



470 Pillsbury Center  
200 South Sixth Street  
Minneapolis MN 55402  
(612) 337-9300 telephone  
(612) 337-9310 fax  
e-mail: attys@kennedy-graven.com

RECEIVED

SEP 21 3 21 PM '98

September 16, 1998

**DOCKET SECTION**

098-1

Office of the Secretary  
Postal Rate Commission  
Washington, DC 20268-0001

Re: *Formal Complaint*  
Our File No. FC100-6

Dear Sir or Madam:

**Introduction**

Pursuant to Code of Federal Regulation Rules (CFR) 39 CFR Ch. III, subpart E, this is the formal complaint against the United States Postal Service (USPS). The complaint is made by FCA, Ltd. d/b/a Life Time Fitness (hereinafter referred to as "Life Time Fitness"), 6442 City West Parkway, Suite 375, Eden Prairie, MN 55334, (612) 947-0000. Communications should be directed to Bonnie L. Wilkins at Kennedy & Graven, Chartered, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, MN 55402. Phone number is (612) 337-9300.

**Statement of Grounds for Complaint**

On January 6, 1998, approximately 99,236 third class advertisements were mailed at the USPS. Upon learning a few days later that there appeared to be a problem with the delivery, Life Time Fitness contacted the USPS. Life Time Fitness' immediate efforts to investigate and correct the situation, proved futile. Some of the advertising mailers were not received by individuals until the end of January 1998.

**Facts of the Case**

Life Time Fitness is a national health club chain. In January 1998, it contracted with Prime Net Marketing Services, Inc. ("Prime Net") to distribute a promotional mailing of approximately 99,236 advertisements by third class mail through the Coon Rapids and Woodbury, Minnesota, USPS locations. Prior to the mailing, Life Time Fitness read the USPS software which assists customers in pinpointing dates for delivery (See, Exhibit A). Through this software, the post office established that its "mailing commitment" for third class mail within the applicable zone was two to three days.

Life Time Fitness' advertising mailing was a time sensitive offer that took effect on January 9, 1998, and expired at the end of that month. On January 5, 1998, the advertising mailers were delivered to the USPS drop station in St. Paul, Minnesota, with the expectation that the mailings would be delivered on or about January 8-10, 1998. (See, Exhibit B).

Prime Net was advised by Mary Weiss, USPS Business Services Network Coordinator, that the mailings were received at homes in the Woodbury postal district on January 9, 1998. In addition, Ms. Weiss advised Prime Net that the Coon Rapids Post Office Station received the mailing on January 9, 1998, and that Coon Rapids delivered a portion of the mailers on January 12, some on January 13, and the remainder on January 14. (See, Exhibit C).

On these dates, however, Life Time Fitness received virtually no customer response. This was contrary to previous mailings that also advertised special savings. Prime Net tried to clarify the situation with the USPS to no avail. Life Time Fitness later learned that individuals had received mailings as late as the end of the month of January 1998, some three weeks after deposit with the USPS.

Eventually a meeting was held with an USPS representative and representatives from Life Time Fitness and Prime Net. During this meeting, the USPS representative advised Life Time Fitness that any further efforts to pursue the matter would be futile because the post office does not guarantee the timeliness of mail service.

As a consequence of the late delivery, Life Time Fitness estimates that it lost over \$385,937.69 in revenues due to the late delivery of mailings, in addition to \$15,418.76 in postage. (See, Exhibit D).

#### Violation of Policies

United States Code § 101 sets forth the overall policy of the USPS, as follows:

“The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, efficient services to patrons in all areas and shall render postal services to all communities.”


In furtherance of this policy, the USPS has established procedures and practices, including “the commitment” to deliver third class mail within two to three days of receipt, as represented in the customer software provided to Life Time Fitness.

The USPS deviated substantially in this case both from its established practices and from the overall policy set by Congress. Contrary to its commitment to complete delivery within two to three days, the USPS delivered Life Time Fitness’ mail two to three *weeks* after it had been deposited with the USPS branch stations. Further, the USPS was dilatory in responding to Prime Net’s inquiries and concerns about the delayed delivery. Unquestionably, the USPS was neither prompt, reliable nor efficient in the delivery of postal services to Life Time Fitness.

Office of the Secretary  
Re: *Formal Complaint*  
September 16, 1998

delivery was not timely, the USPS did not act with "prompt, reliable, and effective" service. Life Time Fitness respectfully asks for its requested relief because of these violations of USPS policy.


