

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Taotao USA, Inc.,)	
Taotao Group Co., Ltd., and)	Docket No.
Jinyun County Xiangyuan Industry)	CAA-HQ-2015-8065
Co., Ltd.,)	
)	
Respondents.)	

Respondent’s Second Motion *in Limine*

Pursuant to 40 C.F.R. Section 22.16(a) and 22.22(a)(1), Respondents, TaoTao USA, Inc., TaoTao Group Co. Ltd., and Jinyun County Xiangyuan Industry Co., LTD., (hereafter “Respondents”) file this Motion *in Limine*. Complainant has identified potential exhibits and testimony that is untimely, irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value. Respondents request that the Tribunal exclude this material from the evidentiary hearing in this matter. Complainant intends to oppose this Motion.

ARGUMENT

Respondent’s request that the Honorable Court issue an Order excluding the expert testimony of Complainant’s expert witnesses, Gail Coad and any evidence consisting of the financial records of any parties that are not mentioned in the Amended Complaint.

A. Testimony of Gail Coad

In Complainant’s Sixth Motion to Supplement the Prehearing Exchange, Complainant identified a potential expert witness: Gail Coad (“Sixth Motion”). Complainant has designated Ms. Coad to testify “as an expert on the financial condition of Taotao USA, Inc., and other related persons or entities, and about the impact of a penalty on Taotao USA, Inc.'s ability to continue in business...” and “on the economic benefit or savings resulting from the violations

identified in the Amended Complaint.” *See* Sixth Motion at 2-3. Complainant suggests that the necessity for the new witness has occurred due to the discovery of “new information” during recent depositions relevant to Complainant's consideration of the impact of a penalty on Respondents' ability to continue in business. Sixth Motion at 1. The “new information” discovered is stated as information that suggests that Taotao USA, Inc. is financially related to other entities through non-arm's length transactions and common ownership or control , such that those other entities' financial information is required to develop a full, accurate understanding of the proposed penalty's impact on Taotao USA, Inc.'s ability to continue in business. However, Complainant has had knowledge of said information for some time, as is stated in the Sixth Motion: most of the exhibits relating to the other entities were provided to Complainant by Respondents. Sixth Motion at 3. This information was provided either before, or shortly after, the initiation of this administrative action, therefore, Complainant should not be allowed to use this information to add an additional expert witness at this late stage.

The addition of an expert witness with only a month left to the evidentiary hearing, and on the last day to supplement the prehearing exchange, is unduly burdensome to Respondents for various reasons:

First, Complainant has consistently identified Dr. James Carroll as their expert witness on the same matters that Ms. Goad now also expected to testify on. In Complainant's Initial Prehearing Exchange, Complainant designated Dr. Carroll as the agency's expert witness on “matters concerning the Clean Air Act civil penalty factor, `the effect of the penalty on the violator's ability to continue in business, and other matters concerning Respondents' finances and accounting.’” *See* Complainant's Initial Prehearing Exchange at 6. Thereafter, in its Third

Motion (“Third Motion”) to Supplement the Prehearing Exchange, Complainant again identified Dr. Carroll as its expert but expanded the scope of the expected expert testimony to include:

“matters concerning the Clean Air Act civil penalty factor, "the effect of the penalty on the violator's ability to continue in business, including financial evaluation, ratio analysis , Generally Accepted Accounting Principles (GAAP) , hybrid accounting, Respondents’ federal tax returns for years 2012 through 2015, appropriate financial sheet adjustments that stem from differences in the accounting conventions used by Taotao USA, Inc. for tax reporting from GAAP typically used by other companies with the same Business Activity/North American Industrial Classification System ("NAJCS") code, and other matters concerning Respondents' finances and accounting.”

See Third Motion at 4.

Additionally, on June 16, 2017, in its Third Motion, Complainant sought to add a report prepared by Dr. Carroll containing a summary of his opinion “that Respondent Taotao USA, Inc. has the ability to pay the penalty sought by Complainant in this case.” *See* Third Motion at 8; CX192.

