaluated the different sources of breakage, whether those evaluations were documented in records or not.?
- (b) If yes, please provide a complete description of each evaluation.
- (c) What proportion of GameFly's customer returned DVDs flow through the Pittsburgh distribution center?

Answer:

(a) Other than the informal, qualitative evaluations discussed in GameFly's Answer to USPS/GFL-22, GameFly has not performed any other studies of the sources of disc breakage. Documents in Library Reference GFL-LR-C2009-1-5, including Document No. 0.7.10.1157073, could be construed as evaluating different sources of breakage.

(b) N/A

(c) Approximately **[BEGIN GAMEFLY PROPRIETARY]**

[END GAMEFLY PROPRIETARY]

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USPS/GFL-88. Please refer to your response to USPS/GFL-77.

- (a) Do DVDs ever crack or become damaged while extracting them from factory packaging prior to enclosing them in a mail piece and entering them into the mail?
- (b) Please provide all documents that discuss this source of damage or its origin.
- (c) Please describe fully all forms of packaging used by manufacturers of DVDs that GameFly distributes to its subscribers.
- (d) Please describe fully the procedures used by GameFly to extract DVDs from each form of packaging prior to preparing a mail package to enter into the mailstream.

Answer:

(a) Yes. In GameFly's experience, however, disc breakage during this operation is extremely rare.

(b) GameFly has no documents discussing this source of damage or its origin.

(c) The majority of Games arrive at GameFly in 30-count boxes. The game is cased in a plastic DVD-type case with instructions and artwork. These cases are cellophane wrapped for security. The 30 count cases are shipped individually via FedEx and UPS. For larger orders, the 30 count box is palletized and shipped via common carrier.

(d) The majority of Games arrive at GameFly in 30-count boxes. Each box is opened with a safety blade by hand. The individual units are then cut along the security seal (for Xbox 360 games) or the top of the case (for PS3 and Wii games) by hand. The shrink wrap is then removed by hand. The cases are

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then opened and the games are removed from the case. They are then placed in tyvek sleeves that have already had the label applied.

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USPS/GFL-89. Please refer to your response to USPS/GFL-77. Please describe completely the methodology employed in conducting the Pittsburgh evaluation. Include a description of the personnel employed in the evaluation, their qualifications, and any training given prior to the evaluation.

Answer:

1. Potentially broken disks were identified by the opening team and placed in a collection bin for the repair specialist daily.
2. A specialist visually inspected each disk and maintained a tally of breaks by category.
3. Questionable disks were tested by a Checkflix machine and consoles.
4. The broken tally was readjusted based on outcome of the tests in #3

The repair specialist is a GameFly employee with a minimum of one year experience. He/she is trained on the job in accordance with the damaged training guide. He/she is subject to quality control testing by the warehouse supervisor and/or manager.

The study was a census of all broken discs received at the Pittsburgh during the study period; no sampling was performed.

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USPS/GFL-90. Please refer to your response to USPS/GFL-77. In evaluating damage incurred by its DVDs, does GameFly distinguish between damage according to

- (a) the particular manufacturer of the DVD;
- (b) the materials from which the DVD is constructed or manufactured (including types of coatings or labeling);
- (c) whether a DVD is blu ray versus non-blu ray;
- (d) how often the DVD has been rented;
- (e) how often the DVD has been played?
- (f) Please provide any documents that might exist discussing these potential sources of DVD damage.

Answer:

(a) through (e). GameFly does not evaluate DVD damage in terms of these factors, and the only listed factors that GameFly tracks are (c) and (d).

(f) See documents produced as Appendix USPS-GFL-90. All other responsive documents have already been produced to the Postal Service. See Appendix USPS-GFL-20 and Library Reference GFL-LR-C2009-1-5 (including Document No. 0.7.10.187023).

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USPS/GFL-91. Please refer to your response to USPS/GFL-77.

- (a) In evaluating the sources of damage to GameFly's DVDs, either in the Pittsburgh evaluation, or any other evaluation, has GameFly differentiated the sources of damage in the mailstream according to the type of machine or other operation that is thought to have caused the damage?
- (b) Please provide any documents that might exist discussing this source of damage.

Answer:

- (a) No.
- (b) GameFly does not believe that any responsive documents exist. It is possible, however, that the Postal Service might consider the caption to the photograph reproduced as Appendix USPS-GFL-91 as responsive. Accordingly, GameFly is producing the photograph.

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USPS/GFL-92. Please refer to your response to USPS/GFL-77. Has GameFly ever compared the sources of damage to its own DVDs with sources of damage to Netflix or Blockbuster DVDs? If yes, please discuss and provide any documents that might exist regarding the differences in sources of damage.

