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Please note that a slightly different version has been published in the journal *Business History – Special Issue “Brand and its History”* (May 2017) edited by Patricio Sáiz and Rafael Castro

<http://dx.doi.org/10.1080/00076791.2017.1299129>

Disney in Spain (1930–1935)

Jose Bellido and Kathy Bowrey

This article looks at the ways in which the global brand par excellence – Mickey Mouse – spread throughout Spain in the early 1930s. In tracing the creative and commercial interplay with the Mickey character we show how the Disney Company failed to obtain any significant intellectual property rights in its own name or obtain a sympathetic hearing by Spanish patent and trademark officials. Yet this was undoubtedly a period of significant global development of the Disney brand. With the attempt to explain such an apparent contradictory situation, this article highlights the importance of the management of particular struggles in the flux of desires, appropriation and investments that contributed to the emergence of the elusive ‘merchandising right’.

“The route taken by Mickey Mouse is more like that of a file in an office than it is like that of a marathon runner”

(Walter Benjamin, *Selected Writings*)¹

Introduction

Today it is common for Mickey Mouse to be characterised as one of the most important, if not the most important, intellectual property assets of the modern era. The iconic status enjoyed by the character has led to the adoption of Mickey Mouse as the quintessential North

¹ Benjamin, *Selected Writings*, 545

American rodent, let loose by the Disney corporation upon the rest of the world.² Global familiarity with the character provides an opportunity to talk about the extension, globalisation and congestion of intellectual property rights, serving as a magnet for criticism and political claims about the nature and extent of corporate and legal power wielded over our everyday lives.³ However, this reading has eclipsed many interesting historical angles, and in particular the ways in which a whole new set of contractual arrangements and business configurations were put in place to support the emergence of this figure as a global merchandising legend, and how these arrangements interacted with the development of intellectual property practices. By looking at the specific case of Spain, this article explores the rise of Mickey Mouse from trademark to brand. Our study challenges the ways in which business history scholarship has focused on the importance of intangible rights to the development of the multinational and growth of global consumerism. Although we agree on the importance of trademarks to the emergence of the multinational firm,⁴ we think that there is a tendency to oversimplify the processes by which trademarks become intangible assets of the multinational corporation. The presumption underpinning much of that literature is that North American firms were naturally entitled to trademark protection in overseas territories and could easily obtain registrations and enforce these overseas with relative ease. We would like to move away from any idealised role of law presented there, where brands are often depicted as the development of legal ‘rights’ asserted by the multinational.

The distinction between the trademark and the brand has become common in marketing literature.⁵ It is described by Stefan Schwarzkopf in the following way. The trademark is treated as ‘a purely legal entity, operating in a commercial context’; and the brand is ‘embodied in icons which are protected by trademarks, while being embedded in cultural as well as commercial contexts’.⁶ The strength of the distinction is derived from its attempt to draw attention to the importance of managerial and advertising expertise and other cultural

² Kozinsky, “Mickey and Me”; Litman, “Mickey Mouse Emeritus”; Heald, “Testing the Over”.

³ Grzelak, “Mickey Mouse & Sonny Bono Go to Court”; Posner, “Response”; Depoorter, “The Several Lives.”

⁴ Wilkins, *The Maturing and “The Neglected Intangible”*; see also Chandler, “The Emergence” and Scale & Scope.

⁵ Aaker, “Dimensions of Brand Personality”; de Chernatony and MacDonald, *Creating Powerful Brands*.

⁶ Schwarzkopf, “Turning Trademarks into Brands,” 165.

factors that underpin trademark value, awareness and longevity. Again, we are sympathetic to this objective, but we think that in relegating the trademark to the ‘purely legal’ sphere, the distinction often fails to capture the historically specific forms of relations emerging between culture, economy and the law that caused intangible properties to become valuable. This is especially interesting in the case of the Disney corporation in Spain, as the company did not own any of the significant trademarks or design rights, or enforce any copyright protection, in the period we study – and yet the Disney brand still succeeded. This suggests that we need to look more carefully at the dynamics of the interrelationship between property and contract and the logistics that enabled and shaped the internationalisation of intellectual property ‘rights’. In particular, it is important to explore the ways in which appropriation and investment coalesced historically and how trademark and licensing arrangements facilitated the making of business configurations that contributed to the rise of the global brand.