KENNEDY & GRAVEN, CHARTERED

By:   
Bonnie L. Wilkins (#178998)  
470 Pillsbury Center  
200 South Sixth Street  
Minneapolis, MN 55402  
Telephone: (612) 337-9300  
Facsimile: (612) 337-9310

ATTORNEYS FOR FCA, Ltd.

cc: Manager USPS, Consumer Affairs, 100 S. 1st Street, Room 21, Minneapolis, MN 55401  
USPS Cons. Advoc., U.S. Post Srv., 475 L'enfant Plz. SW, Washington, DC 20260-2200  
Robert Paul  
Larry Wertheim

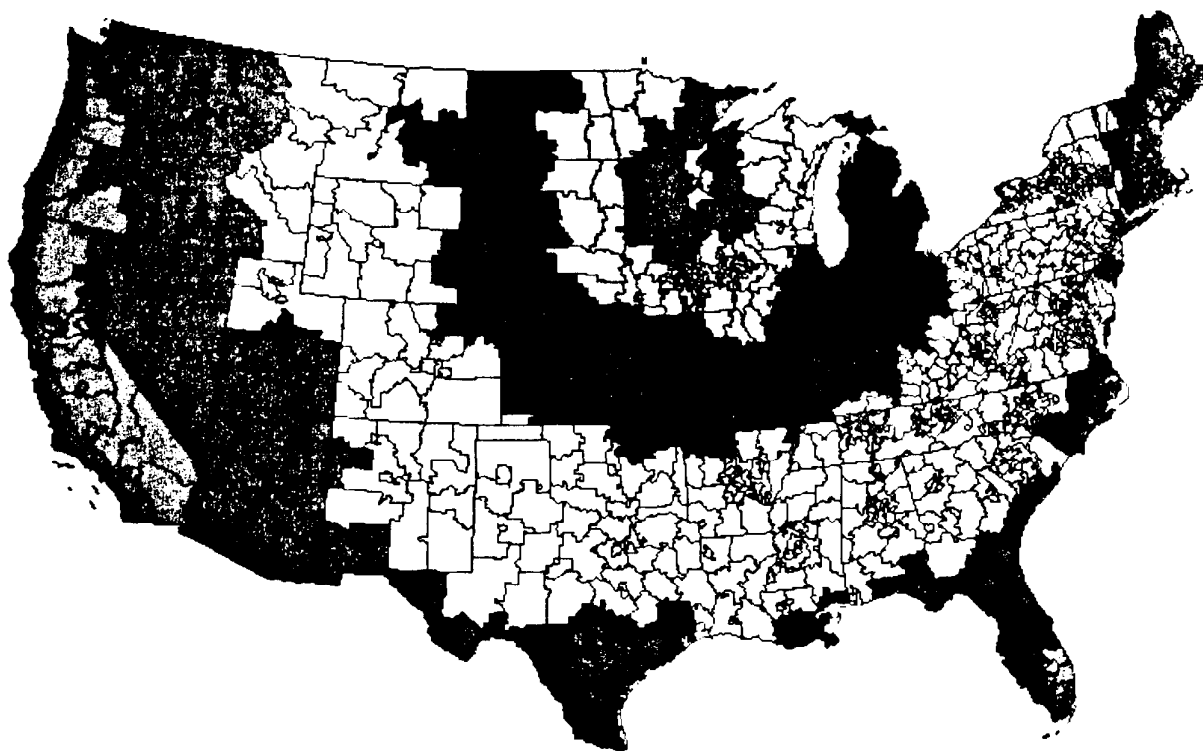
Mail Class  
☐ 1st ☐ Parcel  
☐ 2nd ☐ Priority  
☒ 3rd

Commitment (Days)  
3 4 5 6 7 8 9 10  


Source  
Zip Code   
Name

☒ Originating  
☐ Destinating

Networks



Service Commitment Data for Fiscal Year 98, Quarter 1

Zoom Out

Postage Statement - Standard Mail (A) - (Other Than Nonprofit) - Permit Imprint

MAILER: Complete all items by typewriter, pen or indelible pencil. If you need a receipt, prepare in duplicate.

