Postal Rate Commission
Submitted 6/8/2006 1:59 pm
Filing ID: 49380
Accepted 6/8/2006

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268–0001

COMPLAINT ON STAMPED STATIONERY	Docket No. C2004–3

BRIEF OF THE UNITED STATES POSTAL SERVICE
(June 8, 2006)

INTRODUCTION

The question of whether the Disney stamped stationery is a "postal service" under chapter 36 of the Postal Reorganization Act is not one that can be definitively answered by simple reference to statute, regulation, precedent, or practice. The question before the Commission should be resolved, as have been similar questions in the past, on practical and equitable considerations. These considerations lead to the conclusion that the better course of action in this instance is to treat the sale of this stationery as solely within the Postal Service's authority.

I. BACKGROUND

The complaint[1] concerns the sale of stationery featuring artwork related to *The Art of Disney: Friendship* stamp series. First-Class Mail postage is printed on each sheet using the designs found on the stamps. The stationery itself features related artwork. The Postal Service set the price of the stationery at $14.95 for a set of 12 sheets. The effective price for the 12 sheets of stationery above the First-Class Mail postage (at 37 cents each) was therefore $10.51. According to the Complainant, the

[1] Douglas F. Carlson Complaint on Stamped Stationery (June 24, 2004).

sale of this stationery is a "postal service" and therefore the price of the stationery should be set like postal rates and fees under chapter 36 of the Postal Reorganization Act.

Boiled down to its essential points, the Complainant's argument[2] is as follows: The sale of stamped stationery fits within the plain language of the Commission's definition of postal services subject to Commission jurisdiction: "the receipt, transmission, or delivery by the Postal Service of correspondence, including, but not limited to, letters, printed matter, and like materials; mailable packages; or other services incidental thereto."[3] Postal Service marketing indicates that the stationery is designed for writing and mailing letters. Stamped stationery is like stamped envelopes and stamped cards, for which the Commission recommends classifications and fees. The Postal Service has filed testimony in rate cases treating stamped envelopes and stamped cards as "postal services." Therefore, the sale and pricing of stamped stationery should also be under the Commission's purview as a "postal service."

The precedential backdrop does not one support the simple logic of this argument. The lack of resiliency of the argument becomes evident when the Complainant asserts that "[a] service that increases the convenience of sending correspondence, including letters, is a postal service."[4] This wishful assertion, however, is not consistent with the Commission's line of decisions determining over what services it will exercise jurisdiction. The sale of packaging material, the provision of photocopy

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[2] These points are distilled from the Complaint; the Complainant's Answer in Opposition to the Postal Service Motion to Dismiss Complaint (January 24, 2006); and his Answer in Opposition to Postal Service Motion to Suspend Proceeding (May 5, 2006).
[3] PRC Order No. 1449 at 4 (January 4, 2006).
[4] Answer In Opposition to the Postal Service Motion to Dismiss Complaint at 7.

service, and the sale of unstamped stationery in post offices all would meet the "increases convenience" test. But none of these services has been deemed to be a "postal service" subject to the Commission's jurisdiction. So the "convenience" test proposed by Complainant does not provide clear guidance on which side of the divide stamped stationery falls.

II. THE PRACTICAL UNDERPINNINGS OF PRECEDENT SUPPORT A MORE DISCERNING APPROACH THAN THAT SUGGESTED BY THE COMPLAINANT

The precedents in this area cannot be summarized simply by saying that a special service is a "postal service" if it is incidental to the transmission of mail. Both packaging supplies and stamped envelopes arguably are incidental to the transmission of mail, while money orders are not. Yet packaging supplies are not subject to the Commission's jurisdiction, while stamped envelopes are. And money orders were deemed to be a postal service because most are (or were) mailed,[5] but photocopies made in post offices, seemingly just as likely to be mailed, were not deemed to be a postal service and would not have been, *even if* their use were limited to reproduction of matter carried in the mail.[6] There is obviously more than *prima facie* logic at work here.

A better way to understand the precedent and to reconcile these seeming inconsistencies is to analyze the implicit or explicit perception of a need to protect the mailing public or unregulated businesses selling similar services from potential cross-subsidization of the service in the postal context. It might be inferred that the sale of

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[5] *See* PRC Op., R76-1, App. F at 11-12, citing *Assoc. of Third-Class Mail Users v. United States Postal Service*, 405 F. Supp. 1109, 1115 (D.D.C. 1975).
[6] *Id.* at 20.

packaging supplies and the provision of photocopying services, which logically could have been found to be incidental to the provision of other postal services, were not found to be jurisdictional, because they did not, either in the abstract or in reality, present a situation from which consumers or private businesses potentially needed protection. In fact, historically, these services have been priced at relatively high convenience levels, which customers find acceptable, yet do not harm other business that provide those services.

