BEFORE THE
FEDERAL MARITIME COMMISSION

STREAK PRODUCTS, INC.,	:	
Complainant,	:	
v.	:	Docket No. 13-04
UTi, UNITED STATES, INC.,	:	
Respondent.	:	

RESPONDENT AND COUNTERCLAIMANT UTi, UNITED STATES, INC.'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO THE AMENDED ERIFIED COMPLAINT OF STREAK PRODUCTS, INC. AND SYX DISTRIBUTION INC.

Respondent UTi, United States, Inc. ("UTi"), by and through its attorneys, Venable LLP, for its answer to the Amended Verified Complaint of Streak Products, Inc. ("Streak Products") and SYX Distribution Inc. ("SYX Distribution"), filed on January 24, 2014, respectfully answers, alleges, and states as follows:

I. Complainant

A. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

B. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

C. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

D. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

E. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

F. UTi lacks knowledge or information sufficient to either admit or deny the allegations in this paragraph and on that basis denies them.

II. Respondent

A. Admitted.

B. Admitted.

III. Jurisdiction

The first and second sentences of this paragraph contain conclusions of law, to which no response is required. To the extent a response is required, UTi states that it lacks knowledge or information sufficient either to admit or deny the truth of the allegations set forth in those sentences, and on that basis it denies them and refers to the referenced statutes in their entirety for their contents. UTi admits that it has provided service in the liner trade that was not in accordance with a published tariff. UTi admits that it is required to publish tariffs. UTi denies that is has engaged in any unfair and unjust discriminatory practices in the matter of rates, charges and/or services. UTi denies that it failed to keep the rates, charges, classification, rules, and practices of its tariff system open to public inspection.

IV. Statement of Facts

A. Denied. UTi admits that it has done business in the past with a company named Systemax Distribution which may or may not be related to the Complainant in this action.

B. UTi lacks knowledge or information sufficient to either admit or deny the allegations in the first sentence of this paragraph and on that basis denies them. UTi admits it has provided transportation services for SYX Distribution.

C. Admitted with respect to SYX Distribution only.

D. Admitted with respect to SYX Distribution only.

E. UTi denies the last sentence of this paragraph. UTi lacks knowledge or information sufficient either to admit or deny the remaining allegations in this paragraph and on that basis denies them.

F. UTi lacks knowledge or information sufficient either to admit or deny the allegations in this paragraph and on that basis denies them.

G. Denied.

H. UTi lacks knowledge or information sufficient either to admit or deny the allegations in this paragraph and on that basis denies them.

I. UTi lacks knowledge or information sufficient either to admit or deny the allegations in this paragraph and on that basis denies them.

J. UTi lacks knowledge or information sufficient either to admit or deny the allegations in this paragraph and on that basis denies them.

K. Denied.

L. Denied.

V. Violations of the Shipping Act of 1984

A. This paragraph contains conclusions of law, to which no response is required. UTi denies charging Streak or SYX Distribution rates greater than those published in an applicable tariff. UTi admits violating 46 U.S.C. § 41104(2) and refers to the referenced statute in its entirety for its contents.

B. This paragraph contains conclusions of law, to which no response is required. UTi denies violating 46 U.S.C. § 41104(4) and refers to the referenced statute in its entirety for its contents.

C. This paragraph contains conclusions of law, to which no response is required. UTi denies violating 46 U.S.C. § 40501 and refers to the referenced statute in its entirety for its contents.

VI. Injury to Streak and SYX Distribution

A. Denied.

VII. Prayer for Relief

UTi denies that Streak Products or SYX Distribution is entitled to any of the relief set forth in the "Wherefore" paragraph under this Section VI[I] of the Verified Complaint. UTi requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

AFFIRMATIVE DEFENSES

UTi asserts the following affirmative defenses without assuming any burden of proof or persuasion that would otherwise remain with Streak Products or SYX Distribution. Each defense is asserted to all claims against UTi. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Streak Products and SYX Distribution's allegations. As separate and affirmative defenses, UTi alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution have failed to state a claim against UTi for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution lack standing to state a claim.

