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PROTECTION OF LITERARY AND ARTISTIC TITLES UNDER TRADEMARK LAW

A good title is at least half of the work's success.
Good books are known by few, but good titles by all.

J. Wittlin

INTRODUCTION

"The title of a work of art" is accepted as a *"linguistically defined, widely, if not commonly, accepted unit name of a given work of art"*[1]. The title of a work speaks for the recognisability of the author[2], where often it is characterised by various levels of individuality corresponding to the recognisability of the work, the author, and the popularity of the work itself. The title often "[…] *attracts the amateur, focuses his gaze and enchants him in advance; the title is a magician, but every so often also a shameless trickster* […]"[3]. Titles of literary works function in the world of "symbols". The titles dictate our choice, as convenient symbols in a set of psychological factors[4]. The importance of a good title still arises, so the choice of a title of work has become the subject of unbridled competition[5].

Title protection is not the protection of the work under the title, but the protection of the recognisable marking individualising the work. As a result, the protection of a work title is possible when it fulfils its individualising and distinguishing function[6]. It should be remembered that its protection can be considered on two levels: either in the context of the whole work, where the title is understood as an integral part[7], or quite the opposite – according to various pieces of legislation – where it is treated as a separate legal entity. Taking this into consideration, title protection can result from legislation on fighting

[1] M. Wallis, *Sztuki i znaki. Pisma semiotyczne*, Warszawa 1983, p. 226.
[2] W. M. Borchard, *Trademarks and the Arts*, Nowy Jork 1989, p. 1 *et seq*.
[3] H. Béhar, *O tytułach surrealistycznych*, "Pamiętnik Literacki" 1981, No. 2, p. 261.
[4] V.S. Netterville, B.L. Hirsch, *Piracy and Privilege in Literary Titles*, 32 "S.Cal.L.Rev." 101 (1958–1959), p. 102.
[5] S.W. Tannenbaum, *Copyright Law: Titles in the Entertainment Field*, 45 "A.B.A.J." 459 (1959), p. 459.
[6] S. Grzybowski, A. Kopff, J. Serda, *Zagadnienia prawa autorskiego*, Warszawa 1973, pp. 99–100.
[7] J. Barta, R. Markiewicz, *Prawo autorskie*, Warszawa 2008, p. 42. Concerning the integrity of work see: A.M. Niżankowska, *Prawo do integralności utworu*, Warszawa 2007; M. Szaciński, *Integralność utworu a prawo moralne autora*, "Palestra" 2010, No. 1–2, pp. 132–135.

unfair competition[8], press law[9], copyright law[10], civil law regarding the protection of personal goods[11], and also trademark law[12]. In general, titles are protected according to the fundamental tenets of unfair competition law, copyright law and trademark law[13]. The unique conception is adopted in German Law. The concept of the legislative protection of titles in German law was not based on copyright protection, but on protecting the title under *sui generis* law, included in the Trademark Act from 25 October 1994 – Markengesetz[14]. A variety of concepts regarding title protection are presented in foreign legal systems, and are an opportunity to draw attention to the possibility of extending the protection of titles to the protection regulated under the trademark law[15].

1. REGISTRABILITY OF TITLES

Qualifying the title of a work as a trademark causes many difficulties. Assigning different roles to these marks hinders the unambiguous settlement of this issue. What differentiates titles and trademarks is most importantly their purpose. A title "as such" is a word, which is used to identify a certain work. It does not need to have a general character or refer to the whole item, but it can also be a headline of any part of the work[16]. In the theory of literature, it is assumed that the title performs two functions: it identifies an intellectual literary work (identification function) and introduces the readers into the literary work (initial metastatement function)[17]. Therefore, the role of the title is not to underline the source of origin in a marketing sense, but merely introducing

[8] G. Tylec, *Użycie cudzego tytułu jako czyn nieuczciwej konkurencji*, [in:] *Ochrona tytułu utworu w prawie polskim*, Warszawa 2006, pp. 107–164.

[9] G. Tylec, *Ochrona tytułu prasowego*, [in:] *Ochrona tytułu…*, pp. 165–174.

[10] G. Tylec, *Tytuł utworu jako przedmiot ochrony prawnoautorskiej*, [in:] *Ochrona tytułu…*, pp. 26–66; J. Błeszyński, *Prawo autorskie*, Warszawa 1985, pp. 51–52; K. Grzybczyk, *Prawnoautorska ochrona postaci fikcyjnej*, "Monitor Prawniczy" 1997, No. 6, p. 235.

