

Before the
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Stamped Stationery)

Docket No. C2004-3

OFFICE OF THE CONSUMER ADVOCATE
REPLY BRIEF
(June 22, 2006)

This brief is filed in reply to the Brief of the United States Postal Service, dated June 8, 2006. Several of the arguments presented in the Postal Service's Initial Brief were anticipated and addressed in the Office of the Consumer Advocate's (OCA's) Initial Brief, also dated June 8. However, the Postal Service presents several new reasons in its attempt to justify its failure to file a request for a new classification and rate or fee under Chapter 36 of Title 39. These new arguments warrant a response from OCA.

The thrust of the Postal Service's position on brief is that the Commission should resolve the question of the "postal character" of Disney Stamped Stationery on "practical and equitable considerations."¹ This approach to resolving a matter of statutory construction is highly unconventional, to say the least.² Expediency is not the operative test in this straightforward case of statutory construction. Quite the opposite of what the Postal Service suggests, the Commission should use all means available to

¹ Postal Service Brief at 1.

² Even more surprising is that the Postal Service seems to disdain the idea of referring to "statute, regulation, precedent, or practice." *Id.*

determine what *Congress' intentions* were at the time it enacted the Postal Reorganization Act (PRA). The Commission should look to the plain meaning of the statute and, if it is unable to discern the plain meaning, look to the legislative history of the PRA.³ What is “practical and equitable,” independent of congressional intent, has no bearing on the Commission’s performance of its duty.

The Postal Service appears to be trying to manufacture an ambiguity in the statute, and Commission and judicial precedents, where there is none. There is no ambiguity, nor even a genuine question, whether Disney Stamped Stationery is a postal service. The principle of statutory interpretation is well established that when no ambiguity exists, the adjudicator should not go outside the text of the statute to create one.⁴ Furthermore,

It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the [adjudicator] is to enforce it according to its terms. Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.

* * * * *

If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the [adjudicator] to enter speculative fields in search of a different meaning.⁵

There is no uncertainty concerning the postal character of Disney Stamped Stationery. By the unambiguous terms of §3622(a) of Title 39, “the Postal Service shall request the Postal Rate Commission to submit a recommended decision on changes in

³ Also, judicial and administrative precedents.

⁴ *United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77, 83 (1932): “[E]xtrinsic aids to construction [may be used] ‘to solve, but not to create, an ambiguity.’”

a *rate or rates of postage* or in a fee or fees for postal services” (Emphasis added). The fact that the Postal Service has imprinted postage on Disney Stamped Stationery plainly brings this product within the Commission’s jurisdiction over rates of postage.

In an early Governors’ Decision, the Governors (literally) underscored that:

common sense suggests that the Congress employed “rates” and “fees” together in section 3622 (and elsewhere) so as to make it clear that all postage charges for postal services within reach of chapter 36 of title 39 would be changed only through the ratemaking procedures set out in that chapter, leaving no room for pedantic cavil over whether some particular charge might fall outside the meaning of “rate” in its strictest sense.⁶

OCA finds itself in agreement with this position of the Governors. All postage charges must be submitted under the procedures of Chapter 36.

The failure of the Postal Service to file a formal request to offer Disney Stamped Stationery for sale to the public invites the question whether, in fact, the Postal Service is attempting to load more attributable and institutional costs for collecting, sorting, mail processing, and delivery onto the postage charge for this product than was approved by the Commission in the last omnibus rate case. While, on the surface, the Stamped Stationery indicates a postage charge of 37 cents or 39 cents, it is probable that the very high price that the Postal Service charges for Disney Stamped Stationery includes an excessive mark-up of the attributable costs of collecting, sorting, transporting, and delivery activities for these letters that is far above a level approved by the Commission for mail of this size, weight, and level of service. It is only by means of hearings under

⁵ *Caminetti v. United States*, 242 U.S. 470, 485 and 489 (1917) (citations omitted).

⁶ Governors’ Decision, Docket No. R74-1, September 4, 1975, at 12-13.

§3622, and perhaps §3623, that the public can assure itself that all costing and pricing of the product conforms to the methodology approved by the Commission.

