

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC
TREATMENT OF MATERIALS**
(November 12, 2010)

In accordance with 39 C.F.R. § 3007.21 and Order No. 225¹, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Commission. The materials covered by this Application consist of the Appendix to the Initial Brief of the United States Postal Service. These documents contain confidential information that has been submitted under seal and protected from disclosure throughout this proceeding. Because the documents contain confidential information, the Postal Service respectfully requests that the documents remain under seal.

The factors set forth in 39 CFR § 3007.21(c) are listed below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Under 39 U.S.C. § 410(c)(4), the Postal Service is not required to disclose “information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.” The Appendix to the Initial Brief of the United States Postal

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

Service contains sensitive, commercial information of GameFly, the Postal Service, and other third-party mailers, which, if disclosed, would prejudice these parties.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

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(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

The materials consist of studies, analyses, reports, and proposals related to the processing of disc mail, and correspondence related to disc mailer costs and other proprietary business considerations.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

Disclosure of the documents would prejudice the Postal Service and the affected disc mailers, as it would disclose proprietary business information to competitors of the affected disc mailers and the Postal Service. The likelihood of harm is significant.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

An affected disc mailer's competitors learn of a disc mailer's proprietary cost information and proprietary methods used to increase the efficiency of its mailing operation. An affected disc mailer's competitors apply these methods, eliminating the affected disc mailer's competitive advantage related to its disc mailing operation. The

forced public disclosure discourages companies in the DVD industry, and possibly other industries, from cooperating with the Postal Service to increase the efficiency of their mailing operations. It may drive the affected disc mailers to terminate their use of the Postal Service, and purchase their mailing services from a competitor of the Postal Service. This has negative effects on the quality of products and the efficiency of processing DVD mail.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service seeks protection from disclosure to any party who does not agree to abide by the confidentiality provisions established in this docket.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect the interests threatened by disclosure of the non-public materials.

(8) Any other factors or reasons relevant to support the application.

N/A.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the Appendix to the Initial Brief of the United States Postal Service.

Respectfully submitted,

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