

**3CEMS CORPORATION:
HERE'S ONE FOR THE BOOKS**

The Global Offering Prospectus of 3CEMS Corporation () (Code: 1828, Main Board, The Stock Exchange of Hongkong Ltd) states, at Page 96:

'As at the Latest Practicable Date, no member of the Group was engaged in any litigation, arbitration or claim of material importance and no litigation, arbitration or claim of material importance was known to the Directors to be pending or threatened against any member of the Group.'

And, then, along came Writ of Summons, Number 2744, lodged in the High Court of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC).

The Plaintiff and the 2 Defendants in this Writ of Summons, to which a Statement of Claim is attached, are:

Soft View International Technology Company Ltd	Plaintiff
()	
vs	
Danriver Incorporated	1st Defendant
Fan Cheng-Lien ()	2nd Defendant

The Statement of Claim, hereby reproduced in full, reads as follows:

- '1. *The Plaintiff is and was at all material time carrying on a business of inter alia a design house for electronic products including portable DVD for international sales.*
- '2. *(1) The 1st Defendant is and was at all material time a member of the 3CEMS Group (), carrying on inter alia a business of manufacturing computers and electronic products. Among the companies in the 3CEMS Group, the 1st Defendant has a number of subsidiaries including Danriver System Inc. operating factories in the PRC for production or otherwise.*

(2) The 2nd Defendant was at all material time the Vice Chairman of the 3CEMS Group and the appointed representative of various companies in the 3CEMS Group including the 1st Defendant.
- '3. *(1) In or about November/December 2003, one Jeff Lan () of (subsequently merged into Chinasea Worldwide Technology Co. Ltd. () ("Chinasea")) approached (formerly known as " ("Tom Peng") the Chief Executive and Managing Director of the Plaintiff for the intended design, production and sale of 7" portable DVD players to a prospective customer of Chinasea in the USA known as Audiovox.*

(2) Upon the introduction of Jeff Lan, Tom Peng came to know the 2nd Defendant. The 2nd Defendant further introduced one Andy Wang () the Vice General Manager of the 3CEMS Group to Tom Peng, which said Andy Wong acted as a major contact person of the 1st Defendant.

(3) In a meeting among Jeff Lan, Tom Peng, Andy Wong and the 2nd Defendant in about mid December 2003, Jeff Lan indicated that Chinasea was contemplating design,

production and purchase of 115,000 sets of 7" portable DVD players to be designed by the Plaintiff for resale to Audiovox in the USA. The 2nd Defendant proposed for cooperation between the Plaintiff and the 1st Defendant through the PRC factories of its subsidiaries. To induce the Plaintiff to cooperate with the 1st Defendant for design and production of portable DVD players, the 2nd Defendant on behalf of the 1st Defendant represented to Tom Peng on behalf of the Plaintiff that the 1st Defendant being a key member of the 3CEMS group with the support of factories operated by its subsidiaries in the PRC including Danriver System Inc. had vast experience and sufficient capacity and capability of manufacturing the required quantity of portable DVD players and that they had all the licences required for the production of such products which were essential in order not to infringe any intellectual property rights. He proposed that the Plaintiff would provide the 1st Defendant with the required electronic technology and design, the required integrated circuit ("IC") and TFT liquid crystal display ("LCD") at a marked up price and prepay the mould tooling charges and expenses and the Plaintiff would also substantially invest in its manpower and equipment to cater for this project which was estimated to be in the region of NT\$200,000,000.00, that the Defendant would be responsible for the production, and that the portable DVD players produced would be sold to Chinasea for resale to its American customer Audiovox.

(4) Upon the invitation of the 2nd Defendant, in about mid-December 2003, Tom Peng visited the factory operated by the 1st Defendant and/or its subsidiaries in Guangzhou of the PRC. In order to induce the Plaintiff to enter into the proposed cooperation and transaction with the 1st Defendant as pleaded in (3) above, the 2nd Defendant then on behalf of the 1st Defendant again represented to Tom Peng on behalf of the Plaintiff that with the size of the 3CEMS group and the 1st Defendant and with the capacity of the factories operated by its subsidiaries/associated companies the 1st Defendant had more than sufficient experience, capacities and capabilities to produce the required quantity of 115,000 sets of portable DVD players and had all the required licenses for the product which would otherwise infringe various intellectual property rights of other parties in the trade.

‘4. Induced by and in reliance upon the aforesaid representations of the 2nd Defendant on behalf of the 1st Defendant, the Plaintiff in about December 2003/January 2004 agreed with the 1st Defendant that:

(1) The 1st Defendant was to produce and sell to Chinasea 115,000 sets of 7" DVD players as designed by the Plaintiff; the price for each set being US\$140.00 and the delivery was to be made in stages from July 2004 to February 2005.

(2) The 1st Defendant was to bear the production costs including the costs of 7" TFT-Glass.

