

Film Titles and Their Protection

Any cinematographic work is recognized for decades by its "Title". Registration of title by producers and writers is therefore becoming a prerequisite in the industry. Registration of titles with industry associations doesn't hold water in courts. By contrast, ownership and validity of titles can be established when registered with the Trademark Registry. Registration imparts exclusive right to the person who registers to use the title and restrain unauthorized use or adoption or infringement of the same.



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The Indian film and entertainment industry is one of the largest producers of world class films. It offers a big market in terms of consumers and has a significant growth potential with an expected growth rate of 20% per year. The grant of “Industry” status to the Indian film industry by the Government of India in 2001 resulted in its rapid evolution with the foray of many foreign players and investors including 20th Century Fox, Viacom Motion Pictures, Warner Brothers etc. This paradigm shift is astounding however IP (Intellectual Property) issues mainly related to controversies over using deceptively similar titles or other ways of unauthorized adoption of titles of films, infringement of copyright and trademarks, passing off have also cropped up simultaneously.

Registration with Industry Associations

Indian Motion Picture Producers’ Association (IMPPA), Association of Motion Pictures and Television Program Producers (AMPTPP) and Film and Television Producers’ Guild of India, Film Writers’ Association and Western India Film Producers Association (WIFPA) are the industry associations that are consistently working with the objective of promoting and encouraging the production of feature films and protecting the commercial interest of films produced in India. Producers and writers (who are members of these associations) can also get the titles and scripts registered with these organizations. The film industry usually operates through these associations. Before

registering the title, the association usually verifies with other associations as to whether the same or deceptively similar title has been registered with another association. However such registration only establishes priority in the adoption of title of film and authorship of the script and has no effect on any legal proceedings in the court.

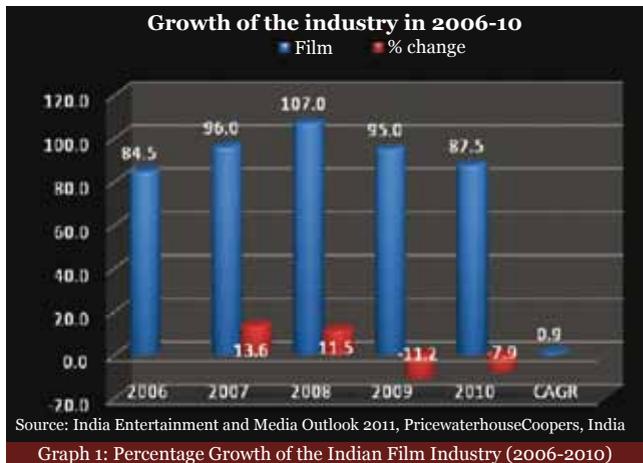
Protecting the Title under Intellectual Property Laws

US Courts have taken a uniform view that the title alone of a literary work cannot be protected by Copyright Law. Thus copying of a title alone, and not the plot, characterization, dialogue, song etc. is not the subject of Copyright Law. The same fundamental is followed under Copyright Law in India. Indian Copyright Law offers protection to the original literary work, dramatic, musical and artistic works, cinematographic films and sound recording but not to titles alone.

Trademark Registration of the Title

The legal protection for literary titles lies in the field of trademark and unfair competition law and is protected under the fundamental tenets of the said law. The Delhi High Court has also noted in the famous “Nishabd” case that the title cannot be used in such a way as to create a likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers. For these purposes, titles of literary and entertainment creations and works are treated in much the same way as the trademarks of other commercial commodities.

It is common, rather it is imperative, to give title to literary or entertainment works. The literary work produced by the author or the work of entertainment produced by a producer needs a name. It is only then that such work would be identified. The term ‘literary title’ is used to encompass the titles of books, periodicals, newspapers, plays, motion pictures, television series, songs, phonograph records, cartoon features and the like. [McCarthy on Trademarks and Unfair Competition, Third Edition (1995) Vol. I].



