

S E R V E D
May 15, 2014
FEDERAL MARITIME COMMISSION

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DOCKET NO. 13-04

STREAK PRODUCTS, INC., and SYX DISTRIBUTION, INC.

v.

UTi, UNITED STATES, INC.

MAY 15, 2014, PROCEDURAL ORDER

On May 13, 2014, the parties appeared for a telephone status conference to discuss the need for additional discovery and to establish a schedule for filing proposed findings of fact, appendices, and briefs. Brendan Collins and Katie Meyer appeared for complainants Streak Products, Inc. (Streak) and SYX Distribution, Inc. Ashley W. Craig, Rachel M. Fiorill, and Elizabeth K. Lowe, appeared for respondent UTi, United States, Inc. (UTi). The conference was recorded but will not be transcribed. Each party has been provided with an audio recording of the conference.

As a result of the conference, the following schedule is established.

May 23, 2014	Complainants will file any objections to Respondent's discovery responses served May 7, 2014
June 20, 2014	Complainants will serve the revised report of its expert witness Steve Ferreira. The report must comply with the requirements of 46 C.F.R. § 502.201(d).
July 25, 2014	Deposition of expert witness Steve Ferreira on or before this date. The parties have agreed to conduct this deposition by video conference. The parties may agree to conduct this deposition after this date, but this agreement will not extend the briefing schedule set forth below.
August 8, 2014	Complainants file Proposed Findings of Fact, Supporting Evidence, and Brief

September 5, 2014 Respondent files Response to Complainants' Proposed Findings of Fact and Supporting Evidence, and files Respondent's Brief

September 19, 2014 Complainants file Reply to Respondent's Proposed Findings of Fact and Reply to Respondent's Brief

FORM OF PROPOSED FINDINGS OF FACT, APPENDICES, AND BRIEFS

1. **Proposed Findings of Fact.** This document must set forth proposed findings of fact in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. Each factual proposition must be followed by an exact citation to evidence that the party contends will support the proposed finding of fact; *e.g.*, a page number in the Appendix.¹ See 46 C.F.R. § 502.221. The party must provide to other parties *and to the Commission* an electronic copy of the Proposed Findings of Fact with the hard copy of the Proposed Findings of Fact. The electronic copy must be in a word-processing format (*e.g.*, Microsoft Word 2003 or earlier or WordPerfect 10 or earlier) and provided by compact disk or email.
2. **Replies to Proposed Findings of Fact.** This document must set forth verbatim each proposed finding of fact in the proposing party's Proposed Findings of Fact, then admit or deny the proposed finding. Each denied proposed must be followed by an exact citation to evidence that the replying party contends will rebut the evidence claimed to support the proposed finding of fact. The replying party must provide to the proposing party *and to the Commission* an electronic copy of the replying party's Reply to the Proposed Findings of Fact with the hard copies of the Reply. The electronic copy must be in a word-processing format (*e.g.*, Microsoft Word 2003 or earlier or WordPerfect 10 or earlier) and provided by compact disk or email.
3. **Appendix.** The evidence on which a party's Proposed Findings of Fact is based must be included in an Appendix in the following format:
 - a. The cover of the appendix must identify the party or parties that prepared the appendix; *e.g.*, "Streak/SYX Appendix";
 - b. The pages of the appendix must be numbered sequentially;
 - c. The appendix must begin with a table of contents identifying the page at which each individual document begins;

¹ Parties must designate specific facts and provide the court with their location in the record. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002). "General references [to evidence] without page or line numbers are not sufficiently specific." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003).

d. Each party must ensure that all documents in its appendix are legible.

e. A party should cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if UTi contends that a document included in Streak/SYX's appendix rebuts the evidence Streak/SYX claims supports a proposed finding of fact, UTi should cite to Streak/SYX's appendix rather than include a second copy of the same document in its own appendix.

4. **Brief.** Briefs must meet the requirements of Commission Rule 221, 46 C.F.R. § 502.221, with the exception that the proposed findings of fact required by section 502.221(d) must be included in the Proposed Findings of Fact described above.

5. **Service and Filing.**

The parties are directed to serve and file hard copies of the documents required by this order by overnight delivery service.

The parties are directed to consult with each other to determine the most practicable way to send electronic copies of documents in a word-processing format to each other. The parties are directed to send the electronic copy in a word-processing format of required documents to the Commission at the following email addresses: secretary@fmc.gov and judges@fmc.gov. Confidential information should not be filed by email. 46 C.F.R. § 502.5(a).

The parties have agreed to consult with each other to agree to the extent possible on the shipping documents to be included in the record and to discuss stipulating to facts regarding the freight paid for transportation of Complainants' shipments. The parties are directed to ensure that information for which they request confidential treatment pursuant to 46 C.F.R. § 502.5 is entitled to that protection. *See DNB Exports LLC v. Barsan Global Lojistik Ve Gumruk Musavirligi A.S.*, FMC No. 11-07, Order at 1-5 (ALJ Jan. 24, 2014) (Order on Motions for Confidential Treatment of Merits Briefs and Materials Filed with Merits Briefs).

On May 8, 2014, UTi submitted two subpoenas for deposition with a request that they be signed. For the reasons stated in the conference, the request for issuance of subpoenas is **DENIED**.


Clay G. Guthridge
Administrative Law Judge