

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

ERRATA TO DIRECT TESTIMONY OF NICHOLAS F. BARRANCA
ON BEHALF OF THE UNITED STATES POSTAL SERVICE (USPS-T-1)
(October 8, 2010) **[ERRATA]**

On July 7, 2010, the United States Postal Service filed the direct testimony of witness Nicholas F. Barranca in this proceeding (USPS-T-1). In reviewing the testimony prior to cross-examination, scheduled for October 14, 2010, two citation errors have been discovered. The Postal Service herewith gives notice of corrections to these errors:

<u>Page</u>	<u>Correction</u>
20	<p>Change footnote 6 from</p> <p>“Memorandum, at ¶ 59 (GFL543, cited as GFL533-GFL551); ¶ 98 (GFL340, compare entire email chain GFL339-43),” to</p> <p>“Memorandum, at ¶ 59 (GFL543, cited as GFL533-GFL551); ¶ 98 (GFL347-48, compare messages in entire email chain).”</p>
21	<p>Change footnote 15 from</p> <p>“See Memorandum at ¶ 41 (GFL78090, GFL79119); ¶ 137 (reference to “real purpose” of official statements, supported by GFL347-48, GFL315-16, GFL327-29, GFL337).” to</p> <p>“See Memorandum at ¶ 41 (GFL78090, GFL79119); ¶ 136 (reference to “real purpose” of official statements, supported by GFL347-48, GFL315-16, GFL327-29, GFL337).”</p>

In light of the relatively minor nature of these changes, the Postal Service does not believe that any party will be disadvantaged by these corrections. Copies of revised pages are attached to this notice.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel, Pricing and Product Support

James M. Mecone

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-8917; Fax -6187
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1 favorable to those mailers.⁶ It also cites documents attempting to support its
2 characterization of a uniform approach to operations, while other documents it cites
3 show, if anything, the coexistence of a diversity of operations and practices, depending
4 on local conditions.⁷ As noted above, furthermore, some of the practices it attempts to
5 demonstrate have been overtaken by time and circumstances, and no longer apply.⁸

6 GameFly quotes from a broad variety of document types. Many are internal
7 email messages between postal employees.⁹ Some are communications with mailers.¹⁰
8 Quite a few are slide presentations given, or at least prepared, either within the Postal
9 Service, or for the Postal Service by mailers.¹¹ Some of these slides merely present
10 bullet points that are tersely expressed and do not obviously lead to the expanded
11 conclusions about them that GameFly represents.¹² A few of the documents cannot be
12 identified by author, circumstance, or even date.¹³ Some are handwritten notes
13 summarizing meetings or personal views that are clearly not intended to represent the
14 Postal Service' official views.¹⁴

⁶ Memorandum, at ¶ 59 (GFL543, cited as GFL533-GFL551); ¶ 98 (GFL347-48, compare messages in entire email chain)

⁷ Memorandum, at ¶ 59 (compare GFL545, GFL548, compare GFL 558-59, GFL 562), ¶ 36 (GFL 24-26)

⁸ Memorandum, at ¶ 59 (GFL 558-59).

⁹ Memorandum, at ¶ 134 (GFL81093).

¹⁰ Memorandum, at ¶ 77 (GFL290).

¹¹ Memorandum, at ¶ 41 (GFL78090); ¶ 72 (GFL73949).

¹² Memorandum, at ¶ 41 (GFL78090, GFL79119); ¶ 118 (GFL78009)

¹³ Memorandum, at ¶ 143 (GFL458); ¶ 146 (GFL857)

¹⁴ Memorandum, at ¶ 86 (GFL189; ¶ 143 (GFL11115)

1 In some instances, GameFly cites internal correspondence as evidence of an
2 interpretation of Postal Service intentions that the citations do not directly support.¹⁵ I
3 even found one citation used to support the description of an increasing trend or
4 practice that predated the time period GameFly was describing.¹⁶ Some of the
5 descriptions or opinions in cited documents are just ambiguous.¹⁷ Hardly any of all of
6 the documents cited refer to GameFly specifically.

7 Among the most unsettling of GameFly's references are some that GameFly
8 strongly implies represent admissions by the Postal Service of unlawful discrimination.
9 Most of these involve individual opinions expressed at lower levels of the organization,
10 and are inferred from the language used by the authors.¹⁸ Few, if any, are official
11 communications on behalf of the Postal Service expressing Postal Service policies.
12 Several of these inferences arise from references to speculations about risks of legal
13 action as a result of the Postal Service' operations practices, either actual or
14 hypothetical.¹⁹ I am not aware that any of these represent legal opinions expressed on
15 behalf of the Postal Service.

16 I would flatly reject the conclusions regarding liability for discrimination that
17 GameFly implies by referring to these documents and drawing unfounded inferences
18 about their meaning. To the extent that GameFly is citing them merely for rhetorical
19 effect, I believe it has engaged in a significant disservice to the record and to the truth.

¹⁵ See Memorandum, at ¶ 41 (GFL78090, GFL79119); ¶ 136 (reference to "real purpose" of official statements, supported by GFL347-48, GFL 315-16, GFL327-29, GFL337)

¹⁶ Memorandum, at ¶ 140 (GFL562).

¹⁷ See Memorandum, at ¶ 53 (GFL81091).

¹⁸ See Memorandum, at ¶¶ 113-20, 134-40.

¹⁹ See, e.g., Memorandum, at ¶ 114 (GFL1); ¶ 115 (GFL805).