International intellectual property in the early 1930s

At the outset it is important to note that there were two relevant treaties in this era for the protection of North American intangible property abroad. The Paris Convention for the Protection of Industrial Property (1883) afforded protection to patents, trademarks and industrial designs of nationals of convention countries, on the same terms as available to their own citizens.⁷ The US joined the convention in 1887, which meant that North American firms could apply for patent, design and trademark registration in accordance with the laws that applied in the jurisdiction where they sought protection.⁸ As we shall see, in the early 1930s Disney did not seem particularly interested in applying for design or trademark protection in Spain. However, a high degree of enthusiasm for the popular film character led to extensive commercial appropriation and assimilation of the character into Spanish folklore. Following from this, significant trademark registrations and design rights came to be held by Spanish traders. But when Disney complained, the rights of domestic traders were upheld by Spanish officials. It is therefore important to follow the history of these local traders who first manufactured Disney products and registered trademarks and designs to support their trade in order to consider how their profile and alignments rapidly changed at a very early stage.

⁷ Article 2 of the Paris Convention (1883); for a discussion, see generally Ricketson, *The Paris Convention*.

⁸ Seely, *History of the International Union*, 7

The Berne Convention for the Protection of Literary and Artistic Property (1886) was the treaty that facilitated international copyright protection. Although the US had not signed this copyright treaty, the Berlin Revision of 1908 provided a ‘backdoor’ solution for North American authors and artists.⁹ Non-signatory countries could qualify for protection by issuing identical release dates for the publication in the US and a Berne Union country.¹⁰ American authors and artists were also entitled to protection under Article 50 of the Spanish Copyright Law 1879, following US recognition of Spain as a ‘proclaimed country’ from 1895.¹¹ However, they were only entitled to protection as known to Spanish copyright law. It was not at all clear that cartoon characters which began their life as artistic works or drawings, known to the Spanish public through reproduction on film, could be protected from unauthorised industrial application.¹² Contrary to the contemporary understanding of ‘intellectual property’ as one comprehensive legal category that protects a wide array of intangible creations and products, in this era there was no such umbrella construct. Furthermore, as Bently and Sherman have discussed, the two international intellectual property treaties contributed to a bifurcated perception of legal rights, and along with this, a distinction between original authors and inventors and their respective protections.¹³ In turn, they were seen as piecemeal and limited avenues of protection, depending upon an intangible creation’s precise origin, form of manifestation and technicalities of specific copyright, design, patent and trademark laws.

In the 1930s, outside the established book, newspaper and music publishing industries, few corporations had the strategic insight and the managerial infrastructure in place to arrange for

⁹ Jacobson, “The Question,” 422.

¹⁰ Colino, “Copyright Protection.”

¹¹ Solberg, “Copyright Enactments,” 92; see also the Spanish Royal Orders of March 1906 and 26 June 1914 regarding the copyright registration of North American citizens in Spain; Fernández Mourillo, *Legislación y Propiedad Intelectual*, 131–132.

¹² Design protection of Mickey Mouse was not sufficient in the UK; see Anon., “Mickey Mouse in Court.” For a similar comment on the possible existence of a legal gap, see Cabello Lapiedra and Martínez Garcimartín, *La Propiedad Industrial en España*, 123.

¹³ *Sherman and Bently, The Making*, 162.

effective foreign copyright protection, even assuming that this was available for film characters. Yet what our study reveals is how rights and relations were still able to be asserted through licence agreements entered into with local manufacturers and traders, regardless of the formal legal credentials of Disney's copyright and industrial property ownership claims. These processes of negotiation and selection of local traders that had already established a market advantage led to the initial deployment of Disney agents and the appointment of licensees who ironically became more interested in trying to control the circulation of Disney products in Spain than Disney itself. In fact, as we shall see, licensees developed a more active role in opposing further Spanish Mickey registrations immediately after their appointment. So, rather than narrating a clear development of legal protection and expansion underpinning the transition from trademarks to brands, this history shows a more complicated assemblage of contacts, arrangements and appointments. Despite (or precisely because of) the limitations of intellectual property protection in Spain, the interactions between Disney and local commercial enterprises triggered a set of particular relations in which the object or property transacted was not just the use of a sign but the timely provision of specific services, publicity and information regarding the availability of Disney characters. The establishment of distinct managerial and contractual arrangements with affiliated local traders fragmented and dispersed earlier playfulness with the character. Combined with the rise of the international advertising firms that coordinated publicity campaigns and releases, these business and legal strategies helped secure a strong connection between Mickey, Disney and Disney-affiliated enterprises. Marketing ventures centring on licensed products, magazines and catalogues captured the imagination of fans and channelled goodwill into modes of consumption that served to reinforce authorised readings of signs, precipitating a shift from trademarks to brands and making the idea of a global franchise possible.

