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Harry Potter Lawsuits and Where to Find Them

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The enormous success of J.K. Rowling's literary creation *Harry Potter* and its associated multimedia empire has spawned countless jealousies, countless imitators, countless parodists, and countless pirates. The franchise has kept dozens if not hundreds of lawyers busy with precedent-setting copyright cases, trademark disputes, First Amendment battles over religious expression, and even the occasional breaking and entering. Indeed, it appears that Ms. Rowling and her works pop up in court more than any author since Charles Dickens—and that's saying something considering that Dickens, unlike Rowling, wrote books about lawyers. We have created this guide to the most notable and interesting of the *Harry Potter* legal disputes.

Conjuring the Magic

Nothing breeds intellectual property lawsuits like success. From the time *Harry Potter* was first published, the books have been challenged by other artists who contend that they—not Rowling—are responsible for all or part of the magic. Rowling has never been anything but vindicated, so why were these cases brought in the first place? Perhaps *Harry Potter* is like the Mirror of Erised, in which potential plaintiffs see what they want to see, or perhaps, as Ginny Weasley once opined, it's because "you sort of start thinking anything's possible if you've got enough nerve."

Stouffer v. Scholastic

In 1999, just after the first *Harry Potter* book was released in the United States, American author Nancy Stouffer started writing letters to Scholastic, Rowling's US publisher, in which she claimed to have authored books in the 1980s entitled *The Legend of Rah and the Muggles* and *Larry Potter and His Best Friend Lilly.* Stouffer alleged that the *Harry Potter* books infringed her copyrights and trademarks in a number of ways, including because one of Stouffer's books had a race of beings called "Muggles," and another had a protagonist whose name rhymed with *Harry Potter* and who wore glasses. Scholastic filed an action in the Southern District of New York, seeking a declaratory judgment of non-infringement.

In 2002, the Court granted summary judgment to Scholastic,[1] finding that Rowling's use of the term "muggles" to refer to ordinary human beings was unlikely to be confused with Stouffer's "Muggles," who were "tiny hairless creatures with elongated heads who live in a fictional, post-apocalyptic land." As to the "Larry = Harry" allegation, the Court held that the fact that two boys with brown hair were wearing glasses was not sufficient to create a likelihood of confusion for trademark purposes or a substantial similarity for copyright purposes.

The Court conducted its infringement analysis under the assumption that Stouffer in fact did author the works she claimed to have authored at the times she claimed to have authored them. But when it was done with that infringement analysis, the Court dropped the assumption and really let Stouffer have it. The Court credited evidence that Stouffer's book in the 1980s was originally entitled simply *Rah,* and that only later did she add the words "The Legend of" and "the Muggles" in order to bolster her court case. The Court also found that the only copy of the *Larry Potter* book offered into evidence had been falsely dated. Stouffer ultimately was found to have committed several frauds on the court, and she was ordered to pay a $50,000 sanction. The Second Circuit later affirmed.

Wyrd Sisters v. Weird Sisters

In *Harry Potter and the Goblet of Fire,* the band at the Yule Ball was the Weird Sisters, a fictional wizard rock band. In 2005, when it came time for Warner Brothers to

make the movie, a folk music act from Manitoba stepped forward. The folk band, called the Wyrd Sisters, filed suit in an Ontario court to prevent the film's distribution in Canada, lest *Harry Potter* fans unwittingly start showing up at Wyrd Sister gigs. Warner Brothers reportedly offered the Wyrd Sisters $50,000 to go away, but they rejected the offer and continued to pursue damages in the neighborhood of $40 million. Unlike the Weird Sisters from *Macbeth*, however, the Wyrd Sisters from Manitoba could not see the future. It was reported that the Ontario Court found the suit to be "highly intrusive," and also that it was not pleased with the band's public comments about the case. The Wyrd Sisters were ordered to pay $140,000 in court costs. By that time, however, any reference to the name had been removed from the film, and the band that played *Do the Hippogriff* at the Yule ball was called … well … it "needed no introduction."

Smith v. Rowling

In 2010, Elijah Smith brought a *pro se* claim against Rowling in the Eastern District of California.[2] The allegation was simple: "I'm the author who write Harry Potter … " As to the relief sought, Mr. Smith stated: "Mrs. J.K. Rowling will make a great teacher … I'll be gladly to help Mrs. J.K. Rowling after she pay me $18 billion."

Mr. Smith's complaint was dismissed shortly after it was brought, and his request to proceed *in forma pauperis* was denied. Mr. Smith, who at the time the complaint was filed resided in a California state prison, has brought similar claims against Michael Jackson, Lil Wayne, Snoop Dog, and Sam Cooke.

