

# PROTECTION OF WORKS TITLES FROM THE PERSPECTIVE OF COPYRIGHT PROTECTION AND TRADEMARK PROTECTION

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## Abstract

*The main purpose of the paper is assessing the possibilities of protecting the titles of works.*

*One possibility is the protection by means of registered or unregistered trademarks. This route presents difficulties because of the distinctiveness perspective. In this sense, the European case-law has recently developed a constant practice and outlined a series of criteria that should be taken into consideration when examining a trademark consisting of a title.*

*Another possibility is protecting the title under the provisions of the copyright law. From this respect, the practice has not yet determined a constant practice. However, the dominant opinion is that the originality criterion should be taken into consideration when assessing the protection of a title.*

*Finally, brief conclusion are made, including short remarks on the cumulative protection of titles, both as trademarks and under the copyright law.*

**Keywords:** *titles, copyright, originality, trademark, distinctiveness.*

## 1. Introductory remarks

According to the explanatory dictionary of the Romanian language, the "title" is defined, among other definitions, as a "word or text placed at the beginning of a work or a distinct part of it, indicating summatically or suggestively its content". It is also defined as "the part written from the beginning of a movie that indicates the name of the film, the makers, and the studio that produced it"<sup>1</sup>.

The title is, therefore, that word or group of words by which we refer to a work. It is that part of the work that will bear the reputation of the author, or, on the contrary, the burden of a negative reception. Which will remain in the author's record and will remain closely related to his name for posterity.

Although the title is, therefore, of great significance for the author of the work it is designing, as we will further see, its protection encounters real practical difficulties.

In this respect, at a practical level, there are two ways that can be taken into account for the protection of works, namely their protection as trademarks (registered or unregistered), and their protection through copyright law, which we will further detail.

## 2. Protection of titles as trademarks

Regarding the admissibility of protection as trademarks for titles, related to titles of publications (here we are considering newspapers, magazines and books), the doctrine emphasizes that the old Romanian regulations contained an express provision through

which the titles could be protected as trademarks, regardless of the protection they enjoyed from the standpoint of copyright. Subsequently, the doctrine considered that a distinction should be made between titles of works in general, including film titles, and titles of newspapers, magazines or collections, in the sense that only the latter may enjoy trademark protection. This vision was based on the fact that titles of such periodicals are meant to identify the origin of some commercial activities, materialized through press goods or services<sup>2</sup>. As we will further see, with respect to publications, collections or series, this is one of the lines followed by the European jurisprudence in the matter.

Further, the main objections to the registration of titles of works as trademarks were identified by the doctrine. It has thus been emphasized that titles do not individualize a corporeal object, a merchandise, but an intangible work, namely the intellectual creation that bears that title. As counter-argument, it is argued that, although the work is intangible, it must not be forgotten that it enters the commercial circuit as bodily objects designed to individualize the form that the work takes<sup>3</sup>. However, we consider this counter argument as departing from the definition of the mark, in the sense that, although product individualisation is one of the roles of the mark, the title will not indicate its commercial origin. For example, considering that the commercial origin is the publishing house that put that book into circulation, the title will not determine it, and consumers will not make a direct link between the title and the marketer. In other words, the title will not meet the distinctiveness condition, even if it will be placed on a product with which the public is in contact. In this respect, different editions of a book may be published

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<sup>1</sup> The Explanatory Dictionary of the Romanian Language, Academy of the Socialist Republic of Romania Publishing House, 1975, page 965.

<sup>2</sup> Yolanda Eminescu, *Regimul juridic al mărcilor*, Lumina Lex Publishing, Bucharest, 1996, page 53 and the following.

<sup>3</sup> Yolanda Eminescu, *op. cit.*, page 55.

by different publishers, and so the title will not be able to determine the commercial origin of the product. We can, however, bring another counter-argument, in the sense that the incorporeality of the product that bears the mark is not an argument in the sense of not the name as a trademark. A service, for example, although it is not corporal, could bear a trademark.