In the case of money orders, the concerns just mentioned and the inherent internal conflict between them were made explicit: The Commission indicated that:

> [A]s a matter of policy, we are concerned by the fact that regulation of money order fees under the standards of § 3622 must take place in the context of a Postal Service operation which is conducted in competition with unregulated private enterprise. It is common knowledge that the Service is only one of the numerous issuers of money orders serving the public. Other money order services are available at banks and other retail establishments. It may thus be that the price of money orders is already effectively constrained by competition. Such a constraint may lead to cross-subsidization of money orders by other services. We do not reach the question, on the record, of whether such subsidization should be countenanced—*e.g.*, for the benefit of those members of the public not having access to alternative money order services….[7]

Indeed, in this instance, there was a suggestion that socioeconomic concerns beyond competition and cross-subsidization could be considered.

With respect to stamped envelopes, the Commission noted that "the service is essentially a sale of stationery and is not strictly a postal operation."[8] The Commission clearly did not view the "sale of stationery" as a "postal service." Yet, it maintained jurisdiction, possibly over concern about the effect on envelope manufacturers of the

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[7] *Id.* at 12-13.
[8] *Id.* at 16.

Postal Service's presence in this market. In so doing, the Commission ensures that the fees for stamped envelopes and stamped cards are based on the costs related to those utilitarian items, for which no alternatives exist. Moreover, with respect to a stamped envelope, it is the stamp—the convenient payment of postage—that is its main feature and the reason there is consumer demand. With respect to the Disney stationery, on the other hand, the pre-printed stamp is almost incidental, because the main feature and the principal source of demand is the stationery itself, including the unique artwork. Moreover, the artwork is so closely related to the stamp images as to be philatelic in nature. In light of the philatelic nature of the stationery, the Postal Service would be much more likely to sell such stationery, even if the stamps were not pre-printed, than it would be to sell plain, white business envelopes. In this light, the sale of high-quality stationery featuring licensed artwork is a very different animal[9] from stamped envelopes and stamped cards.

III. APPLICATION OF PRECEDENTIAL CONCERNS AND THE POSTAL SERVICE'S PHILATELIC AUTHORITY SUPPORT MAINTAINING POSTAL SERVICE AUTHORITY OVER STAMPED STATIONERY

The Postal Service is unaware of any other complaint from mailers or prospective mailers of the stamped stationery regarding the product or its price. Indeed the Postal Service considers the product a success and is interested in issuing more such stationery in the future. The Postal Service is also unaware of any complaints from stationery manufacturers or retailers regarding the price. Indeed, a visit to a card shop or stationery store would demonstrate that the effective price of the Disney stationery ($10.51 for 12 sheets of high-quality stationery containing licensed artwork) is in line

[9] Disney pun intended.

with the high end of the price for similar stationery. The Postal Service, therefore, is neither undercutting private businesses nor overcharging consumers. Accordingly, there is no clear public need to support imposing regulation over what is, even more clearly than with respect to plain stamped envelopes, "essentially a sale of stationery."

The only source of displeasure regarding the stationery, other than this Complaint, has been from some quarters of the philatelic press, as the Complaint indicated, and regarding only the price, not the product itself. Although no member of the public is compelled to purchase Disney stationery to send First-Class Mail, philatelists apparently feel "compelled" to buy this product because it contains the image of a postage stamp.[10] As indicated in the attachment, however, the philatelic press does not speak with one voice regarding the importance of this issue and the appropriateness of this Complaint.[11]

But the concerns of some philatelists, even if they were justified, do not provide a sufficient basis to support Commission regulation in accordance with the precedents discussed above. Indeed, it is particularly inappropriate in light of the Postal Service's unilateral authority over philatelic services. 39 U.S.C. § 404(a)(5). While the Commission sets the price of postal services, the Postal Service has unilateral authority over philatelic services. Thus, it is the Postal Service that determines what commemorative stamps to issue, when, and in what denominations. Historically, the

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[10] Indeed, it is not clear why a sheet of stamped stationery that sells for approximately $1.25 each (plus postage) created a negative reaction. Presumably, a collector does not need 12 identical sheets to complete a collection of postage issuances and one would assume the existence of a secondary market from which single sheets could be obtained.

