

November 29, 2018

Steven J. Olson
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VIA E-MAIL

Robert Desiderio
115 Eighth Street SW
Albuquerque, NM 87102

Re: BYD Demand for Cease and Desist

Dear Mr. Desiderio:

It has come to our attention that the City, by its employees, officials, or agents and Mayor Tim Keller ("Mayor") have made public statements, including statements to the press, about BYD and BYD's products that are false, misleading, and inaccurate.

In our November 19, 2018 correspondence we indicated the following statements by the City and the Mayor, among others, were misleading:

- Statements made by the City and Mayor regarding the safety of the braking systems in the BYD buses. The Mayor stated there was "a major safety issue with the brakes" in his November 13 press conference without offering proof of a proper inspection. Also on November 13, Transit Director Bernie Toon said "these buses are unsafe at any speed," a completely false statement that injures BYD's reputation. When inspection reports were requested by BYD on November 18, your office refused to provide them, claiming they are attorney work product.
- Statements regarding the quality of the buses. The Mayor claimed that the buses did not have fire protection, claiming the buses batteries are "not properly stored or cooled," and "there's not even close to adequate fire protection." This is not true. Furthermore, the City claimed that the frame of the bus was cracked. However, the crack was merely a cosmetic crack of an outside rear panel.
- Statements regarding the delays in bus delivery. While the Mayor frequently stated that there have been delays in BYD's delivery of the buses in his press conference, he omitted the fact that the City itself caused delays through its abnormally high number of requests for changes to the buses. Furthermore, neither the Mayor nor City officials explained that the significant delays of the ART project were caused by construction and engineering problems with several of the new bus stations, and were completely unrelated to BYD's products.

Nevertheless, the Mayor has continued to make false or misleading statements about BYD and its products. These include:

- Statements regarding BYD as a company. After BYD defended its products and reputation, the Mayor called BYD “unprofessional.” In fact, BYD has acted in good faith and has done its best to adhere as closely to the original schedule as possible. Mayor Keller stated this week that BYD “couldn’t deliver and it leaves our city’s ART project years behind” which is a complete mischaracterization of BYD’s tireless attempts to satisfy the City’s clean transportation needs.
- Additional statements about the quality of BYD buses. Mayor Keller added, “it was good to see these problematic buses leaving town,” again making the misleading statement about BYD’s products.

Furthermore, at least one video has been uploaded on to YouTube of purported testing of a BYD bus ramp (Link: https://www.youtube.com/watch?v=v_UKfZKb6DE). The video does not contain any sort of recognized form of equipment testing.

To minimize further harm done to BYD by the City’s and the Mayor’s actions, BYD hereby demands that the City and Mayor immediately cease and desist from continuing the above-mentioned actions and that the City and Mayor take down any published videos relating to the alleged testing of BYD’s buses.

Nothing in this letter or accompanying communications shall be construed as a waiver of any of BYD’s legal or equitable rights, all of which are hereby expressly and impliedly reserved. BYD will not hesitate to pursue its rights and seek all remedies available under the law, including compensatory damages, special damages, injunctive relief, punitive damages, legal costs, and attorneys’ fees.

Sincerely,



Steven Olson
of O’MELVENY& MYERS LLP

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