Another objection raised was the lack of independence of the title in relation to the work, an objection that was contradicted by the case-law in some matters. Also, if for isolated works the title is considered to reflect their content, for newspapers and magazines the solution was different<sup>4</sup>. Again, this solution was adopted by the European office. Regarding the independence of titles, obviously the title of a periodical is independent of its content, the title being constantly in relation to a dynamic content that changes from one issue to the other, which ultimately becomes the subject of copyright. Moreover, in the case of periodicals, in this context, it would be more appropriate to refer to the titles of individual articles than to those of publications. Regarding the independence of titles of works in general, since a title may be carried out by several adaptations of the work of different nature (that is, by derivative works different from the original work), we consider that the title has a certain degree of independence with respect to the work.

With regard to the evolution of the European case-law, although initially, much more generous and permissive with the registration of titles as trademarks, it has begun to crystallize over time a relatively constant practice on this issue. In this respect, we mention that in 2001 EUIPO (at that time OHIM) registered the European trademark THE LION KING no. 002048957 for goods and services in Classes 09 and 41 for which, if that mark had been filed at present, it may have been refused, in accordance with the practice developed over time<sup>5</sup>.

Legal provisions considered relevant to the analysis of the registrability of titles as trademarks are contained in art. 7 para. (b) and (c) of the Trade Mark Regulation and reads as follows: *The following shall not be registered: (b) trade marks which are devoid of any distinctive character; And (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service*<sup>6</sup>.

The EUIPO Practice Guidelines, concerning the applicability of letter b), contains a special sub-chapter

dedicated to book titles. Accordingly, *"Trade marks consisting solely of a famous story or book title may be non-distinctive under Article 7(1)(b) in relation to goods and services which could have that story as their subject matter. The reason for this is that certain stories (or their titles) have become so long established and well known that they have 'entered into the language' and are incapable of being ascribed any meaning other than that of a particular story. For example 'Peter Pan' or 'Cinderella' or 'The Iliad' are perfectly capable of being distinctive trade marks for (e.g.) paint, clothing or pencils. However, they are incapable of performing a distinctive role in relation to (e.g.) books or films because consumers will simply think that these goods refer to the story of Peter Pan or Cinderella, this being the only meaning of the terms concerned"*<sup>7</sup>.

The Guidelines further emphasize that such objections should be presented in very limited cases, such as those in which the title in question is sufficiently well known to the relevant consumer and the mark attributed to certain goods / services may be perceived as referring first of all to a famous book story or title. The issuance of a decision on lack of distinctive character is more likely when it can be shown that several versions of the story have been published and / or there have been numerous television, theater and film adaptations available to a wide audience. Thus, depending on the nature of the work designated by the title in question which is filed as trademark, printed matter, films, recordings, plays and performances are goods or services with respect to which objections may be made<sup>8</sup>.

As a consequence, the Office seeks to systematize the practice by following the two criteria: one relating to the reputation of that title and the second by the type of work it identifies in order to determine the goods or services for which the mark is not distinctive. However, as we shall see, these two criteria bear a high degree of subjectivity, so they need to be carefully considered on a case-by-case basis.

As far as point c) is concerned, the EUIPO Guidelines do not make a direct reference to possible objections risen to the protection of titles of works. However, as emphasized below, it is a ground invoked by the European Office in its refusals.

Thus, as stated above, Disney Enterprises has filed for registration the trademark THE JUNGLE BOOK for classes 3, 9, 14, 16, 18, 20, 21, 24, 25, 28, 29, 30, 32 and 41 of goods and services. On 16 January 2013, the Office issued a provisional refusal to the effect that the mark was refused for some of the goods and services in classes 09, 16 and 41, generally consisting of supports for audio-video materials,

<sup>4</sup> *Idem*, page 55.

<sup>5</sup> <https://euipo.europa.eu/eSearch/#details/trademarks/002048957>.

