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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

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November 4, 2013

VIA EMAIL AND OVERNIGHT MAIL

Karen Gregory, Secretary
Federal Maritime Commission
Office of the Secretary, Suite 1046
800 North Capitol Street, NW
Washington, DC 20573

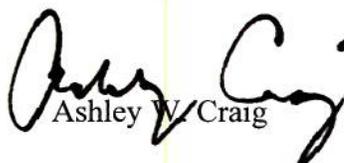
Re: Streak Products, Inc. v. UTi, United States, Inc., FMC Docket No. 13-04

Dear Secretary Gregory:

On behalf of Respondent UTi, United States, Inc. ("UTi"), we respectfully submit the enclosed Respondent UTi, United States, Inc.'s Answer and Affirmative Defenses to the Verified Complaint of Streak Products, Inc., to be filed in the matter captioned *Streak Products, Inc. v. UTi, United States, Inc.*, FMC Docket No. 13-04. In addition to today's e-mail filing, we have enclosed herewith one original and five copies of the document.

If you have any questions regarding the aforementioned materials, please contact me at 202-344-4351. Thank you.

Sincerely,


Ashley W. Craig

Enclosure

CC: All counsel of record

CE:OS
OGC
RUS(G)
Pwb

BEFORE THE
FEDERAL MARITIME COMMISSION

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

STREAK PRODUCTS, INC.,

 ORIGINAL

Complainant,

v.

Docket No. 13-04

UTi, UNITED STATES, INC.,

Respondent.

**RESPONDENT UTi, UNITED STATES, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES
TO THE VERIFIED COMPLAINT OF STREAK PRODUCTS, INC.**

Respondent UTi, United States, Inc. ("UTi"), by and through its attorneys, for its answer to the Verified Complaint of Streak Products, Inc. ("Streak Products"), filed on April 12, 2013, 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.

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 lacks knowledge or information sufficient to either 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 it has engaged in any unfair and unjust discriminatory practices in the matter of rates or charges. UTi denies that it has failed to keep open to public inspection in a tariff.

IV. Statement of Facts

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

B. Denied. See response to IV.A.

C. Denied.

D. UTi denies the last sentence of this paragraph. UTi lacks knowledge or information sufficient to either admit or deny the remaining 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. Denied.

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

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

I. Denied.

J. 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 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

A. Denied.

VII. Prayer for Relief

UTi denies that Streak Products 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. 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' allegations. As separate and affirmative defenses, UTi alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Streak Products has failed to state a claim against UTi for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Streak Products lacks standing to state a claim.

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

Streak Products has suffered no damage as a result of the alleged Shipping Act violations by UTi.

FIFTH AFFIRMATIVE DEFENSE

Streak Products' claims are barred, in whole or in part, by its failure to mitigate its alleged damages.

SIXTH AFFIRMATIVE DEFENSE

Any damages that Streak Products has allegedly suffered have resulted, in whole or in part, from its own conduct and omissions.

SEVENTH AFFIRMATIVE DEFENSE

Any damages that Streak Products has allegedly suffered should be offset by the amount of benefit it received from UTi for UTi's transportation services.

EIGHTH AFFIRMATIVE DEFENSE

Streak Products' 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.

Dated: November 4th, 2013

Respectfully submitted,

By: 

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Counsel for Respondent UTi, United States, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2013, a true and complete copy of the foregoing Answer was served on the following by FedEx Overnight and electronic mail:

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*Counsel for Complainant
Streak Products, Inc.*



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