

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**THE UNITED STATES POSTAL SERVICE  
RESPONSE TO PRESIDING OFFICER'S RULING NO. C2009-1/40**  
(October 8, 2010)

On September 14, 2010, GameFly, Inc. filed a motion to compel the Postal Service to answer GameFly discovery requests GFL/USPS-225-233 and 235.<sup>1</sup> The Postal Service objected to the discovery requests and opposed the motion, noting that GameFly filed the discovery requests after the close of discovery, and that, due to the absence of any indication that additional documents exist, there was no justification for imposing the substantial burden of a new document search.<sup>2</sup>

On October 1, 2010, the Presiding Officer issued Presiding Officer's Ruling No. C2009-1/40, granting in part, and denying in part, GameFly's motion to compel.<sup>3</sup> This ruling addresses the obligation to supplement discovery responses, and recognizes that "the supplementation obligation does not ordinarily require a responding party to conduct new and extensive searches for information."<sup>4</sup> The ruling requires the Postal Service to "confirm that any material and [] information [responsive to GFL/USPS-225-227, and 230-233], of which it is aware, is not being withheld," and "to confirm its

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<sup>1</sup> Motion of GameFly, Inc., to Compel the Postal Service to Answer GameFly Discovery Requests (GFL/USPS-225 to 233, 235), September 14, 2010.

<sup>2</sup> See Objections of the United States Postal Service to Discovery Requests of GameFly, Inc. (GFL/USPS-225-235), August 26, 2010; Response of the United States Postal Service to Motion of GameFly, Inc., to Compel the Postal Service to Answer GameFly Discovery Requests GFL/USPS-225 to 233, 235, September 21, 2010.

<sup>3</sup> Presiding Officer's Ruling Granting, in part, and Denying, in part, GameFly's Motion to Compel, October 1, 2010.

<sup>4</sup> Id. at 6.

responses [to GFL/USPS 228 and 229] are complete and correct to the best of its knowledge.”<sup>5</sup> The Postal Service confirms that any material and information responsive to GFL/USPS-225-227, and 230-233, of which it is aware, is not being withheld, and that its responses to GFL/USPS-228 and 229 are complete and correct to the best of its knowledge.

Concurrent with this Response, the Postal Service files under seal Appendix-GFL/USPS-225. This appendix contains documents the Postal Service discovered during the preparation of its witnesses for oral cross-examination. These documents could be considered responsive to the discovery requests addressed by Presiding Officer’s Ruling No. C2009-1/40, and the Postal Service might rely on them in this case.<sup>6</sup> The Postal Service believes that it provided these documents to GameFly previously, but it provides them now in the event that it did not provide them earlier.

In addition, Presiding Officer’s Ruling No. C2009-1/40 directs the Postal Service “to produce its available [] reports and documents” responsive to GFL/USPS-235.<sup>7</sup> The Postal Service has initiated the process of collecting these reports and documents. But due to the potential for a substantial volume of reports, the extended time period covered by the requests, and the relatively unimportant role of these reports in decision-making, the Postal Service will require additional time to collect all the responsive reports and documents. The Postal Service will produce the reports and documents as

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<sup>5</sup> Id. at 9.

<sup>6</sup> See id. at 9 FN 14 (directing the Postal Service to “supplement its production with regard to all non-privileged materials upon which it relies in this case”).

<sup>7</sup> Id. at 10.

they become available. As explained in its response to GameFly's motion to compel, the Postal Service does not believe that a delay will prejudice GameFly.<sup>8</sup>

Respectfully submitted,

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<sup>8</sup> See Response of the United States Postal Service to Motion of GameFly, Inc., to Compel the Postal Service to Answer GameFly Discovery Requests GFL/USPS-225 to 233, 235, at 4 (explaining that because witness Lundahl made his recommendations regarding breakage reduction measures in 2007 and 2008, post-June 2009 reports are not likely to contain information different from the weekly reports already produced by the Postal Service).