<sup>6</sup> Art. 7 para.14 letter.b-c) of the Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark published in the OJ L 78 of March 24, 2009.

<sup>7</sup> Guidelines for Examination in the Office for Harmonization in the Internal Market (Trade Marks and Design) on Community Trade Marks, Part B, Examination, Section 4, Absolute Grounds for Refusal, page 15 and the following.

<sup>8</sup> *Idem*.

printed matter, or entertainment. The Office argued that *"trade marks consisting solely of a famous story or book title may be non-distinctive under Article 7(1)(b) in relation to goods and services which could have that story as their subject matter"*. The Office also claims that certain stories or titles have *"entered into language"*, so it is impossible to be given any meaning other than that of the story in question. He claimed, according to the EUIPO Guidelines, that the JUNGLE BOOK had numerous television, theater and movie adaptations available to a wide audience<sup>9</sup>.

However, we consider that the proprietor of such a mark may "bypass" the lack of protection as a result of the lack of distinctiveness for those goods and services which may be subject to that work in the light of the provisions relating to the reputation of the trademark. Thus, if a trademark becomes known for certain adjacent goods, such as, for example, toys in class 28, and such a reputation would have been recognized by the law, it can also successfully oppose the use of its trademark for goods for which the trademark has been refused. Of course, it seems hard to believe that a certain trademark consisting of a title could become famous for complementary goods as long as they are well-known in connection with the work that it designates. In such a scenario, however, it would be interesting to see whether the lack of distinctiveness of the mark for these goods would be accepted as sufficient defense of the defendant. We believe that yes, since the reason for not registering distinctive signs is precisely to leave them to the free use of market participants.

Another conclusion to be drawn is that, in the case of titles, time does not flow in favor of the possibility of registering them as a trademark, as is the case for other marks, which can enhance their distinctiveness through long-term use, or even obtain greater distinctiveness by acquiring the well-known status or reputation. To the contrary, in the case of well-known titles, there is a risk of potential objections from the office before which the mark has been filed.

EUIPO's case-law has also shown that the range of goods for which a certain title may or may not be registered as trademark is flexible and needs to be analyzed on a case-by-case basis. Thus, without going into the details on the merits of the case, in accordance with the practice of the EUIPO's Board of Appeal, in a cancellation action for the mark PINOCCHIO, it held that that mark was not distinctive for various types of toys in Class 28<sup>10</sup>. The reasoning was probably the fact that a Pinocchio toy might be the character itself, which was a toy that came alive. Therefore, although these goods are generally not intrinsically linked to the

subject of a particular work, in this case toys, dolls or other such goods were themselves part of the subject of the work.

Another conclusion to be drawn from EUIPO's case-law is the range of works that a title designates. We shall exemplify by the following quotation in the famous decision *Dr. No*: *"However, in the present case, an examination of the documents submitted by the applicant shows that the signs Dr. No and Dr. NO do not indicate the commercial origin of the films, but rather their artistic origin. For the average consumer, the signs in question, affixed to the covers of the video cassettes or to the DVDs, help to distinguish that film from other films in the 'James Bond' series. The commercial origin of the film is indicated by other signs, such as '007' or 'James Bond', which are affixed to the covers of the video cassettes or to the DVDs, and which show that its commercial origin is the company producing the films in the 'James Bond' series. Moreover, even if the profits that the film Dr. No had generated within the Community are capable of showing the commercial success of the film in that territory, the fact remains that they cannot show that the signs in question are used as indicators of commercial origin"*<sup>11</sup>. The conclusion we can draw from this paragraph is as follows: *Dr. No* is able to identify a particular work, namely one of the short stories written by Ian Fleming and the first movie of the James Bond series. Therefore, there may normally be objections to its registration as a mark, insofar as the designated goods / services refer to the subject of the work. But James Bond, although it is the name of the protagonist, and is the title of a series, or a franchise, it can fulfill its trademark role and can indicate a commercial origin. Therefore, it can also be registered for such goods. And, in fact, there are European trademarks JAMES BOND registered for goods and services in classes 09, 16 and 41<sup>12</sup>.