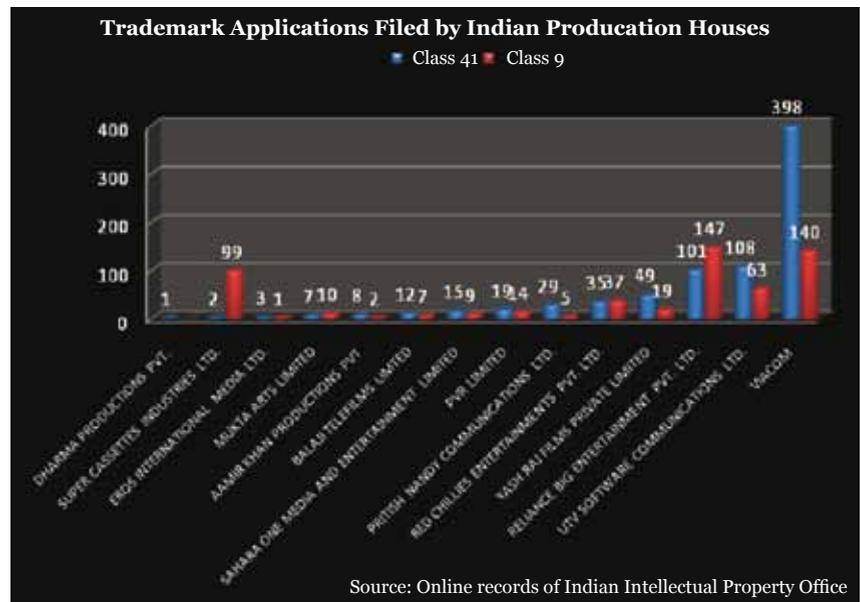
Titles may relate to a single literary work or to a series of literary works. The scope, parameters and limitations of both types of works as observed by the Delhi High Court is delineated below:

Titles of a series of literary works

Titles of a series of books, periodicals or newspapers function as a trademark to indicate that each edition comes from the same source as the others and can therefore be registered as a trademark. Such 'series titles' enjoy the same protection as usual trademark.

Titles of single literary works

In order to be entitled for trademark protection, it is necessary to establish that the titles of single literary works have acquired secondary meaning. The underlying assumption behind this is that the question of likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers/users would arise and can be contended only if the disputed title has acquired the secondary mean-



ing and is capable of associating itself with the particular work or source.

Even if the work has not been released, a sufficient amount of pre-release publicity of the title may cause a title to acquire recognition sufficient for protection. Relevant evidence from which secondary meaning for a literary title

may be inferred as a question of fact includes:

- the length and continuity of use;
- the extent of advertising and promotion and the amount of money spent;
- the sales figures on purchases or admissions and the number of people who bought or viewed the work; and
- the closeness of the geographical and product markets

Disputes surrounding the Titles of Films registered with Industry Associations

Shortcut: Bikramjeet Singh vs Anil Kapoor

Anil Kapoor, an Indian actor and producer, had registered the title "shortcut" for his production -starring Akshaye Khanna, Arshad Warsi and Amrita Rao- with IMPPA. Later on, producer Bikramheet Singh Bhullar raised objection with the IMPPA, submitting that the same title has been registered by him prior to Anil Kapoor's registration. In this Title tussle, Anil Kapoor had to finally withdraw and change the title to "Shortcut- The Con Is On".



Thoda Pyaar, Thoda Magic vs Thoda Life, Thoda Magic

The Yash Raj Films production "Thoda Pyaar, Thoda Magic" came under controversy over the title when opposed by actor-producer Saahil Chadha on the grounds that the title of his film "Thoda Life, Thoda Magic" had already been registered with the Indian Motion Picture Producers Association (IMPPA). Kunal Kohli, Director of "Thoda Pyaar, Thoda Magic" in the counter argument said that the title of his movie was registered with the Film and Television Producers' Guild of India. Sahil later lodged a complaint with IMPAA. Later, both the movies were released without any change in their title.

