

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

**REPLY IN SUPPORT OF COMPLAINANT’S
MOTION FOR PARTIAL DEFAULT ON LIABILITY AS TO
TAOTAO GROUP CO., LTD., AND JINYUN COUNTY XIANGYUAN INDUSTRY CO., LTD.**

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency’s Office of Civil Enforcement (“Complainant”) files this Reply in Support of the Motion for Partial Default on Liability as to Taotao Group Co., Ltd. (“Taotao Group”), and Jinyun County Xiangyuan Industry Co., Ltd.’s (“JCXI”) (“Motion for Default”), consistent with section 22.16(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”).

On February 3, 2016, Complainant filed the Motion for Default with the Environmental Appeals Board (the “Board”) in its capacity as the Presiding Officer pursuant to 40 C.F.R. § 22.4(a), after Taotao Group and JCXI failed to file answers by the January 19, 2016 deadline set by that tribunal. *See* Order Granting Motion for Extension of Time to File Answer (EAB, December 22, 2015); Clarification Order (EAB, January 12, 2016). In the Motion for Default, Complainant requested entry of a Default Order against Taotao Group and JCXI ruling that all factual allegations in the Complaint are deemed admitted.

Complainant further requested that the Board transfer the proceeding against Taotao Group and JCXI to the Office of Administrative Law Judges (“OALJ”).

Six days later, on February 9, 2016, Taotao Group and JCXI each filed an answer through the OALJ’s e-filing system. On February 11, 2016, the Board issued an Order transferring the motion for default to the OALJ for consideration. Taotao Group and JCXI filed their Response to Complainant’s Motion for Partial Default (“Response”) on February 23, 2016.

In their Response, Taotao Group and JCXI make two arguments. First, they contend that they cannot be held in default because “there has been no proof provided that [they] were properly served with the Complaint.” Response at 3. In support, Taotao Group and JCXI refer to their pending Motion to Quash and Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5) (“Motion to Quash”), filed December 15, 2015, and repeat the arguments contained therein. Response at 2–3. They claim that because the Motion to Quash “has yet to be heard before the OALJ or the Board . . . ,” Respondents cannot be held in default. This argument addresses the order of proceedings, rather than the substance of Taotao Group and JCXI’s default, and is therefore a smoke-and-mirrors attempt to bypass operative facts that both substantiate valid service of the Complaint, and show that Taotao Group and JCXI ignored the opportunities at hand to address procedural questions to the Board and OALJ.¹

¹ Taotao Group and JCXI could have sought clarification of the Board’s Order dated December 22, 2015, or the Clarification Order dated January 12, 2016, or could have raised their concerns in a reply to Complainant’s Response to Respondents’ Motion to Quash and Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5). Further, nothing stood in the way of their communicating informally with the Board to seek guidance on any day prior to January, 19, 2016, and yet Taotao Group and JCXI made no apparent effort to do so.

Complainant filed proof of service on Taotao Group and JCXI with the Board on November 25, 2015, as required by 40 C.F.R. § 22.5(b)(1)(iii). Complainant further demonstrated the validity of service on Taotao Group and JCXI in its Response to Respondents' Motion to Quash, filed on December 30, 2015. To the extent that Taotao Group and JCXI now repeat their arguments against the validity of service, Complainant incorporates into this Reply by reference the information and arguments contained in its Response to the Motion to Quash. If Respondents' Motion to Quash is denied, then they may be held in default.

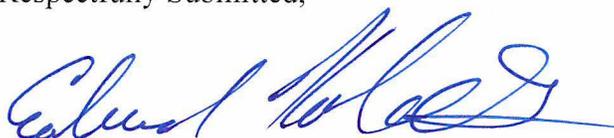
Taotao Group and JCXI's second argument is that their confusion about the order of procedure excuses their disregard of the Board-ordered filing deadline. The Board expressly told Taotao Group and JCXI that it would not rule on their Motion to Quash, and that their answers were nonetheless due by January 19, 2016. *See* Clarification Order (EAB, January 12, 2016).² Taotao Group and JCXI neither filed timely answers, nor took any of the procedural deadlines as an opportunity to seek further clarification, nor reached out for guidance at any time prior to the deadline for them to file answers. Taotao Group and JCXI's perceived procedural uncertainty does not justify their decision to disregard the Board's clear order. Though Taotao Group and JCXI did file answers after Complainant filed its Motion for Default, those answers are untimely and the procedural violation remains. Taotao Group and JCXI have not shown good cause to excuse them from their default.

² The Board wrote: "The Board's December 22, 2015, order extending the time to file an answer for all three respondents through Tuesday, January 19, 2016, stands. The Board will not rule on Taotao Group's and JCXI's motion to quash service and dismiss the complaints against them." Clarification Order at 2 (EAB, January 12, 2016).

Conclusion

For the reasons set forth in Complainant's Motion for Default, and in this Reply, Complainant requests that the Presiding Officer find Taotao Group and JCXI in default, and enter a Default Order ruling that all factual allegations in the Complaint are deemed admitted by Taotao Group and JCXI, and that Taotao Group and JCXI are consequently liable for the violations alleged therein.

Respectfully Submitted,



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2/29/2016

Date

CERTIFICATE OF SERVICE

I certify that the original and two copies of the foregoing Reply in Support of Complainant's Motion for Partial Default on Liability as to Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd., ("Reply"), in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, were filed this day by hand delivery to the Headquarters Hearing Clerk in the EPA Office of the Headquarters Hearing Clerk at the address listed below:

U.S. Environmental Protection Agency
Office of the Headquarters Hearing Clerk
1300 Pennsylvania Ave., NW, MC-1900R
Ronald Reagan Building, Room M1200
Washington, DC 20004

I certify that two copies of this Reply were sent this day by certified mail, return receipt requested, for service on Respondents' counsel at the address listed below:

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