Answer:

GameFly's management and employees have not performed such a comparison because they had no access to any company-specific information about the "sources of damage to Netflix . . . DVDs" until June 28, 2010, when David A. Hodess became an authorized reviewing representative for GameFly under the protective order in this case. GameFly in-house personnel still lack access to any specific information about the "sources of damage to . . . Blockbuster DVDs."

GameFly's legal counsel and economic consultants, by contrast, have had access to the documents produced by the Postal Service in discovery in this case. Many of the documents concern the causes of damage to Netflix and Blockbuster DVDs. The documents show that the processing of DVD return mailers on automated letter processing equipment is a major source of damage to DVDs, and that bypassing automated letter processing greatly reduces DVD breakage rates. *See, e.g.,* GameFly Answer to USPS discovery request USPS/GFL-72 at 2-4 (citing and discussing documents produced by USPS); Memorandum of GameFly, Inc., Summarizing Documentary Evidence (April 12, 2010) at 8-13, 17-26 (citing and discussing documents produced by USPS). The cited documents were entered into evidence on June 16, 2010, and constitute a substantial fraction of the documents reproduced in Tr. 4/158-652.

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The 80,000-odd pages of documents produced by the Postal Service in discovery contain still other documents on the issue.

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USPS/GFL-93. Please refer to your response to USPS/GFL-77. Please describe how GameFly detects breakage in its DVDs. For example, are the DVDs scanned with equipment or are they subjected only to visual inspection? Include in your description an identification of all equipment used and each step in the process of detecting damage.

Answer:

Broken discs are first identified through a visual inspection during the opening process. Discs that seem questionable are reevaluated using a Checkflix machines (see www.checkflix.com) and sometimes a console test.

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USPS/GFL-94. Please refer to your response to USPS/GFL-77. Is there a threshold for damage of any particular type that GameFly can tolerate (e.g., small cracks, scratches, cosmetic blemishes) and still send game DVDs to GameFly's subscribers (who do not report any damage)? Please describe fully.

Answer:

[BEGIN GAMEFLY PROPRIETARY]

[END

GAMEFLY PROPRIETARY]

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USPS/GFL-95. Please refer to your response to USPS/GFL-77.

- (a) Does GameFly analyze (or has it ever analyzed) DVD breakage according to whether DVDs are broken on the outbound mail trip or the inbound trip?
- (b) If so, how has GameFly determined the trip on which breakage occurs (e.g., customer reports, reports from GameFly employees inspecting returned DVDs)? Please describe fully.
- (c) Please provide any documents that might exist discussing these analyses.

Answer:

- (a) Yes. See Appendix USPS-GFL-20.
- (b) Inbound breaks are reported by GameFly employees. Outbound breaks (unplayables) are reported by GameFly subscribers.
- (c) See Appendix USPS-GFL-20.

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USPS/GFL-96. Please refer to your response to USPS/GFL-77

- (a) Has GameFly ever attributed DVD damage to processes or equipment used to prepare or package a DVD for mailing?
- (b) Please describe every step in the process of preparing the DVD for mailing. Include in the description each piece of equipment used in the preparation and packaging.
- (c) Please provide any documents that might exist discussing the packaging of DVDs for mailing in relation to potential sources of damage.

Answer:

(a) In theory, a DVD could be damaged during the handling needed to prepare and package a DVD for mailing. In practice, breakage during handling, if it occurs at all, is extremely rare.

(b) The steps are as follows:

1. Each disc (in its own protective Tyvek sleeve) is scanned using a hand-held barcode scanner.
2. Shipping and return labels are automatically generated and then manually placed on the mailer.
3. The shipping label is placed on the front cover and the return label is placed on the inside/return portion of the mailer.
4. The game in its Tyvek sleeve is manually inserted into a cardboard outer sleeve for additional protection.

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5. The closed ends of both the Tyvek sleeve and cardboard sleeve are oriented in opposing directions to encapsulate the unit/disc so that it cannot come loose.

6. An employee:
 - Unfolds the mailer.

 - Places the disc inside cardboard so the sleeve opening is in the fold of the cardboard with the disc title facing up

 - Folds the cardboard over and slides the entire item into the mailer opening with arrow facing down.

 - Peels off the clean-tac strip covering the adhesive strip in the middle of the loose flap of the mailer, and folds the flap over while aligning the loose end with the top clean-tac fold

 - Peels off the top clean-tac adhesive strip and folds over the remaining flap.

 - Stacks the sealed mailers in a pile.

7. The sealed mailers are stacked in a mail bin (775):
 - Mailers in the bin must all face the same direction for the USPS processing equipment.

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- Bins are prepared for acceptance based on local USPS presentation preferences.
- Once prepared, the bins are placed in an APC or hamper cart per local USPS preferences.
- APC or hampers are loaded onto the GameFly truck and secured using e-track straps.
- The GameFly truck delivers the containers of mail to the BMEU using a dock assigned by the BMEU. APC containers or hampers are rolled off the truck and placed into the acceptance area designated by the BMEU for an acceptance clerk to inspect the mailing.

