

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Docket No. 13-04**

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**STREAK PRODUCTS, INC.**

**and**

**SYX DISTRIBUTION INC.**

**COMPLAINANT,**

**v.**

**UTi, UNITED STATES, INC.,**

**RESPONDENT.**

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**COMPLAINANTS' MOTION TO DISMISS UTi'S COUNTERCLAIM**

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Streak Products, Inc. ("Streak") and SYX Distribution Inc. ("SYX") (collectively "Complainants") move to dismiss the Counterclaim asserted by UTi, United States, Inc. ("UTi") because it fails to allege a Shipping Act violation.

UTi's Counterclaim asserts a claim against SYX in the amount of \$40,958 arising out of SYX's alleged failure to pay U.S. Customs and Border Protection duties. *See* Amended Complaint at IV (A). Because UTi's counterclaim constitutes a breach of contract claim rather than a claim arising out of an alleged Shipping Act violation, it must be dismissed.

**The Commission's Jurisdiction is Limited to Shipping Act Violations**

The Commission's jurisdiction is limited to claims involving alleged violations of the Shipping Act. *See, e.g., Pasha Auto Warehouse, Inc. v. Philadelphia Regional Port Authority,*

1998 WL 188848 at \* 6 (E.D. Pa. 1998); *Tugz Int'l, LLC v. Canaveral Port Authority*, 2004 1368689 at \* 3 (M.D. Fl. 2004); *In re Containership Co.*, 466 B.R. 219, 226 (Bankr. S.D.N.Y. 2012). The Commission elaborated on this point in *Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda*, 300 S.R.R. 991 (2006). There, it observed that questions as to the Commission's jurisdiction turn on whether a claim essentially constitutes a breach of contract claim or whether it involves elements peculiar to the Shipping Act. *Id.* at 998. Thus, "as a general matter, allegations essentially comprising contract law claims should be dismissed unless the party alleging the violations successfully rebuts the presumption that the claim is not more than simply a breach of contract claim." *Id.*, quoting *Cargo One, Inc. v. COSCO Container Lines Co.*, 28 S.R.R. 1635, 1645 n. 17 (2000).

Consistent with the jurisprudence in this regard, the Commission's regulations require that a private party's complaint allege a Shipping Act violation. *See* 46 C.F.R. § 502.62 (a)(3)(v). If the Complaint fails to allege the section of the Shipping Act violated or to state facts which support the allegations, the Commission may, *sua sponte*, require the Complainant to do so.

Here, it is apparent that the Counterclaim asserted by UTi asserts a straightforward breach of contract claim for an alleged failure to pay Customs' duties. Indeed, under the portion of the Counterclaim purporting to address what section of the Shipping Act has been violated, UTi merely states that "Streak has violated the Shipping Act of 1984, Shipping Act, 47 U.S.C § 40101 *et seq.*" *See* Counterclaim V.<sup>1</sup> Such a generic assertion which fails to identify what Shipping Act provision purportedly has been violated and which fails to assert any facts to

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<sup>1</sup> The Complainants presume that UTi meant to cite 46 U.S.C. § 40101 *et seq.* and meant to list SYX rather than Streak.

overcome the presumption that its claim is one for breach of contract, fails to state a valid claim.  
Accordingly, UTi's claim must be dismissed.

Respectfully submitted,



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Dated: March 17, 2014

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 17th day of March 2014:

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