



## Legal considerations in the selection of article, book and journal titles

by Elaine Heywood and Victoria Chandler



Literary quotes, proverbs, famous sayings, product names and slogans along with film, song and classic book titles are often used as inspiration for or referenced in publication titles or opening paragraphs in order to capture the reader's attention and interest. This article looks at some of the legal issues which should be considered when choosing a title incorporating the words of someone else and in particular whether any intellectual property rights may be infringed. This article represents the UK position. Copyright and trade mark law differs from country to country.

### Copyright

Copyright protection gives the copyright owner the exclusive right to reproduce the work. Third parties are therefore prohibited from reproducing the work without the owner's permission.

It should be remembered that literary copyright protects the physical expression of an idea or concept in words and not the underlying idea or concept itself. As soon as the idea or concept is recorded in words, the author is automatically entitled to copyright protection for the literary work until it expires or is disclaimed.

Internationally, copyright is governed by the Berne Convention. This is an international agreement setting out minimum standards for the protection of copyright including reciprocal rights for authors from other member states. Currently there are 163 signatories including the UK and the USA. Works are protected by each signatory to the Convention in the same way that the works of its own authors are protected, regardless of where the work was actually created. Therefore, the national laws of the country where any copyright infringement takes place will apply to the infringement within that country rather than the laws of the country where the work was created.

As copyright arises automatically in the UK and elsewhere under the Berne Convention, there is no register of works subject to copyright and thus no easy way of determining whether the reference you intend to use is (i) protected by copyright; or (ii) going to infringe any copyright which exists. By contrast, in the USA works can be (but do not have to be) registered with the Copyright Office. There are, however, some general principles to bear in mind for UK copyright:

- Using a similar idea or concept to someone else without actually copying the words used to express that idea or concept will not infringe any copyright in their expres-

sion of the idea or concept.

- The UK courts have on several occasions held that there is no copyright in a name, a single word or title as they are not long enough to constitute a literary work.
- A journal article title generally carries less risk than a book title, because the latter is often perceived to have a wider audience.
- Copyright is infringed by the copying of a substantial part of the copyright work. It is unlikely, for example, that reproducing a famous line from a film, song or book in an article title would be considered copying a "substantial part" of the work in question. However, there is a residual risk, and a claim is not impossible. A book title that uses the first line of a poem or song still within its copyright probably carries most risk.
- There are no formal requirements regarding the use of the © symbol in the UK. The absence of any copyright notice does not necessarily mean there is no copyright and, likewise, the inclusion of a copyright notice may not necessarily mean that there is any enforceable copyright protection. The © symbol is really a warning to potential infringers and does have some significance internationally, under the Universal Copyright Convention.
- Literary copyright in the UK lasts for the life of the author plus 70 years. You would therefore be free to reference anything where the copyright has expired, for example, quote from a Shakespeare play, or where there is no identifiable author that may own the copyright, for example, a colloquial saying or proverb.
- Even where copyright does exist and it is arguable that the quote to be referenced is the whole or substantial part of the copyright work, there are "fair dealing" exceptions to infringement which generally allow the work to be reproduced for non-commercial purposes if accompanied by an acknowledgement.
- The author of a copyright work also has a moral right to be identified as the author of the work and the right to object to the derogatory treatment of their work even if the copyright is no longer owned by them. Such claims are quite common in France, but rare in the UK. The UK does not (yet) have a satire defence and a 'rip-off' of a French work is therefore inherently riskier than a UK work.

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**Trade Marks**

There may be circumstances where it seems apt to refer to a particular product name, organisation or even advertising slogan within an article, book or journal title. However, such names and slogans may be registered trade marks. Therefore, some thought needs to be given to whether use of the name or slogan would amount to trade mark infringement.

Unlike copyright, trade marks can be registered. This might be via a national registry (although some countries, for example in parts of Africa, do not have registries). There is also a European Union wide trade mark, and an international trade mark registration system which allows applicants to designate multiple territories where the application is to take effect.

A registered trade mark gives the owner the exclusive right to use the mark for the particular goods and services for which it is registered. You are, however, allowed to make reference to a registered trade mark in order to identify the goods/services of the trade mark owner.

A trade mark is infringed by anyone using in the course of trade an identical mark for identical goods/services or similar mark for identical or similar goods/services in circumstances where the use is likely to confuse the public. Further, the Trade Marks Act states that “any such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the

registered trade mark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the mark”.

Most trade mark owners are predominately interested in protecting their brand from commercial attack either by the sale of counterfeit goods, by competitors diverting trade through use of confusingly similar branding or use of their marks in a way which potentially damages their reputation.

It is therefore difficult to envisage many situations where reference to a registered trade mark in an article title or opening paragraph would be in relation to the same goods/services or indeed be used in the course of trade such that the use would be an infringement. For example, a spin on the famous HAVE A BREAK or HAVE A BREAK, HAVE A KIT KAT slogans registered by Nestle for chocolate and biscuits would not be trade mark infringement if used in the title of an academic article relating to fractures or stress management. In any event, the trade mark owner is unlikely to be offended by reference to its trade mark unless the article could be considered damaging to the reputation of the trade mark in question.

However, trade mark issues may arise in the use of particular names or terms for journal or book titles. This is because the production of a journal or book is likely to be a commercial enterprise.

The wisdom in academic publishing used to be that journal titles should not be trade marked. However, some publishers have started to stake out claims in order to protect their titles from third party use. Meanwhile in the book world, series such as “The Complete Idiots Guide” and “The Rough Guide” have long been trade marked in the US and UK respectively. There are also likely to be trade mark registrations in place where there has been significant commercial spin-off from a book. For example, Warner Bros Entertainment Inc has in excess of 70 Harry Potter related trade mark registrations in the UK alone. Registrations will typically cover printed matter, books, journals, magazines and printed publications.

It is possible to search the UK Trade Marks Register via the UK Intellectual Property Office website at [www.ipo.gov.uk](http://www.ipo.gov.uk) to check whether your proposed reference is registered in the UK and if so, what goods/services are covered.

**Conclusion**

In most situations, it is unlikely that any third party rights will be infringed by the use of famous lines, quotes, names or titles within a publication title or opening paragraph or indeed that any rights holder would wish to take action. However, if in doubt, further advice should be obtained and/or the permission of the copyright or trade mark owner should be sought.

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**Some article titles from the *BMJ's* December issues**

Below are some titles from December issues of the *BMJ*:

- 1990: Are orthopaedic surgeons really gorillas?
- 1992: Socioeconomic differentials in mortality: evidence from Glasgow graveyards
- 1994: Effect of ale, garlic, and soured cream on the appetite of leeches  
Ability to distinguish whisky (uisge beatha) from brandy (cognac)  
—with its commentary: A spirited attempt
- 1999: Unsafe sax: cohort study of the impact of too much sax on the mortality of famous jazz musicians
- 2002: Controlled prospective study of faecal occult blood screening for colorectal cancer in Bury, black pudding capital of the world  
Ice cream evoked headaches (ICE-H) study: randomised trial of accelerated versus cautious ice cream eating regimen

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