

PRESIDING OFFICER'S  
RULING NO. C2009-1/31

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING  
ON PROCEDURES FOR ORAL CROSS-EXAMINATION  
OF GAMEFLY'S INSTITUTIONAL WITNESSES

(Issued July 23, 2010)

To ensure that the record is developed efficiently during the hearing scheduled on July 28, 2010, this Ruling notifies parties of the procedures that will be followed during oral cross-examination of GameFly's institutional witnesses.<sup>1</sup>

*Background.* On July 6, 2010, the Postal Service was directed to file a notice of intent to conduct oral cross-examination of the institutional witness that GameFly was ordered to present at the hearing scheduled for July 28, 2010.<sup>2</sup> The Postal Service filed its notice of intent to conduct oral cross-examination on July 12, 2010.<sup>3</sup> On July 13, 2010, GameFly filed a notice indicating that it would provide two individuals as its institutional witnesses for this hearing.<sup>4</sup> GameFly identified David Hodess, President

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<sup>1</sup> See also P.O. Ruling C2009-1/26 at 1.

<sup>2</sup> P.O. Ruling C2009-1/24.

<sup>3</sup> United States Postal Service Notice of Intent to Conduct Oral Cross-Examination, July 12, 2010 (Notice of Intent).

<sup>4</sup> GameFly, Inc., Notice Concerning Institutional Witnesses and Hearing Dates, July 13, 2010 (GameFly Notice).

and CEO of GameFly, and Sander Glick, Vice President of SLS Consulting, as knowledgeable institutional witnesses.<sup>5</sup>

First, the hearing will follow procedures to minimize the amount of testimony under seal. During the hearing on June 16, 2010, counsel for the Postal Service agreed that it would conduct oral cross-examination of GameFly's witness in the public hearing to the extent possible, and reserve questions relating to nonpublic information for a subsequent *in camera* segment of the hearing. It is anticipated that portions of the oral cross-examination of the institutional witnesses may reference material under seal. Postal Service counsel shall reserve oral cross-examination questions likely to elicit responses that refer to information subject to non-public treatment for a separate *in camera* segment at the end of the hearings.

Second, it is unclear which of the two witnesses will best be able to answer questions on permissible topics, particularly since the Postal Service did not identify the lines of questioning it plans to pursue in any detail. To expeditiously attain answers and reduce the risk of misdirected questions between witnesses, the two GameFly witnesses will sit as a panel, and respond to permissible questions by the Postal Service. The Postal Service may direct its questions to either, or both, witnesses as appropriate, and choose the order in which witnesses are questioned. Postal Service counsel shall link lines of questioning to an identified discovery answer at issue. See P.O. Ruling C2009-1/24 at 11.

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<sup>5</sup> *Id.* On July 19, 2010, GameFly also filed a response to the Notice of Intent as permitted by ruling paragraph 3 of P.O. Ruling C2009-1/24. Response of GameFly, Inc., to Postal Service Notice of Intent to Conduct Oral Cross-Examination, July 19, 2010 (Response).

RULING

Procedures as set forth in the body of this Ruling will be followed during the hearing on July 28, 2010.

Dan G. Blair  
Presiding Officer