Willy the Wizard

In 2010, the estate of author Adrian Jacobs brought suit against Scholastic in the Southern District of New York[3] for copyright infringement (and a similar suit in London against Rowling's UK Publisher, Bloomsbury). The suit alleged that *Harry Potter and the Goblet of Fire* was copied in part from *The Adventures of Willy the Wizard,* a 16-page booklet about an adult wizard who, among other things, participates in a contest in order to win a place in a wizard retirement home.

In 2011, the Court allowed Scholastic's motion to dismiss because "any serious comparison of the two strains credulity." The only substantive points of comparison were that the main character in each work was a wizard who participates in a contest (for Harry, it was the triwizard tournament), and that at some point each wizard has an idea in the bathtub (a hackneyed device since Archimedes).

But the Court didn't stop there, also taking the opportunity to describe *Willy the Wizard,* unlike *Harry Potter,* as "devoid of a moral message or intellectual depth" and for the most part "lack[ing] any cohesive narrative elements that can unify or make sense of its disparate anecdotes—a generous reading may infer that its purpose is to engage a child's attention for a few moments at a time, much like a mobile or cartoon." In fact, the Court opined, "it is unlikely that a rudimentary character like Willy can be infringed upon at all." Perhaps not wishing to invite similar literary criticism from the Second Circuit, the estate did not appeal. The UK case subsequently came to a similar end.

Harry Potter v. The Future President of the United States

The most recent allegation of copying against Rowling came earlier this year in the Eastern District of New York. The *pro se* plaintiff submitted a complaint which accused a Hollywood studio (but not one that had anything to do with *Harry Potter*) of stealing several ideas from an autobiography she had submitted. Among other things, the complaint alleges: "*Harry Potter* scar on forehead is related to hospital emergency room visit I witnessed of 2 of my family members that wish to remain unnamed." As to damages, the Complaint asked for $20 billion, the basis for which was that "I now am seeking the United States presidency & a congressional run prior that require funding that I do not have." The Court granted the plaintiff's motion to proceed *in forma pauperis,* then quickly dismissed the complaint as frivolous.

She Who Must Not Be Copied

For every author who claims that Rowling copied part of *Harry Potter* from them, there are a hundred instances of unauthorized copies of Rowling's work by others. Much of this copying falls into traditional categories of pirating and counterfeiting. For example, the Central District of California in *Warner Brothers v. Slaughter,*[4] put the kibosh on an operation that was selling unauthorized copies of *Harry Potter* movies through *Amazon.com*. In *Rowling v. Shukla*,[5] an Indian court put a stop to the distribution of unlicensed Marathi language translations. Rowling has taken a special interest in the sale of counterfeit books and "J.K. Rowling" signatures on eBay, and in 2007 she obtained an injunction against the auction site from the Delhi High Court.

Harry Potter has inspired more than its fair share of unauthorized derivate works and fan fiction. After an initial stumble due to a heavy-handed letter to a fan site, Rowling has famously given her blessing to fan fiction, provided it is non-commercial and not sexually explicit. One such kosher creation is G. Normal Lippert's series of James Potter novels, tracing the exploits of Harry

and Ginny's son. But there are plenty of copies and derivatives—or alleged derivatives—that Rowling and her licensees have not blessed. Here are a few we found most interesting.

The Harry Potter Lexicon

Perhaps the most high profile case involving *Harry Potter* was *Warner Bros. v. RDR Books,*[6] which concerned the *Harry Potter Lexicon* Web site. The Lexicon site, founded in 2000 by *Harry Potter* superfan Steven Vander Ark, incorporated and organized extensive quotations and plot summaries from Rowling's text. The Lexicon became the go-to encyclopedia for *Harry Potter* facts, and was used informally by the makers of the films, the videogame, and even by Rowling herself. In 2007, Vander Ark was approached by RDR books with an offer to publish the Lexicon content in print. The book was to consist of 2,437 entries containing direct quotations, paraphrases, plot details, and summaries of scenes from the Harry Potter novels.

When Warner Brothers found out about the Lexicon book, it contacted RDR with an expression of concern and asked to see a copy. RDR went on the offensive and accused Warner Brothers of unauthorized use of Vander Ark's work. Shortly thereafter, the parties were facing off against each other in the Southern District of New York. The main issue in the case became whether publication of the Lexicon book would be a fair use of Rowling's work.

After a bench trial, the Court considered the fair use issue. On the one hand, the Lexicon was transformative in the sense that it did not supersede or replace the novels, nor did it present a threat to their market. But on the other hand, the commercial publication of a book (as opposed to a non-profit Web site) would be an exploitation of the entertainment value of Rowling's work, and it used an awful lot of that work. So, as far as the novels went, this was a close call for the Court.

