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**FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.**

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

DOCKET NO. 07-10

KAWASAKI KISEN KAISHA, LTD. ("K" LINE)

V.

FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC.; GEMINI SHIPPERS ASSOCIATION, INC.; SARA MAYES; AND HAROLD SACHS

ANSWER OF RESPONDENTS FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC. AND GEMINI SHIPPERS ASSOCIATION, INC.

Respondents Fashion Accessories Shippers Association, Inc. ("FASA"), and Gemini Shippers' Association, Inc. ("Gemini"), hereinafter, collectively referred to as "Respondents," by and through their attorneys, hereby respond to the complaint against them as follows:

I. THE PARTIES

- A. Respondents do not have sufficient knowledge or information to admit or deny the allegations of Paragraph A of this section, and on that basis deny the allegations of Paragraph A of this section.
- B. Respondents admit that Gemini Shippers Association, Inc. is a Delaware non-profit corporation, but otherwise deny the allegations of Paragraph B of this section.
- C. Respondents admit that FASA was incorporated as a Delaware non-profit corporation, that the term "Gemini Shippers Group" is a registered trade name and d/b/a of FASA and that FASA is referenced on the Gemini Shippers Group website, but otherwise deny the allegations of Paragraph C of this section.
- D. Respondents admit the allegations of Paragraph D of this section.

- E. Respondents admit the allegations of Paragraph E of this section.
- F. Respondents admit that the principal place of business of FASA is located at 350 Fifth Avenue, Suite 2030, New York, NY 10118, that Mayes and Sachs conduct their activities for FASA out of that location, and otherwise deny the allegations of Paragraph F of this section.

II. JURISDICTION

- A. Respondents admit that 46 U.S.C. §40502 authorizes parties to enter into service contracts and that the Federal Maritime Commission has issued regulations pertaining to service contracts in 46 C.F.R. Part 530, but otherwise deny the allegations of Paragraph A of this section. In addition, Complainant has made no allegation concerning 46 U.S.C. §41301(a), so that Respondents have no basis to admit or deny any contention relating to that statutory provision.
- B. Respondents admit that the Commission has authority to rule on violations that pertain to the Shipping Act, but otherwise deny the allegations of Paragraph B of this section.
- C. Respondents admit that the Commission has jurisdiction over certain persons who are regulated under the Shipping Act, 46 U.S.C. §40101 et seq. (the “Act”), but otherwise deny the allegations of Section C of this section.
- D. Respondents admit the allegations of Paragraph D of this section.

III. STATEMENT OF THE CASE

A. INTRODUCTION

1. Respondents admit that FASA is organized as a non-profit Delaware corporation, that it acts as a shippers’ association and enters into service contracts with ocean common carriers both in its own name and under its trade name, Gemini Shippers Association. Respondents also admit that FASA maintains a website in the name of Gemini Shippers Group that publicizes the services it offers to both members and prospective members. Respondents further admit that it has entered into service contracts with Kawasaki Kisen Kaisha, Ltd. (“K Line”), that K Line often negotiates individual rates with FASA’s members, that those rates are incorporated by K Line into the relevant service contracts, but otherwise deny the allegations of this section.

2. Respondents admit that the service contracts which it has entered into with K Line include provisions by which K Line agreed to make so-called volume incentive payments (“VIPs”) to FASA, that K Line has specific knowledge of the amount of VIPs it has paid to FASA, that any VIPs that may have been paid to FASA by other carriers in service contracts are not relevant to the issues in this proceeding, and otherwise deny the allegations of Paragraph 2 of this section.

3. Respondents deny the allegations of Paragraph 3 of this section.
4. Respondents admit that K Line has voluntarily entered into VIPs in the service contracts it has with FASA, admits that K Line has also voluntarily signed a provision in one or more of its service contracts by which it agrees not to “back-solicit” any of FASA’s members, and otherwise deny the allegations of Paragraph 4 of this section.
5. Paragraph 5 of this section contains no factual allegations and are accordingly neither admitted nor denied.

B. FACTS

1. Respondents do not have sufficient knowledge or information to admit or deny the allegations of Paragraph 1 of this section, and on that basis, deny those allegations.
2. Respondents admit that K Line entered into Service Contract No. 13473 with FASA doing business as Gemini Shippers Association. Respondents do not have sufficient knowledge or information to admit or deny the allegations of Paragraph 2 of this section, and on that basis, deny those allegations.
3. Respondents admit that K Line entered into Service Contract No. 14042 with FASA doing business as Gemini Shippers Association. Respondents do not have sufficient knowledge or information to admit or deny the allegations of Paragraph 3 of this section, deny those allegations.
4. Respondents admit that K Line entered into Service Contract No. 14682 with FASA doing business as Gemini Shippers Association. Respondents do not have sufficient knowledge or information to admit or deny the allegations of Paragraph 4 of this section, deny those allegations.
5. Respondents admit that K Line entered into Service Contract No. 15115 with FASA doing business as Gemini Shippers Association and that the wording of the contract speaks for itself. Respondents deny the remaining allegations of Paragraph 5 of this section.
6. Respondents admit that the Appendix to Service Contract No. 15115 contained a VIP clause whereby K Line agreed to pay Respondents for cargo transported by it under the contract and that K Line had refused to make such payments, but otherwise deny the allegations of Paragraph 6 of this section.
7. Respondents deny the allegations of Paragraph 7 of this section.
8. Respondents admit that Service Contract No. 15115 contained a clause by which K Line agreed not to back-solicit any member or former member of FASA “except upon notice to [FASA] and subject to mutual agreement between [K Line and FASA],” do not know what is meant by the term “Gemini principals,” but otherwise deny the allegations of Paragraph 8 of this section.

