

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

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING  
ON OBJECTIONS TO ADMISSION OF GFL-CX-1

(Issued October 18, 2010)

I. INTRODUCTION

GameFly, Inc. (GameFly) moved to admit a document marked as GFL-CX-1 into evidence, during rebuttal hearings on October 5, 2010.<sup>1</sup> The Postal Service objected to its admission due to lack of foundation, authenticity, and reliability. These objections were taken under advisement. *Id.* They are now overruled. The document is admissible in both public (redacted) and sealed (unredacted) forms.

II. ANALYSIS

The marked document is composed of two letters, dated February 15, 2005 and May 9, 2005. The witness, Robert Lundahl was unfamiliar with the document. Tr. 7/1353. The Postal Service objected to its admission explaining that “there is no foundation on which it can be admitted into [evidence].” Its counsel indicated that even though “it started in our custody” its origin does “not authenticate the document” or establish “that it is in any sense ... reliable.” *Id.* at 1374-76. GameFly’s counsel replied that the issue already has been “litigated ... early in this case” and that a “document created in the ordinary course of business by postal officials” is sufficiently trustworthy, particularly when it reflects “statements against interests....” *Id.* at 1375.

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<sup>1</sup> See Tr. 7/1374-76; Tr. 8/1556.

The document appears to have been generated in the ordinary course of business. Each page seems authentic for different reasons. The first page is a one-page letter from Processing and Distribution Center Operations to Plant Managers concerning “Netflix Return Mail”, which is signed by David E. Williams. See GFL0000520. The next page is on the letterhead stationary of the Deputy Postmaster General & COO, and it reflects a stamp noting “RECEIVED May 13, 2005 DISTRICT MANAGER GREATER IN DISTRICT.” See GFL 0000521-22. The last page bears Patrick Donahoe’s signature.

Verification that an official composed a letter that bears his signature is rarely required in this context. Also, nothing more is needed to name the time, the place, and the persons to whom the letters were directed. No elevated risk concerning authenticity has been shown by the Postal Service, the party with access to the original sources.

An earlier ruling, P.O. Ruling C2009-1/24, explained why sustaining such an objection that questioned the reliability of such documents may be disfavored.<sup>2</sup> Similarly, it was observed in P.O. Ruling C2009-1/ 40, that “[d]ocuments produced in the ordinary course of business tend to be admissible” and that “[t]he Postal Service views the scope of the evidence too narrowly.”<sup>3</sup> The admission of GFL-CX-1 does not bar the Postal Service from promptly showing that there is a genuine discrepancy through an affidavit or declaration.<sup>4</sup>

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<sup>2</sup> See P.O. Ruling C2009-1/24 at 12.

<sup>3</sup> See P.O. Ruling C2009-1/40 at 8; *id.* n.13, *citing* “Tr. 4/156 (‘I am prepared to rule that we will allow them into evidence at this time....’ [under seal]); *see also* Tr. 3/73-75.” (footnote in original). The citation concludes that, “[a]s the objections relating to authenticity do not withstand closer scrutiny, the documents may be presumed to speak for themselves.”

<sup>4</sup> The Postal Service may file a motion to strike the exhibits along with one or more supporting declarations within the next seven days.

### RULING

The Postal Service's objections to the admission of GFL-CX-1 (redacted), and for GFL-CX-1 (proprietary) under seal, are overruled. These documents are admitted into evidence.

Dan G. Blair  
Presiding Officer