However, what tipped the scales against fair use was that Rowling hadn't written only the novels. She also had published "companion" books, such as *Quidditch Through the Ages* and *Fantastic Beasts & Where to Find Them*, and was planning her own *Harry Potter* encyclopedia. The Lexicon would compete directly with these books in the market for Harry Potter reference guides, which by itself was worth tens of millions of dollars. The Court held that the unpublished Lexicon book infringed Rowling's work, and permanently enjoined its publication. Instead of appealing, RDR and Vander Ark went back to the drawing board. In 2009, RDR published a revised version of the Lexicon book, which copied less from Rowling, contained more original material and, according to documents filed in a later case, had been informally approved by the plaintiffs.

Harry Potter Kolkataye

In 2003, the book merchants on College Street in Kolkata (formerly, Calcutta) were thrilled to receive shipments of *Harry Potter Kolkataye* (*Harry Potter in Calcutta)* by Indian author Uttam Ghosh. The Bengali language book told the story of a Kolkata boy named Jhontu who can't get tickets to a *Harry Potter* film, so he goes home and dreams that the entire story is narrated to him. Purportedly, Harry and Jhontu also meet famous characters from Bengali literature, such as Rabidrantah Tagore and filmmaker Satyajit Ray. Ghosh announced that "[m]y book is not plagiarism" and insisted his story was unique. If that's the case, Warner Brothers retorted, what's with the use of our characters, not to mention all those copyrighted stills from our film? Some 15,000 copies of the book were sold before Warner Brothers' lawyers threatened legal action against the booksellers and distribution ceased. Ghosh remained defiant, reportedly stating: "I will now create my own Harry Potter. Can you suggest a name?" One name he floated to reporters was "Hari Patra."

Hari Puttar: A Comedy of Terrors

Ghosh must have been pleased when, a couple years later, Indian film producer Harinder Kohli appeared to take his idea and run with it. In 2005, word leaked out that Kohli was producing *Hari Puttar,* a comedy about a boy left *home alone* who foils the attempts of nitwit burglars to rob his family. Warner Brothers' lawyers sent a letter expressing concern, but then allegedly let the matter drop. In 2007, just before the release of *Hari Puttar: A Comedy of Terrors,* Warner Brothers filed a complaint seeking an injunction and alleging that the title would cause initial interest confusion among *Harry Potter* fans.

The High Court of Delhi at New Delhi dismissed the complaint and rejected the application for injunctive relief. The Court found that Warner Brothers was not entitled to injunctive relief because it had waited too long to file suit despite its knowledge of the film's production. As to the substantive trademark claim, the Court credited the defendant's explanation that "Hari," which is pronounced "Hurry," is short for the Hindi name of the main character (Hariprasad), and also has religious connotations for Indian audiences (*e.g.*, "Hari Krishna," etc.) that outweigh any association with Rowling's work. Moreover, "Puttar" is Punjabi for "son," which allegedly corresponded to film's focus on the son of the family.

The Court also was of the view that nobody actually would be confused. First, the "illiterate or semi-literate movie viewer, in case he ventures to see a film by the name of Hari Puttar, would never be able to relate the same with a Harry Potter film or book" because he could

not read the two titles. The Court also found that *Harry Potter* was targeted at an "elite and exclusive audience," not likely to mislead because:

> Such a person must be taken to be astute enough to know the difference between a Harry Potter film and a film entitled Hari Puttar, for, in my view, the cogniscenti, the intellectuals and even the pseudo-intellectuals presumably know the difference between chalk and cheese.

The Hindu Hogwarts

Meanwhile, the attention of Rowling's Indian lawyers was pulled back to Kolkata. The construction of pandals, replica buildings that often are temporary, has become a tradition associated with the Durga Puja religious festival. A previous pandal of the *Titanic* had apparently been very popular so, in 2007, a local bank sponsored a giant Hogwarts pandal to be erected in the city's Salt Lake district. Rowling and Warner Brothers marched back into Court. Although it appears that the Dehli High Court declined to order the pandal be immediately taken down, it did order the organizers to refrain from similar activities in the future without the permission of the plaintiffs.

Let One Thousand Sequels Blossom

China, the world's most populous country, has seen more than its proportional share of unauthorized *Harry Potter* derivative works. In *Harry Potter and the Porcelain Doll,* Harry and a group of circus performers team up to defeat Voldemort's Chinese counterpart, Yandomart, nicknamed the "naughty bubble." *Harry Potter and the Chinese Overseas Students* tells the story of six teenage Chinese wizards who travel to Hogwarts and help Harry get his groove back so he can triumph over evil. In *Harry Potter and the Big Funnel* (also translated as the "Filler of Big"), Harry's friends start turning into wooden stools while his cousin Dudley dates a belly dancer—we don't get that one either.

