

## ***“HARRY POTTER” v. “HARI PUTTAR”?***

*Warner Brothers Entertainment Inc. v Harinder Kohli*, raised before the High Court of Delhi the question whether the defendant’s film titled “Hari Puttar” was visually and phonetically similar to the plaintiff’s registered trademark “Harry Potter” in respect of goods in classes 9, 25, 28 and 41. “Hari is a common first name in India and “Puttar” in the Punjabi language means “son”. “Hari Puttar” when translated would, therefore, mean “Hari, the son”. The defendant’s film “Hari Puttar” was, therefore, about the heroic deeds of Hari, the young son of a Punjabi couple portrayed in a humorous fashion.

The plaintiff, Warner Brothers Entertainment Inc alleged that the publicity surrounding the defendant’s motion picture by repeated references and allusion to its trademark “Harry Potter” was creating immense confusion and deception in the minds of the potential audience of the plaintiff’s film, resulting in dual torts of unfair competition and passing off. Further, the plaintiff also raised the doctrine of Initial Interest Confusion that infringement could be based upon confusion that created initial customer interest, even though no actual sale was finally completed as a result of the confusion.

However, in its eagerness to get an interim injunction against the defendant, the plaintiff made contradictory statements in its pleading regarding the date of knowledge of the defendant’s film, thereby exposing it to a successful defense by the defendant of misrepresentation of facts to mislead the court.

Even otherwise, the court was not convinced about the potential of the defendant’s mark to cause confusion and deception among the purchasing public. The court, therefore, held that even assuming that there was any structural or phonetic similarity between “Harry Potter” and “Hari Puttar”, what deserved not to be overlooked was that the Potter films were targeted to meet the entertainment needs of an elite and exclusive audience who were adept at discerning the difference between a film based on a Harry Potter book and a film which was a Punjabi comedy, the chief protagonist of which was called Hari Prasad Dhoonda. The court further held that necessarily, the yardstick also must differ, bearing in mind the fact that a consumer product such as a soap or even a pharmaceutical product may be purchased by an unwary purchaser or even an illiterate one, but the possibility of an unlettered audience viewing a Harry Potter movie remote. Based on the aforesaid reasoning and the course of conduct of the plaintiff, the court rejected the interim injunction application.