As regards the Romanian Office for Inventions and Trademarks, it registered in 2014 the trademark *#Selfie* application number M 2014 01028 for goods and services in classes 09, 16 and 41<sup>13</sup>. This is the title of a successful film among the Romanian consumers, being on the third place in the top of the Romanian films after 2010, one of the films that surpassed it, ranked first, being *tits sequel*<sup>14</sup>. In this context, can we say that RoPTO does not follow the practice established by the European office? Not necessarily. Thus, while it is true that the registered trade mark covers goods and services to which the European office considers a title lacks distinctive character (magnetic data carriers, entertainment), the movie was launched in May 2014,

<sup>9</sup> Refusal of the European Trademark Application issued on November 18, 2013, page 2 and the following.

<sup>10</sup> Decision of the Second Board of Appeal from February 25, 2017 in the matter R 1856/2013-2, page 12 and the following.

<sup>11</sup> Decision of the Tribunal (Secon Chamber) in the matter T-435/05, para. 25.

<sup>12</sup> <https://euipo.europa.eu/eSearch/#basic/1+1+1/50+50+50+50/James%20bond>.

<sup>13</sup> [http://api.osim.ro:18080/marci/hit\\_list.jsp](http://api.osim.ro:18080/marci/hit_list.jsp).

<sup>14</sup> [https://ro.wikipedia.org/wiki/Lista\\_filmelor\\_cu\\_cele\\_mai\\_mari\\_%C3%AEncas%C4%83ri\\_%C3%AEn\\_Rom%C3%A2nia#Filmele\\_rom.C3.A2ne.C8.99ti\\_cu\\_cele\\_mai\\_mari\\_.C3.AEncas.C4.83ri](https://ro.wikipedia.org/wiki/Lista_filmelor_cu_cele_mai_mari_%C3%AEncas%C4%83ri_%C3%AEn_Rom%C3%A2nia#Filmele_rom.C3.A2ne.C8.99ti_cu_cele_mai_mari_.C3.AEncas.C4.83ri).

3 months before the application date<sup>15</sup>. Thus, the reputation condition could not have been fulfilled.

Another conflict before RoPTO was between the YELLOW SUBMARINE trademark owned by Subafilms Limited and the YELLOW SUBMARINE trademark filed by a Romanian applicant. Subafilms Limited is a company created by the members of the well-known band Beatles to manage the rights for the name YELLOW SUBMARINE. In connection with this name, it should be mentioned that this was not only the well-known song of the band, but also the title of an animated film that had as protagonists members of the rock group.

As regards the earlier mark YELLOW SUBMARINE, as mentioned above, this is evidence that the Alicante Office was more permissive in admitting trademark registrations representing titles, this mark, filed in 1999, being registered for goods and services in classes 09, 16 or 41. The contested mark designates public catering and temporary accommodation services, covered by the earlier marks. Thus, the complementarity of services in class 43 with the goods and services covered by the earlier mark and the reputation of the earlier marks in the European Union were invoked. The Board of Appeal accepted the arguments of the applicant and abolished the decision to register the trade mark in question<sup>16</sup>.

A similar solution, concerning the same earlier marks, was issued by EUIPO in 2007. Thus, the YELLOW SUBMARINE marks and their reputation were successfully invoked against the registration of a trademark application with the same verbal element filed for goods in class 31. In this case, the filed trademark was also rejected<sup>17</sup>.

It should be noted, therefore, that the distinctiveness of the earlier marks has not been raised nor at national or European level. However, we are of the opinion that such a problem would have been difficult to be raised, since, once registered, the mark enjoys a presumption of distinctiveness, which the Office takes notice of and which may be disputed by the other party, argument which was not invoked.

