Federal Appeals Court Finds Film “50/50” Did Not Infringe Musicians’ Trademark

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The Seventh Circuit Court of Appeal recently ruled that the producers of the film "50/50" did not infringe rap duo Phifty-50's trademark.

Eastland Music, which registered “PHIFTY-50” and “50/50” as trademarks, alleged that Lionsgate Entertainment and Summit Entertainment infringed its trademarks by using “50/50” as the title of a motion picture that opened in 2011. The title of the film references the main character’s odds of surviving cancer.

The Seventh Circuit ultimately upheld the lower federal district court's decision to dismiss the lawsuit on summary judgment. It noted that the phrase 50/50 and its variants have been used as the title of intellectual property for a long time, citing several films that have used the phrase in their title. “If there is any prospect of intellectual property in the phrase 50/50, Eastland Music is a very junior user and in no position to complain about the 2011 film,” the panel wrote.

On the issue of likelihood of confusion, the court also found that Eastland Music had a very weak case. As explained by in the opinion, “The title of a work of intellectual property can infringe another author’s mark only if the title falsely implies that the latter author is its origin.” As an example, the panel noted that the titles of Truman Capote’s novella Breakfast at Tiffany’s, and the movie of the same name, do not infringe the rights of famous jeweler Tiffany & Co. because no reasonable person would thinks that the jeweler is the source of the book or the movie.

Although it declined to formally adopt the seminal case of *Rogers v. Grimaldi*, the court did agree with the lower court that trademark law cannot be used to obtain rights over the content of an artistic work. The lower court concluded that the title "50/50" had artistic relevance to the plot of the film because it referred to the main character's chance of survival.

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