(c) We assume that this question seeks information about the damage potentially caused to DVDs by the preparation and assembly of outbound GameFly mailings. GameFly has no such documents. (Alternatively, if the question seeks information about the effectiveness of alternative mailpiece designs in preventing DVD damage caused by the *Postal Service*, GameFly has already produced all responsive information it possesses in response to previous Postal Service discovery requests.)

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USPS/GFL-97. Please refer to your response to USPS/GFL-77.

- (a) Has GameFly ever experienced damage to its DVDs during their evaluation or cleaning them after return by a customer?
- (b) Please describe fully how returned DVDs are evaluated, cleaned or repaired prior to sending them out to subsequent customers.
- (c) Please provide any documents that might exist discussing the cleaning or repair process in relation to potential sources of damage.
- (d) Please provide any documents that might exist discussing cleaning or repair processes in relation to damage.

Answer:

(a) Yes, but GameFly has not quantified this damage due to its very low incidence.

(b) GameFly cleans newly-returned DVDs with a microfiber towel and Azurdisc cleaning solution specially formulated for optical media. A GameFly employee inspects each DVD to verify that the game and sleeve match, and that the disc has not been rendered unplayable by scratches or other forms of damage. Damaged discs are sent to the Damage and Repair specialist for further evaluation. The specialist send discs with minor scratches to an in-house buffing operation. Internal repair is done using JFJ buffing machines that use a foam buffing pad and buffing compound. Discs with deep scratches are sent to an external repair service. See also Appendix USPS/GFL-97, a training guide provided to GameFly employees responsible for cleaning and repairing discs.

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(c) and (d) See Library Reference GFL-LR-C2009-1-5, Document
Number 0.7.10.848572.

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USPS/GFL-98. Please refer to your response to USPS/GFL-77.

- (a) Is GameFly aware that the processes used for manufacturing DVDs, and qualities of the polycarbonate used, can affect the susceptibility of DVDs to cracking or otherwise breaking? (For example, numbers of layers of paint and degree of curing in the manufacturing process).
- (b) Please describe fully the extent of GameFly's knowledge concerning the linkages between DVD manufacturing and subsequent breakage during handling and play.
- (c) Please describe fully the extent of GameFly's knowledge concerning the linkages among type(s) and/or mix(es) of polycarbonate in DVD manufacturing and subsequent breakage during handling and play.
- (d) Please provide any documents that might exist discussing the relationship between DVD manufacturing and breakage.

Answer:

- (a) No.
- (b) GameFly has no such knowledge, nor does it have any control over the manufacturing process.
- (c) GameFly has no such knowledge, nor does it have any control over the manufacturing process..
- (d) GameFly has no such documents.

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USPS/GFL-99. Please refer to your response to USPS/GFL-80. Please explain what considerations led to GameFly's decision to mail its DVDs at single piece rates.

Answer:

The presort discounts were too small to justify the purchase of sorting equipment.

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USPS/GFL-100. Please refer to your response to USPS/GFL-8, including your Supplemental Answer. Has the process described changed over time? Please describe in detail the process by which GameFly historically has assembled its mailers once procured and all mailing/shipping supplies 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 the before and after processes and why such changes were undertaken.

Answer:

The clean-tac strip (a self-sealing dry adhesive strip covered by a peel-off protective strip) was added in November 2006. Before that, GameFly sealed its mailers by running them through a tabbing machine. GameFly adopted the use of clean-tac strips instead of tabbing because the tabbing machine could not provide sufficient throughput.

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USPS/GFL-101. The invoices contained in Appendix USPS-GFL-8 show that a GameFly uses two different mailers of one size, a 2 color DVD mailer and 4 color DVD mailer. Please describe how each mailer differs and how each is utilized.

Answer:

A 2 color mailer is printed in two colors, while a 4 color mailer is printed in four colors. There is no functional difference.

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USPS/GFL-102. The response to USPS/GFL-51 appears to reference only emails which relate to tests conducted by GameFly to determine mailability or machinability, including susceptibility to breakage and frequency of breakage of GameFly's own mail pieces, and any tests conducted on mail piece designs listed in your response to USPS/GFL-1. Documents, as defined in the Second Discovery Request of USPS to GameFly, Inc. (USPS/GFL-47 to -62), encompass any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced, construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Please produce all documents and communications related to any tests responsive to USPS/GFL-51, including any communications with the Postal Service.

Answer:

GameFly has objected to producing documents previously sent to or received from the Postal Service. GameFly has produced all of other responsive documents it possesses in response to previous Postal Service discovery requests. See Appendix USPS/GFL-4A and Appendix USPS/GFL-6.