[11] G. Tylec, *Tytuł dzieła jako dobro osobiste*, [in:] *Ochrona tytułu…*, pp. 175–184.

[12] A. Hołda-Wydrzyńska, *The title covered by the exclusive right as the subject of the legal protection*, "SJLS" 2011, No. 3, pp. 26–38.

[13] H. Papaconstantinou, *Legal Protection for the Titles of Literary Works: A Comparative Study*, 4 "C.J.T.L." 28 (1965–1966), pp. 28–46.

[14] P. Baronikians, *Der Schutz des Werktitels*, München 2008; B. Stegmaier, *German and European Trademark Law*, 12 "J.C.L.I." 433 (2001–2002), pp. 433–436; J. Kay-Uwe, *Revision of the German Trademark Law*, 84 "TMR" 605 (1994), pp. 605–616; M. Fammler, *The new German Act on marks: EC harmonisation and comprehensive reform*, "E.I.P.R." 1995, 17 (1), pp. 22–28; A. Hołda-Wydrzyńska, *Tytuł utworu jako przedmiot ochrony prawnej w niemieckim prawie znaków towarowych – Markengesetz*, "Zeszyty Naukowe GWSH" 2013, No. 3, pp. 121–137.

[15] J. Klink, *Titles in Europe: trade names, copyright works or title marks?*, "E.I.P.R." 2004, 26 (7), pp. 291–301; L.A. Glick, *Protection of Literary and Artistic Titles: A Comparative Analysis of United States and Foreign Law*, 55 "C.L.Rev." 449 (1969–1970), pp. 449–469.

[16] G. Tylec, *Ochrona tytułu utworu w prawie autorskim i prawie prasowym*, "Przegląd Ustawodawstwa Gospodarczego" 2006, No. 6, p. 29 *et seq*. *Słownik języka polskiego*, Tom III. Ed. M. Szymczak, Warszawa 1981.

[17] D. Danek, *Dwie funkcje tytułu: identyfikacja utworu i wprowadzenie do utworu*, [in:] *Dzieło literackie jako książka*, Warszawa 1980, pp. 76–95; D. Danek, *O tytule utworu literackiego*, "Pamiętnik Literacki" 1972, Issue 4, pp. 166–173; G. Tylec, *Ochrona tytułu utworu w prawie…*, p. 30.

the subject of the work[18]. Titles often describe the content of the work, advertising it to the reader and identifying works and their sources[19]. However, a trademark is an instrument of a market economy, used to ensure proper protection for the functioning of the market[20], and its principal role is to distinguish the products of one company from the products of another company[21]. Taking this into consideration, it should be stated that the title functions as an identifier, which is not a distinguishing marker in the classic sense of the word. Generally, the aim of the classic distinguishing markers as trademarks, *entrepreneurs*' markers and geographical indications is to identify the traders with the products or services they offer on the market[22]. On the other hand, it cannot be denied, however, that a title also has a distinguishing role, which makes it closer to trademarks, especially with titles identifying works and their sources in a general meaning, like the author, director or publisher. The consequence of such a perspective is a legal discourse that has been going on for a long time, dedicated to qualifying titles as trademarks.

The dominant opinion is that the title of a single creative work is not registrable. Following the Trademark Manual of Examination Procedures, which is a manual published by the United States Patent and Trademark Office, it can be assumed that the title of a single creative work concerns a work in which the content does not change, whether that work is in printed, recorded, or electronic form[23], regardless of the number of available circulations and the frequency of publishing the work[24]. In contrast, the title of series of creative works is a title used on at least two different creative works. It is commonly considered that such titles are capable of functioning as trademarks. It is said that the name of a series of creative works may be registrable if it serves to identify and distinguish the source of the goods that is most frequently associated in the public mind with the publisher, printer or bookseller[25].

A supporter of registering titles as trademarks is P. Reeskamp, who, by comparing the title of the work to a trademark, perceives it as having the same strength as a Coca-Cola or BMW trademark[26]. Similar claims are made by W.M. Borchard, who treats trademark law as a source of protecting artists' right from the illegal appropriation of their creations by third parties, especially regarding the two most important and valuable

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[18] R. Ingerl, Ch. Rohnke, *Markengesetz. Gesetz über den Shutz von Marken und sonstigen Kennzeichen*, München 2010, p. 94.

[19] J. Klink, *Titles in Europe…*, p. 290 *et seq*.

