

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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In the Matter of:)	
)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Blata USA Corporation,)	
Omicron Motors)	
)	
Respondent.)	AED/MSEB: 7251
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THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Blata USA Corporation, and Omicron Motors, of 9028 NW 12th Street, Doral Florida 33166 (Respondents).

Purpose:

The purpose of this Settlement Agreement (Agreement) is to resolve Respondents' alleged violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the regulations promulgated at 40 C.F.R. Part 1051, Subpart B, regarding the emissions certification requirements for off-highway motorcycles and recreational equipment (the Off-Highway Motorcycle Regulations).

Statutory Authority:

1. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions information label.
2. Section 205(a) of the Act, 42 U.S.C. § 7524(a), provides that any person who violates Section 7522(a), is subject to a civil penalty of not more than \$32,500 for each vehicle or nonroad engine.

Regulatory Authority:

3. 40 C.F.R. § 1068.101(a)(1) prohibits a new off-highway motorcycle from being manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States unless the motorcycle is covered by an EPA-issued certificate of conformity (COC), and bears the required EPA emissions information label (label).
4. 40 C.F.R. § 1051.135(b) requires the manufacturer who has been issued the COC for the motorcycle to affix at the time of manufacture a permanent and legible emissions label. The label must be attached so it is not removable without being destroyed or defaced.

5. 40 C.F.R. § 1068.240 requires a manufacturer to obtain EPA approval before importing replacement engines.

Definitions:

6. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* Respondents' importation of the 120 off-highway motorcycles as described in Paragraph 7 of this Agreement and Respondents' importation of 20 motorcycle engines described in Paragraph 11 and any civil liability and corrective action that may apply to such violations.
 - b. *Export:* to transport to a location outside of the United States and its territories, Canada, and Mexico.

Alleged Violations:

7. On April 13, 2007, Respondents imported into the Port of Miami, Florida 120 off-highway motorcycles as described the Table below (subject motorcycles). Respondents declared on the EPA Declaration Forms 3520-21 that the subject motorcycles were covered under a COC, supplied a copy of Certificate number 7BLTX-1240FM-001 for EPA engine family 7BLTX-1240FM, and stated that the subject motorcycles were covered under that COC.

Table 1

Entry Number	Detention Number	Quantity	Manufacturer	Model Year	Model
081-0178884-5	0138914	38	Guangdong Tayo	2007	05 Super 125 cc
		80	Guangdong Tayo	2007	06 Super 125 cc
		02	Guangdong Tayo	2007	Junior 125 cc
Total		120			

8. U.S. Customs and Border Protection (U.S. Customs) examined several motorcycles of each model contained in the entry and determined that either the motorcycles did not bear a label or bore a label that could be removed without destroying or defacing the labels, in violation of 40 C.F.R. § 1051.135 (b) and (b)(1), respectively.
9. U.S. Customs also determined that motorcycles were not equipped with catalytic converters. In order to be covered by Certificate number 7BLTX-1240FM-001 motorcycles must be equipped with a specified catalytic converter.

9. The model names on the commercial invoice and packing list for the entry, and the model names listed on Certificate number 7BLTX-1240FM-001 are not the same. Moreover, the invoice identifies three different models: 05 Super 125 cc, 06 Super 125cc, and Junior 125cc, while the COC lists, among other models, models designated as: Super 125, and Junior. Finally, the model name displayed on the subject motorcycles, "Thumpstar", is not listed on neither the invoice or the COC.
10. Based on the forgoing, EPA alleges that the subject motorcycles were not covered under a COC, and/or the subject motorcycles bore deficient labels. As the importer of the subject motorcycles, Respondents are liable for 120 violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the Off-Highway Motorcycle Regulations, 40 C.F.R. §§ 1051.135 and/or 1068.101(a)(1).
11. On August 6, 2007, Omicron Motors imported into the United States twenty engines manufactured by Lifan Industry Group, Ltd. listed in Table 2 below (subject engines). Accompanying documents indicated that these were for use in Blata motorcycles. Omicron claimed on the EPA Declaration Forms 3520-21 that the engines were small spark engines made before the date emissions standards for them were applicable, i.e. before January 1, 2006. However, no marks on the engines permit verification of the date of manufacture of the engines so they are presumed to be manufactured after January 1, 2007.

