

(S E R V E D)
(NOVEMBER 19, 2007)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 07-10

KAWASAKI KISEN KAISHA, LTD.

v.

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

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Kawasaki Kisen Kaisha, Ltd. ("K" Line). Complainant asserts that it is a corporation formed and existing under the laws of the country of Japan and is operating as an ocean common carrier. Complainant asserts that Respondents, Fashion Accessories Shippers Association, Inc. ("FASA"), and Gemini Shippers Association, Inc. ("Gemini") are Delaware non-profit corporations, that Sara Mayes is President of FASA, and that Harold Sachs is Executive Director of FASA.

Complaint asserts that all Respondents are located at 350 Fifth Avenue, Suite 2030, New York, New York 1011.

Complainant contends that FASA purports to act as a shippers association and enters into service contracts with ocean common carriers as "Gemini Shippers Association." Complainant "K" Line also contends that it has entered into a number of service contracts with Fashion Accessories Shippers Association and/or Gemini Shippers Association since April 2001. Complainant alleges that it makes "royalty payments" by check to Gemini Shippers Association pursuant to the terms of such service contracts. Complainant maintains that under the service contract "royalty clause," Complainant was required to collect from FASA/Gemini member shippers and forward to Respondent Gemini, the "Gemini Association dues" which royalty ranged from \$40.00 to \$70.00 per container. Complainant "K" Line also states that it was billed for such royalties on the billhead of "Gemini Shippers Group." Complainant further states that FASA instituted a New York arbitration claiming royalties it would have received had "K" Line not directly entered into a service contract with a "so-called 'member' and a 'former member' during the 2006-2007 contract term."

Complainant contends that Respondents are in violation of the Shipping Act of 1984 ("the Shipping Act") by: (1) holding themselves out as a shippers' association when it neither organized as a shippers' association nor functions as one as defined by the Shipping Act; (2) requiring that "royalty payments" be made by Complainant to Respondents for the "privilege of carrying cargoes under the contract rates," and

through such “royalty payments,” engaging in a scheme to obtain transportation at less than the otherwise applicable rates; and (3) implementing and enforcing an “exclusive dealing clause” that locks shippers into FASA contracts and controls rate levels. Complainant asserts that the activities described above are in violation of the 46 U.S.C. §§ 40102(20), (22) and (23), 41102(a), 41104(10), and the Commission’s regulations at 46 C.F.R. 530.8(c)

Complainant requests that the Commission: (1) “order Respondents to cease and desist from representing the FASA/Gemini operation, as it presently exists, as a shippers’ association”; (2) find the exclusive dealing clause and the royalty clause to be in violation of the Shipping Act and to issue a cease and desist order against Respondents’ future use of such clauses; (3) find that FASA/Gemini’s New York arbitration or any other means for seeking to enforce the unlawful exclusive dealing and royalty clauses is unlawful; and issue a cease and desist order against any Respondent pursuing the New York arbitration against “K” Line or re-instituting any similar arbitration for enforcement of either of the clauses.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact

that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 18, 2008, and the final decision of the Commission shall be issued by March 18, 2009.

A handwritten signature in black ink, appearing to read "Bryant L. VanBrakle". The signature is fluid and cursive, with a large initial "B" and "V".

Bryant L. VanBrakle
Secretary