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## THE GHOST IN THE MACHINE: NAVIGATING THE “SPIRITUAL SEQUEL” IN INDIA’S IP LANDSCAPE

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### ABSTRACT

The case of *Eros International v. Aanand L. Rai* over *Tere Ishk Mein* highlights the shortcomings of Indian intellectual property law in protecting the commercial identity of films based on aesthetic similarities, wherein filmmakers create spiritual sequels to an older film without reproducing its characters or storyline. This is because of the inadequacies of the current framework, which focuses on the doctrine of idea-expression separation and the traditional concept of passing off for addressing cases involving the commercial use of another’s intellectual work. This paper reviews these shortcomings in copyright and passing off laws concerning the entertainment industry, identifies the resultant lacuna, and proposes a three-pronged test (Aesthetic Goodwill Test) as a judicial tool to distinguish creative homage from commercial appropriation.

**Keywords:** spiritual sequel, aesthetic goodwill, idea-expression dichotomy, passing off, trade dress, *Eros International v. Aanand L. Rai*, Indian copyright law, Trade Marks Act, 1999.

## Literature Review

The doctrine of idea-expression and its relevance to audiovisual productions have consistently retained scholarly attention. *Intellectual Property Law*, authored by Lionel Bently and Brad Sherman, is the most definitive comparative source for studying the doctrinal limits of copyright regarding style and atmosphere,<sup>1</sup> while the application of the idea-expression dichotomy in the context of Indian copyright law under the specific constraints of the Copyright Act, 1957, has been covered by Arul George Scaria.<sup>2</sup> The issue of trade dress and passing-off in the entertainment industry is one of the least researched topics in Indian copyright literature. No previous studies have considered the topic of “spiritual sequel” in their purview. This article seeks to fill the gap by applying and extending the existing doctrinal framework to a novel commercial phenomenon.

### I. Introduction

Nostalgia is a powerful commercial force, and Indian cinema has long known how to use it. Only now, however, is the legal system beginning to confront its implications. The rise of the “spiritual sequel”, which carries forward the “soul” of an earlier film without continuing its characters or storyline, has opened a legal Pandora’s box within India’s intellectual property framework.

The conflict, involving director Aanand L. Rai’s movie *Tere Ishk Mein* (2025), Eros International, which holds the rights to *Raanjhanaa* (2013), and an ₹84 crore suit,<sup>3</sup> further accentuates these legal tensions. Eros is accusing the new film, starring Dhanush, featuring music by A.R. Rahman, and set against a Varanasi backdrop of tragic romance, of deliberately exploiting the brand value of their movie *Raanjhanaa* through marketing slogans like “From the World of *Raanjhanaa*.” The question this case forces Indian courts to confront is foundational: can a “vibe” be owned?

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<sup>1</sup> Lionel Bently & Brad Sherman, *Intellectual Property Law* (Oxford University Press, 4<sup>th</sup> edn. 2014).

<sup>2</sup> Arul George Scaria, *Piracy in the Indian Industry: Copyright and Cultural Consonance* (Cambridge University Press 2014).

<sup>3</sup> Vinay MR Mishra, *Eros Files ₹84 Crore Suit Against Aanand L. Rai for projecting Tere Ishk Mein a ‘Spiritual Sequel’ to Raanjhanaa*, *The Times of India* (Jan. 17, 2026), <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/eros-files-84-crore-suit-against-aanand-l-rai-for-projecting-tere-ishk-mein-a-spiritual-sequel-to-raanjhanaa-exclusive/articleshow/126565207.cms> (last visited May 25, 2026).

## II. Defining the Legal Vacuum

It is easy to classify a conventional sequel since there is licensed reproduction of characters and storylines that fall under the purview of Section 14(a) of the Copyright Act,<sup>4</sup> where the right to reproduce, adapt and issue copies of literary or dramatic works is exclusively provided to the owner of the copyright of that particular piece. However, a spiritual sequel does not entail such reproduction. Instead, it imitates the atmosphere of an earlier work to evoke a particular response from consumers, often leveraging the same director, lead actor, or musical collaborator.

A parallel may be drawn from the technology industry. The Nothing Phone, founded by OnePlus co-founder Carl Pei, did not acquire the OnePlus trademark but marketed itself as the “spiritual successor” to the original OnePlus mission, targeting the same enthusiast niche.<sup>5</sup> The strategy seen in both cases is similar as each one invokes the cultural identity of a predecessor without triggering any legal mechanism that would require authorisation.