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USPS/GFL-103. The response to USPS/GFL-60 states that GameFly has searched its email files and determined that it has no communications related to the live mail tests performed from July 2007 through July 2008. Documents, as defined in the Second Discovery Request of USPS to GameFly, Inc. (USPS/GFL-47 to -62), encompass any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced, construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Please produce all documents and communications related to the 'live mail' tests of multiple mailer configurations performed from July 2007 to July 2008 referred to on page 106 of the GameFly Memo.

Answer:

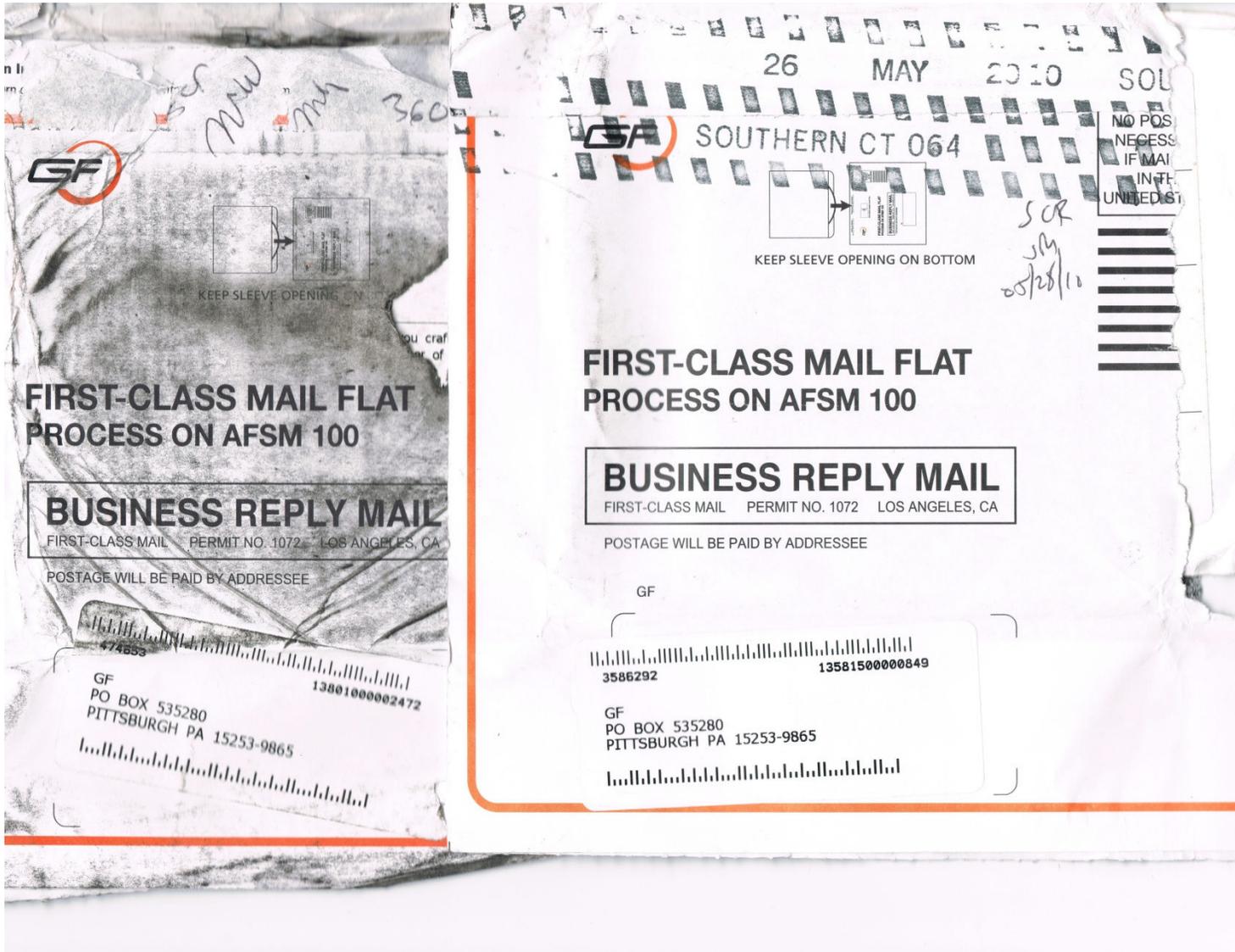
GameFly has produced all responsive documents it possesses in response to previous Postal Service discovery requests. See Appendix USPS/GFL-4A and Appendix USPS/GFL-6.

APPENDIX USPS-GFL-90

[REDACTED]

APPENDIX USPS-GFL-91

Jammed Disc Mailer and Old Style Cancellor



APPENDIX USPS-GFL-94

[REDACTED]