

# Securities Regulation Daily Wrap Up, SECURITIES OFFERINGS—N.D. Ohio: Securities action against light bulb maker is switched off, (Feb. 26, 2016)

By [Rodney F. Tonkovic, J.D.](#)

A district court has pulled the plug on a securities action brought against a manufacturer of lighting products. The complaint alleged that the company made misrepresentations in the offering documents accompanying its IPO, but the court found no actionable allegations illuminating any pre-IPO wrongdoing. The court dismissed the action with prejudice for failure to state a claim ([Sohol v. Yan](#), February 25, 2016, Polster, D.).

According to the complaint, Ellis Yan and his brother formed TCP International Holdings, Ltd. in the late 1980s. TCP focused on lighting products. In 1996, the company introduced a new type of compact fluorescent lamp. Over time, the company introduced more advanced designs, including a first-generation LED, and boosted production. In 2014, TCP went public.

The complaint alleged that the offering documents accompanying TCP's IPO made misrepresentations and failed to disclose material facts. Specifically, the complaint asserted that the offering materials made misleading misstatements regarding Underwriters Laboratory (UL) and Energy Star approval of TCP's products. Among other actions, Yan allegedly caused TCP to bypass regulatory and supplier certification processes, used "golden samples" for testing purposes, and told employees to disregard QA and control processes.

**No pre-IPO wrongdoing.** In an earlier order the court dismissed the complaint's claims under Sections 11 and 12 of the Securities Act, finding that the investors failed to describe any wrongful acts prior to the IPO. This amended complaint attempted to address this deficiency by alleging that the company submitted "golden samples" for testing; that is, non-representative samples that had been built and tested to meet

industry standards. The complaint alleged further that TCP's product labels indicated UL and Energy Star approval when no such approvals had been received.

The court found that the allegations that predated the IPO amounted at most to mere mismanagement and did not give rise to any materially misleading statements or omissions. The investor relied in part on allegations in a complaint filed by a TCP officer who had also been involved in an altercation with Yan that required the intervention of the police. These allegations, the court said, constituted inactionable concerns about Yan's business practices and management style.

Regarding the allegations surrounding the "golden samples," the court stated that this might be material, but the complaint failed to show that this conduct predated the IPO. The investor failed to include even the most general dates that would indicate that these events happened pre-IPO, the court said. In sum, the complaint continued to lack allegations of wrongful acts predating the IPO, and these counts were dismissed. The complaint's Exchange Act claims, which, the court observed, alleged fraud by hindsight, were dismissed for the same reasons.

The case is [No. 1:15-cv-00393](#).

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Companies: TCP International Holdings, Ltd.

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