9. Respondents admit that it instituted an arbitration before the American Arbitration Association in New York City, in accordance with the dispute resolution provisions of service contracts it entered into with K Line, alleging that K Line had breached those service contracts by failing to pay VIPs to which FASA was entitled and by breaching the “no back solicitation” clause, but otherwise denies the allegations of Paragraph 9 of this section.
10. Respondents admit that K Line is obligated to honor the provisions of service contracts into which it voluntarily entered and filed with the Commission, but otherwise deny the allegations of Paragraph 10 of this section.
11. Respondents admit that K Line is contractually obligated to pay the VIPs set forth in the service contracts into which it voluntarily entered and filed with the Commission, and that any such payments are deposited to a FASA bank account. The second and third sentences are denied.
12. Respondents admit that it requested a business review letter (“BRL”) from the Antitrust Division of the U.S. Department of Justice, and the contents of FASA’s letter speak for themselves. Respondents deny that FASA prohibits its members or former members from contracting for their ocean carrier services in a manner that is independent from FASA and deny that the “no back solicitation clause” is antithetical to any provisions of the Shipping Act. Respondents deny the remaining allegations of Paragraph 12 of this section.
13. Respondents admit that it requested a BRL and that the BRL contained a number of statements, all of which speak for themselves, but otherwise deny the allegations of Paragraph 13 of this section.
14. Respondents admit that the Antitrust Division issued a BRL, the terms of which speak for themselves, but otherwise deny the allegations of Paragraph 14 of this section.
15. Respondents do not know what is meant by the term “FASA/Gemini principals,” but deny the allegations of Paragraph 15 of this section.
16. Respondents do not know what is meant by the term “FASA/Gemini principals.” Respondents admit that FASA initiated an arbitration before the American Arbitration Association due to K Line’s breach of its contractual obligations, but otherwise deny the allegations of Paragraph 16 of this section.
17. Respondents deny the allegations of the Paragraph 17 of this section.
18. Respondents admit that Mayes was involved in negotiating the provisions of service contracts with K Line, but otherwise deny the allegations of Paragraph 18 of this section.
19. Respondents do not know what is meant by the term “principals.” Respondents admit FASA initiated an arbitration against K Line pursuant to the provisions of applicable service contracts in response to K Line’s breach of its contractual commitments not to back solicit FASA’s members, but otherwise deny the allegations of Paragraph 19 of this section.

20. Respondents do not know what is meant by the term “FASA/Gemini principals” and deny the allegations of Paragraph 20 of this section.

21. Respondents deny the allegations of Paragraph 21 of this section.

IV. VIOLATIONS OF THE ACT

A. Respondents deny the allegations of Paragraph A of this section.

B. Respondents deny the allegations of Paragraph B of this section.

C. Respondents deny the allegations of Paragraph C of this section.

D. Respondents deny the allegations of Paragraph D of this section.

E. Respondents deny the allegations of Paragraph E of this section.

F. Respondents deny the allegations of Paragraph F of this section.

G. Respondents deny the allegations of Paragraph G of this section.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim against Respondents upon which relief may be granted.

Second Affirmative Defense

Neither the Act nor the Commission have subject matter jurisdiction over the issues raised in the Complaint.

Third Affirmative Defense

Complainant is precluded from seeking to annul or enjoin any provisions of the service contracts it voluntarily entered into with FASA and filed with the Commission by 46 U.S.C. § 40502(f) and 9 U.S.C. § 2 (the Federal Arbitration Act).

Fourth Affirmative Defense

As Complainant's efforts to enjoin the arbitration initiated by FASA before the American Arbitration Association (in Matter No. 50 125 T 00523 06) have been denied by both the United States District Court for the Southern District of New York and by the arbitrator, Complainant's request that the Commission stay the arbitration is barred by principles of *res judicata*.

Fifth Affirmative Defense

The allegations and relief requested by Complainant are barred in whole or in part by one or more of the doctrines of waiver, estoppel, laches and/or clean hands.

Sixth Affirmative Defense

Complainant's claims are barred by the statute of limitations.

WHEREFORE, Respondents respectfully pray that the Commission determine and adjudge that:

- A. the Complaint be dismissed with prejudice with respect to Respondents;
- B. Complainant take nothing with respect to Respondents by way of declaration, injunctive relief or reparations;
- C. Respondents be awarded their costs and attorney fees incurred herein; and
- D. Respondents be awarded such other and further relief as the Commission may deem just and proper.

VERIFICATION

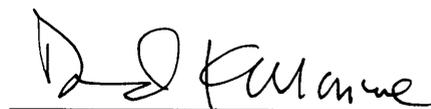
I, Sara Mayes, on behalf of Fashion Accessories Shippers' Association, Inc., do hereby declare under penalties of perjury that the foregoing Answer is true and correct to the best of my knowledge, information and belief.

Date: 12/6/07



Sara Mayes

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "E D Greenberg", written over a horizontal line.

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Counsel for Fashion Accessories Shippers
Association, Inc., and Gemini Shippers
Association, Inc.

December 14, 2007

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, and by email transmission (with the exception of Thomas Aldridge of "K" Line America, Inc.), this 14th day of December 2007:

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Murray Hill, NJ 07974

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And we are providing a courtesy copy of the foregoing document by messenger delivery and by email transmission to ALJ Clay Guthridge as follows:

The Honorable Clay G. Guthridge
Administrative Law Judge
Federal Maritime Commission
800 North Capitol Street, NW
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Email: cguthridge@fmc.gov

Linda D. Thomas