(3) The 1st Defendant was also to ensure and provide the required licenses including the DVD logo, 6C, Philips, Macrovision and Dolby.

(4) The Plaintiff was to provide the design and technology and to prepay () the mould tooling charges. The Plaintiff was also to provide and the 1st Defendant was to purchase from the Plaintiff the required IC and TFT LCD at a marked up price.

‘5. Pursuant to the agreement aforesaid and induced by and in reliance upon the representations of the 2nd Defendant on behalf of the 1st Defendant, the Plaintiff had purchased the required quantity of TFT LCD and IC, had incurred mould tooling charges and had substantially invested in manpower and equipment for the said project.

‘6. In about March 2004, the 1st Defendant purportedly came up with final working samples of the 7" DVD players which were however not working at all. Further the Defendant did not in fact have, and had failed to obtain, the required licences for the products.

‘7. (1) By reason of the said defaults on the part of the 1st Defendant, Chinasea terminated the project in about March/April 2004. In substitution for the said project and to avoid losses, the Plaintiff thereafter procured another customer View Tech Corporation ("View Tech") for the same quantity of 115,000 sets of 7" DVD players, which were to be used in various road passages in Disneyland Japan, as opposed to private consumer use, thus requiring a lower quality.

- (2) Regarding this project (“the View Tech project”), the Plaintiff and the 1st Defendant agreed that the DVD players were to be delivered between August and November 2004.
- ‘8. Pursuant to this agreement and in reliance upon the representations as aforesaid, the Plaintiff had incurred further mould tooling charges to satisfy the product requirements of View Tech and had continued to provide the required technology, TFT LCD and IC, manpower and equipment as it had for the Chinasea project.
- ‘9. For the View Tech project, View Tech in about May 2004 placed an initial purchase order for 15,000 sets. Again in default, the 1st Defendant, up to November 2004, had not been able to deliver any set of DVD players at all despite the request of View Tech.
- ‘10. By reason thereof, View Tech terminated the project. As a further attempt to avoid losses, the Plaintiff therefore procured another customer Keian Corporation, hoping that the 1st Defendant would improve on the quality of the DVD players to be produced. The Plaintiff and the 1st Defendant thus agreed that the DVD players were to be delivered between November 2004 and April 2005 (“the Keian project”).
- ‘11. In default, the 1st Defendant had failed to improve on the quality of the DVD players produced and the same were not working at all. Between November 2004 and March 2005, 4 inspections were held on the DVD players produced by 1st Defendant and the same did not pass any of the said inspections. Further the 1st Defendant did not in fact have the required licenses for the products.
- ‘12. The aforesaid representations of the 2nd Defendant on behalf of the 1st Defendant were untrue and were made fraudulently, or recklessly not caring whether it was true or false, or alternatively negligently, in that the 1st Defendant did not have the experience, capacities and/or capabilities to produce the DVD players required and that it did not have the required licences for the said products.
- ‘13. By reason of the misrepresentations of the Defendants, the Plaintiff has suffered loss and damage:

Particulars

(1) Expenses for 180,000 pieces of TFT LCD purchased at US\$4,000,000.00 and resold at US\$200,000.00 in mitigation of damage	<u>US\$3,800,000.00</u>
(2) Expenses for 110,000 pieces of half finished TFT LCD purchased at US\$3,800,00.00 and resold at US\$100,000.00 in mitigation of damage	<u>US\$3,700,000.00</u>
(3) Expenses for 50,000 pieces of IC purchased at US\$800,000.00 and resold at US\$100,000.00 in mitigation of damage	<u>US\$700,000.00</u>
(4) Expenses for wasted materials	<u>US\$26,600.00</u>
(5) Wasted capital investment	<u>NT\$206,000,000.00</u>
Total:	<u>US\$8,226,600.00</u>
	<u>& NT\$206,000,000.00</u>

- ‘14. The Plaintiff further claims for interest on such sum as found due from the Defendant at such rate and for such period as the Court deems just pursuant to S.48 of the High Court Ordinance Cap.4.

‘AND THE PLAINTIFF CLAIMS:-

- (1) Damages in the amount of US\$8,226,600.00 and NT\$206,000,000.00 pursuant to paragraph 13 herein;*
- (2) Such further and/or other relief as the Court deems just;*
- (3) Interests; and*
- (4) Costs.’*

What It All Means

A ... [CLICK TO ORDER FULL ARTICLE](#)

NOTICE TO SUBSCRIBERS

This **TARGET** Intelligence Report, Volume VIII, Number 239,
will be the last **TARGET** published for 2006.

The next **TARGET** will be on Subscribers' desks on Wednesday, January 3,
2007.

This medium takes this opportunity to wish all **TARGET** Subscribers

**MERRY CHRISTMAS
AND
A VERY HAPPY NEW YEAR**

8 2392006

200713

!!

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

*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. **TARGET** does not guarantee to publish readers' views, but reserves the right so to do subject to the laws of libel.*