[11] *See, e.g.,* "From the Publisher's Desk" by John F. Dunn, *Mekeel's & Stamps Magazine*, August 13, 2004, p. 38 (copy attached).

Postal Service issues a “generic” definitive stamp at the first-ounce First-Class Mail rate, set as a result of the Commission’s recommendation, and also issues a variety of commemorative stamps at that rate as well. But, it would be perfectly lawful for the Postal Service to denominate high-demand commemoratives at levels significantly higher than the first-ounce First-Class Mail rate. Whether it would make sense from a business or public relations perspective is another matter, but, under the law, it is a matter subject only to the Postal Service’s determination.

IV. ASSERTING JURISDICTION FAILS TO SERVE THE PUBLIC INTEREST

The final practical consideration that should be taken into account in reaching a determination on the issue raised by the Complaint is its potential effects. Assuming the Commission were to assert jurisdiction, the Postal Service would have the following options. First, it could decide to avoid the additional regulatory process[12] by no longer having the postage printed on the stationery, but to sell the stationery, at whatever price it set for the stationery as a philatelic item, with an enclosed packet of stamps at the one-ounce First-Class Mail rate set through the regulatory process. This would result in a loss of consumer convenience, and diminution of the overall value of the item (along perhaps with sales), resulting in a loss (however insignificant in the grand scheme of things) of revenue to the Postal Service. Lower demand potentially would lower the value of the transaction to the licensor, which could potentially result in the Postal

[12] Presumably, the need to negotiate with the intellectual property owner regarding license, design, and other issues, on top of the usual design and production time, results in a particularly long lead time in issuing stamped stationery such as the Disney stationery. Adding on the months required to prepare for and undertake litigation before the Commission might make the process so long as to be completely impracticable from a production and business standpoint.

Service's inability in the first place to obtain the needed license to issue stationery with artwork that is the intellectual property of a third party. Again, consumers would lose an option they now have. Whether philatelists would gain by not feeling "compelled" to collect the stationery and thereby saving some money, or would lose by the diminution of postal issuances, is a question better left to philatelists, but judging from the Dunn editorial, philatelists would stand to lose as well.

If the Postal Service wished to issue another set of stamped stationery with licensed artwork following a determination of jurisdiction by the Commission, the issue of appropriate pricing would come to a public forum. Complainant has argued that a proper consideration of the statutory factors would exclude philatelic or artistic value, and would be based on the cost to produce the stationery plus the licensing costs, marked up essentially by the value of "the convenience and overall value of a sheet of stamped stationery compared to a stamped card."[13] Any pricing formula that excludes consideration of the value of the intellectual property itself would essentially kill the product. No owner of such valuable intellectual property as the Disney designs would consent to their being sold at a price that does not reflect the value of the property. There would simply be no future issuances of such stationery. Again, the public interest would not be served by this result.

Complainant cannot simply dismiss this concern as "pure speculation," with the simplistic retort that "where there's a will, there's a way."[14] It is not speculation, it is a business reality. It is completely unrealistic to assert that, simply because the Postal

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[13] *See* Answer In Opposition to the Postal Service Motion to Dismiss Complaint at 11-12.
[14] *Id.* at 14.

Service has a will to use an intellectual property owner's artwork, a corporation will consent to a license under the circumstances that would ensue if the Complainant's proposed regulatory and pricing scheme were put in place.

The Commission might, on the other hand, decide to depart from the limitations suggested by the Complainant and attempt to expand its area of expertise in order to determine the appropriate value of the intellectual property so that it could price the stationery appropriately. The problem in this scenario would be that an owner of significant intellectual property is very unlikely to allow the Postal Service to present in a public proceeding information about the value of the property, given the highly sensitive commercial value of such information. Again, the likely result would be no more stamped stationery with licensed artwork. And again, no one would benefit form such an outcome.

CONCLUSION

In the past, the Commission, whether explicitly or implicitly, has carefully balanced competing considerations in determining whether to assert jurisdiction over particular services or products offered by the Postal Service. It should do so once again here for all the reasons discussed above. Accordingly, the Commission should determine that the sale of the Disney stationery is not a “postal service” under chapter 36 of the Postal Reorganization Act, thus maintaining the status quo.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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June 8, 2006

From the Publisher's Desk

by John F. Dunn

Great Stamps!

The Art of the American Indian issue is going to be a real winner. Not only will it be a beautiful addition to your stamp collection, but it also cannot help but arouse interest in stamp collecting, not only among Native Americans, but also other people who appreciate the finer things in life.