Can a title be protected as an unregistered trademark? As regards Romania, although this is a jurisdiction conferring exclusive rights for a trademark generally through registration, the well-known mark is one of the exceptions provided by the *Trademarks Law*.

With regard to well-known trademarks, we consider in this context to be of particular relevance the doctrine of protection of well-known trademarks, in the sense that the acquisition of the trademark rights by proving the well-known status of a trademark has the

same effect as its registration. In other words, a natural consequence of this is that a well known mark must fulfill the same conditions as a registered trademark, namely: to be licit, susceptible of being graphically represented, distinctive and available. In the absence of these conditions, the item may be perceived as a well known sign, but not a well known trademark<sup>18</sup>.

Or, we believe that these considerations are the answers to the above question. Thus, even if a title has been well known, in the absence of distinctiveness for the goods / services for which it is well-known, it can not be relied on as a legally enforceable right.

We conclude that titles, as well-known trademarks, may be opposed, similar to trademarks, to goods and services for which they are distinctive (or to those similar to them).

### 3. Protection of titles through the copyright law

As mentioned above, the main function of a title is to identify a particular work.

Regarding their protection from the perspective of the Copyright Law, the doctrine has underlined that the current regulation makes no express reference. As a consequence, the titles are neither excluded from protection, nor do they automatically enjoy protection as a part of the work. It is therefore clear from the general provisions that "*the titles of works, in order to enjoy the protection of copyright, must satisfy the general requirement of originality*"<sup>19</sup>.

In this respect, we refer to the legal provisions that determine the subject of the copyright as follows: "*The original works of intellectual creation in the literary, artistic or scientific field are the object of copyright, irrespective of the way of creation, the way or the form of expression and regardless of their value and destination (...)*"<sup>20</sup>. At least at a theoretical level, titles fall within this definition, being indisputably an intellectual creation of their author, who may or may not fulfill the condition of originality.

As far as the national case-law is concerned, there have not been many decisions defining a route for determining whether the title of a work is protected by copyright or not. The doctrine, however, cites a fragment of one of the few decisions that have approached - even incidentally - this problem, which noted that "*because copyright extends to essential parts of the work, the title of the novel (n Shogun) is part of copyright protection*"<sup>21</sup>.

<sup>15</sup> <http://www.imdb.com/title/tt3102208/>.

<sup>16</sup> Decision of the Board of Appeal - Trademarks no. 77 of June 30, 2011 in the matter CRM 17 / 2011.

<sup>17</sup> Decision of the Opposition Commission from November 30, 2007 in the matter B 698 821.

<sup>18</sup> Viorel Roș, Octavia Spineanu-Matei, Dragoș Bogdan, *Dreptul Proprietății Intellectuale. Dreptul Proprietății Industriale. Mărcile și indicațiile geografice*, All Beck Publishing, Bucharest, 2003, page 103.

<sup>19</sup> Viorel Roș, *Dreptul Proprietății Intellectuale. Vol. I. Dreptul de autor, drepturile conexe și drepturile suis-generis*, All Beck Publishing, Bucharest, 2016, page 252 and the following.

<sup>20</sup> Art. 7 of Law no. 8 of March 14, 1996 on copyright and related rights, published in the Official Gazette no. 60 of March 26, 1996.

<sup>21</sup> Viorel Roș, *Op. cit.*, page 253.

This perspective offered by this decision can offer an interesting solution to the protection of titles through copyright, but we believe that it should be redrafted, on the one hand, and correlated with the condition of originality, on the other hand, as it was also emphasized in the relevant doctrine.

Thus, with regard to the first aspect, we think it is preferable for the title to be considered a part of the work that is the subject of copyright. "Extending", as it was called in that decision, implies a preexisting right which, as a result of the law or other act or legal act, is "extended" to this extrinsic element - the title. Or, we believe that the title can only be considered a part of the work that is the subject of copyright.

