



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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CAN ALBUM TITLES BE TRADEMARKED? A LEGAL ANALYSIS of MUSIC, BRANDING, and INTELLECTUAL PROPERTY

-Anushka Dutta¹

When an Album Becomes More Than Music

In the age of modern music marketing, an album title often represents much more than a collection of songs. It can define an entire artistic era—complete with a distinctive aesthetic, merchandise lines, concert tours, and a strong cultural identity. For artists like Taylor Swift, Beyoncé, or BTS, an album title may become instantly recognisable to millions of fans worldwide. This raises a fascinating intellectual property question: can an artist claim exclusive trademark rights over an album title?

The answer is not straightforward. While music, lyrics, and sound recordings may be protected under copyright law, titles generally do not receive copyright protection because they are considered short phrases. Instead, artists seeking protection over commercially valuable album titles must turn to trademark law. However, trademark law only protects a title when it functions as a source identifier—that is, when consumers associate the title with a particular artist or commercial source².

The “Single Creative Work” Problem

One of the biggest obstacles to trademarking album titles is the single creative work rule in U.S. trademark law. The rule provides that the title of a single creative work—such as one book, film, or album—generally does not qualify as a trademark.

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² Maaz Shareef, ‘Are Album Titles Trademarked? What You Need to Know’ (2024)

<https://www.trademarkia.com/news/trademarks/are-album-titles-trademarked> accessed 10 June, 2026.

The reasoning is simple: the title of a single album merely tells the audience what the work is called; it does not necessarily tell them who produced it. Trademark law is designed to prevent consumer confusion about the source of goods or services, not to grant a monopoly over every creative title.

This principle is reflected in the Lanham Act, 15 U.S.C. § 1127, which requires a trademark to identify and distinguish the source of goods, and is specifically recognised by the United States Patent and Trademark Office (USPTO) in the Trademark Manual of Examining Procedure (TMEP) § 1202.08, which states that titles of single creative works are generally not registrable as trademarks.

The principle was reinforced in *Herbko International, Inc. v. Kappa Books, Inc.*, (2002)³, where the court noted that the title of a single creative work does not ordinarily function as a trademark because it identifies the work itself rather than its source.

When Can an Album Title Become a Trademark?

Although the general rule appears restrictive, it does not mean that album titles can never receive trademark protection. The key question is whether the title has moved beyond identifying a musical work and has started functioning as a brand.

1. Album Titles Used in a Series

A recurring title used across multiple creative works is more likely to receive trademark protection because consumers may recognise it as indicating a common source.

The USPTO's TMEP § 1202.08 allows registration of titles of a series of creative works because the recurring title identifies the source of the series rather than merely naming a single work. Therefore, an artist releasing a continuing collection of albums under the same overarching title may be able to establish trademark rights.

2. Album Titles That Acquire Secondary Meaning

Even a single title may gain trademark significance if it acquires secondary meaning. This occurs when the public no longer sees the title merely as the name of an album but associates it with a particular artist, brand, or commercial origin.

³ *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156 (Fed. Cir. 2002)

Courts determine secondary meaning by considering factors such as the length of use, commercial success, advertising, media recognition, and consumer perception. The importance of consumer association was emphasised by the U.S. Supreme Court in *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205 (2000)⁴, which recognised that trademark protection depends on a mark's ability to identify source.

The Modern Album Era: Where Music Meets Merchandising

The rise of the digital music industry has complicated the traditional understanding of album titles. Today, an album often expands into a complete commercial universe. Artists sell clothing, posters, accessories, and other products featuring album names and associated imagery. Album-themed tours and experiences further strengthen the public connection between the title and the artist.

For example, an album title used prominently on merchandise may function differently from the same title appearing only on a music recording. In such cases, trademark law may protect the title because consumers perceive it as indicating a commercial source rather than simply describing an album.

This transformation demonstrates how the boundaries between artistic expression and branding have become increasingly blurred.

What About India?

Indian trademark law does not contain a specific “single creative work rule” like that recognised by the USPTO. Under Section 2(1)(zb) of the Trade Marks Act, 1999, a trademark must be capable of distinguishing the goods or services of one person from those of another.

Indian courts have mostly dealt with titles of films and literary works, but the principles are relevant to album titles as well. In *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016)⁵, the Supreme Court of India held that a title alone does not receive copyright protection due to a lack of originality. However, a title may be protected under trademark law or through a passing-off action if it has acquired substantial goodwill and reputation⁶.

⁴ *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205 (2000)

⁵ *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016) 2 SCC 521

⁶ Khurana & Khurana, ‘Trademark Law For Entertainment Brands: Protecting A Brand Identity’ (2023) <https://www.khuranaandkhurana.com/2023/08/24/trademark-law-for-entertainment-brands-protecting-a-brand-identity> accessed on 11 June, 2026.

Therefore, a famous album title with strong public recognition and commercial association could potentially obtain trademark protection in India.

Trademark Rights vs Artistic Freedom

Providing broad trademark rights over album titles also raises concerns about freedom of expression. If artists could easily monopolise common words or phrases used as titles, future musicians might face restrictions when naming their own works.

This tension was addressed in *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)⁷, where the court developed a test balancing trademark protection with First Amendment interests in artistic expression. Although the case concerned a film title, its reasoning remains influential in disputes involving artistic works and titles.

Final Note: A Title, a Brand, or Both?

The journey of an album title from a simple name to a protected trademark reflects the changing nature of the music business. Traditionally, the law treated album titles as labels for individual creative works, making trademark protection difficult. However, in today's era of fan communities, global tours, and extensive merchandising, some album titles have evolved into powerful commercial brands.

Ultimately, the legal question is not how famous an album is, but whether the title performs the essential function of a trademark—identifying the source of goods or services in the minds of consumers. As music increasingly merges with commerce and culture, the debate over whether album titles should receive broader trademark protection is likely to continue.

⁷ *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)