On the continuum of services ranging from “postal” to “not postal,” the imprinting of postage places Stamped Stationery as far in the direction of “postal” as a service can be. Postal Service postage has no other purpose than to pay for the collection, processing, transportation, and delivery of mail (and sometimes for services incidental to these functions). In the case of Disney Stamped Stationery, that is exactly what the imprinted postage will do. A user of Stamped Stationery will generally write a message in the message area, place an address in the address area, fold up the stationery into a letter, and send it to a recipient via the Postal Service. The Postal Service will collect it, sort it with other letters, transport it, and deliver it, all by virtue of the postage that was imprinted on the stationery (or, arguably, at an even higher price than is indicated by the postage indicium).

The Postal Service finds significance in the Commission’s earlier decisions not to exercise jurisdiction over the sale of packaging material, photocopy services, and unstamped stationery.⁷ These services are easily distinguished from Disney Stamped Stationery by the fact that the Stamped Stationery has postage imprinted on it. The Commission has previously determined that packaging material, photocopying and stationery products are widely sold in the private sector and are not uniquely used in connection with mail. By contrast, the postage element of Stamped Stationery is unique to mail.

⁷ Postal Service Brief at 2-3.

As stated above, postage has no other purpose than to pay for the mailing of a letter, package, special service, etc. If the Postal Service were to cease to exist, and a mailer found that (s)he had postage stamps on hand, the stamps would be worthless.⁸ They would have no intrinsic value and no products or services could be obtained by exchanging them – they would be as useless as Civil War Confederate currency is today. The imprinting of postage on the Stamped Stationery establishes the bright line that the Commission needs to distinguish stationery that *is* a postal service (i.e., imprinted with postage) from stationery that may not be a postal service (non-imprinted).

The Postal Service seems resistant to the idea of a bright line between postal services and “not postal” services. Instead, the Postal Service prefers a blurred, meandering kind of boundary between services that are subject to the Commission’s jurisdiction and those that are not. The “test” for Commission jurisdiction that the Postal Service would have the Commission apply is this: stamped stationery that is relatively low-cost, and marked up according to the Commission’s guidelines, is subject to the Commission’s jurisdiction; while stamped stationery that is high-cost and marked up several times any level ever approved by the Commission is outside the Commission’s jurisdiction. The flaw in such a test is immediately apparent – the Postal Service could deliberately evade Commission jurisdiction simply by marking up postal services and products to exorbitant levels.

An approach of this type that is so subjective and so susceptible of manipulation must be rejected. One of the distinguishing features of sound administrative law is the objectivity and predictability of agency rules and regulations. While an “anything goes”

⁸ This does not include, of course, any philatelic or collectible value that might be associated with such an item.

approach like this may be “equitable” and “practical” from the standpoint of postal administrative convenience, it is inequitable and unsound from a public policy standpoint. If the Postal Service wants to avoid Commission involvement in its sale of stationery, it should bundle non-imprinted stationery with a separate packet of stamps. Otherwise, the Postal Service must submit a formal request to sell postage-imprinted stationery under Chapter 36 of the Act.

Having recently examined this issue at length in Docket No. RM2004-1, the Commission formulated a definition of a “postal service” subject to its jurisdiction. The hallmarks that the Commission’s decision complies with the law are that: “The final rule is . . . fully consistent with the Act, its legislative history, and precedent.”⁹ The Commission recognized that the correct process for determining the extent of its jurisdiction over challenged services is through the application of the plain language of the PRA, its legislative history, and court and Commission precedents construing the language of the Act.

The Commission should, therefore, reject Postal Service arguments that are intended to dissuade the Commission from exercising its duties under §§3622 and 3623, all for the sake of Postal Service convenience.¹⁰ OCA urges the Commission to issue a decision finding that the Disney Stamped Stationery is a postal service and to direct the Postal Service to desist from further sales of the Stamped Stationery until such time as sale of the product has been recommended to the Governors by the Commission under the procedures established by Congress in Chapter 36 of the PRA.

⁹ Order No. 1449, Docket No. RM2004-1, at 29.

¹⁰ Disney Stamped Stationery is not an isolated instance of the Postal Service’s attempts to evade the Commission’s lawful exercise of its jurisdiction. See Order No. 1449 at 20.

Respectfully submitted,

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