The problem is that the copyright law in India is black and white in nature; either one copies protectable expression and violates the law under Section 51 of the Copyright Act,<sup>6</sup> or one duplicates an unprotectable idea in accordance with the idea-expression dichotomy affirmed in *R.G. Anand v. Deluxe Films*.<sup>7</sup> A director’s signature style, or a preference for certain creative choices, falls into neither category. This is the blind spot that the spiritual sequel exploits.

## III. ‘Tere Ishk Mein’ and the ‘Raanjhanaa’ Legacy

The marketing adopted by *Tere Ishk Mein* was deliberately associative. While the promotional material included the phrase, “From the World of *Raanjhanaa*,” both Dhanush and Rahman, along with the Varanasi setting, were elements borrowed from the predecessor’s artistic identity. Eros, which owns the rights to *Raanjhanaa*, argues that this amounts to intentional dilution and infringes the film’s secondary meaning: the brand recognition it has acquired in consumers’ minds beyond its title or plot over the last decade.

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<sup>4</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, §14(a) (India).

<sup>5</sup> Philp Berne, *Nothing Phone 2 leaks hints at a spiritual successor to OnePlus*, TechRadar (Mar. 29, 2023), <https://www.techradar.com/news/nothing-phone-2-leak-hints-at-a-spiritual-successor-to-oneplus> (last visited May 25, 2026).

<sup>6</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, §51 (India).

<sup>7</sup> *R.G. Anand v. M/s Deluxe Films & Ors.* AIR 1978 SC 1613. *The Supreme Court held that copyright does not subsist in ideas, plots, or themes themselves but in the original expression, form, or arrangement in which they are conveyed.*

The suit states two grounds. Firstly, it claims that there is an element of passing off since the title “*Raanjhanaa*”, though not protected on its own, has developed a distinctive reputation in Indian culture due to its sustained cultural recognition. Secondly, it asserts that using the world of the original work would decrease its value and possibly come under Section 29(4) of the Trade Marks Act,<sup>8</sup> which protects marks with a recognised reputation in India even in relation to dissimilar goods or services.

While the ruling of the Delhi High Court in the case of *Sholay Media and Entertainment v. Parag Sanghavi* (“*Sholay*”) is an affirmation of the fact that film titles and characters can qualify as trademarks,<sup>9</sup> this precedent cannot conclusively solve the existing issue. This is so because, unlike in *Sholay*, where the actual film title was being used without authorisation, *Raanjhanaa*’s title was not directly used in *Tere Ishk Mein*.

#### IV. Limits of Copyright

The *R.G. Anand* test asks whether a reasonable person would regard the later work as a copy of the original. That standard is unlikely here: viewers of *Tere Ishk Mein* are not likely to mistake it for *Raanjhanaa*. The real issue is not mistaken identity but mistaken association, a subtler and potentially more harmful form of consumer deception. Copyright law is designed to address the former, not the latter.

The Copyright Act provides no remedy for what can be termed “aesthetic goodwill”: the creativity accrued through the choice of casting, shooting locations, genre, and sensibility. Section 13 of the Copyright Act,<sup>10</sup> which specifies the classes of works in which copyright subsists, protects expression and not the atmosphere that expression creates. Hence, when a filmmaker uses the same sensibility and aesthetics created jointly with one production house for a new one, they take advantage of this specific flaw in the legal system.

#### V. Passing Off and the Problem of Aesthetic Goodwill

The doctrine of passing off, as adopted in Indian jurisprudence from its English basis in *Erven Warnink v. Townend*, needs proof of (i) goodwill; (ii) misrepresentation likely to mislead the

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<sup>8</sup> The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999, §29(4) (India).

<sup>9</sup> *Sholay Media and Entertainment Pvt. Ltd. v. Parag Sanghavi & Ors.*, Civil Suit No. 1892/2006 (Delhi H.C. Aug. 24, 2015). *The Court held that the title “Sholay” and characters such as “Gabbar Singh” had acquired trademark significance through prolonged use and cultural recognition.*

<sup>10</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, §13 (India).

public; and (iii) resulting damage.<sup>11</sup> Applied to the *Raanjhanaa* dispute, each element raises certain problems.

First, *Raanjhanaa* most definitely possesses goodwill. It is well-crafted, critically acclaimed, and was commercially successful. Second, one may interpret the marketing slogans employed in *Tere Ishk Mein*'s promotion as misrepresentation since they seem to suggest a connection that does not legally exist. Finally, the damage both commercial (in terms of diverted audience expectation) and reputational (in terms of brand dilution) is foreseeable.