The next step is to answer the following question: to what extent taking over a title is copyright infringement? In this sense, we consider that, relative to any part of the work, its takeover can not be imputed if the fragment is not itself characterized by originality. And if, in terms of a fragment of a work, the originality can be given by the construction of phrases or by a certain combination of words, with respect to titles, consisting even of one word, we think that the requisition of their originality requirement should be greater in order not to reach the unnatural situation where a certain term is thus monopolized. We therefore do not agree that protection should be extended automatically to any title.

We also want to emphasize that notoriety should not be confused with originality. "The Great Dictator" is undoubtedly one of the most well-known films in Charlie Chaplin's film and world's cinema. Can it be considered an original title?

In the doctrine, some interesting considerations have been signaled regarding the proof of the originality of a work. Thus, the cited author points out that in Romania, unlike in France, for instance, the courts accept a presumption of originality in favor of the copyright claimant, the contrary proof being the burden of the party to whom that right is opposed. It is, in our opinion, reasonably emphasized, that such an approach is not in the spirit of regulations in the field of intellectual property protection, since if the applicant himself does not prove the originality, in fact, he does not prove the validity of the opposed right. This approach would create even more practical difficulties in the situation where the person who should prove his / her right is a defendant, given that, according to the regulations in the matter, the plaintiff is required to prove his / her claims. In such a situation, the defendant would be protected by a simple presumption, which should, in turn, be overturned by the applicant<sup>22</sup>.

The older doctrine has drawn a still valid practice, as we will show through the decisions that we will

further analyze. Thus, the legislative provisions of the GDR in 1987 are highlighted, which, although perhaps they are no longer up to date, are interesting in the sense that they describe the comment on the *Shogun* decision above: "copyright extends to the work in its entirety, to its parts and to the title, to the extent that it has an individual creative character"<sup>23</sup>. Or, we consider the "individual creative character" the most appropriate definition of the originality of the title in the context of the protection under the provisions of copyright.

The above-mentioned paper also makes a commentary on the French case-law, which, while adopting the originality solution, is not unanimous, and the French courts appear to be reluctant to recognize the original character of the titles. Also, as a general conclusion, it is noted that the general tendency for periodic titles is to be protected under the trademark regime, the German doctrine being more leaning towards making a distinction between titles of works and publications<sup>24</sup>. We find it natural, since they designate rather the commercial origin of the product (the newspaper), regardless of the varying content of each issue.

As regards the State Office for Inventions and Trademarks, the few available decisions seem to have adopted a filter of originality to determine the opposability of a copyright protected title. Thus, in a decision in 2009, he stated that "although Law no. 8/1996 does not expressly provide for the titles of the works as making the object of protection, since the phrase "CU LĂUTARII DUPĂ MINE" is original and was created and registered in the Register entitled "Declaration's Bulletin" by the composer Ion Vasilescu in 1939, the Commission finds that the provisions of Rule 15 2 letter f) of GD 833/1998 are applicable". Also in this decision are cited the doctrinal claims according to which the originality of the title should be appreciated independently of the rest of the work. Also, the originality in this decision is described by the fact that "from the evidence submitted to the case by the intimate opponent, the phrase "CU LĂUTARII DUPĂ MINE" is identified with the name of the composer Ion Vasilescu"<sup>25</sup>. Or, we believe that this phrase perhaps defines in the best manner the concept of originality with regard to a title.

As the relevant case-law shows, the Alicante Office, in its turn, examines the originality of the titles in order to determine whether a particular title is opposable as copyright. According to the EUIPO Guidelines, for a copyright to be enforceable in a cancellation action, it is the complainant's duty to show the applicable national legislation in force and to argue why the alleged copyright in that Member State could be successfully opposed<sup>26</sup>.

<sup>22</sup> Alin Speriusi-Vlad, *Protecția creațiilor intelectuale, Mecanisme de drept privat*, C.H. Beck Publishing House, 2015, pages 211-213 and the following.

