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

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

SUPPLEMENTAL ANSWERS OF GAMEFLY, INC., TO
USPS DISCOVERY REQUEST
USPS/GFL-4, -67, AND -68
(July 27, 2010)

GameFly, Inc., ("GameFly") respectfully submits these revised and supplemental answers to discovery requests USPS/GFL-4, including a supplement to Appendix USPS-GFL-4A; USPS/GFL-67, and USPS/GFL-68. In reviewing GameFly's original answer to USPS/GFL-4, GameFly determined that the answer, and the related answers to the follow-up questions, could give an incomplete and inaccurate impression of how the files of two former GameFly employees, Steve Brown and Jeff Kawasugi, were treated after the departure of the two individuals from GameFly. GameFly submits this supplemental response to ensure that the record is clear, complete and accurate.

Additionally, as part of its ongoing review of its files to ensure that all responsive information has been produced, GameFly has located a complete copy, including attachments, of an email from Jeff Kawasugi to Dave Hodess that was included in Appendix USPS-GFL-4A. The version previously included in this

Appendix lacked attachments and contained only the first line of the final paragraph.

Respectfully submitted,

David M. Levy
Matthew D. Field
Alexandra Megaris
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004
(202) 344-4800

Counsel for GameFly, Inc.

July 27, 2010

SUPPLEMENTAL ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
(July 27, 2010)

USPS/GFL-4. Please produce all documents and communications related to any of the following matters:

(a) GameFly's decision to use a mail piece to transport its DVDs through the mail;

(b) GameFly's decision to stop using a particular mail piece or to use some other design; and

(c) GameFly's decision to modify the design of its mail piece.

Supplemental Answer:

The two individuals who managed the mailer design changes described in GameFly's original response to USPS/GFL-4 (Steve Brown and Jeff Kawasugi) left GameFly in December 2007 and August 2009, respectively. GameFly's May 18 response to the interrogatory stated that "GameFly did not retain the two employees' files on these matters." This statement was true in that GameFly did not retain the two employees' files as distinct and separate files. To the extent that the quoted response can read as a statement that the contents of the files were deliberately discarded, destroyed or not searched, however, the record should be clarified.

Consistent with standard practice at GameFly, both Mr. Brown and Mr. Kawasugi were each directed before leaving GameFly to turn over custody of their files to Mike Gimlett, GameFly's Vice President–Merchandising. Mr. Brown turned over two cartons of files to Mr. Gimlett before leaving GameFly in December 2007. Mr. Gimlett did not segregate Mr. Brown's files, but simply left

them in the centralized file area where they were stored. Because Mr. Gimlett, like other senior GameFly executives, handles is management responsibilities in an almost entirely paperless fashion, he did not look at the files again before searching through them (along with his other files) in response to the Postal Service's discovery requests in May 2010.

Mr. Kawasugi turned over a much smaller volume of files to Mr. Gimlett before leaving GameFly in August 2009. Like Mr. Brown's files, Mr. Kawasugi's files were not reviewed by Mr. Gimlett before he searched through them in response to the Postal Service's discovery requests in May 2010. GameFly did not focus on the completeness of the hard copy files turned over by Mr. Kawasugi until the Postal Service raised the retention of Mr. Kawasugi's documents as an issue in this case. That prompted GameFly to launch a renewed search for additional files in more remote and less promising locations than Mr. Kawasugi's former office, department and nearby file storage area. The renewed search unearthed approximately one carton of additional files at GameFly's distribution center in Lakewood, California, about 20 miles distant from Mr. Kawasugi's former offices in GameFly's headquarters in Los Angeles.

While it is possible that some files kept by Mr. Brown or Mr. Kawasugi may have been lost or destroyed (as indicated in GameFly's original response to USPS/GFL-68), GameFly has no reason to believe that this occurred. Neither individual was instructed to destroy any of his files, or to do anything other than surrender them to GameFly. Moreover, since obtaining custody of the files, Mr. Gimlett has not purged any documents relating to the complaint case. Indeed, as

note above, Mr. Gimlett never looked at the Brown and Kawasugi files from the time that he gained custody of them before they were searched in response to the Postal Service's discovery requests.

As soon as the Postal Service served GameFly with discovery requests, Mr. Gimlett searched all of the files discussed above—including all files in his possession, including those inherited from Messrs. Brown and Kawasugi, as well as the additional Kawasugi files discovered separately in the Lakewood distribution center—for documents responsive to the Postal Service's discovery requests. Although GameFly did not segregate these files in a way that would enable GameFly to determine which parts of its current employees' files were originally maintained by Mr. Brown or Mr. Kawasugi, the documents in the files from these two individuals were reviewed and produced if responsive.

Finally, in the course of preparing for the July 28 hearing, GameFly has discovered that an email thread involving Mr. Kawasugi previously produced by Mr. Kawasugi represents only a portion of the original document, and that GameFly possesses the complete original. A copy of the latter has been produced in Supplemental Appendix USPS/GFL-4A.

