

**BEFORE THE
FEDERAL MARITIME COMMISSION**

OL USA, LLC,)	
)	
Complainant,)	
)	
v.)	DOCKET NO. 24-11
)	
MAERSK A/S,)	
)	
Respondent.)	
)	

ANSWER TO VERIFIED COMPLAINT

Defendant MAERSK A/S (hereinafter referred to as “MAERSK”), by its attorneys, George W. Wright & Associates, LLC, answers the Verified Complaint, as follows:

INTRODUCTION

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “1” and defers all questions of law to the Commission.

SECOND: Paragraph “2” contains no allegation of fact or law and no answer is required.

NAMED PARTIES AND OTHER ENTITIES

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “3” and defers all questions of law to the Commission.

FOURTH: Admits the allegations contained in paragraph “4.”

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “5” and defers all questions of law to the Commission.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “6.”

SEVENTH: Admits the allegations contained in paragraph “7.”

JURISDICTION

EIGHTH: Admits the allegations contained in paragraph “8.”

NINTH: Admits the allegations contained in paragraph “9.”

TENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “10” and defers all questions of law to the Commission.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “11” and defers all questions of law to the Commission.

MEMORANDUM OF FACTS

TWELFTH: Admits that in or about late 2021 the subject shipper-owned containers were wrongfully returned to the Savannah Port Authority empty after MAERSK released them loaded to Honour Lane Shipping’s (HLS’s) agents or representatives, and MAERSK further admits that the Savannah Port Authority accepted HLS’s wrongfully returned empty shipper-owned containers from HLS’s agents or representatives without MAERSK’s knowledge or consent, and MAERSK denies the other allegations contained in paragraph “12.”

THIRTEENTH: Admits upon information and belief that HLS owned the subject containers; but except as so specifically admitted, denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph “13.”

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “14.”

FIFTEENTH: Denies the allegations contained in paragraph “15.”

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “16.”

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “17.”

EIGHTEENTH: Denies the allegations contained in paragraph “18.”

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “19.”

TWENTIETH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “20.”

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “21.”

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “22.”

TWENTY-THIRD: Denies the allegations contained in paragraph “23.”

TWENTY-FOURTH: Admits that the text of the referenced email speaks for itself, but denies that the email constitutes an admission by MAERSK and denies the other allegations contained in paragraph “24.”

TWENTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “25.”

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “26.”

TWENTY-SEVENTH: Admits that on November 22, 2023, OL USA filed a Complaint against MAERSK in the United States District Court for the Southern District of New York based on the same factual allegations and asserting the same damages claims as alleged in this proceeding; but except as specifically admitted, denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph “27.”

this proceeding; but except as specifically admitted, denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph "27."

TWENTY-EIGHTH: Denies the allegations contained in paragraph "28."

TWENTY-NINTH: Admits that the referenced shipper-owned container was returned to HLS or its representatives and denies any wrongful detention by MAERSK; but except as so specifically admitted and denied, denies the other allegations contained in paragraph "29."

THIRTIETH: Admits that the referenced shipper-owned container was returned to HLS or its representatives and denies any wrongful detention; but except as so specifically admitted and denied, denies the other allegations contained in paragraph "30."

THIRTY-FIRST: Admits that the referenced shipper-owned container was returned to HLS or its representatives and denies any wrongful detention; but except as so specifically admitted and denied, denies the other allegations contained in paragraph "31."

THIRTY-SECOND: Admits that referenced shipper-owned container was returned to HLS or its representatives and denies any wrongful detention; but except as so specifically admitted and denied, denies the other allegations contained in paragraph "32."

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "33."

THIRTY-FOURTH: Admits that the referenced shipper-owned container remains in MAERSK's inventory because HLS or its representatives failed to make arrangements for the return of the container to an agreed discharge port; but except as specifically admitted, denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph "34."

THIRTY-FIFTH: Admits the allegations contained in paragraph "35."

THIRTY-SIXTH: Admits that MAERSK responded to OL USA's letter advising OL USA of MAERSK's Tariff options for returning shipper-owned containers that are wrongfully returned empty to MAERSK; but except as specifically admitted, denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph "36."

THIRTY-SEVENTH: Admits the allegations contained in paragraph "37."

