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# South Korea: Titles of Musical Productions Protectable as Source Identifiers When They Have Acquired Distinctiveness

*Seol and Company v. Yu-Jung*, Korean Supreme Court  
(Case No. 2012Da13507, January 29, 2015)

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Until recently, titles of musical productions, along with titles of books and musical albums, were not protectable as trademarks under governing Korean practice (unless such titles were used for a series of works). However, a recent case from the Korean Supreme Court (Case No. 2012Da13507, January 29, 2015) has changed the landscape for titles of musical productions, holding that such titles may be protected as source identifiers under the Unfair Competition Prevention and Trade Secret Protection Act (“UCPA”).

The production company Seol and Company (“Seol”) stages performances of Andrew Lloyd Webber’s famous musical “CATS.” In October 2010, they brought an action before Seoul Central District Court under Article 2(1)(ii) of the UCPA seeking to enjoin Yu-Jung, a representative of Mudad, a drama company, from staging a musical called “CHILDREN’S CATS.” Article 2(1)(ii) prohibits acts likely to cause confusion with a third party’s business facilities or activities, and requires evidence that (a) the asserted mark is well-known as a source identifier in Korea; (b) the cited mark is identical or similar to

the asserted mark; and (c) there exists a likelihood of confusion given the similarity between the respective marks.

A decision was reached in Seol's favor in the first instance; however, on appeal, the Seoul High Court reversed and held that in order for the title "CATS" to act as a source identifier, merely conveying the content of the musical is not enough. Rather, the musical title needed to be used specifically in relation to Seol's business, and that factor was not met.

Recently, the Supreme Court reversed the High Court's decision and held that in view of the facts at hand, the title "CATS" functioned as a source identifier for the plaintiff. The Supreme Court highlighted the fact that since 2003, Seol has staged numerous productions of the musical under a license, spent significant sums in advertising the production, and the production has been seen by a wide audience. As such, "CATS" had become distinctive and associated with Seol, and therefore functioned as a source identifier. The Supreme Court noted, however, that generally the title of a copyrighted musical production simply serves to convey the content of the musical, which is not sufficient on its own to receive trademark protection.

The Supreme Court remanded the case to the High Court, which found in favor of Seol. The defendant, Yu-Jung, subsequently appealed and the matter remains pending.

## **Primary Contacts**

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