SUPPLEMENTAL ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
(July 27, 2010)

USPS/GFL-67. In your answer to USPS/GFL-4, you state "[t]he two individuals who managed these changes (Steve Brown and Jeff Kawasugi) left GameFly in December 2007 and August 2009, respectively, and GameFly did not retain the two employees' files on these matters." Did GameFly impose a litigation hold on the files of the two employees described above? Please describe the litigation hold, including the effective dates and the preserved content, and produce all documents related to the litigation hold. If you did not impose a litigation hold on the files of the two employees described in your answer to USPS/GFL-4, please explain the reasoning for this decision.

Supplemental Answer:

Please see GameFly's Supplemental Answer to USPS/GFL-4.

SUPPLEMENTAL ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
(July 27, 2010)

USPS/GFL-68. In your answer to USPS/GFL-4, you provide a partial email thread dated 6/2/2009. Please produce the complete email thread and the attachments referenced in that email thread.

Supplemental Answer:

Please see Supplemental Appendix USPS/GFL-4A.

SUPPLEMENTAL APPENDIX USPS-GFL-4A

Field, Matthew

From: Levy, David M.
Sent: Monday, July 26, 2010 4:49 PM
To: Field, Matthew
Subject: FW: Northern VA P&DC - Mailer Testing
Attachments: 1AFCS - Mailers bunching up and jamming the in-feed line.JPG; 1DPRC - first belt and wheel.JPG; 1DPRC - where height rejects collect.JPG

From: Dave Hodess [mailto:dhodess@gamefly.com]
Sent: Wednesday, July 14, 2010 7:12 PM
To: Levy, David M.
Subject: FW: Northern VA P&DC - Mailer Testing

David-

Mike just found this email. I think we may have sent the body earlier but I don't remember sending the pictures.

dave

From: Mike Gimlett
Sent: Wednesday, July 14, 2010 4:08 PM
To: Dave Hodess
Subject: FW: Northern VA P&DC - Mailer Testing

From: Jeff Kawasugi
Sent: Wednesday, December 05, 2007 4:04 PM
To: Dave Hodess
Subject: Northern VA P&DC - Mailer Testing

Dave,

Yesterday 12/4 I tested 4 configurations of our mailer at the Northern VA P&DC with Steve Tkacik, Flats Engineer and Chris Stratton (sp) Letter Engineer.

The objective of the test was to observe how mailers with different dimensions and thicknesses would be treated at the 010 area of the P&DC, more specifically the Dual Pass Rough Cull (DPRC) portion of the Barney machine and the Advanced Facer Canceller System (AFCS). We also ran a number of the discs on the DBCS Letter sorter to test

Here is a summary of the results:

Qty.	Test Mailers	In/Out	Height	Length	TTL Weight	DPRC Reject
300	Simpsons 12/07	Outbound	6 7/8"	6 15/16"	.899-.999	4.3%
	No Cardboard	Inbound	6 7/8"	6 15/16"	.802-.902	
	Refer a Friend circa '06	Outbound	7 1/4"	7 1/2"	1.688-1.788	

300	With Cardboard	Inbound	7 1/4"	7 1/2"	1.569-1.669	6.5%	100%
	Refer a Friend circa '06	Outbound	7 1/4"	7 1/2"	1.02-1.12		
300	No Cardboard	Inbound	7 1/4"	7 1/2"	.901-1.01	10.3%	100%
	Refer a Friend circa '06	Outbound	7 1/4"	7 1/2"	1.354-1.454		
300	Half Cardboard	Inbound	7 1/4"	7 1/2"	1.235-1.344	did not run	100%

Observations:

- The first cull that the DPRC performs is for height. I believe the test we ran was inconclusive. We were using mailers with a uniform height, build and texture and that may have contributed to a bunching effect. We later viewed regular mixed collection mail going through the DPRC and letter mail was being culled for the same bunching. Further, when we spoke to the operators/maintenance people they said that the height tolerance for that first cull could be adjusted differently at each machine or each facility differently. Roughly 90% of the collection mail is able to go through the DPRC to the AFCS, the remainder gets processed either by re-entering into the DPRC or manually sorting and sending to the flats area.
- Thick mailpieces are also culled the DPRC but that thickness tolerance is set between ¼ and 3/8". None of mailers were thicker than ¼" so that would explain the result.
- The InFeed line to the AFCS bunched up as well during testing due to the uniformity of the mailpieces. So instead we bypassed and used the manual feeder for our mailers. 100% were rejected, due to height. Chris Stratton said that anything greater than 6 1/8" blocks light barriers and kicks the piece into a reject bin. The operator has the ability to manually sort (taking flats to the AFSM) or to take the items to the letter machine (DBCS). We believe this may be an opportunity to work with the USPS Plants to make sure Gamefly mailers are sent to the AFSM.
- Finally, we took 40 of our mailers to the DBCS and ran the same 40 for 3 passes. Not sure if it was the cardboard but the machine jammed each time and we had to pull discs from the wheels and belts to get the machine started. Again, a potential opportunity if we want to re-inforce that our mailers do not belong on the DBCS – USPS operators save maintenance time and increase output by keeping our mailers out of the letter machines. Note, the DBCS does not cull mailers for either height, thickness or rigidity.

Jeff

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