

*Bharatiya Manufacturing and Services Ltd and Ors vs. Bharatiya Printing Equipments and
Peripherals Ltd and Ors*

Mr Anand Bharatiya is an industrialist with a career in industry spanning 45 years. He started with a factory manufacturing car accessories. The business expanded and diversified into manufacturing of paper, stationery, printers, garments, office equipment, and automobiles; financial services, providing internet services, mobile phone services. His business now includes a chain of hotels in India and in the UK, Mauritius, Australia, US and Malaysia. 'Bharatiya' hotels operate on a business model giving an 'Indian' experience and promoting Indian cuisine. All businesses are run by companies formed by Mr Anand Bharatiya – together the Bharatiya group. Bharatiya group projects phenomenal future growth in the existing units, and extension to other businesses. Names of all these companies begin with his surname 'Bharatiya'. The companies are managed by a group of persons related to Mr Anand Bharatiya. Bharatiya Manufacturing and Services Ltd, Mumbai holds in India all the companies in the group.

The word 'Bharatiya' has not been registered as a trade mark in India. It is registered as a mark in UK and US in respect of hotel and related services, i.e. tour and travel. Advertisements of these hotels appear on TV and satellite channels in India and above countries, and in tour and travel magazines and newspapers circulating throughout the world. One Bharatiya company exports garments to US and Brazil. The companies of the Group advertise under the slogan: "Be Bharatiya; be a proud Indian". Bharatiya group has built a goodwill by maintaining standards and winning awards for product quality, keeping a fair share in the market in respect of all goods, a consistent profit in its ventures, aggressive marketing and advertisement, campaigns, sponsorship of programmes on television, and events etc.

Bharatiya is a surname of persons coming from two States in India. Every telephone directory in India has at least one entry of the surname; telephone directories of 10 large cities in India least at least 25 persons of the surname. The name Bharatiya has not been a part of the name of any other Company in India until 2007, when Bharatiya Printing Equipments and Peripherals Ltd was registered. No other company is registered with the name. However many proprietary and partnership concerns, some of them dealing in automobile accessories, garments, office equipment, paper, stationery, use the name Bharatiya, as can be seen from commercial telephone directories, Yellow Pages or similar lists issued by telephone department, catalogues / lists circulated by Chambers of Commerce. A reputed educational institution Bharatiya Education Society is registered as a Public Trust and Society at Nagpur, and runs branches in five States in India.

Mr Janak Bharatiya, not related to Mr Anand Bharatiya, had been working with a number of these companies at senior management positions. Until end of 2001, he headed for 5 years as Managing Director the Bharatiya Printers Ltd of the Bharatiya group which manufactured computer printers. In 2007, he resigned his job. He immediately set up another company called Bharatiya Printing Equipments and Peripherals Ltd with its registered office at Nagpur. Initially this company traded in Indian consumables for imported printers. In 2009, the Company set up a unit to manufacture printer stationery and consumables at Nagpur and Pune. In 2014, it intends to commence manufacturing printers.

Bharatiya Manufacturing and Services Ltd, Mr Anand Bharatiya and ten other companies (among them Bharatiya Printers Ltd) filed a civil suit in the civil court at Nagpur against Mr Janak Bharatiya and Bharatiya Printing Equipments and Peripherals Ltd seeking compensation for passing off its trade name and trade mark, and permanent injunction restraining them from using the name Bharatiya in the name of the company, its advertisements, business correspondence etc. They have filed an application for temporary injunction.

The plaintiff has produced evidence to show its reputation to establish the facts relating to their business, the use of the mark 'Bharatiya', awards, profits, marketing, advertisements, sponsorship etc. The defendant has filed telephone directories and lists circulated by Chambers of commerce. The defendant alleges *inter alia* that (i) the court has no jurisdiction, (ii) no person can claim monopoly in a surname, (iii) Mr Janak Bharatiya has a right to use his surname as part of the name of his establishments, which also emanates from his right to life and liberty, (iv) any right of the plaintiff cannot extend over the defendant Mr. Bharatiya to stop him from using his surname as part of the company set up and managed by him, (v) public policy demands that persons must have a right to use their names and surnames to describe their ventures, (vi) Bharatiya is a common word to describe an Indian. The temporary injunction application is for hearing. Argue for the plaintiffs and the defendants.

Notes: (i) The case is located in India. Laws of India will apply. (ii) India is 'Bharat' in Hindi, the national language of India. 'Bharatiya' means 'Indian'.

This imaginary case has been formulated by Dr Nilima Bhadbhade, ILS Law College, Pune, and Mr Bhalchandra Phatak, Advocate.