[20] M. Kępiński, *Zarys Prawa Własności Intelektualnej, tom 1 – Granice prawa autorskiego,* Warszawa 2010, p. 160.

[21] In the literature can be found different divisions of trademark functions. See: J. Koczanowski, *Funkcje i ochrona prawna znaków towarowych*, "ZNUJ PWiOWI" 1976, Issue 8, pp. 49–69; R. Skubisz, *Prawo znaków towarowych, Komentarz*, Wyd. II, Warszawa 1997, p. 3 *et seq*.; M. Kępiński, *Rozporządzanie prawem z rejestracji znaku towarowego*, Poznań 1979, pp. 52–58; W. Włodarczyk, *Zdolność odróżniająca znaku towarowego*, Lublin 2001, p. 21 *et seq*.

[22] R. Skubisz, *Prawo znaków towarowych, Komentarz*, Wyd. II, Warszawa 1997, p. 13.

[23] Hereinafter, TMEP. TMEP § 1202.08, § 1202.08 (a), § 1202.08 (b).

[24] J.E. Harper, *Single Literary Titles and Federal Trademark Protection: The Anomaly between the USPTO and Case Law Precedents*, 45 "IDEA" 77 (2004–2005), pp. 77–96.

[25] TMEP § 1202.08 (b) i (c).

[26] P. Reeskamp, *Dr No in trade mark country: a Dutch point of view*, "J.I.P.L&P" 2010, Vol. 5, No. 1, pp. 29–38.

features of an artist, i.e. talent and recognisability[27]. As R. Callmann notes, a title can be treated as a name and a trademark. It performs the same function as an individual's name in identifying the work, and it is like a trademark in the sense that it advertises the work, identifies its source and "guarantees the validity of copies". According to the Author, the title is like a trademark recognised as an intangible and incorporeal property right. A title is deserving of protection against the use of a confusingly similar title, if it is freely chosen and distinctive, or has acquired a distinctive secondary significance[28]. If the title is not descriptive and is capable of clearly distinguishing the work from others, it can be assumed that it fits in the construction of a trademark[29].

Among the representatives of Polish doctrine of law, attention was drawn also to the distinguishing nature of the work title, though there are not many opinions on this subject. However, such opinions initiated by A. Ponikło and J. Gutowski are much more reserved and regard mostly the titles of series of works, i.e. periodicals[30]. According to M. Kępiński, it is unnecessary to construct a separate exclusive law for literary work titles, since in the Polish legal conditions copyright laws provide sufficient protection[31]. In more contemporary literature, it should be noted that authors have also supported the registrability of titles of single creative works[32]. However, the poor achievements of the Polish doctrine regarding considerations of qualifying a work title as a trademark show that the present copyright regulations, as well as competition laws, are considered sufficient.

2. THE MEANING OF DISTINCTIVENESS IN TRADEMARK LAW

On the base of trademark law a marker must be characterised by an appropriate level of distinctiveness to be able to distinguish goods or services from among other goods and services. Depending on the level of distinctiveness, the sign can be either a distinctive one, or on the contrary an indistinctive one: descriptive, generic, or customary[33]. On the basis of trademark law, it is assumed that distinctiveness implies three fundamental issues. Firstly, a distinctive marker is one that is unique enough to distinguish one good from others. Secondly, distinctive is the opposite of a descriptive sign. And thirdly, a distinctive marker must be recognisable as marking the origin of a good or service, and not as a decorative symbol[34].

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[27] W.M. Borchard, *Trademaks…*, p. 1.

[28] R. Callmann, *Unfair Competition in Idea and Titles*, 42 "Cal. L. Rev." 77 (1954), pp. 82–84.

[29] M.V.P. Marks, *The Legal Rights of Fictional Characters*, 25 "Copyright L. Symp." 35 (1980), pp. 71–72.

[30] A. Ponikło, J. Gutowski, *Polskie prawo patentowe. Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 marca 1928 r. o ochronie wynalazków, wzorów i znaków towarowych. Komentarz*, Warszawa 1935, p. 184.

[31] M. Kępiński, *Znak towarowy (funkcja, rodzaje znaków, oznaczenia stanowiące przedmiot praw wyłącznych, rejestracja, zakres wyłączności)*, SC, Tom XXII, Warszawa–Kraków 1974, p. 190.

[32] W. Włodarczyk, *Zdolność odróżniająca…*, p. 82; M. Czajkowska-Dąbrowska, I. Wiszniewska, *Merchandising – czyli komercjalizacja popularnych symboli*, "Przegląd Prawa Handlowego" 1998, No. 10, p. 5.