Trademark Applications by leading Media and Production Houses in India:

Leading production houses in India apply for registration of movie titles and labels in Class 41 that encompass a number of services including "entertainment". Phir Hera Pheri (1084237), Munna Bhai (1780467, 1780364) and Dhoom (2193798, 2095311 and 1319835) are examples of movie series where the producers have applied for registration of movie titles and labels in Class 41. On the other hand, as movies are also viewed on storage devices like DVDs, many applications are also filed in Class 9 that provides for, among other goods, "apparatus for recording, transmission or reproduction of sound or images...". The graph below depicts the number of applications filed for registration in Class 41 and Class 9 by some of the media houses in India.

Famous Controversies surrounding movie "Title"

Biswaroop Roy Choudhary vs Karan Johar on 28 July, 2006

Producer Biswaroop Roy filed a suit in the High Court of Delhi seeking permanent injunction to restrain Karan Johar from using his registered title "Kabhi Alvida Naa Kehna". The said title had also been filed by Karan Johar with the Association of Motion Pictures and TV Program Producers and the Film and Television Producers Guild of India.



The court dismissed the petition on the grounds that words or phrases in common parlance are sought to be used with exclusivity and which of the parties has traversed an appreciably longer way in the use of such words as a trademark or as a title.

Kanungo Media (P) Ltd. vs RGV Film Factory And Ors. on 27 February, 2007



Kanungo Media (P) Ltd. filed a suit against Ram Gopal Verma in the High Court of Delhi seeking permanent injunction for using the title of their highly acclaimed film title "NISHABD". The court held that the plaintiff's film has not acquired secondary meaning and is therefore not likely to cause any confusion in the mind of the public. Also plaintiff delayed in bringing the cause to the court. In view of this injunction, the application of the plaintiff was dismissed.

Warner Bros. Entertainment Inc. ... vs Harinder Kohli And Ors on 22 September, 2008

Warner Bros. filed a suit for permanent injunction in the High Court of Delhi to restrain producers of "HARI PUTTAR" from using the title that allegedly infringes their registered trademark HARRY POTTER. The Court while dismissing the suit held that Harry Potter films are targeted to meet the entertainment needs of an elite and exclusive audience who can discern the difference between a film based on a Harry Potter book and a film which is a Punjabi comedy.



Conclusion:

Any cinematographic work is recognized for decades by its "Title". It also helps the people to conceptualize the idea associated with the film. Registration of title by the producers and writers is therefore becoming a prerequisite and imperative to preserve their commercial rights and interests in the movies. As the registration of title with Industry Associations does not play any vital role in court cases. The ownership and validity of the title can be easily established in case the marks are registered with Trademark Registry.

The registration not only imparts an exclusive right to the registrant to use the title and restrain the unauthorized use/ adoption or infringement of title but also in case of suits of infringement or passing off, the registrant can seek permanent injunctions and damages.

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Fish Eye Network Pvt. Ltd. vs Association of Motion Pictures & T.V. Programme Producers and others (SUIT (LODG.) NO.901 OF 2011)

The Application was filed by the Plaintiff in the Bombay High Court seeking ad interim relief against the release of the Movie "Thank You" as the said title was registered with the Association of Motion Pictures and T.V. Program Producers by Plaintiff in 2005. The Court refused to grant ad interim relief to the Plaintiff and on the basis that, "Fisheye was aware since May 2005 that UTV was using the title 'Thank You' and that prima facie, there was no copyright as such in a title, hence the Court would not be inclined to give interim injunction at the stage when the movie was slated for release as the producers had already spent ₹60 crore on the making of the film.

Nokia Corporation vs MOVIEEXPRESS (CS(OS) 286/2012 High Court of Delhi, Order dated February 6, 2012)

Nokia Corporation filed an application for grant of ex parte ad interim injunction in the High Court of Delhi against the Defendants from producing a Telgu movie titled 'Mr. Nokia' which they alleged was deceptively or phonetically similar to their registered trade mark "Nokia".

The court passed an order restraining defendant and its agents from advertising, offering for viewing the movie under the title Mr. Nokia and/or Mr. No. Keyia and/or Mr. Nav-kia and/or other identical or deceptively similar (phonetically, structurally or visually) mark to the plaintiffs registered trade mark Nokia.