Table 2

Entry Number	Detention Number	Quantity	Manufacturer	Model Year	Model
081-01799084-1	0138968	20	Lifan Industry	unknown	unknown
Total		20			

12. When EPA investigators contacted Respondents they were advised that the engines were for use as replacement engines in Blata motorcycles. However, the labeling and other provisions of 40 C.F.R. § 1068.240 have not been met.
13. Based on the forgoing, EPA alleges that the subject engines were not covered under a COC, and/or the subject engines lacked required labels. As the importer of the subject engines, Respondents are liable for 20 violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the Off-Highway Motorcycle Regulations, 40 C.F.R. §§ 1051.135 and/or 1068.101(a)(1).

Civil Penalty

14. Respondents shall pay to the United States of America a civil penalty of \$25,000, with \$12,500 to be paid no later than thirty (30) days from the date of this Agreement and

\$12,500 to be paid no later than one hundred twenty (120) days from the date of this Agreement.. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 17 of the Agreement. Respondents agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB - 7251

Alternatively, Respondents may effect an electronic funds transfer in the amounts of \$12,500 with the notation "Blata USA Corporation Administrative Settlement Agreement for Case No.: AED/MSEB-7251" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas_NYC
Routing Number:	021030004

or, Respondents may pay online at www.pay.gov. From the "Search Public Form" field, enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center", and complete the "SFO Form Number 1.1."

Notice of Payment of Penalty:

15. A copy of the payment checks, documentation of wire transfers, or documentation of internet payments shall be faxed to David Alexander. at (202) 564-0069 (voice number (202) 564-2109) within twenty-four (24) hours of mailing, or execution of the payments. All correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

David Alexander, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7251

(Courier Service)

David Alexander, Esq.
U.S. EPA
Ariel Rios South, Room 1111A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Corrective Action:

16. No later than thirty days after the final payment is remitted and paid, and no earlier than the day after final payment received by the United States, or such later time required by U.S. Customs, Respondents shall export the subject motorcycles and subject engines to a

location outside North America. The exportation shall be carried out under the supervision of U.S. Customs. Respondents shall certify to EPA and provide supporting documents that the subject motorcycles and subject engines were exported within 7 days of the exportation.

Stipulated Penalties:

17. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 through 16 of this Agreement, Respondents agrees to the following stipulated penalties:
 - (a) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraphs 14 and 15 of this Agreement, Respondents shall pay a stipulated penalty of \$250 per day.
 - (b) For the failure to export the subject motorcycles and engines in accordance with each provision of paragraph 16, or to provide proof of such exportation pursuant to Paragraphs 15 and 16 of this Agreement, Respondents shall pay for each subject motorcycle a stipulated penalty of \$5,000.
18. All stipulated penalties shall be paid in the manner specified in Paragraph 14 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) or confirmations of payment shall be sent to David Alexander at the address specified in Paragraph 15 of this Agreement.
19. Respondents further agrees that upon default or failure of Respondents to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty and/or stipulated civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it. Respondents expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
20. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
21. Respondents hereby represents that the individual or individuals executing this Agreement on behalf of Respondents are authorized to do so and that such execution is intended and is sufficient to bind Respondent.
22. Respondents waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.

23. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
25. The effect of settlement described in Paragraph 26 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
26. Upon completion of the terms of this Agreement, this civil matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondents in the event of default or noncompliance with this Agreement; for violations of Section 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondents of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Blata USA Corporation

Signature: _____

Date: 10/30/07

Print Name: Rebecca Gonzalez

Corporate Officer's Title: V.P.

Omicron Motors

Signature: _____

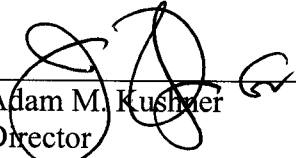
Date: 10/30/07

Print Name: Rebecca Gonzalez

Corporate Officer's Title: V.P.

**Administrative Settlement Agreement – *In the Matter of Blata USA Corporation and Omicron Motors;*
AED/MSEB – 7251**

U.S. Environmental Protection Agency

By:  _____
Adam M. Kushner
Director
Air Enforcement Division
Office of Civil Enforcement

Date: Dec 6, 2007