THIRD AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution's claims are barred, in part, by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution have suffered no damage as a result of the alleged Shipping Act violations by UTi.

FIFTH AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution's claims are barred, in whole or in part, by failure to mitigate alleged damages.

SIXTH AFFIRMATIVE DEFENSE

Any damages that Streak Products and SYX Distribution have allegedly suffered have resulted, in whole or in part, from the companies' own conduct and omissions.

SEVENTH AFFIRMATIVE DEFENSE

Any damages that Streak Products and SYX Distribution have allegedly suffered should be offset by the amount of benefit the companies received from UTi for UTi's transportation services.

EIGHTH AFFIRMATIVE DEFENSE

Streak Products and SYX Distribution's allegations are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

In addition to the foregoing defenses, UTi retains the right to amend this Answer to raise additional affirmative and other defenses as those defenses become known during litigation.

COUNTERCLAIM

I. Counterclaimant

A. Counterclaimant, UTi, is a non-vessel-operating carrier (NVOCC), as defined by the Shipping Act of 1984, as amended, 46 U.S.C. § 40102, with its primary place of business at 100 Oceangate, Suite 1500, Long Beach, California, 90802.

B. UTi is a FMC licensed Ocean Transportation Intermediary (License No. 001792).

II. Counterclaim Respondent

A. Upon information and belief, Counterclaim-Respondent, SYX Distribution Inc., is a Delaware Corporation, with its primary place of business at 175 Ambassador Drive, Naperville, Illinois, 60540.

B. SYX Distribution is a distribution agent.

III. Jurisdiction

This counterclaim is filed pursuant to Section 11(a) of the Shipping Act, 47 U.S.C. § 41301. UTi is seeking reimbursement for monies spent for duties paid on SYX Distribution's behalf.

IV. Statement of Facts

A. UTi has paid $40,958.56 in duties to U.S. Customs and Border Protection on behalf of SYX Distribution.

B. SYX Distribution has refused to repay UTi for the monies it has paid on SYX Distribution's behalf.

V. Violation of the Shipping Act of 1984

A. Streak has violated the Shipping Act of 1984, Shipping Act, 47 U.S.C. § 40101 et seq.

VI. Prayer for Relief

A. UTi seeks reimbursement from SYX Distribution for the $40,958.56 it paid to U.S. Customs and Border Patrol on SYX Distribution's behalf.

Dated: February 18, 2014

Respectfully submitted,

By: _____

Ashley W. Craig
Elizabeth K. Lowe
Rachel M. Fiorill
VENABLE LLP
575 Seventh Street, N.W.
Washington, D.C. 20004
Tel: (202) 344-4351
Fax: (202) 344-8300
awcraig@venable.com

Counsel for Respondent UTi, United States, Inc.

VERIFICATION

I, George P. Hassapis, hereby declare and state that I am the Assistant General Counsel of UTi, United States, Inc. ("UTi"), Respondent in this proceeding, and that the foregoing Verified Answer is true to the best of my information and belief, and that the grounds of my belief as to all matters not upon my own personal knowledge in information which has otherwise been provided to Respondent.

I declare and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 18, 2014

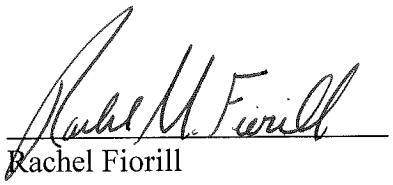
By: _____
George P. Hassapis
Assistant General Counsel
UTi, United States, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February 2014, a true and complete copy of the foregoing Answer was served on the following by FedEx Overnight and electronic mail:

Edward D. Greenberg
Brendan Collins
David P. Street
GKG Law, P.C.
1054 31st Street, N.W., Suite 200
Washington, D.C. 20007
egreenberg@gkglaw.com
bcollins@gkglaw.com
dstreet@gkglaw.com

Counsel for Complainant
Streak Products, Inc.



Rachel Fiorill
Counsel for Respondent
UTi, United States, Inc.