[33] B.J. Egan, *Lanham Act Protection for Artistic Expression: Literary Titles and the Pursuit of Secondary Meaning*, 75 "T.L.Rev." 1777 (2000–2001), p. 1782.

[34] J.D. Kimpflen, *Trademarks and Tradenames*, AMJUR, 2nd Edition, § 33.

The distinctive ability of a trademark can have a primary character, resulting from the very nature of the marker, or a secondary one achieved through using a given sign in trading[35]. A marker with a primary distinctive ability is, by definition, original. It is quickly acceptable among average recipients, its finesse and uniqueness allows the distinguishing function to be better achieved. Sometimes, however, a given marker is deprived of uniqueness and therefore, in the opinion of average recipients, is an insufficiently distinctive marker. A sign primarily deprived of a distinctive character may, however, as a result of undertaken actions, acquire secondary distinctive ability. It is important that, through the use of the marker, it becomes a carrier of information on the origin of a good[36]. Taking this into consideration, in the doctrine and judiciary can be found numerous divisions of titles. In the context of titles, it is worth quoting the case *Maugham J.* in *Mathieson v. Sir Isaac Pitman & Sons Ltd.* (1930), where titles were distinguished into three categories: 1) the descriptive titles describing only the nature of the book or the subject treated, e.g. *Sketches of Horses,* 2) fancy titles containing an element of imagination, e.g. *The Lord of the Rings, Chariots of fire*, 3) descriptive titles with an element of fancy, which can gain a secondary meaning, e.g. *Four Weddings and a Funeral*[37].

Polish doctrine divides titles in a different way, which is patterned after the French and German considerations. There are original titles characterised by a high intellectual and emotional charge, like *Faust, Diaboliad etc*., trivial titles that present only the content of the work like *The Little Match Girl, The Ugly Duckling etc*., and titles which do not extend beyond specifying the genre *Tales, Poems, Sculptures etc.* In respect of the above presented division of the titles into those that are creative and can be protected by legal measures contained in the Polish copyright act, and those that are not creative and cannot be protected[38].

Regarding titles of works, their distinctiveness can be discussed from several perspectives: distinctiveness as an ability to individualise a work; distinctiveness as the ability to distinguish by origin; and distinctiveness understood as a distinguishing nature of a marking in the context of a given product. In the case of work titles, distinctiveness plays an important role as, due to their affiliation to a particular group of signs, it is understood mostly as *the ability to individualise (distinguish) a work as such,* and not the ability to individualise the publisher or the producer. By definition, titles refer to the work, where the content is more important than its origin[39]. Distinctiveness understood as the ability of a marker to distinguish between goods or services from one source and goods or services from another source complicates the considerations of the distinctive function of a work title. Two various conceptions can be assumed. It can be assumed that the source of origin is either the author of the work him/herself (as the person who created the work), or the producer or publisher, being the entrepreneurs

[35] R. Skubisz, *Zdolność odróżniająca znaku towarowego w prawie europejskim i prawie polskim*, [in:] *Sądownictwo administracyjne gwarantem wolności i praw obywatelskich 1980–2005*, Eds. J. Góral, R. Hauser, J. Trzciński, Warszawa 2005, p. 387.

[36] Judgement WSA in Warsaw of 8 June 2005, VI SA/Wa 2241/04, *LEX nr 841278*; Judgement WSA in Warsaw of 18 March 2004, II SA 3170/02, *LEX nr 697784*.

[37] R. Stone, *Titles, character names and catch-phrases in the film and television industry: protection under the law of passing off*, "Ent. L. R." 1996, 7 (7), pp. 263–264.

[38] G. Tylec, *Ochrona tytułu utworu w prawie…*, p. 29.

[39] R. Ingerl, Ch. Rohnke, *Markengesetz…*, p. 94.

interested in the economic use of the title (this mostly concerns broadly understood periodicals)[40]. Accepting the first option means that distinguishing on the basis of origin is understood widely and is identical to the authorship of the work. In the case of this concept, it is underlined that, for an average consumer, it is not the actual source of physical production of the work that is important, but the origin of creation of the work, so the author him/herself. Therefore, the title is a marker indicating the origin of the work from a specific source[41]. In community legislation, the ruling on Dr No is a contradiction to this opinion[42]. Moreover, it is worth noticing that a registered title as a trademark can be also treated as a marker distinguishing a good. A good is *any material economic good*[43]. When goods are discussed in the context of a work, it means a good that has *corpus mechanicum*. It is important to remember that titles as trademarks are not submitted to protect the work as such, but they are submitted as its material form, which can be a book or film material[44].