Post Office of Mailing ST PAUL, MN 55101		Mailing Date 01-05-98		Processing Category <input type="checkbox"/> Letters <input type="checkbox"/> Flats <input checked="" type="checkbox"/> Automation Flats <input type="checkbox"/> Machinable Parcels <input type="checkbox"/> Irregular Parcels		USPS Auth. Mailing ID Code(s)	
Permit No. 400	Fed Agency Cost Code	Statement Seq No. 4990					
Permit Holder's Name & Address (Include Zip Code) PrimeNet Marketing Services 2250 Pilot Knob Road St. Paul, MN 55120		Telephone 612-405-4000		Receipt No.		Job # 23423 Description LIFETIME HOLIDAY MAILER Element 001 Keycode Lifetime	
		1-Ft. MM	2-Ft. MM	2-Ft. EMM	Total Ltr.		
		Flat Trays N/A	No. Sacks 373	No. Pallets 5	No. Other		
Customer No. (Dun & Bradstreet)		Weight of a Single Piece 0 1 2 5 4 pounds				Sacking Based on <input type="checkbox"/> 125 pcs <input type="checkbox"/> 15 lbs <input type="checkbox"/> Both	
CTAS Cust Ref ID		Total Pieces 99,236		Total Weight 12,444.1944		Prepared Under DMM (Check all that apply) <input type="checkbox"/> M610 (Letters, flats, parcels) <input type="checkbox"/> M610 (Upgradable letters) <input checked="" type="checkbox"/> M620 (Enhanced Carrier Route) <input type="checkbox"/> M610 (Automation Letters) <input checked="" type="checkbox"/> M620 (Automation Flats)	
Name & Address of Individual or Organization for Which Mailing is Prepared (if other than the permit holder) Life Time Fitness 6442 City West Parkway Suite 375 USA Eden Prairie, MN 55244		Name & Address of Mailing Agent (if other than the permit holder)					
Customer No. (Dun & Bradstreet)		Customer No. (Dun & Bradstreet)					

## Postage Computation - Standard Mail (A) (Other Than Nonprofit)

Entry Discounts	Automation Discounts	Net Rate	Count (Pcs/Lbs)	Charge	Entry Discounts	Automation Discounts	Net Rate	Count (Pcs/Lbs)	Charge
NO ENTRY DISCOUNT									
Part A Regular Automation .2068 Lb(3.3087 Oz) or Less									
3/5 Flat .189 x 450 pcs = \$ 66.5620									
Basic Flat .277 x 108 pcs = \$ 29.9160									
Part C Enhanced Car. Rt. .2068 Lb(3.3087 Oz) or Less									
Basic Nonletter .155 x 98,670 pcs = \$ 15,293.8500									
Total \$ 15,410.3280									
Postage From Part A \$ 116.4780		Postage From Part B \$		Postage From Part C \$ 15,293.8500		Postage From Part D \$		Total Computed Postage \$ 15,410.3280	
<input type="checkbox"/> Additional Postage Payment (State reasons) <input type="checkbox"/> Single-Piece Rate <input type="checkbox"/> Nonstandard Surcharge <input type="checkbox"/> Special Service (Specify)						No Pieces		Rate/Piece	
Is applicable bulk per piece rate affixed to each piece? (Form 3602-PR required) <input type="checkbox"/> Yes <input type="checkbox"/> No						TOTAL POSTAGE		\$ 15,410.33	
<input type="checkbox"/> For Enclosed Reply Pieces (Automation rates only) (Effective 1/1/97): I certify that all business reply, courtesy reply, or metered reply letter-size cards or envelopes, enclosed in the pieces described above, bear the correct facing identification mark (FIM) and barcode under DMM C810. <input type="checkbox"/> For ZIP Codes (Nonautomation rates only): I certify that the ZIP Codes appearing on the pieces described above have been verified and corrected where necessary within 12 months of the date of this mailing using a USPS approved method.									
The signature of a mailer certifies that it will be liable for and agree to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer, and both the mailer and the agent will be liable for and agree to pay any deficiencies.)									
The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to \$10,000 (18 USC 1001). In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).									
I hereby certify that all information furnished on this form is accurate and truthful, that this mailing meets all applicable CASS/MARS standards for address and barcode accuracy, and that the material presented qualifies for the rates of postage claimed.									
Signature of Permit Holder or Agent (both principal and agent are liable for any postage deficiency incurred)								Telephone No. 612-405-4000	
Single Piece Weight		Total Pieces		Are the figures at left adjusted from mailers entries? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes Reason					
Total Weight		Total Postage							
Check One <input checked="" type="checkbox"/> Verify Not Sched <input type="checkbox"/> Performed As Sched		Date Mailer Notified		Contact		By (Initials)			
I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed 2) proper preparation (and presort where required) 3) proper completion of the postage statement and 4) payment of the required annual fee.								Round Stamp (Required)	
Signature of Weigher								Time AM PM	