In tracing the ways Disney adapted to the cultural, legal and business conditions of 1930s Spain, we show the importance of managerial strategies, the emergence of commercial and legal infrastructures, and the contingent use of 'borrowed' local knowledge and expertise, to the emergence of international brand consciousness in the early twentieth century. We argue that contrary to what is often claimed by Disney's many critics, the remarkable success of the enterprise was not attributable to the unfolding of any grand corporate plan lying behind Mickey's endless iterations, set loose from a Californian home base. Rather, the enterprise was, for its time, unusually adept and flexible in embracing and enrolling local interests and

enterprises open to business negotiation and collaboration that allowed the firm to capitalise on relevant manufacturing and trading opportunities, developing new forms of professional marketing and licensing expertise. Sensitivity to cultural, legal and economic contingencies was central to this success. It was the variety of these connections, modulations and interactions, more than any development of international intellectual property protection, that laid the foundation for the far more extensive intellectual property claims that came to distinguish the enterprise later in the twentieth century.

Of mice and magic

In December 1930 Carlos Gea contacted a distinguished trademark agent, Alfonso Ungría,¹⁴ with the idea of registering a peculiar sign in the Spanish Patent and Trademark Office.¹⁵ Gea was a well-known figure of the citrus industry in Valencia,¹⁶ one of those entrepreneurs who had contributed to making the fruit desirable all over the world.¹⁷ Although the fruit came from orange groves near Valencia, its production was mainly destined for export.¹⁸ So, he decided to distinguish his products with a pictorial representation of a mouse, described in his application as ‘popularised on films’.¹⁹ That mouse was none other than the famous character Mickey, with the long shoes and the oval buttons on his shorts. The following legend was inscribed above this figure, in case of any doubt: ‘Mickey Oranges’ (see Figure 1).²⁰ The application was particularly significant because trademark registrations, printed labels and

¹⁴ Ungría, who had been a diplomat, became a member of the Spanish Institute of Trademark and Patent Agents in 1929, see letter Ungría to the President of COAPI, 11 September 1929 in COAPI Archives. His patent and trademark agency was founded in 1891; see ‘Advert’ *Diario La Vanguardia*, 1 November 1929, 4; see also Ungría, “Ley y Práctica en materia,” 13–31.

¹⁵ Power of Attorney from Gea Uberos to Ungría, Valencia, November 1930; File 83, 398; AHOEPM.

¹⁶ ‘Obituary’ *Diario ABC*, 4 August 1972, 74.

¹⁷ Vicente Abad notes that the zenith of the Spanish orange exports was 1930; see Abad, *Historia de la Naranja*, 249.

¹⁸ References to agricultural trademarks with a suggestion that they could have been regulated differently can be found in Péraire, *La marca de fábrica. Comentarios a la legislación vigente. Jurisprudencia civil y penal* 23.

¹⁹ Trademark application from Carlos Gea Uberos, 3 December 1930, File 83, 398; AHOEPM.

²⁰ Description of the application; File 83, 398; AHOEPM.

artistic design packaging were among the material features that allowed oranges to shift from simple agricultural products to marketable commodities.²¹ If there was one product or trade that epitomised Spain in this period, it was the orange.²² These Valencia oranges were for international distribution and the first Mickey trademark registration in Spain was in class four of the nomenclature: oranges.²³

Gea's interest in the packaging of his oranges for export shows the international spread of an American 'paradigm shift' in the packaging and marketing of mass market and consumer products.²⁴ If there was an association that could make the products more attractive to the consumers, and in particular to Americans, it was the celebrity of the moment: Mickey Mouse.²⁵ In developing the international market for citrus, Gea sought to combine the local and the global, to create a 'context of consumption'²⁶ by linking the local product to a famous image to catch the attention of distributors and consumers. Less than two weeks after the application, 'Mickey Oranges' was published in the Spanish official trademark gazette.²⁷ No opposition was filed and having passed all the requirements stipulated in the corresponding trademark law,²⁸ the application was successful.²⁹ In February 1931 a registered trademark

²¹ See Hudson-Richards, *The Orange Proletariat*; See also Arroyo, *Las etiquetas naranjeras*; Mir, "Etiquetas de alimentos. Frutas. Miscelánea"; EPH/554(1)-EPH/554(18) in BN.