It is underlined that in most cases the title of a single work is descriptive or generic, and therefore not protectable. However, many series titles are descriptive too. Trademarks, which are descriptive, are indistinctive because of a few factors. Firstly, a trademark "as such" has to be an information carrier that states the source of origin of the goods and services. Secondly, as a result of granting the exclusive right on the trademark, it is not possible to lead to such a situation, when the ability to inform consumers about the features of the goods is limited[45]. In the context of titles, the descriptive nature means indicating the matter of the work or the feature of the good and service. Therefore, in most cases, it is suggested that, under general trademark principles, secondary meaning is required for protection[46]. The so-called test of secondary meaning for literary titles is fundamental. It is said that the average consumer should assume that all works or goods being offered under a certain title are controlled by a single source[47]. It is not possible to define a sufficient quantity or quality of consumer recognition. It is possible, however, to define factors that beneficially influence the title obtaining a secondary ability to distinguish. It can be the length and continuity of use, the extent of advertising and promotion, the sales figures on purchases or admissions, the number of people who bought or viewed a work or the market range[48]. The secondary meaning does not have to be proven by the popularity of the work, but it can be a factor with a very positive influence on its reception.

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[40] P. Shapiro, *The Validity of Registered Trademarks for Titles and Characters After the Expiration of Copyright on the Underlying Work*, 31 "Copyright L. Symp." 69 (1984), p. 81.

[41] I. Simon, *Parodies: a touch of magic*, "E.I.P.R." 2004, 26 (4), pp. 188–189.

[42] Judgment of the Court of First Instance of 30 June 2009. Danjaq, LLC v Office for Harmonisation in the Internal Market, T-435/05. Text of judgment is available on www.curia.europa.eu [1.10.2016].

[43] W. Włodarczyk, *Zdolność odróżniająca…*, pp. 47–48.

[44] P. Baronikians, *Der Schutz…*, p. 164.

[45] M. Du Vall, E. Nowińska, U. Promińska, *Prawo własności przemysłowej*, Wyd. 3, Warszawa 2007, p. 193.

[46] J.T. McCarthy, *McCarthy on Trademarks and Unfair Competition*, Fourth Edition 2004, Volume 2, § 10:2 – § 10:10.

[47] Ibidem, § 10:10.

[48] Ibidem, § 10:13.

3. DR NO CASE

Considerations regarding a work title in the context of protection under the exclusive right to a trademark have also become a subject of a ruling of a former Judgment of the Court of First Instance regarding the title of one of the films from the James Bond series – "Dr No"[49]. In the indicated case, the Court denied the title of the film *Dr No* the attribute of a trademark, but it did not categorically deny the possibility of using titles in that way (point 24). In this ruling, the court stressed that the title of a work can be protected as a trademark but on the condition that it does not indicate artistic origin, but commercial origin, thus enabling the consumer who purchases goods or services to repeat the experience if it proves to be positive, or to avoid it if it proves to be negative (point 23). However, in the present case, the commercial origin of the film is indicated by other signs, such as '007' or 'James Bond', which show that its commercial origin is the company producing the films in the 'James Bond' series. The sign Dr No does not indicate the commercial origin of the films, but rather its artistic origin (point 25).

It has to be underlined that, according to the Court, the same sign may be protected as an original creative work by copyright and as an indicator of commercial origin by trademark law. It is, therefore, a matter of different exclusive rights based on distinct qualities, that is to say the original nature of a creation, on the one hand, and the ability of a sign to distinguish the commercial origin of the goods and services, on the other. Therefore, even if the title of a film can be protected pursuant to certain national laws as an artistic creation independent of the film itself, it cannot automatically enjoy the protection afforded to indicators of commercial origin, since only signs that develop characteristic trademark functions may enjoy that protection (point 26).

This ruling, however, does not dispel all doubts. Most of all, it is still not clear what the difference is between *artistic origin of the work* and *commercial understanding of the origin*. It seems that, in practice, these terms frequently become blurred. This was also noticed by P. Reeskamp, who thoroughly criticised the quoted ruling. Firstly, he indicated that knowledge of the artistic origin of the work is more important than the knowledge of the publisher or producer of the work, since often it is the author who provides the quality of a given product. Secondly, if the purpose of a trademark is to facilitate the consumer's decision-making when they are purchasing the product or a service, then how can one evaluate the possibility to select a work on the basis of hitherto experiences connected with knowledge of the author, their previous works and opinions of reviewers? Thirdly, the Author draws attention to the fact that in there is no consistency in community rulings regarding the origin condition. Because one time there is a mention of *the origin of the goods*[50], and another *the commercial origin of the goods*[51]. The first glance allows an understanding of the scope of this notion as

[49] See footnote no 41.