# PrimeNet

Marketing Services

January 14, 1998

Mary Weiss  
Business Services Network Coordinator  
United States Post Office Room 117  
100 South First Street  
Minneapolis, MN 55401-9617

Dear Mary,

This is the follow-up to date of PrimeNet Marketing Services' communication with you and Ann Wilken of the United States Postal Business Center:

*Thursday, January 8, 1998:* After my request, I was told you had checked with the post office of Woodbury and Coon Rapids and that they had received the Life Time Fitness mailer and would go into the mailboxes most likely in its entirety in Friday, January 9, 1998.

*Friday, January 9, 1998:* I asked you if it was possible to delay the mailing until the following week (Monday, January 12, 1998), I was told Friday that it was ready to go out and that the Post Office would not be able to stop it at this time.

*Tuesday, January 13, 1998:* I contacted you and requested that you call Woodbury Post Office to find out the exact delivery days of the Life Time Fitness mailer. You told me that you had spoken with the Woodbury Post Office and that the Life Time Fitness piece got into the homes in its entirety on Friday, January 9, 1998. You had not yet spoken with Coon Rapids Post Office, but assumed that the piece was in mailboxes on Friday in its entirety as well.

*Wednesday, January 14, 1998:* I received a message from Ann Wilken of the United States Postal Business Center stating that she was following up for you and that she had just spoken with the station manager in Coon Rapids and that they had actually received the piece late Friday, January 9, 1998, and as a result had been able to get a portion of the mailer out on Monday, January 12, a portion out on Tuesday, January 13, and the remaining on Wednesday, January 14, 1998.

EXHIBIT C

I am recapping our communication because PrimeNet Marketing Services and our client, Life Time Fitness needs further clarification as to how we may avoid similar circumstances in the future. The United States Postal Services guidelines recommends two to three day delivery time for mail sent out of the Twin Cities and delivered within the State of Minnesota. Please inform me as soon as possible of further steps we may take to further ensure our targeted in-home dates.

Sincerely,



Deb Muller

Cc: Ann Wilken, United States Postal Business Center  
Robert Paul, Life Time Fitness  
Mark Keefe, PrimeNet Marketing Services



**Robert Paul**

**From:** Robert Paul  
**Sent:** Monday, February 23, 1998 10:42 AM  
**To:** Abdi Javidan  
**Subject:** Promise Mailer Losses

After careful review of the costs incurred and the potential revenue forfeited, I am estimating our total financial losses due to the United States Postal Service's negligent handling of our January *Promise* poster mailer at approximately \$401,000.00.

<u>DESCRIPTION</u>	<u>COSTS</u>
Creative Time / Anne Denato (33 Hours)	\$618.75
Creative Time / Karen Hauer (11 Hours)	\$825.00
Special Materials	\$95.80
Printing / John Roberts Company	\$20,075.25
List, Labeling & Handling	\$4,534.06
Postage	\$15,418.76
Forfeited Revenue / Enrollment Fees <sup>1</sup>	\$127,600.00
Forfeited Revenue / Monthly Dues <sup>2</sup>	<u>\$232,188.83</u>
<b>TOTAL:</b>	<b>\$401,356.45</b>

What is, perhaps, most frustrating to me is that despite clear outlines in their own materials that project a 3-day delivery time for such large-sized pieces, the USPS *itself* cannot confirm just when our mailers were finally in-home. My best estimate is that the first 10% of mailers may have been delivered in 4-5 days, but the remainder took 12-15 days.

Please let me know if there is anything else you or our legal team may need in order to pursue a compensation settlement with the USPS. I would be pleased to provide detailed documentation or additional information.

<sup>1</sup>Calculated by subtracting the total number of direct mail leads received during the period of January 9-31 from the minimum number of leads projected (1% of total distribution), reducing that figure by 35% to reflect our 65% success rate, then multiplying the remainder by our average enrollment fee of \$220.00.

**(1000 - 107) X 65% X \$220**

<sup>2</sup>Calculated by multiplying the number of new members lost at each club (282 Coon Rapids / 298 Woodbury) by the amount of average monthly dues (\$38.67 Coon Rapids / \$37.16 Woodbury), adding those two monthly figures together, then running a twelve-month schedule that allows for an average monthly attrition rate of 2.35%.

**((282 X \$38.67) + (298 X \$37.16)) X 12 (- 2.35% Month)**