

BEFORE THE  
FEDERAL MARITIME COMMISSION

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Docket No.

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STREAK PRODUCTS, INC. AND SYX DISTRIBUTION INC.,

COMPLAINANT,

v.

UTi, UNITED STATES, INC.,

RESPONDENT.

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**AMENDED VERIFIED COMPLAINT**

**I. Complainants**

A. Complainant, Streak Products, Inc. (“Streak”), is a Delaware Corporation, with its primary place of business at 7891 West Flagler Street, #234, Miami, FL 33144.

B. Streak is a manufacturer of computer storage devices.

C. Streak was the owner of the goods transported by the Respondent.

D. SYX Distribution Inc., (“SYX Distribution”) is a Delaware Corporation, with its primary place of business at 175 Ambassador Drive, Naperville, Illinois, 60540.

E. SYX Distribution is sometimes referred to as Systemax Distribution on bills of lading and invoices.

F. SYX Distribution acts as a distribution or shipping agent for Streak, and for other Systemax affiliates, helping arrange for the shipments of their goods.

## **II. Respondent**

A. Respondent, UTi, United States, Inc. (“UTi”) is a non-vessel operating common carrier (NVOCC) with its primary place of business at 100 Oceangate, Suite 1500, Long Beach, California, 90802.

B. UTi is an FMC licensed NVOCC (License No. 001792).

## **III. Jurisdiction**

This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. Streak and SYX Distribution are seeking reparations for injuries caused to it by UTi as result of its violation of 46 U.S.C. §§ 41104(2), 41104(4) and 40501. As more particularly alleged below, the Respondent provided service in the liner trade that is not in accordance with rates, charges, classifications, rules, and practices contained in a tariff published with the Commission. The Respondent also engaged in an unfair and unjust discriminatory practice in the matter of rates or charges by charging the Complainants rates higher than that charged other shippers. Finally, the Respondent failed to keep open to public inspection in its tariff system, tariffs showing all its rates, charges, classifications, rules and practices between all points or ports on its own route and on any through transportation route that has been established.

## **IV. Statement of Facts**

A. UTi has been providing transportation services for Streak since at least 2003.

B. SYX Distribution has helped coordinate shipments of goods on behalf of Streak since approximately February of 2004. UTi has been providing transportation services for SYX Distribution since on or about September 2007.

C. Some of the transportation services provided by UTi for Streak and SYX Distribution involved full container loads (FCL) shipments.

D. Some of the transportation services provided by UTi for Streak and SYX Distribution involved less than container load (LCL) shipments.

E. Due to concerns about the rates it was being charged for transportation services provided by UTi, Streak retained an expert to engage in a review of the freight invoices paid to UTi by Streak and SYX Distribution during the period from 2009 through 2011. That review revealed that UTi issued invoices to Streak and SYX Distribution for FCL shipments in excess of the amounts set forth in UTi's tariff. The amount Streak and SYX Distribution was overcharged, and the amount UTi was overpaid for FCL shipments was in excess of \$213,000 for that time period.

F. Streak and SYX Distribution's review of UTi's tariff revealed that UTi did not have tariffs on file for LCL shipments handled by UTi on behalf of Streak and SYX Distribution.

G. During the time period from 2009 through 2011, UTi billed Streak and SYX Distribution in excess of \$210,000 for LCL shipments for which it had no tariff on file.

H. Upon information and belief, Streak believes that UTi has overcharged it by billing amounts in excess of its lawful tariff from 2003 until the present.

I. Upon information and belief, SYX Distribution believes that UTi has overcharged it by billing amounts in excess of its lawful tariff from 2003 until the present.

J. Streak and SYX Distribution only learned that UTi was billing them for amounts in excess of its published tariff when it retained an expert to engage in a review of the freight invoices paid to UTi. Streak and SYX Distribution engaged in this analysis due to concern as to the rates it was being charged by UTi.

K. Prior to December of 2012, Streak and SYX Distribution neither knew, nor could have known, that UTi was charging them for amounts in excess of UTi's published tariff.

L. UTi engaged in an unfair and unjustly discriminatory practice by charging Streak and SYX Distribution rates greater than those it charged other shippers.

**V. Violations of the Shipping Act of 1984**

A. UTi violated 46 U.S.C. § 41104(2) by charging Streak and SYX Distribution rates greater than those reflected in its published tariff.

B. UTi engaged in an unfair or unjustly discriminatory practice in violation of 46 U.S.C. § 41104(4) by charging Streak and SYX Distribution rates greater than those it charged other shippers.

C. UTi violated 46 U.S.C. § 40501 by failing to keep open to public inspection in its tariff system, tariffs showing all its rates, charges, classifications, rules and practices between all points or ports on its own route and on any through transportation route that has been established.

**VI. Injury to Streak and SYX Distribution**

A. As a direct result of the violations of the 1984 Act by the Respondent, Streak and SYX Distribution have incurred damages in excess of \$400,000.00. The full extent of damages can only be determined after obtaining discovery in regard to the entire time period for which UTi has been overcharging Streak and SYX Distribution and the dollar amount of such overcharges.

**VI. Prayer for Relief**

A. Statement regarding ADR procedures: Alternative dispute resolution procedures have been utilized prior to filing the Amended Complaint and Complainants have consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.

B. WHEREFORE, Streak and SYX Distribution pray that the Respondent be required to answer the charges in this Complaint; and that after due hearing and investigation: 1) an order be entered commanding UTi to pay Streak and SYX Distribution reparations for violations of the Shipping Act, plus interest, costs, and attorneys' fees any other damages to be determined; and 2) that such other and further relief be granted as the Commission determines to be proper, fair and just in the circumstances.

C. Streak and SYX Distribution request a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,



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Attorneys for Streak Products, Inc.

Dated: December 23, 2013

VERIFICATION

Curt Rush declares and states that he is the Secretary of Streak Products, Inc. and the Secretary of SYX Distribution, Inc., Complainants in this proceeding, and that the foregoing Verified Complaint is true to the best of his information and belief; and that the grounds of his belief as to all matters not upon his own personal knowledge is information which has otherwise been provided to Complainants.

I declare and state under penalty of perjury that the foregoing is true and correct.

Executed on December 20<sup>th</sup>, 2013



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STATE OF New York  
COUNTY OF Nassau

Sworn to and subscribed before me this 20<sup>th</sup> day of December, 2013, by

Am J K Katz

Ingrid K Katz / Am J K Katz  
Notary Public

My commission expires 1/3/15

INGRID K. KATZ  
NOTARY PUBLIC, State of New York  
No. 01KA6087673  
Qualified in Nassau County  
Commission Expires January 3, 2015

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United State mail, first class postage prepaid, and/or by electronic transmission, this 23<sup>rd</sup> day of December 2013:

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Attorneys for Respondent  
*UTi, United States, Inc.*

  
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