Different from passing off of goods wherein the deception lies either in the source or quality of the product, the passing off of entertainment products poses the question of the level of evocation of the precursor needed to constitute actionable misrepresentation. "From the World of *Raanjhanaa*," despite its implication of copyright authorship, is a marketing strategy utilising the goodwill built up by the brand.

## VI. Trade Dress: An Underutilised Framework

The doctrine of trade dress, though more precise, remains largely untested in India's entertainment sector. Under Section 2 (zb) of the Trade Marks Act, a "mark" includes "any combination of colours" and "any combination of words, letters, numerals, shapes, or signs",<sup>12</sup> broad enough to cover the composite aesthetic of a film's marketing identity.

If *Raanjhanaa*'s Varanasi setting, amber and blue colour palette, Rahman's devotional soundscape, and its tragic-romance genre are treated collectively as a composite "trade dress," their systemic replication in *Tere Ishk Mein*'s promotional campaign, without a license from Eros, could constitute appropriation. This line of reasoning has not yet been litigated in Indian courts for films. The present case provides a strong foundation for doing so.

Crucially, trade dress protection would not monopolise a location, a genre, or a filmmaker's sensibility. It would protect the commercial combination of those elements assembled through the predecessor's audience-acquisition costs. This is the distinction between creative inspiration, which the law must preserve, and commercial free riding, which the law must

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<sup>11</sup> *Erven Warnink Besloten Vennootschap v. J. Townsend & Sons (Hull) Ltd.* [1979] AC 731 (U.K.). *The three-part test- goodwill, misrepresentation, damage, has been consistently applied by Indian courts in passing off actions.*

<sup>12</sup> The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999, §2(zb) (India).

prevent.

## VII. The Aesthetic Goodwill Test

Indian courts must consider the following tripartite criteria to adopt an “Aesthetic Goodwill Test” for adjudicating disputes arising from spiritual sequels:

First, the new work’s marketing must appeal to an identifiable predecessor rather than a genre in general through the presence of marketing elements like characters, settings, and thematic keywords, which can be traced back to a single prior work and not a general creative practice.

Second, the combination of all these elements must be sufficiently close to the predecessor to make the new work reminiscent of the original, adapting the consumer confusion criterion set in place by *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*<sup>13</sup> and adapting it to entertainment products, accounting for the impressionistic rather than transactional nature of audience perception.

Third, the rightsholder of the predecessor must have suffered quantifiable harm, not only in terms of lost sales, but in terms of its brand identity being diluted, including the willingness of the audiences to pay a premium for an authorised continuation of the original’s creative universe.

A test like this would serve as an appropriate ground to differentiate between the rights of a filmmaker to use recurring thematic materials and the rights of the studio that must safeguard its investment from the unauthorised utilisation of the goodwill built into its products. This proposition is supported by foreign authoritative sources, including US case laws pertaining to trademark and trade dress law, for instance, the decision in *Twentieth Century Fox Television v. Empire Distribution Inc.*,<sup>14</sup> where the court made a clear distinction between the mere use of popular generic convention and the infringement of a unique commercial identity. The interpretation of this comparative test highlights the need for the creative industry to remain unrestricted in its use of generic conventions while also preventing any unjust enrichment deriving from the commercial success of a prior work. Importantly, such a test would place the

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<sup>13</sup> *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.* (2001) 5 SCC 73 (India). *The Supreme Court laid down factors for determining likelihood of confusion including the nature of the marks, the class of purchasers, and the degree of resemblance.*

<sup>14</sup> *Twentieth Century Fox Television. v. Empire Distribution Inc.*, 875 F.3d 1192 (9th Cir. 2017) (U.S.).

burden of proof for showing the invocation of the precursor's goodwill on the claimant.

### **VIII. Conclusion**

The spiritual sequel is turning out to be the means through which audiences' confidence can be transferred without any license. While India's IP legislation distinguishes between the protectable expression and non-protectable ideas, it fails to include the commercial exploitation of the aesthetic space where the spiritual sequel thrives. A recognition by the judiciary of an aesthetic goodwill test or further development of trade dress principles in relation to movie advertising could, in the future, provide the courts with a principle-based means of distinguishing artistic inspiration from commercial exploitation without altering the current balance between ideas and expression. Until the courts come up with a definition of when and how the "soul" of a film becomes an asset owned by the movie studio, the spiritual sequel will continue to be what the dispute between Eros and Rai showed: a ghost in the machine, powerful enough to fill theatres and overdue for legal reckoning.