While untold numbers of unauthorized *Harry Potter* sequels inhabit Chinese bookshelves, perhaps the one that has garnered the most attention in the West is *Harry Potter and the Leopard-Walk-Up-to-Dragon.* There are various accounts online explaining the plot, not all of them consistent. Reportedly, the book begins with Harry being turned into a dwarf by a mysterious "sweet and sour" rain, and then the rest of the book consists mostly of text from *The Lord of the Rings* trilogy, with Rowling character names substituted for Tolkien character names (except for Dumbledore, who couldn't quite *find and replace* Gandalf). Rowling's Chinese publisher hired private investigators to track down a copy of the book, which proudly displayed the name of its publisher. When legal action was brought, that publisher quickly "fessed up" and the matter ended with a small fine and a public apology. Ironically, it later turned out that the copy obtained by the private investigator, which the publisher admitted to printing, was "a fake of a fake." It was printed by a still-unknown second publisher, using the first publisher's imprint.

Harry Potter v. the US Army

In 2004, *The Preventive Maintenance Monthly,* a publication of the US Army, printed a comic strip intended to teach soldiers how to maintain their equipment. The comic featured a character named "Topper," a bespectacled dark haired boy who resides at the Mogmarts School under the tutelage of Professors Rumbledore and Snappy. The magazine staff initially argued that "the drawings do not look like any of the characters in Harry Potter." A couple days later, official spokespersons from the Army Material Command got involved and made the more credible claim that the comic was a non-infringing parody. Nevertheless, with Rowling's lawyers breathing down its neck, the army retreated and promised not to do it again.

Tanya Grotter and the Magical Double Bass

Perhaps *Harry Potter's* most challenging *bête noir* has been the *Tanya Grotter* series by Russian author Dmitry Yemets. *Tanya Grotter* tells the story of a girl with magical powers whose parents are killed by an evil sorceress, who received a distinguishing facial scar during the attack, who is poorly treated by her foster family (the "Durnevs"), and who attends the Tibidokhs School of Magic. The books combine these plot points with elements of Russian folklore. Yemets and his publishers have described *Tanya Grotter*'s relationship to Rowling's work as parody, "cultural response" and "burlesque sister."

The first book in the series, *Tanya Grotter and the Magical Double Bass,* sold half a million copies in Russia, prompting Dutch book distributor Byblos in 2003 to plan a small 7,000-copy release to test the Western market. Rowling brought an action to halt the publication, and the Amsterdam District Court agreed that Tanya and Harry had way too much in common. Byblos was ordered to cease and desist. However, Russian publisher Eksmo has continued to churn out sequels in Russian

that have sold very well in the Russian market, sometimes outperforming *Harry Potter*. Yemets also has continued to fire shots at Rowling over the parody bow, in one book placing Tanya in the World Dragonball championship against a character called "Hurry Pooper." (Classy.)

The Chamber of Secrets

Between 1997 and 2010, fans who didn't like reading unauthorized derivatives had to endure an agonizing wait until each new *Harry Potter* novel was published. The contents of each new book were valuable secrets, and not always well-kept ones. In 2007, the Web site *deepdiscount.com* starting shipping thousands of copies of *Harry Potter and the Deathly Hallows* a week ahead of its official release date, in violation of Scholastic's On-Sale Date Policy Contract. Scholastic filed a breach-of-contract action in Illinois state court and then later in the Northern District of Illinois. *Deepdiscount.com* responded with an abuse of process counterclaim, accusing Scholastic of filing the state action in order to raise public awareness of the book's release date. However, the matter settled fairly quickly after the initial fireworks and, in the meantime, Scholastic reportedly contacted *deepdiscount.com* customers to ask them not to open the book until the official release date.

Other leaks have been of a less contractual nature. In 2003, three copies of then-still-unpublished *Harry Potter and the Order of the Phoenix* disappeared from its UK printing facilities. Shortly thereafter, the London tabloids began receiving calls from an unidentified man seeking around £25,000 for an early peek at three chapters. Bloomsbury obtained an injunction against the "Person or Persons Unknown" who had made the offers to the newspapers. In *Bloomsbury v. Person or Persons Unknown et al.,*[7] the High Court of Justice Chancery Division ruled that this description was "sufficiently certain as to identify" the defendants. A month later, the *New York Daily News* got into the act by publishing an excerpt of the book days ahead of its embargoed release. Scholastic brought suit for copyright infringement in the Southern District of New York, and the matter quietly settled.

But *Harry Potter and the Half-Blood Prince* takes the prize for the most interesting and curious leaks. When a Canadian grocery store mistakenly sold at least 14 copies prior to the book's embargoed release date, Canadian publisher Raincoast went to court for an injunction, and they got a doozy: The Supreme Court of British Columbia granted an injunction ordering the grocery store's customers not only to refrain from leaking the book's contents, but not to *read it* either.

