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April 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.

ORDER DISMISSING RESPONDENT'S COUNTERCLAIM WITHOUT PREJUDICE

Complainant Streak Products, Inc. (Streak) is a Delaware corporation that manufactures computer storage devices. Respondent UTi, United States, Inc. (UTi) is a non-vessel-operating common carrier (NVOCC) licensed by the Commission. On April 12, 2013, Streak filed a Complaint alleging that UTi violated the Shipping Act when providing transportation services for cargo owned by Streak. UTi filed an answer that did not include a counterclaim.

On January 23, 2014, Streak's motion to amend the Complaint to add its distribution agent and affiliate SYX Distribution Inc. (SYX Distribution) as a complainant was granted. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Jan. 23, 2014) (Order Granting Motion for Leave to File Amended Complaint). On February 18, 2014, UTi filed an answer to the Amended Complaint. This answer includes a counterclaim alleging:

IV. Statement of Facts

- A. UTi has paid \$40,958.56 in duties to U.S. Customs and Boarder 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 [*sic*] has violated the Shipping Act of 1984, Shipping Act, 47 [*sic*] U.S.C. § 40101 et seq.

(UTi Answer and Counterclaim at 6-7.)¹

On March 12, 2014, Complainants filed a motion to dismiss the counterclaim. On April 2, 2014, UTi filed an opposition to the motion.² Complainants did not file a reply to the opposition and the time to file a reply has run. *See* 46 C.F.R. §§ 502.69(g) and 502.70(c).

[A] respondent may include in the answer a counterclaim against the complainant. . . . A counterclaim . . . must allege and be limited to violations of the Shipping Act within the jurisdiction of the Commission. The service and filing of a counterclaim . . . [is] governed by the rules and requirements of this section for the filing of complaints and answers.

46 C.F.R. § 502.62(b)(4). “If the complaint fails to indicate the sections of the Act alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary.” 46 C.F.R. § 502.62(a)(3)(v).

UTi’s counterclaim alleging that Streak violated the Shipping Act does not “indicate the sections of the Act alleged to have been violated.” 46 C.F.R. § 502.62(a)(3)(v). Therefore, it does not comply with Rule 62(a)(3)(v). UTi’s counterclaim is dismissed without prejudice to filing a motion to amend the answer to include a counterclaim that complies with the Rules. A motion to amend must be filed on or before April 22, 2014.

O R D E R

Upon consideration of Complainants’ Motion to Dismiss UTi’s Counterclaim, the opposition thereto, and the record herein, and for the reasons stated above, it is hereby

ORDERED that the motion to dismiss be **GRANTED**. UTi’s Counterclaim is dismissed without prejudice to filing a motion to amend the answer to include a counterclaim complying with the Rules. A motion to amend must be filed on or before April 22, 2014.


Clay G. Guthridge
Administrative Law Judge

¹ I note that in its motion to dismiss, UTi stated: “Streak Products has paid in full for all transportation services provided by UTi.” (UTi Motion to Dismiss at 3.)

² In its opposition, UTi relies on a statute that give the federal district courts “supplemental jurisdiction over claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy” 28 U.S.C. § 1367(a). UTi does not cite any authority for applying this statute to the Commission’s jurisdiction or any other authority that expands the Commission’s jurisdiction beyond that granted by Congress.