

## SHOUT OUT

### A Happy Ending for Kasowitz and Its Bollywood Client

By Jenna Greene

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If this case was an old Bollywood movie, the lawyers would be leaping from their chairs about now to yell “Objection, milord,” and the judge might dramatically break the nib of her pen as she rendered her decision to a packed courtroom.

No such luck. But a team of litigators from Kasowitz Benson Torres led by partner Michael Bove scored a decisive win on behalf of a major Bollywood production company. On Friday, U.S. District Judge Alison Nathan in Manhattan dismissed with prejudice a consolidated securities class action against Eros International.

Eros, which has a library of more than 3,000 films (recent hits include “Tanu Weds Manu Returns,” “Welcome Back” and “Dil Dhadakne Do”), was sued by investors who claimed the company deceived them about its movie streaming service, Eros Now.

Eros Now was initially offered for free. The strategy was to build a base of customers who would later be converted into a fee-paying pool of subscribers. To do so, Eros bought an Indian mobile platform called Techzone, which built its business on selling ringtones for older phones. That allowed the company to market Eros Now to Techzone customers.

As a result, Eros Now “registered users” jumped from 2.9 million to 14 million. A few months later, there were 19 million, and four months after that, 30 million.

Company stock hit all-time highs in July and August 2015.

“The problem with this—and a fact central to plaintiffs’ case—was that for Techzone customers to actually stream content on Eros Now, they would need a device with this ability,” Nathan wrote. “India’s mobile phone technology and available data networks were several years behind the United States. As such, most mobile phones in use in India during the class period were unable to download apps or access full-data internet websites.”

Represented by Labaton Sucharow, the plaintiffs said Eros knew this, but still touted the number of users to mislead investors and inflate the stock price.

Eros responded that a “self-interested short seller disseminated a series of false rumors and misinformation about Eros’s business and accounting practices,” and that’s largely what drove the stock price down. The company hired Skadden, Arps, Slate, Meagher & Flom to conduct an internal review. The firm determined Eros did nothing wrong.

Further, Eros argued that plaintiffs failed to allege any affirmative misrepresentations, challenged their allegations of material omissions and said other statements were just puffery or non-actionable forward looking statements.



Courtesy photos

Michael Bove, partner with Kasowitz Benson Torres.

Nathan agreed. “Despite plaintiffs’ voluminous complaint, their argument largely boils down to one simple claim: that a person cannot be a ‘registered user’ if he or she cannot meaningfully make ‘use’ of the product,” she wrote. “The story plaintiffs tell about these users inability to actually stream movies is quite compelling. Unfortunately for them, it is also largely immaterial.”

Part of the problem with the case was defining what it meant to be a “registered user.” Ultimately, Nathan concluded that “many users did derive some sort of functional benefit, such as by purchasing a ring tone,” even if they couldn’t watch entire movies on their phones.

“Defendants never made any claim that these users experienced a large, quality picture, or quick download speed. And defendants did, at various times, caution investors about the impact India’s technology would have on their business,” the judge wrote. “Defendants could have defined and reported ‘users’ in an alternate way that took into account the specifics of their use, but that does not amount to misrepresentation.”

Roll the credits—it’s a happy ending for Eros.

“This is a well-deserved victory for a good company that has been targeted for some time by outrageously false claims disseminated by short-sellers and then repeated as the basis for this putative class action complaint,” Bove said in a news release. “We are extremely pleased by this thorough decision, and the company feels finally vindicated.”

Kasowitz partner Stephen W. Tountas and associates Anthony MacDonald Caputo and Tian “Skye” Gao also worked on the case.

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