Meanwhile, a US Post Office manager at a sorting facility in Kansas City spotted the package containing the copy of *Harry Potter and the Half-Blood Prince* that she had ordered from Amazon, and which was addressed to her home. The manager pulled it out of the mail stream a couple days before the contracted release date. When the package was discovered on her desk and she was told to put it back in the mail stream, she allegedly substituted a "dummy package" for the original, took the book home early anyway, and then bragged about it to her subordinates. She was demoted from her management position and her appeal was later rejected by the Merit Systems Protection Board in *Kennedy v. United States Postal Service*.[8]

Finally, no leak was as disturbing as the case of Aaron Lambert, a 20 year old security guard at a warehouse in Corby, Northamptonshire. Lambert hit upon the scheme of stealing a couple copies of *Harry Potter and the Half-Blood Prince* from the warehouse and selling them to the *Sun* and *Daily Mirror* for a combined £80,000. Lambert was arrested after brandishing and then discharging an imitation Walther PPK pistol during a meeting with a *Sun* reporter. While out on bail for that incident, he called Bloomsbury and attempted to blackmail the publisher into paying him to keep his mouth shut about the contents of the book. Lambert was sentenced to over four years behind bars. At his sentencing hearing, Lambert's attorney pointed to his regular use of a cocktail of body-building steroids as the reason for his "stupid" behavior.

Undesirable No. 1

On the other side of the equation, there are plenty of people who would have been happier if the *Harry Potter* books never came out at all. In the custody dispute of *Pierce v. Meltzer,*[9] a man was accused by his ex-wife of exposing their child to offensive "non-monotheistic cultures," by which she meant that he let the kid read *Harry Potter.* In *People v. Coleman,*[10] a prosecutor who was accused of making discriminatory use of peremptory challenges got himself out of trouble simply by explaining to the judge that he had struck one of the jurors in question because she had identified Albus Dumbledore as the person "she respects or admires the most." In *Murdick v. Catalina*,[11] a supervisor's vocal disapproval of *Harry Potter* as promoting "devil worship" was instrumental in defeating a motion to dismiss a Buddhist employee's religious discrimination claim.

But the above controversies pale in comparison to *Harry Potter* fights in the context of childhood education. Harry Potter has been banned from school library shelves all over the world, in locations as remote as New Zealand and as unlikely as Massachusetts (you would have thought we learned our lesson in 1693). Similar incidents have occurred even in Harry's homeland. In 2006, a British employment tribunal upheld the termination of

a South London teaching assistant who refused to let a kindergartner read *Harry Potter.* The teacher's alleged objection was that "JK Rowling has proclaimed that she is herself a witch and that the spells mentioned in the books are actually real spells," and therefore even hearing the book would cause her to be cursed.

But most librarians have argued that the only *real* magic in the *Harry Potter* series is its unparalleled ability to get kids to read. In 2007, a Superior Court judge in Gwinett County, Georgia agreed and upheld the Georgia Board of Education's decision to keep the books around, despite a vocal outcry from some parents. On the other hand, a Jacksonville, Florida library went the other way, succumbing to legal threats and agreeing to stop handing out "Hogwarts Certificates of Accomplishment," which it had been using to encourage child literacy.

Counts v. Cedarville

The Cedarville School District library in Arkansas tried a compromise between these two extremes. After a local pastor tried to have the books banned, the school board (on which the pastor sat) voted to keep *Harry Potter* on the shelf but restrict access to those children with parental permission. This wasn't good enough for Billy Ray Counts, who brought suit in the Western District of Arkansas for violation of his daughter Dakota's First Amendment rights.[12] The Court held that the permission requirement was a burden on Dakota's constitutional rights because it restricted her right to access and stigmatized her choice of reading material.

Because the restriction impinged on a First Amendment right, that meant that the burden shifted to the school board to justify the restriction. The board gave two reasons. First, "the books might promote disobedience" and "could create … anarchy." Since there was no evidence of a single instance of disobedience—let alone anarchy—arising from reading the books, the Court rejected this theory. Second, the board argued that *Harry Potter* promoted a "witchcraft religion" instead of Christianity. The Court rejected this argument as well, holding that the Constitution not only forbids the suppression of ideas, but that it isn't too keen on the suppression of alternative religions either. The Court ordered that *Harry Potter* be put back on the unrestricted shelves.

