

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Taotao USA, Inc.,)
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry Co., Ltd.)
)
Respondents.)

Docket No. CAA-HQ-2015-8065

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NOTICE OF FILING DISCREPANCY

Complainant files this Notice of Filing Discrepancy to notify the Tribunal of a discrepancy between the Joint Prehearing Exchange (the "PHE") Respondents filed with the Tribunal and the PHE that Respondents served on the Complainant. On September 23, 2016, Respondents electronically filed their PHE and its accompanying exhibits with the Tribunal. The PHE identified six potential witnesses, but only included a summary of one witness's expected testimony, in contravention of 40 C.F.R. § 22.19(a)(2)(i). The filed PHE indicated that it included four exhibits, identified as:

1. Respondent's [sic] Prehearing Exchange Exhibits
2. Information on Testing and Correspondence regarding Engine Family FTAOC.049MC2
3. Email from Larry Sweincki [sic], CEE Project Manager
4. Taotao USA 2014 Tax Returns

Respondents Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.'s Joint Prehearing Exchange, Exhibit 1 (as filed with the Tribunal).

The PHE also included a separate page asserting a claim of business confidentiality over Exhibit 2 and Exhibit 4. Exhibit 1 and Exhibit 3 were electronically filed with the PHE, but Exhibit 2 and Exhibit 4 were not. The PHE's certificate of service indicated that Respondents were filing their PHE electronically, and that a hard-copy of the PHE and its exhibits would be served on Complainant's counsel by mail. The certificate of service did not indicate that Respondents were filing a hard-copy of the PHE including the missing or redacted Exhibits 2 and 4 with the Tribunal.

Complainant's counsel received the mailed copy of the PHE on Monday, October 3, 2016. The delivery consisted of a paper copy of the PHE, and a compact disc containing electronic copies of the PHE exhibits. The PHE received by Complainant's counsel did not have a separate page asserting a

claim of CBI over any exhibits.¹ The PHE received by Complainant's counsel also indicated that it included eight exhibits, rather than four:

1. Respondent's [sic] Prehearing Exchange Exhibits
2. Information on Testing and Correspondence regarding Engine Family FTAOC.049MC2
3. Email from Larry Sweincki [sic], CEE Project Manager
4. Taotao USA 2014 Tax Returns
5. Taotao Group Financial Statements
6. Taotao USA Financial Statement
7. JCXI Financial Statement
8. Effect of penalty assessment

Respondents Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.'s Joint Prehearing Exchange, Exhibit 1 (as served on Complainant).

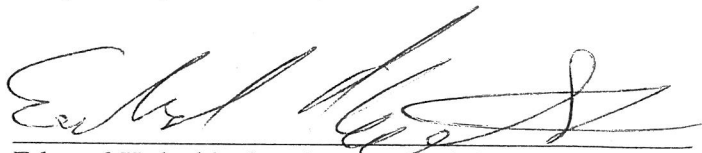
Despite this list, only four different documents were included with the PHE as exhibits. These were Respondents' Prehearing Exchange Exhibits list (labeled Exhibit 1); a document titled "Timeline Info of FTAOC.049MC2 Confirmatory Testing" (included twice and labeled as both Exhibit 2 and Exhibit 3); the email from Larry Swiencki, CEE Project Manager (labeled Exhibit 4); and unsigned copies of Taotao USA, Inc.'s 2014 federal and state tax returns (labeled Exhibit 5).

The discrepancy between the PHE that Respondents electronically filed and the PHE that Respondents served on Complainant's counsel creates confusion about which exhibit documents are properly in the record before the Tribunal. This confusion is compounded by Respondents' failure to provide copies of all the exhibit documents identified. Respondents' counsel has indicated that one witness listed in the PHE was identified in error and that additional information and exhibits will be forthcoming. Complainant does not make any claim of prejudice at this time. However, Complainant reserves the right to object to the admission into evidence of material not timely exchanged as required by the Consolidated Rules of Practice.

Complainant requests that the Tribunal take notice of the discrepancy between the PHE that Respondents filed and the PHE that Respondents served on Complainant's counsel, and take whatever further action it deems appropriate to clarify the record in this proceeding.

¹ Complainant will treat the document Respondents refer to as "Information on Testing and Correspondence regarding Engine Family FTAOC.049MC2," and Taotao USA's 2014 Tax Returns, as confidential business information.

Respectfully Submitted,



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10/6/2016
Date

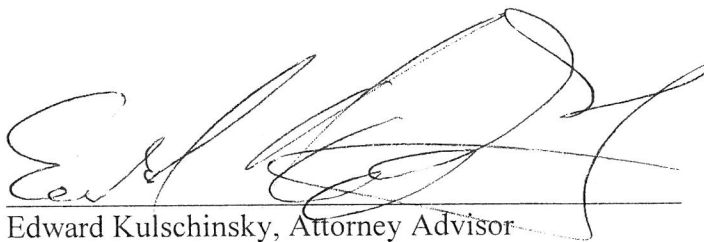
CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Filing Discrepancy in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day by hand delivery.

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

Law Offices of William Chu
Attention: William Chu
4455 LBJ Freeway #909
Dallas, TX 75244

10/6/2016
Date



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