

SUNDAY SUED FOR \$HK6.53 MILLION

A wholly owned subsidiary of publicly listed SUNDAY Communications Ltd (Code: 866, Main Board, The Stock Exchange of Hongkong Ltd) has been accused by a purported marketing consultant (assumed by TARGET to be a former marketing consultant) of not paying its bills, amounting to more than \$HK6.53 million.

High Court Action Number 747 of 2001 is between Dataconsult Asia (Hongkong) Ltd and SUNDAY, operated by Mandarin Communications Ltd, a wholly owned subsidiary of SUNDAY Communications Ltd.

According to the Statement of Claim, attached to the Writ of Summons, it is alleged that Dataconsult Asia entered into a service agreement with SUNDAY whereby Dataconsult Asia was appointed SUNDAY's direct marketing consultant.

The date of the agreement was said to be January 1, 2000, about 3 months prior to SUNDAY, tapping investors with its flotation, which brought in about \$HK2.35 billion into the company's coffers.

The purported agreement was to run until December 31, 2000, Paragraph 6 of the Statement of Claim alleges.

However, Paragraph 7 alleges: *'A notice of termination dated 31 July 2000 was given by the Defendant (SUNDAY) to the Plaintiff (Dataconsult Asia) to terminate the Service Agreement without cause at the expiry of three months from the date of the notice. The said notice of termination did not satisfy the contractual requirement of 180 days prior notice and the date of actual termination would be deemed to be on 31 December 2000.'*

As a result, Dataconsult Asia is claiming \$HK3,301,292.15 against SUNDAY, *'being the unpaid charges and reimbursable expenses accrued up to the date of termination to be paid by the Defendant ...'*

A breakdown of this amount of money is given as follows:

(a) Outstanding Monthly Fee under the Service Agreement from June to December 2000: \$HK166,666 x 7 months	\$HK	1,166,662.00
(b) Postage Fee	\$HK	43,575.40
(c) Creative and Production Works	\$HK	624,325.00
(d) Data Capture and Telemarketing Works:		
(i) Work done in the 2000 year	\$HK1,679,179.75	
less: Advance payment		
in March 1999	_____(213,750.00).	
	\$HK1,465,429.75	
	\$HK	1,465,429.75
(e) Miscellaneous Expenses	\$HK	<u>1,300.00</u>
TOTAL	\$HK	<u>3,301,292.15</u>

Paragraph 9 of the Statement of Claim alleges that, on May 9, 2000, there was another agreement, entered into between the protagonists, allegedly evidenced by a purported purchase order.

This agreement was purported to include, inter alia, that SUNDAY would order from Dataconsult Asia, *'firstly the services of the setting up and implementing a Bridge and Solvitur Suite software system ("Implementation Work") and secondly the licence of the said software for the period of 3 years from January 2000 to December 2002 ("Licence").'*

An agreed fee for this work was agreed to be \$US230,000 and \$US390,000, respectively, Paragraph 10 states.

According to the remaining portions of the Statement of Claim, Dataconsult Asia issued its invoices, but did not get paid.

Paragraph 14 particularises the Plaintiff's claims against SUNDAY in respect of the purported second contract:

System Implementation	\$US 92,000
Cost of Work up to Repudiation and damages in Respect of Implementation Work	\$US126,500
Damages from Repudiation of Licence	<u>\$US195,000</u>
TOTAL	<u>\$US413,500</u> (about \$HK3,225,300)

In total, Dataconsult Asia is seeking about \$HK6.53 million plus interest, and costs of the Action.

***While TARGET makes every attempt to ensure accuracy of all data published,
TARGET cannot be held responsible for any errors and/or omissions.***

-- E N D --

If readers feel that they would like to voice their opinions about that which they have read in TARGET, please feel free to e-mail your views to editor@targetnewspapers.com or targnews@hkstar.com. TARGET does not guarantee to publish readers' views, but reserves the right so to do subject to the laws of libel.