The Prisoner of the ASDA-Ban

Ironically, the most virulent criticism of *Harry Potter* may have come from one of its own retailers. In 2007, just before the release of *Harry Potter and the Deathly Hallows,* UK supermarket chain ASDA issued a press release complaining about the high price of the books and accusing Bloomsbury of "blatant profiteering" and holding children for "ransom." Bloomsbury's response was devastating. First, Bloomsbury threatened a libel action. Second, Bloomsbury just happened to suddenly realize that ASDA was late in paying a small three-year-old bill, thereby cancelling Bloomsbury's obligation to deliver ASDA's order of half a million of the new *Harry Potter* books. Bloomsbury insisted that the discovery of the arrears was "completely unrelated" to the libelous press release. What a shame, all those children will have to buy the book somewhere else. ASDA first threatened a breach-of-contract action, then offered to pay the old bill immediately, and then finally backed down, "apologizing unreservedly" and making its peace with the recommended retail price.

Constant Vigilance

The lawyers for J.K. Rowling and her licensees are always on the lookout for potentially problematic trademark usage and domain name registrations. In *Warner Bros. v. Samuel,*[13] the TTAB ordered the cancellation of the GOBSTONES mark for card games, which the registrant had been using in connection with a Potteresque font. In *Warner Bros v. Shtadler,* the application to register HARRYCOPTER (for remote control plastic boys on broomsticks with helicopter rotors coming out of their heads) was refused after the applicant failed to respond to Warner Brothers' opposition.

While the Harrycopter idea may have been half-baked, a few others were fully baked. Warner Brothers successfully has defeated attempts to register, for t-shirts, POTTHEAD in another Potteresque font and, for music, HAIRY POTHEAD: WEEDCRAFT MAGIC'S NEITHER BLACK OR WHITE … IT'S STICKY GREEN FULL OF DELIGHT. Also, in *Warner Bros. v. Campo,* a group of animators attempted to register HARRY POTHEAD in connection with their short film, *Harry Pothead and The Magical Herb,* which was selected for the 2001 *Spike & Mike's Festival of Animation.* In the film, a mother explains that her kids so love the new *Harry Pothead* book that, the other day, she caught her daughter rolling up the pages and smoking them! The *pro se* filmmakers claimed their work was a parody, but in other papers also inconsistently alleged that their film was completely original and did "not parody any material from the Harry Potter movie or book series." With that admission, the TTAB held that the filmmakers were using *Harry Potter* in a confusing manner to parody "something else" (parental obliviousness to adolescent drug use) and refused the registration.

Whimsic Alley, a truly impressive fantasy store in Los Angeles, has done a brisk business in licensed *Harry Potter* merchandise, but it apparently went too far in 2003 when the store's owner tried to register the trademark

DUMBLEDORE'S ARMY. Warner Brothers filed suit in 2004, resulting in a settlement agreement pursuant to which Whimsic Alley agreed to stop using *Harry Potter* marks in connection with unauthorized merchandise. In 2013, however, Warner Brothers was back in court, alleging that the store had breached the agreement by offering *Harry-Potter* themed camps ("The Camp That Lived"), parties featuring a "House Cup" competition in the "Great Hall," and even a four-day "Wizard Cruise" to Ensenada, Mexico. Whimsic Alley denied that the marketing materials for the cruise expressly used *Harry Potter* marks. However, travel sites announced the cruise with headlines such as "Attention Harry Potter fans!" and the official FAQ for the cruise explained the 18-and-up age requirement by reminding "fans of Harry Potter" that "from the time he was 11, Harry was old enough to fight off Voldemort year after year, but was not old enough to legally practice magic outside of Hogwarts." Warner Brothers and Whimsic Alley settled again in November 2013, with the store agreeing to a permanent injunction. We have written previously about another merchandise-related spat between P22 Type Foundry and Universal Studios over the copyrighted typeface software used to create certain *Harry Potter* goodies (which also quickly settled).

As for the Wild West of the Internet domain land grab, the National Arbitration Forum and WIPO Arbitration and Mediation Center have seen dozens of disputes concerning hundreds of *Harry Potter*-themed domain names, from *shop4harrypotter.com* to *legoharrpotter.us*. Almost every one of these disputes has ended in a default judgment.

A few domain registrants have put up a fight, however, but usually to no avail. In *Warner Brothers v. Rana,*[14] the domain in question was *harrypottercollection.com*, an affiliate marketing site that directed users to other sites selling *Harry Potter* merchandise. The registrant argued that the word "collection" means an "accumulation of objects gathered for study, comparison or exhibition as a hobby," and that "a citizen has legal right to" engage in such activity without permission. However, the National Arbitration Forum held that the registrant was earning income based on the good will associated with the *Harry Potter* mark, and had registered the domain in bad faith. The site was transferred to Warner Brothers.

