

# Bollywood Bills

## Defendants, lawyers crying foul over a suit targeting pirated videos at ethnic grocery stores

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**N**ew India Bazaar looks like many of the ethnic grocery stores that dot San Francisco. It's got the usual assortment of rice and foods for sale, the familiar scent of Indian spices in the air, and an increasingly popular money-maker: a vast selection of DVDs and videotapes of Bombay's latest movies.

But while these Bollywood videos are a favorite among the shop's clientele, owner Auro Vhatt worries they could put him out of business. In March, Vhatt received a letter notifying him that he was violating the state's unfair competition and anti-piracy laws, and as a re-

sult could face jail time and exorbitant legal fees. "Our initial reaction was disbelief," says Vhatt. "I didn't know what to do about it. We were really scared."

Now Vhatt is embroiled in a case that goes beyond the issue of video piracy. Defendants and their lawyers are crying foul over what they say is an abuse of a state law to exploit hundreds of immigrant-owned grocery stores throughout the state. A state senator says he's investigating ways to prevent similar cases.

Some 140 ethnic grocery stores, from Bakersfield to Yuba City, received similar letters from the Long Beach-based law firm Brar & Gannuin. According to the letter, a partner of the firm had visited the stores and been offered to rent or buy "an audiovisual work which was obviously pirated."

Enclosed with the note was a "settlement agreement" which proposed to drop the suit in exchange for a payment of \$2,000 and a promise not to engage in any more such activities.

Vhatt, who says he merely sells the videos that distributors give him, turned down the offer. Together with some of the other accused store-owners, he hired Berkeley attorney Padam Khanna, who was later joined by a pro bono team of litigators from Gibson, Dunn & Crutcher.

Last week they won a minor victory when Santa Clara Superior Court Judge Jack Komar denied the plaintiff's motion for a preliminary injunction and granted a demurrer with leave to amend in *Sohi v. Bollywood*, CV

See PLAINTEXTS page 6

### Court Watch

# Plaintiffs Lawyers Say Shop Owners Are 'Threatened'

Continued from page 1  
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"Plaintiff's motion is part of an improper scheme to use this court as an instrument of terror for purposes of extracting monies from small and unsophisticated California shopkeepers," wrote Gibson, Dunn litigator David Moyer in his pleadings.

## Court Watch

It's an allegation that rankles Brar & Gannulin partner Harpreet Brar. "What happens is we get called extortionists. That's what the defense counsel calls us because they have no defense."

A two-partner firm founded in 2001, Brar & Gannulin handles mostly "public interest" matters like the case against the New India Bazaar store, explained Brar.

In fact, the firm has carved a niche practice out of such cases. In August, Brar & Gannulin sued some 80 small ethnic grocery stores in Los Angeles and Orange counties. And in February, the firm sued another 20 shops in Riverside. According to Brar, everyone in the L.A. and Orange County cases has accepted his firm's settlement offer, while more than 50 percent of the defendants in Riverside have settled.

"No store in the state is privileged from violating the law," says Brar.

According to Brar, the videotapes available at these stores, typically featuring crude, handwritten labels, are pirated copies. Often, as in the case of *Momsoon Wedding*, the movies are available at the stores before the studio has even set a video release date.

Brar would not say how much money his firm has netted from these settlements, but points out the firm's flexibility. "We try to work with the defendants," says Brar, "in the sense that if they say to us we only have 40 [video] tapes, we'll even take a cut in our fee and settle for lower."

Early this year, the Long Beach firm set its sights up north, and sent summonses to roughly

140 businesses around the Bay Area. As in L.A. and Orange counties, the purpose of the suits was to stop what the firm claimed was the rampant piracy of copyrighted films within the ethnic grocery stores.

And as in L.A., the suit relied on California's controversial Business and Professions Code 17200. Under 17200, any individual can act as a private attorney general and sue a business for unfair business practices. The statute has been used successfully in the past to go after stores selling cigarettes to minors, and most recently in the false advertising claim against Nike which went to the California Supreme Court.

