

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

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

OBJECTIONS OF THE UNITED STATES POSTAL SERVICE TO  
DISCOVERY REQUESTS OF GAMEFLY, INC.  
(GFL/USPS-T4-17-19, 22, 23(a)-(d), 23(f), 27(c), 28, 33(c), 35(a), 37(a), 39(a)-  
(b))  
(August 13, 2010)

On August 4, 2010, GameFly, Inc. submitted forty-three discovery requests, with subparts, to Postal Service witness Robert Lundahl. Pursuant to 39 U.S.C. §§ 3001.26(c) and 3001.27(c), the Postal Service provides objections to discovery requests GFL/USPS-T4-17-19, 22, 23(a)-(d), 23(f), 27(c), 28, 33(c), 35(a), 37(a), and 39(a)-(b), reproduced below.

**GFL/USPS-T4-17.** This questions [sic] concerns the standards and practices described on pages 3-14 of your testimony (USPS-T-4):

(a) Please identify the DVD rental companies to which your company has recommended adoption of these standards and practices.

(b) For each DVD rental company identified in response to part (a), please specify the extent to which the company has adopted each of the recommended standards and practices.

(c) For each standard or practice that your company has recommended but the DVD rental company has *not* adopted, please explain why the DVD rental company chose not to adopt the standard or practice.

(d) Please produce documents sufficient to verify your responses to the previous parts of this question.

**GFL/USPS-T4-18.** Since receiving or applying your advice on how to reduce DVD breakage, has Netflix communicated to the Postal Service or ATR a willingness to have its DVD mailers receive less manual culling and processing from the Postal Service, and more automated letter processing? Please produce all communications to and from Netflix on this point, as well as all internal communications within the Postal Service and ATR on this point.

**GFL/USPS-T4-19.** Please identify each and every DVD rental company that, after learning of your advice on how to reduce DVD breakage, has communicated a willingness to have its DVD mailers receive less manual culling and processing by the Postal Service and more automated letter processing. Please produce all communications to and from the DVD rental company on this point, as well as all internal communications within the Postal Service on this point.

**GFL/USPS-T4-22.** On page 2, lines 9-10, of your testimony (USPS-T-4), you state: “By way of contrast, Netflix has studied DVDs and their structure and composition.”

(a) Please provide copies of all such studies, whether performed by Netflix employees, outside vendors or consultants, or a combination of the two.

(b) If you obtained any of your information about the Netflix studies from written communications or documents other than the studies themselves, please produce the communications and documents.

(c) If you obtained any of your information about the Netflix studies from oral communications, please state the date(s) of the communications, summarize the communications, and identify the sources of and witnesses to in the communications by name, title and employer.

(d) Please discuss your role (if any) in each of the Netflix studies of “DVDs and their structure and composition.”

**GFL/USPS-T4-23.** On page 3, line 20, of your testimony (USPS-T-4), you state: [“]More recently, my firm was retained by Netflix to analyze DVD breakage.”

(a) Please provide the scope of work and period of performance for this project.

(b) Please produce the contract for this project.

(c) Please provide the budget for this project.

(d) Please provide copies of all reports, briefings, analyses, workpapers and other documents that you or your firm provided to Netflix.

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(f) How did your firm become aware that Netflix wanted to have a study performed to analyze DVD breakage?

**GFL/USPS-T4-27.** If you have ever participated in any study of DVD breakage for any client other than the Postal Service or Netflix, please provide the following information for each study:

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(c) The name of the client(s).

**GFL/USPS-T4-28.** This question concerns the “recommendations to Netflix” referenced on page 5, lines 7-9, of your testimony (USPS-T-4). Please identify the recommendations, produce any documents setting them forth, and describe the extent to which the recommendation [sic] were adopted by Netflix.

**GFL/USPS-T4-33.** This question concerns page 10 of your study (USPS-T-4), in which you state that “ATR looked at impact failures as the predominant mechanism for the Blu-ray discs.”

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(c) If so, please identify the client and the period of performance, and produce the study and workpapers.

**GFL/USPS-T4-35.** On page 11, lines 15-17, of your testimony (USPS-T-4), you state that “Many mailers have taken actions to reduce or even avoid the risks of damage described above without changing the type of mail processing they receive.”

(a) Please identify each of the “many mailers” to whom you refer.

**GFL/USPS-T4-37.** On page 11, lines 24-25, of your testimony (USPS-T-4), you state: “ATR evaluated the use of reinforcement rings with an FEM study and later with actual destructive testing.”

(a) For what client(s) did ATR perform these evaluations?

**GFL/USPS-T4-39.** On page 12, lines 12-15, of your testimony (USPS-T-4), you state: “ATR...recommended that these spindles be inspected and the manufacturing process should avoid excessive handling by the inside diameter or the use of jewel cases.”

(a) To whom did ATR make these recommendations?

(b) If ATR memorialized the recommendations in any documents, please produce them.

The Postal Service objects to the above discovery requests on the grounds of relevance and undue burden. The Postal Service also objects on the grounds that these discovery requests seek commercially sensitive information of companies that are not parties to this case. GameFly seeks the results of studies undertaken by the witness on behalf of Netflix and other unidentified companies. None of these companies are parties to this case. Netflix and the unidentified companies invested significant resources to obtain these studies and the information derived from them, and they shared information with the witness on the condition that the witness would maintain the confidentiality of the information. Forced disclosure of the information sought in GameFly’s discovery requests is particularly troubling because GameFly made the intentional decision not to invest the resources necessary for the research and development that other DVD mailers have performed. See, e.g., Tr. V/889-890 (discussing GameFly’s lack of knowledge regarding other DVD mailers practices concerning

modification of DVDs); 892 (conceding GameFly's lack of knowledge regarding the industry standard for DVDs and the composition of DVDs).

Disclosure of the information sought in the discovery requests listed above would reveal confidential and commercially sensitive information of companies that are not parties to this case. It would also allow GameFly to obtain through discovery commercially sensitive and competitively valuable information for which it consciously chose not to make the necessary investment, severely disadvantaging those parties who invested the substantial resources necessary to obtain this information.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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