[50] See: point 51 Judgment of the Court of 12 November 2002. Arsenal Football Club plc v Matthew Reed, C-206/01; point 21 Judgment of the Court of 25 January 2007. Adam Opel AG v Autec AG, C-48/05. Texts of judgements are available on www.eur-lex.europa.ue [1.10.2016].

[51] See: point 28 Judgment of the Court of First Instance of 27 February 2002. Ellos AB v Office for Harmonisation in the Internal Market, T-219/00. The text of the judgement is available on www.eur-lex.europa.ue [1.10.2016].

being much wider – as *general origin,* without the need to accentuate its commercial origin. Taking all this into consideration, the Author regards the accepted division as artificial[52]. In favour of this theory is the gradually more and more blurred function of distinguishing by origin. Nowadays, the need to identify the origin of a product or service with a particular entrepreneur is losing its meaning, because for the consumers it is enough to have knowledge that the good or service marked by a certain marking comes from the same source. The actual function of a trademark is limited to distinguishing, and distinguishing based on origin is its additional value and is complementary to the role of a trademark[53].

As it seems, titles are primarily markers with the role of distinguishing works between each other and individualising particular works. However, trademarks are commercial markers with the role of distinguishing goods or services from different entrepreneurs. It is difficult to disagree with this statement. However, this position in the contemporary times of dynamic development of the *merchandising* phenomenon understood as commercialising non-material goods, it becomes thoroughly blurred[54].

SUMMARY

Choosing the right title is a difficult task. Most titles are not registrable as trademarks and are protected only on unfair competition principles. Sometimes the law provides that an original title may be protected in the same way as an entire work. In most cases, the registration of titles as trademarks is denied because a title does not serve to indicate the source of the work, denoting only the work itself, and is therefore not a trademark. Trademark protection has generally been denied to titles of individual works, primarily because they are descriptive as they indicate the matter of the work or the feature of the good and service. By contrast, it is increasingly commonly considered that series of creative works are capable of functioning as trademarks. Experience shows that there is a certain group of titles of special character. They are *strong titles,* which are so recognisable that they *surpass the work55.* The difference between *strong titles* and *weak titles* is that the former are distinctive on their own, while the latter only distinguish one work from another. This division is not fixed because often weak titles become strong titles, for example when the work they mark becomes popular and recognisable[56]. Strong titles, as they have strong distinguishing features and increased level of individualisation, are more frequently described as ones that can be protected under exclusive law[57].

In the case of the distinguishing capability, the sign is researched in connection with the goods and services to which the sign is applied. Therefore, in the context of titles, the sufficient distinctive character of the sign is frequently not enough. A broad

[52] P. Reeskamp, *Dr No in trade mark country…*, p. 31.

[53] In polish doctrine that notion was presented inter alia by J. Koczanowski [in:] *Funkcje i ochrona…*, pp. 49–51.

[54] M. Czajkowska-Dąbrowska, I. Wiszniewska, *Merchandising – czyli komercjalizacja popularnych symboli,* „Przegląd Prawa Handlowego" 1998, No. 10, pp. 1–9.

[55] P. Baronikians, *Der Schutz…*, p. 156, 161–162.

[56] J. Błeszyński, *Prawo autorskie*, Warszawa 1985, pp. 51–52.

[57] J. Barta, R. Markiewicz, *Prawo…*, p. 42.

majority of the titles indicate the matter of the work or the feature of the good and service, therefore they are treated as descriptive markers. Following the thought of P. Baronikians, submitting a title for a materialised work can always be met with a refusal to register, because titles, being the linguistic markings of a work, can always be received as a marking *directly connected with the content of the work*, and therefore can be considered descriptive. Therefore, thorough research of every case individually is crucial[58].

Despite relevant arguments, it is clear that this subject is highly controversial. Ongoing discourse in the doctrine and jurisdiction shows that the need to express opinions and verification of the rules of protecting work titles is still present. Since titles will fall under stronger and stronger commercialisation, it is difficult to imagine that discussion on the subject will ever come to a halt.

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