The same day, Respondents’ filed their First Motion to Supplement the Prehearing Exchange, identifying their expert witness, Jonathan S. Shefftz, to testify on the economic benefit component of the penalty policy. *See* Respondents’ First Motion to Supplement the Prehearing Exchange at 2. With the Motion, Respondents’ included Mr. Shefftz complete report. *See* RX004.

However, instead of identifying another expert on Respondents’ finances, accounting, and ability to pay, on July 31, 2017, a month and a half later, Complainant in its Fourth Motion to Supplement the Prehearing Exchange (“Fourth Motion”), again identified Dr. Carroll as its

expert witness on Taotao USA's ability to pay and other matters concerning Respondents' finances and accounting, with a revised narrative summary of the expected testimony. *See* Fourth Motion at 2-3.

Thereafter, on August 21, 2017, in Complainant's Fifth Motion to Supplement the Prehearing Exchange ("Fifth Motion"), which was entirely about Dr. Carroll, Complainant included an amended report summarizing Dr. Carroll's opinion. *See generally* Fifth Motion; CX192A. In support of this Fifth Motion, Complainant argued:

"Granting this Motion requesting to supplement the prehearing exchange will not cause Respondents undue surprise or prejudice. Respondents were on notice that Dr. Carroll will testify at the hearing with respect to Taotao's financial condition and ability to continue in business, and the amendment to his expert report is based on information already in the prehearing exchange. Respondents are scheduled to take Dr. Carroll's deposition on August 28, 2017, 3 and Respondents will have the opportunity to depose him about the content of the amendment to his report. The amendment to the report is short, and providing it now should not prejudice Respondents' ability to conduct the deposition."

See Fifth Motion at 3.

On August 28, 2017, Respondent's counsel travelled to Philadelphia to depose Dr. Carroll. After expending valuable time and expense in the preparations for effectively challenging Complainant's evidence and proposed testimony on Respondents financial condition and an ability to pay, Complainant, with a month left to the evidentiary hearing in the matter, has designated a new expert on the same matters that Dr. Carroll has been identified to testify on. *See* Sixth Motion at 2-3.

Complainant should not be permitted to include an expert witness so close to the hearing, and its evidence on Respondents' finances, accounting and ability to pay should be limited to the testimony of Dr. Carroll. Allowing testimony by yet another expert at this stage has caused undue surprise and prejudice. With September 15, 2017 being the last day to supplement the prehearing exchange and identify any proposed witnesses, Respondents now have the undue burden of having to analyze the witness's background, experience, and education, while also reviewing, and challenging any legal theories that Complainant attempts to raise through the use of this expert. Additionally, Respondents' may need to retain an expert to sufficiently challenge, and rebut, Ms. Coad's expert testimony, adding an unnecessary expense, not to mention the fact that the time to include additional expert witnesses and exhibits has run.

The expert testimony of Ms. Coad is inadmissible because it is unduly repetitious, of little probative value, and will unduly burden Respondents prior to trial, which is scheduled to begin in less than a month,

B. Evidence Regarding the Finances of Non-Parties

Complainant has submitted various exhibits containing personal and confidential information on the financial condition of third-parties: Daction Trading, Inc.; Tao Motor, Inc.; 2201 Luna Road , LLC.; EagleATVParts.com; and any other non-party.

Until Complainant can first establish that the proposed penalty is adequate, and then show that these other entities are related to Respondents, said evidence is irrelevant, of little probative value, and prejudicial. Therefore, Respondents request that any testimony and evidence regarding these other entities be excluded.

CONCLUSION

For the reasons stated above, Complainant requests that this Tribunal issue an order excluding the foregoing evidence and expert witness testimony from this matter.

Respectfully Submitted,



09/22/2017
Date

William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com

CERTIFICATE OF SERVICE

This is to certify that on September 22, 2017 the foregoing motion was filed and served on the Presiding Officer electronically through the Office of Administrative Law Judges (OALJ) e-filing system.

The undersigned certifies that an electronic copy of foregoing instrument was sent this day for service by electronic mail to Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov; Robert Klepp at Klepp.Robert@epa.gov; and Mark Palermo at Palermo.Mark@epa.gov.



09/22/2017
Date

William Chu