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "38."

THIRTY-NINTH: Denies the allegations contained in paragraph "39." MAERSK provides the steps for public access to its relevant Tariff terms on Maersk.com in Exhibit "A" annexed hereto.

FORTIETH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "40."

FORTY-FIRST: Denies the allegations contained in paragraph "41" and defers all questions of law to the Commission.

FORTY-SECOND: Denies the allegations contained in paragraph "42" and defers all questions of law to the Commission.

FORTY-THIRD: Denies the allegations contained in paragraph "43."

FORTY-FOURTH: Denies the allegations contained in paragraph "44."

FORTY-FIFTH: Denies the allegations contained in paragraph "45" and defers all questions of law to the Commission.

**CAUSE OF ACTION- VIOLATION OF 46
U.S.C §40501 AND 46 C.F.R. PART 520**

FORTY-SIXTH: Denies the allegations contained in paragraph "46" and defers all questions of law to the Commission.

FORTY-SEVENTH: Denies the allegations contained in paragraph "47."

FORTY-NINTH: Denies the allegations contained in paragraph "49" and defers all questions of law to the Commission.

REQUEST FOR ORAL HEARING

FIFTIETH: Paragraph "50" contains no allegation of fact or law and no answer is required.

FIRST AFFIRMATIVE DEFENSE

The allegations in the Verified Complaint lack a meritorious factual basis. The provisions of MAERSK's Tariff are accessible to the public on Maersk.com as reflected in Exhibit "A" annexed hereto.

SECOND AFFIRMATIVE DEFENSE

The Verified Complaint fails to state a claim against MAERSK on which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

OL USA lacks standing to enforce a penalty for any alleged "prohibited act" under Section 40501 of the Shipping Act.

FOURTH AFFIRMATIVE DEFENSE

OL USA cannot establish that MAERSK engaged in any unjust or unreasonable practice.

FIFTH AFFIRMATIVE DEFENSE

OL USA has no contractual privity with MAERSK with respect to the allegations in the Verified Complaint and MAERSK breached no contractual or other legal duty to OL USA.

SIXTH AFFIRMATIVE DEFENSE

The damages alleged in the Verified Complaint were not caused by any lack of public access to MAERSK's Tariff provisions.

SEVENTH AFFIRMATIVE DEFENSE

OL USA's damages claims against MAERSK should be dismissed or stayed under the "first filed" doctrine based on the Complainant's assertion of the same claims in its prior action against MAERSK filed in the United States District Court for the Southern District of New York.

EIGHTH AFFIRMATIVE DEFENSE

As the subject shipper-owned containers were wrongfully returned empty to the Savannah Port Authority by OL USA, HLS, or their representatives, the claims alleged in the Verified Complaint are barred by the doctrines of equitable estoppel and/or unclean hands.

NINTH AFFIRMATIVE DEFENSE

The claims alleged in the Verified Complaint are barred by OL USA's or HLS's failure to mitigate the alleged damages.

WHEREFORE, Respondent, MAERSK A/S, demands judgment dismissing the Verified Complaint with prejudice and for such other and further relief as the Commission may deem just and proper.

Dated: March 1, 2024

GEORGE W. WRIGHT & ASSOCIATES, LLC

By: /s/ George W. Wright
GEORGE W. WRIGHT
Attorneys for Respondent
MAERSK A/S
505 Main Street, Suite 106
Hackensack, NJ 07601

TO: Eric Larson Zalud, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
Attorneys for Complainant
OL USA, LLC
127 Public Square, Suite 4900
Cleveland, OH 44114

VERIFICATION OF RESPONDENT MAERSK A/S

Dawn Wadikar, hereby verifies as follows:

1. I am an Asset Optimization Manager, AMR for Maersk A/S.
2. I am authorized to make this Verification on behalf of Maersk A/S.
3. I hereby verify that the facts contained in the forgoing Answer and Affirmative Defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty or perjury under the laws of the United States.

Dated: March 1, 2024

Dawn Wadikar

Dawn Wadikar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2024, the foregoing Answer to Complaint was served via electronic mail on:

Eric Larson Zalud, Esq. (ezalud@beneschlaw.com)

/s/ George W. Wright
GEORGE W. WRIGHT