

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

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| COMPLAINT OF GAMEFLY, INC. | Docket No. C2009-1R |
| COMPETITIVE PRODUCT LIST ADDING ROUND-TRIP MAILER | Docket No. MC2013-57 |
| COMPETITIVE PRODUCT LIST ADDING ROUND-TRIP MAILER (MC2013-57) | Docket No. CP2013-75 |

NOTICE OF FILING OF NONPUBLIC LIBRARY REFERENCES
(August 26, 2013)

The United States Postal Service hereby provides notice of filing material under seal as Category 4 nonpublic library references, in response to comments filed in this docket. The below listed library references replace the materials submitted as part of nonpublic library reference USPS-MC2013-57/NP2, which was withdrawn earlier today:

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| USPS-LR-MC2013-57/NP3 | Netflix and GameFly FCM Volumes |
| USPS-LR-MC2013-57/NP4 | Permit Reply Mail Cost Study |
| USPS-LR-MC2013-57/NP5 | Permit Reply Mail Volumes |
| USPS-LR-MC2013-57/NP6 | IBISWorld Industry Report |

The library references contain materials associated with the Declarations of Steven W. Monteith, Virginia J. Mayes, and Mark Shoeman, which were submitted as part of the *United States Postal Service Reply Comments*, filed on August 22, 2013. Library references NP3, NP4, and NP5 include Excel workbooks containing precise volumes for both Netflix® and GameFly®. The Postal Service hereby incorporates by reference its

Application for Non-Public Treatment of Library Reference USPS-MC2013-57/NP1, filed August 5, 2013, for the protection of these materials.

Additionally, library reference NP6 contains a report in PDF format, which contains commercially sensitive information. That information was not specifically addressed in the Postal Service's August 5, 2013, Application for Non-Public Treatment. Accordingly, an Application for Non-Public Treatment for the protection of this report is being submitted with this pleading as Attachment A.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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**APPLICATION FOR NONPUBLIC TREATMENT
OF LIBRARY REFERENCE USPS-LR-MC2013-57/NP6**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225, the United States Postal Service hereby applies for nonpublic treatment of a report filed under seal with the Commission as part of library reference USPS-LR-MC2013-57/NP6. This report, prepared by IBISWorld and purchased by the Postal Service, contains data and analysis of the DVD, game, and video rental market in the United States.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). Because the information covered by this application falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their nonpublic treatment.

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

The report contained in USPS-LR-MC2013-57/NP6 contains commercial information, which under good business practice, would not be publicly disclosed. Therefore, it should be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ The Postal Service purchased the report from IBISWorld. By the terms of the purchase, the report is not intended for public dissemination, and IBISWorld retains the copyright in this publication. Parties outside of this proceeding and the general public should not have unlimited access to the information in the report; nor should they have the ability to copy and redistribute IBISWorld's copyrighted material.

(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;

The Postal Service gives notice that it will inform IBISWorld, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third parties with proprietary interest in the materials filed in this docket is John F. Rosato, Attorney, 475 L'Enfant Plaza SW,

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009), at 11.

Washington, D.C. 20260-1137, whose email address is John.F.Rosato@usps.gov and whose telephone number is 202-268-8597.

(3) A description of the materials claimed to be nonpublic 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 nonpublic;

The report contains a detailed analysis of the DVD, game, and video rental market in the United States, including revenue and cost data.

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

If the report contained in USPS-LR-MC2013-57/NP6 were to be disclosed publicly, the Postal Service considers it quite likely that IBISWorld's copyright interest in the material would be compromised.

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

Harm: Copyright violation and unauthorized distribution of sensitive material

Hypothetical: The report contained in USPS-LR-MC2013-57/NP6 is disclosed publicly.

A member of the public downloads the report from the Commission's website, without having obtained a proper license from IBISWorld to access the report. The report is then copied and redistributed to other individuals and companies, in violation of IBISWorld's copyright.

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

The Postal Service maintains that the materials filed nonpublicly should be withheld from persons in the mailing industries, as well as their consultants and attorneys, and from any customers or potential customers of mailing industry participants.

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

The Commission's regulations provide that nonpublic materials shall lose nonpublic 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.

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

None.

Conclusion

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of the report contained in USPS-LR-MC2013-57/NP6.