

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 5, 1992

UNITED STATES OF AMERICA,     )  
Complainant,                     )  
  )  
v.                                     ) 8 U.S.C. 1324a Proceeding  
  ) OCAHO Case No. 92A00044  
INTERDYNAMICS, INC.,         )  
Respondent.                     )  
\_\_\_\_\_                             )

ORDER GRANTING COMPLAINANT'S MOTION TO STRIKE  
RESPONDENT'S FIRST, THIRD, FOURTH AND FIFTH AFFIRMATIVE  
DEFENSES

The two-count Complaint at issue, which was filed on February 24, 1992, alleges some 234 employment eligibility verification requirement, or paperwork, violations of IRCA, for which \$58,500 in civil money penalties are being sought.

On March 30, 1992, respondent filed its Answer, in which it denied each and every allegation contained in Counts I and II and asserted five (5) affirmative defenses: (1) that respondent at all times proceeded and conducted itself in good faith; (2) that there has been substantial compliance; (3) that respondent did not receive proper education, training, notice and warning during the public information period; (4) that respondent did not receive the appropriate notice and/or warning during the initial 12-month initial citation period commencing May 1, 1987 through April 30, 1988; and (5) that the applicable provisions of Section 274A(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. §1324a are void as being vague and "unambiguous" and enforcement thereof is unconstitutional.

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On April 21, 1992, complainant filed a Motion to Strike Affirmative Defenses, urging that the first, third, fourth and fifth affirmative defenses have been improperly asserted.

In addressing respondent's initial affirmative defense, complainant urges that good faith may not be asserted as an affirmative defense in paperwork violations. U.S. v. Robert Watson, d/b/a North State Tile Co., 1 OCAHO 253 (10/19/90) (Order Granting Motion to Strike Good Faith Affirmative Defense); U.S. v. Lee Moyle, 1 OCAHO 85 (8/22/89) (Order Granting Motion to Strike Good Faith Affirmative Defense); U.S. v. Big Bear Market, 1 OCAHO 48 (3/30/89), aff'd Big Bear Super Market No. 3 v. I.N.S., 913 F.2d 754 (9th Cir. 1990); U.S. v. Boo Bears Den, 1 OCAHO 42 (2/6/89); U.S. v. USA Cafe, 1 OCAHO 42 (2/6/89).

Complainant's Motion to Strike as it relates to respondent's first affirmative defense, is granted.

Complainant's motion next maintains that respondent's third and fourth affirmative defenses should also be ordered stricken since respondent was not entitled to an educational briefing prior to IRCA's enforcement, nor was respondent entitled to a notice and/or warning during the 12-month initial citation period beginning May 1, 1987 through April 30, 1988. Mester Manufacturing v. I.N.S., 879 F.2d 561, 569 (9th Cir. 1989); Thomas R. Heisler, Individually, and d/b/a The Owner Of The Playground Bar, Formerly Playground, Inc., 1 OCAHO 150 (4/5/90) (Order Granting Motion to Strike Affirmative Defenses); U.S. v. Culinary Artistry, Inc., d/b/a Footer's Catering, 1 OCAHO 217 (8/15/90); U.S. v. Boah Fashion Corp., 1 OCAHO 281 (12/21/90).

Complainant's Motion to Strike, as it concerns respondent's third and fourth affirmative defenses, is granted.

Finally, complainant argues that respondent's fifth affirmative defense, that which asserted that the provisions of 8 U.S.C. §1324a are unenforceable owing to unconstititional vagueness, should also be ordered stricken since the employer sanctions provisions have not been found to be so impaired. Big Bear Super Market No. 3 v. I.N.S., supra.

Complainant's Motion to Strike, as it addresses respondent's fifth affirmative defense, is granted.

In summary, complainant's Motion to Strike, as it pertains to respondent's first, third, fourth and fifth affirmative defenses, is

granted and those four (4) affirmative defenses are hereby ordered to be and are stricken.

Respondent's second affirmative defense, to the effect that it has substantially complied with the IRCA paperwork requirements, has been properly asserted as an affirmative defense on the alleged facts of violation. U.S. v. James Q. Carlson d/b/a Jimmy on the Spot, 1 OCAHO 260 (11/2/90); U.S. v. Manos and Associates, d/b/a The Bread Basket, 1 OCAHO 130 (2/8/89) (Order Granting in Part Complainant's Motion for Summary Decision); U.S. v. Broadway Tires, Inc., 1 OCAHO 226 (8/30/90) (Order Granting in Part and Taking Under Advisement in Part Complainant's Motion to Strike Affirmative Defenses).

A telephone conference will be conducted shortly, in the course of which counsel will advise of the earliest mutually convenient date upon which this matter can be set for hearing at a location convenient to the parties, their witnesses and counsel following the early completion of discovery activities and/or settlement discussions.

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JOSEPH E. MCGUIRE  
Administrative Law Judge