<sup>23</sup> Yolanda Eminescu, *Opera de creație și dreptul*, Academy of the Socialist Republic of Romania Publishing House, 1987, page 63.

<sup>24</sup> *Idem*.

<sup>25</sup> Decision of the Board of Appeal - Trademarks no. 358 of June 30, 2009 in the matter CRM 108 / 2009.

<sup>26</sup> The Guidelines for Examination in the Office for Harmonization in the Internal Market (Trade Marks and Design) on Community Trade Marks, Part D, Cancellation, Section 2 Substantive Provisions, pages 23-24 and the following.

Thus, an applicant of Swedish origin, in a cancellation action before EUIPO, has invoked, among its rights, the copyright in the publication title on the name LEGALLY YOURS. In this case, the plaintiff cited the relevant provisions of the Swedish legislation and provided minimal explanations regarding their incidence. With regard to these claims, the Commission noted that *"it can be said that Swedish copyright law requires the subject of a copyright to be a product of mental labour which indicates a certain degree of independence and originality". However, the Cancellation Division points out that the applicant has not shown that the sign "LEGALLY YOURS" would suffice to fulfil these requirements. It is not shown that a two-word title of a magazine would constitute a "work" under Swedish copyright law. It must also be noted that one of the words of the title is "LEGALLY", which is not particularly original in relation to a magazine targeted at the legal industry, and might not, therefore, achieve the degree of originality required under Swedish copyright law".* Finally, the Board underlines that the applicant has not sufficiently argued that the title of a literary or artistic work hinders the registration of a subsequent mark under Swedish law<sup>27</sup>.

## Conclusions

Taking the above into consideration, we can conclude that, at least at the theoretical level, the titles could be protected both as trademarks as well as through the law on copyright.

However, the reigstration of titles as trademarks for goods or services that are directly related to the work may raise the issues of distinctiveness. Thus, a trademark may be refused for such goods or services, or if it is registered it may be cancelled. We also note that in this case the acquisition of reputation by a title makes it harder for it to be register ed, and does not facilitate the process, as it is not the case of a possible distinctiveness acquired on the market. It is therefore

advisable to register the trademark consisting of a title as quickly as possible, if not prior to the release of the work, without, however, disregarding the risk that it could be subsequently canceled for certain products or services.

It should also be borne in mind that denominations of publications, series or franchises are easier to register, as they rather have the role of designating a commercial origin, not the name of a precise work.

As regards the protection of the title under the copyright law, the dominant opinion in practice and jurisprudence is directed towards the analyse of the title through the filter of originality.

Finally, can there be a cumulate protection between copyright and trademark protection? We consider that if a title succeeds simultaneously in fulfilling the condition of distinctiveness and that of originality, the law does not prevent the existence of cumulative protection for that name. In this respect, however, the practice raises the following question: can registration of a title as a mark be eluded by the provisions on the limited duration of copyright? If the answer is affirmative, can one say that such protection is against the general interest?

We believe that any response should be nuanced and take into account many factors, as highlighted in an article published by *Thomson Reuters*. The following points should be considered: in the first place, copyright protection and trademark protection have different purposes. Thus, copyright protects the author, while the trademark protects the public on the likelihood of confusion. Therefore, there can be no sign of equality between copyright protection and trademark protection, so that the latter is not an extension of the first. It must also be borne in mind that copyright protects the exploitation of a work, while the function of the mark is to identify the commercial origin. Thus, in terms of opposition, a copyright may oppose unauthorized reproduction of a work, while the mark is opposed to use as a trademark<sup>28</sup>.

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<sup>27</sup> Decision of the Cancellation Division of November 22, 2013 in the matter no. 6357 C, pages 12-13.

<sup>28</sup> [http://thenewsaeigis.com/global\\_newsletter/2012-02/pages/copyright\\_extension\\_through\\_branding.pdf](http://thenewsaeigis.com/global_newsletter/2012-02/pages/copyright_extension_through_branding.pdf).

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