Another registrant bold enough to respond was John Zuccarini, a frequent flyer in domain name disputes, who had registered *harypotter.com* (as well as other domains such as *scobydoo.com* and the *cartooonetwork.com*). In *Time Warner v. Cupcake Patrol,*[15] Time Warner accused Zuccarini of typosquatting, that is, registering intentionally misspelled domain names with the intent of siphoning Internet traffic from the owner of the properly spelled mark. Zuccarini's defense went something like: "Who is to say that was not the word [I was] trying to spell?" Well, it turned out that the WIPO Arbitration Panel was the one to say and, in 2001, it ordered the domains transferred. The FTC also had something to say. A few months later, the agency convinced the Eastern District of Pennsylvania to issue a $1.8 million forfeiture order and an injunction forbidding Zuccarini from engaging in certain Internet activities (including "hijacking and mousetrapping").

Speaking of the FTC, that agency also has been on the lookout for other improper uses of the Rowling's franchise. In 2012, the FTC filed false advertising charges in the Southern District of California against Your Baby Can, LLC, which allegedly claimed that the *Your Baby Can Read* program had three-year-olds buzzing through the pages of *Harry Potter*. In 2014, the company entered into a settlement with the government, resulting in a permanent injunction and a whopping $185 million judgment (suspended upon a payment of only $300,000).

An even more reprehensible alleged misuse of *Harry Potter* was the subject of *United States v. Ellisor,*[16] in which the Eleventh Circuit affirmed the mail fraud conviction (and an 87 month jail term) for David Lee Ellisor, who the Court found had marketed a "Christmas From Around the World" extravaganza to Florida schools, promising food, live reindeer, and even a Harry Potter look-alike. When the school buses full of children pulled up to the Coconut Grove Convention Center for the event, they found the doors locked and Mr. Ellisor speeding away in his new Jaguar.

The Council of Magical Law

"A breeze ruffled the neat hedges of Privet Drive, which lay silent and tidy under the inky sky, the very last place you would expect astonishing things to happen." If you guessed that this line is from the opening chapter of *Harry Potter and the Sorcerer's Stone,* you're only half right. It also is the opening line of Judge William Smith's opinion in *Wyrostek v. Nash*,[17] a dispute between a landowner and a local zoning official over a plot of land at 4 Privet Drive (same as the Dursleys' address) in Warren, Rhode Island. Judge Smith took full advantage of the coincidence, characterizing the complaint as alleging that the zoning official was "some kind of Draco Malfoy character," a master of the "dark arts" of drainage remediation. Ultimately, however, Judge Smith found that the plaintiffs' allegations of evil were pure "Hufflepuffery" which, "like the ghost of Moaning Myrtle, are plainly vaporous."

But what if a judge is a fan of Harry Potter and isn't fortunate enough to find such a coincidence on his or her docket. Well, dozens of judges simply have forced the issue by shoving *Harry Potter* references into

unrelated opinions, sometimes effectively and sometimes, well … could you possibly rephrase that, Your Honor? We conclude with a few examples:

- In *Mattel v. MCA Records,*[18] the Ninth Circuit established the "Harry Potter dry cleaners" as one of the most frequently cited hypothetical examples of trademark dilution.
- According to the Court of Appeals of Maryland in *Bethesda Title & Escrow v. Gochnour,*[19] various parties had been added to and dismissed from the case "faster than Harry Potter's broomstick in a Quidditch match."
- In *Deseret Management v. United States,*[20] the parties argued whether a company could have "good will" when it was not profitable. The Court of Federal Claims characterized the plaintiff as arguing that "goodwill is a fleeting concept, here one instant and gone the next, depending upon a firm's current profit status—much like a Harry Potter wizard who disapparates in bad times and reappears in good."
- In *Dugo v. State Farm,* a New York state court described the "pre-approval" of medical procedures as the "no-fault insurance equivalent of 'He-Who-Must-Not-Be-Named.'"
- In *Western Reserve Life Assurance v. Conreal,*[21] the defendants argued that the incontestability clause in contracts for "stranger-initiated annuity transactions" prevented the insurance company from rescinding those contracts even on grounds of fraud. In a reference only an insurance lawyer could love, the District of Rhode Island (Judge Smith again) held that "unlike Harry Potter's invisibility cloak, which could conceal not only Harry, but anyone who wore it, the benefits of an incontestable clause can be availed of only by an insured or his or her beneficiary, and cannot be invoked by a stranger to the contract."
- The Court of Appeals of Texas, in the matter of *In re CDK,*[22] overturned a trial court's decision to terminate a couple's parental rights, which had been based in part on expert testimony that the father had a high "propensity for sexual deviancy." The Court found that the expert's psychological assessment tools were unreliable: "For all we know, they and their components could be mathematically based, founded upon indisputable empirical research, or simply the magic of young Harry Potter's mixing potions at the Hogwarts School."
- In *Isenhower v. State,*[23] the disgruntled mother of a Georgia High School student had been asked to leave school grounds, and was then charged and convicted of loitering. The Court of Appeals of Georgia, in overturning her conviction, held that she should have been given more time to leave: "Isenhower could not simply vanish into thin air, 'disapparating' like a character in one of J.K. Rowling's 'Harry Potter' novels. (Isenhower was, after all, at Heard County High School, not Hogwarts)."
- In *People v. Redden,*[24] the Court of Appeals of Michigan cautioned against citizens trying to interpret the state's medical marijuana act to provide a safe haven for drug use: "Reading this act is similar to participating in the Triwizard Tournament described in *Harry Potter and the Goblet of Fire*: the maze that is this statute is so complex that the final result will only be known once the Supreme Court has had an opportunity to review and remove the haze."
- The Court of Appeals of Maryland, in *People's Counsel v. Loyola,*[25] described the process of promulgating zoning ordinances as one where "the local legislature puts on its 'Sorting Hat' and separates permitted uses, special exceptions and all other uses." The Court added a lengthy explanatory footnote just in case anyone didn't get the joke.
- Upon reading Justice Scalia's 2015 dissent in *King v. Burwell,*[26] many believed Scalia had outed himself as a *Harry Potter* fan because of his use of the phrase *jiggery-pokery* to describe the majority's decision to uphold certain aspects of the Affordable Care Act. It turned out to be a false alarm. Those who bothered to look up the term correctly noted that it had been in use in Scotland since the 19th Century.
- Finally, in *State v. Kuykendall,*[27] a criminal trial judge sentencing a defendant in the Ohio Court of Common Pleas failed to make certain findings on the record even though the statute in question required them. The trial judge derided these requirements as unwelcome "Potteresque incantations." Judge Bressler of the Court of Appeals of Ohio not only vacated the sentence, but she also reversed the *Harry Potter* reference. Judge Bressler explained:

> In the magical world of Harry Potter, the failure to follow not only the precise words, but also the correct pronunciation of a spell may lead to disastrous results. For example, in an early lesson on levitation, Professor Flitwick admonishes students that saying the magic words properly is important, and uses the example of a wizard who said "s" instead of "f" and ended up with a buffalo on his chest … While the failure of a trial court judge to say the necessary words at a sentencing hearing may not result in a buffalo on the chest, it may result in a remand.

1. Stouffer v. Scholastic Inc., 221 F.Supp.2d 425 (2002).
2. Smith v. Rowling, CV-00679, March 22, 2010.
3. Allen v. Scholastic Inc., USDC, S.D. New York (2011).
4. Warner Bros. v. Slaughter, CV-00892 (C.D. Cal. 2013).
5. Rowling v. Shukla, 127 DLT 405 (2006).
6. Warner Bros. v. RDR Books, 575 F.Supp.2d 513 (SDNY 2008).
7. Bloomsbury v. Person or Persons Unknown *et al*., Case No: HC 03 C01725, Royal Courts of Justice, London, May 2003.
8. Kennedy v. United States Postal Serv., 145 F.3d 1077 (9th Cir. 1998).
9. Pierce v. Meltzer, 2009 Ct. Sup. 12533 (Conn. Super. Ct. 2009).
10. People v. Coleman, 2010 Cal. App. Unpub. LEXIS 7797 (Cal. App. 1st Dist. Sept. 29, 2010).
11. Murdick v. Catalina, 496 F.Supp.2d 1337 (2007).
12. Counts v. Cedarville School Dist., 295 F. Supp. 2d 996 (Dist. Court WD Ark. 2003).
13. Warner Bros. v. Samuel, 2:12-cv-06523-RSWL-CW (2012).
14. Warner Bros. v. Rana, Claim Number FA0407000304696.
15. Time Warner v. Cupcake Patrol, Case No. D2001-0184 (2001).
16. United States v. Ellisor, No. 05-14459 (11th Cir. 2008).
17. Wyrostek v. Nash, 984 F.Supp.2d 22 (2013).
18. Mattel v. MCA Records, 296 F.3d 894 (2002).
19. Bethesda Title & Escrow v. Gochnour, 14 A.3d 670 (2011), 197 Md. App. 450.
20. Deseret Mgmt v. United States, 09-273T (Fed. Cl. 2013).
21. Western Reserve Life Assurance v. Conreal, 715 F. Supp.2d 270 (D.R.I. 2010).
22. In re CDK, 64 S.W.3d 679 (2002).
23. Isenhower v. State, 750 S.E.2d 703 (2013), 324 Ga. App. 380.
24. People v. Redden, 799 N.W.2d 184 (2010) 290 Mich. App. 65.
25. People's Counsel v. Loyola, No. 137, September Term 2007.
26. King v. Burwell, U.S. Court of Appeals, 4th Cir. No. 14–114, June 25, 2015.
27. State v. Kuykendall, Ohio 6872 (2005).