

Dispute Resolution Hotline

September 01, 2009

PROACTIVE APPROACH, PROMPT ACTION NEEDED TO BEAT BOLLYWOOD BLUES

The media and entertainment industry, particularly the films segment, in India has experienced robust growth over the last few years and has become one of the fastest growing sectors of the economy despite the economic downturn. Lately, however, the glitzy world of Bollywood has seen a rush of litigations for reasons ranging from intellectual property infringement to breach of licence terms such as non-payment. The phenomenon has struck innumerable movies of late, including the Oscar winning *Slumdog Millionaire*, ensuring the producers spend their days pacing court corridors instead of getting things set for their premiere.

Sometimes, these controversies seem to crop up strategically, just before the release. The Roshans were among the earlier ones to be hit, with damages of Rs 2 crore before the release of the film *Krazzy 4* in 2007, as music composer Ram Sampath had alleged that the title song of the movie had been plagiarized from tunes he had composed earlier. Later, attempts were made to stall the releases of magnum opus Jodha Akbar and Singh is King on religious ground, while the latter part of 2008 saw Ghajini victimised by litigations over remake rights and copyright infringement just five days before its release.

In recent times, respective parties have approached courts even before the satellite and home video release of a film on the ground that it is a separate cause of action claiming infringement of copyright in certain portions of the film. For instance, Sony recently filed a copyright infringement action against Shree Ashtavinayak Films just before the exploitation of Home Video Rights of *Golmaal Returns*.

However, in most cases, such delayed actions are not successful. The courts have approached such issues strictly and have held that delay in approaching the court, as far as grant of equitable relief is concerned, is always fatal. Therefore, the intellectual property owner must not waste any time in taking action against the infringers. In fact, time consumed in exchange of notices may also be considered as a delay in approaching the court and may work against the interests of the plaintiff.

The courts have reasoned that laches and delay would have led to the defendant altering his position to his detriment and the grant of injunction at this stage would lead to irreparable loss and injury. In a title litigation involving the popular *Kabhi Alvida Naa Kehna*, the Delhi High Court said that if the plaintiff was a serious producer, he ought not to have ignored gossip within his trade, whether it is in the form of press reports or exchange of communication to the guild/ association claiming the same title and should have approached the court immediately upon the mahoorat when it was certain that the movie was in production stage. Even in the famous *Hari Puttar* case, the Delhi High Court rejected a title infringement lawsuit filed by Warner Bros saying they had known the title of the impugned film since 2005 and had delayed bringing the case to court until the last moment.

The most potent strategy for the right holder would be to nip the devil in the bud by sending a legal notice of cease and desist to the defendants and proceed with legal action immediately, seeking damages and injunction.

Since title infringement, script plagiarism and lifting of music or lyrics are the most contentious issues in the film industry, the right holders must keep track of news items and notices published in newspapers and trade magazines and must act immediately. These periodicals have proven to be excellent platforms for receiving prior notice of future projects and latest content acquisitions made for the potential claimants. Further, courts have often entertained cases when filed immediately on the announcement of the mahoorat of the film or the release of the music or in the event a snapshot of the litigious storyline is published. Though courts have exercised caution on most occasions and allowed the producers to make a representation before them, there have been instances where ex-parte injunctions have been granted based on pure speculation or frivolous claims.

The best legal precaution that the parties can take to considerably preclude such a prejudiced order would be to keep a vigil for potential threats and file a caveat immediately in the appropriate court. This ensures the defendant is given appropriate notice before the case is placed for hearing and the

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party has a chance to be heard and prevent any adverse decision without a chance to defend their rights.

The trend of media litigation has also caught the fancy of overseas media giants such as Twentieth Century Fox. Bollywood production house BR Films has been sued by the Hollywood film studio for allegedly copying the storyline and script of their comedy My Cousin Vinny in the movie Banda Yeh Bindaas Hai. A further impetus to the foreign litigants is that Indian courts have begun to adopt a fair and equitable approach while dealing with damages and costs of litigation and have recently been awarding huge damages and costs.

The Indian film industry's romance with the courts has begun and the "courtship" period seems to be a long one. To ensure a happy ending, rightful owners must adopt a proactive approach and take prompt action against the offenders. One must remember that time is of essence and the key to achieve justice in media related litigations.

- Ranjana Adhikari, Vyapak Desai & Gowree Gokhale

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