In Brar & Gannulin's Bay Area suit, the plaintiff-cum-private attorney general is one Oscar Sohi, operating under the name California Watchdog. According to Brar, Sohi is a Southern California student who contacted him in order to stop the lawlessness he'd witnessed.

But not everybody is convinced that the California Watchdog and his counsel's actions are in the public interest.

"A number of points have been raised that are of concern to me," says Jon Hellese, the district director for state Sen. John Vasconcellos, D-San Jose. "It appears, from what I've seen, to be targeted solely at small, ethnic, mom-and-pop businesses."

According to Hellese, Vasconcellos has charged him and the senator's chief of staff with exploring possible legislative remedies to prevent this type of practice from happening in the future.

"This is basically abusing the statute," says attorney Sunil Brahmbhatt, who represents two of the defendants in the Riverside case. "It was not intended for the purposes of having lawyers get rich. It was intended to protect the public."

Particularly objectionable to Brahmbhatt, Moyer and others is the letter Brar & Gannulin sends to shop owners, which they say seems to threaten criminal prosecution, and offers a quick settlement

agreement to make the threat disappear.

Brar is adamant that his firm has never threatened a defendant with criminal sanctions. "We know it's unethical, we have never done it," he says flatly.

What the firm has done, explains Brar, is simply informed the defendants of the Penal Code section they are violating. A letter to one defendant, available as a court exhibit, quotes several paragraphs of California's anti-pirating statute, Penal Code §653w, which lists the applicable jail terms and monetary fines for violations. The letter then goes on to warn that the shop will be "enjoined in this action and will be required to pay our cost and attorneys fees accumulated by us in enforcing California Penal Code §653w."

Actually threatening criminal sanctions is such a serious breach of State Bar professional conduct rules, says Brar, that had his firm been doing such a thing, "I'm sure the State Bar would have come down on us."

According to the State Bar, there are currently no investigations into Brar & Gannulin. The Bar does not disclose whether complainants have been filed against attorneys.

While Brar & Gannulin may not have literally threatened criminal prosecution, the fact that the letter to shop owners says the firm is enforcing the Penal Code could be construed as a threat, says Richard Zitrin, the director of the Center for Applied Legal Ethics at University of San Francisco School of Law.

"When you say you're enforcing the Penal Code, it implies that you're enforcing the criminal aspect of the Penal Code, not the civil remedies," he says.

Despite the charges of improper conduct that face Moyer's pleadings, Judge Komar steered clear of the matter in his ruling last week. The judge's order granting the demurrer simply stated that the plaintiffs failed to state the cause of action, and that the defendants were improperly joined.

Moyer says he's not sure why the judge didn't address any of his arguments about ethics, but says he's satisfied with the results nonetheless.

"So far we're just focused on taking care of people that came to us for help. What they wanted was the suit to go away and that was our goal," says Moyer, adding he has not pressed for sanctions or filed any complaint yet with the State Bar.

That's because the allegations are just a garnish, contends Brar. "Don't run to the newspaper, don't run to the television station and make the argument. Make it in our court. They won't do it because there's no grounds."

Defense attorneys trotted out the same allegations in Los Angeles and Orange County, says Brar.

It's common for the defense to launch an attack on the plaintiff in these types of cases, says Donald Driscoll, an Alameda attorney who has used §17200 to aggressively go after retailers that sell cigarettes to minors.

"The defense bar is well aware of the tactic, and it's important for plaintiffs to try to avoid being unfairly attacked for enforcing the law," says Driscoll.

Far from being discouraged by last week's ruling, Brar seems emboldened. "We're in stage one," he says. "Get ready for the battle."

In the next couple of weeks, Brar says, he will re-file his case in Santa Clara, presenting more evidence. And, as per the judge's ruling, he'll file individual suits against some of the stores in Bakersfield.

His only lament: the shopkeepers' extra attorneys fees. "It's unfortunate that those defendants in Bakersfield are going to have to pay their attorneys to come all the way down," he says. "It's just not fair for these defendants. They're getting totally taken advantage of."

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