One aspect of this issue that has aroused comment is its name—Art of the American Indian. In our politically correct world, you might have expected it to be titled "Art of the Native American". My understanding is that the new National Museum of the American Indian name determined use of the term American Indian, even though the stamps, as it turns out, are not going to be issued at the Museum (which will open on September 21, one month to the date after the stamps are issued.)

Complaint of the Week.

A few weeks ago collectors were complaining about having to pay a premium for the Lewis & Clark booklets. While I felt the modest premium was acceptable, I could understand that collectors used to buying all their stamps at face value might feel that any premium was unfair pricing.

Now the focus is on those stamped letter sheets the Postal Service has started issuing. Disney writing paper was the first; now the Garden Flowers stamp issue has its own letter sheets, or "stamped stationery". They sell for $14.95 for 12 sheets, or about $1.25 per sheet.

That's a lot of money for writing paper—and that's really about all it is. The Scott editors will most likely list it, as they did the Disney letter sheets, but who really cares?

Do you? Because Scott listed the Disney letter sheets, did you feel obligated to buy them? Do you now feel obligated to buy the Garden Flowers sheets?

And yet, there is a movement afoot to prevent the USPS from issuing products such as these letter sheets. They are even taking their case to the Postal Rate Commission. Hopefully, the PRC will decide that it has better things to do than spend who knows how many thousands of postal dollars studying this subject, investigating the heck out of it, looking for reports and analyses, all because once again someone had nothing better to do than complain about something else the Postal Service is trying to do to make an extra buck that if it does succeed, will help to keep postage rates down, albeit by a tiny fraction of a cent.

Frankly, I can't imagine that these letter sheets will succeed, not because they are overpriced as collectible postal stationery, but because they are overpriced for the (writing) stationery market for which they are intended. Walk into a card store, gift store, or similar establishment and you will find much better values than Disney or Garden Flowers stationery at $1.25 per sheet.

Collect Stationery?

Not necessarily the Disney or Garden Flowers letter sheets the USPS is putting out today. Instead, pick up a Scott Specialized catalogue and go to the back of the book.

You may have to struggle a bit at first, but if you like to study varieties, you will find some real challenges in that "Stamped Envelopes and Wrappers" section.

I don't know why, but I also get this sense that there also may be value growth opportunities present in Postal Stationery. Collectors are looking for untapped areas to study, and increasing numbers are turning to the back of the book. Carriers and Locals emerged some time ago as a "hot" area, not because it was tapped by speculators, but because collectors learned to delight in the study of these often primitive, always fascinating issues of the early private postal carriers.

We have covered Postal Stationery occasionally in *Mekeel's & Stamps* as well as our sister publication, *U.S. Stamp News*, and I have been pleasantly surprised by the positive response to that coverage. (I must tell you that it was a struggle for me to get past "Postal Stationery 101" so that I could present the subject properly, but as I got involved, I did find myself rising to the challenge of trying to identify the various design types.

This, to me, is where we find the potential for real growth —personal growth in studying and conquering a new field. If you are a true collector, whether or not I am right about the potential for value growth will not much matter to you once you find personal satisfaction.

Any Suggestions?

Having turned the discussion from the "complaint of the week" you can find in other publications, let's continue on this subject of stamp and cover collecting.

If you enjoy your field of collecting, why not share it with us? A brief note, an article, even some pages from an exhibit, whatever you want to use to present your case, we would like to present it for you on the pages of *Mekeel's & Stamps*.

I also offer this invitation to specialized societies. We want to help you raise the visibility of your field and in the process attract additional collectors to your specialty.

It's not so much that I have a special interest in promoting one specialty over another. Rather, our role is to promote the hobby, and we can only do that by energizing present and prospective stamp collectors. And we can only do that if we provide you with collecting options presented to you by people who are excited about what they collect.

This, to me, is one of the wonderful things about the articles we reproduce from the past. The writing was so much better back then, not because the writers were especially knowledgeable, but because they were so excited about their collecting.

We can never have enough of that sort of writing, not because we are going to necessarily change what we collect every time we read an enthusiastic article, but because we are going to be re-energized by someone else's enthusiasm for what they collect.

Without adding one stamp or cover, if you bring renewed enthusiasm to your collecting, you will have improved your collection many times over.

And, I might add, that personal satisfaction and growth will carry over to other aspects of your life. That's what makes this hobby so great.

John F. Dunn

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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June 8, 2006