²² On the debate concerning the citrus industry as the main source of Spanish national wealth in the 1930s, see "La calidad de la naranja exportada," 6; Malboysson, "El maravilloso espectáculo," 25–27. That oranges conquered the Spanish imaginary is also reflected in novels (Ibañez' *Entre Naranjos*) and mascots (the 1982 world cup mascot organised in Spain, was unsurprisingly, an orange).

²³ Sánchez Pérez, *La Propiedad Industrial*, 233.

²⁴ Twede, "History of Packaging," 117–119.

²⁵ See revista Gutiérrez, 6 December 1930, 18–19; "Cosas del Cine," *La Vanguardia*, 3 January 1931, 14 ["The Star That Interests Us Now is Mickey Mouse"]; "Ecos y Noticias," *La Vanguardia*, 1 May 1931, 16; Abad, "The Orange Trademarks," 126 (these marks had the 'clear intention of promoting the consumption of these marks among the infant population, offering at the same time the possibility of collecting different scenes of their favourite characters printed on the paper where the oranges were packed up').

²⁶ Arvidsson, "Brands: A Critical Perspective."

²⁷ *Boletín Oficial de la Propiedad Industrial*, X; for some references to the institutional history of trademark law in Spain, see Sáiz and Fernández Pérez, "Catalonian Trademarks."

²⁸ *Estatuto sobre Propiedad Industrial, aprobado por Real Decreto-Ley de 26 de julio de 1929* (Industrial Property Code, approved by Royal-Decree Law, July 1929).

was granted to Carlos Gea for ‘Mickey Oranges’. This was the first Mickey Mouse mark introduced into the Spanish Patent and Trademark Office and Gea was given a certificate of registration that constituted a *juris tantum*, a rebuttable presumption that the property right

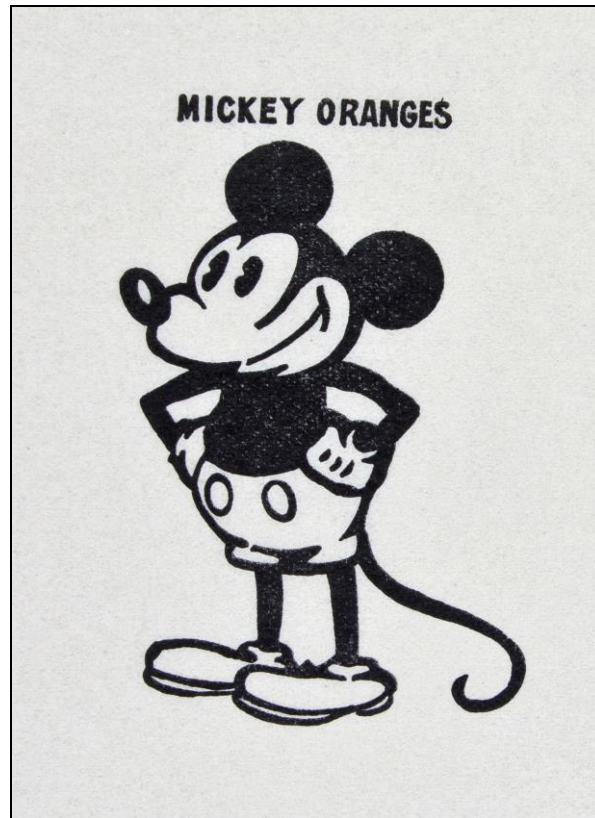


Figure 1. Spanish registered trademark 83,398
Courtesy of AHOPM

noted on the register was valid.³⁰ Soon another application followed suit. This application came from a rival citrus entrepreneur from the same province.³¹ However, there were some differences in the label design. Instead of a verbal reference to the character, the new application relied on an overall visual connection, showing the delightful mouse juggling

²⁹ Certificate of Registration, 21 February 1931, File 83, 398; AHOEPM.

³⁰ See Ladas, *Patents, Trademarks, and Related Rights*, 1067.

³¹ Trademark application from Enrique Dealbert Nebot, File 84,619, AHOEPM, filed 11 March, 1931.

oranges.³² In order to avoid being held confusingly similar, the application transliterated the word ‘mouse’ (‘maus’) and dropped one letter to become ‘Micke’ (see Figure 2).³³ However, these efforts were not enough. Although crate labels decorated with Mickey in full juggling mode captured the trade connection even better than the first sign, arriving a few weeks later at the office meant that the registration was limited to fruits except oranges.³⁴ The chances of making a difference in a competitive marketplace resided not in having an exclusive right to a Mickey mark but in the productive use of the figure to advertise products. Mickey was so popular a film character that, as with Felix the Cat a few years earlier,³⁵ he generated a marketing craze.

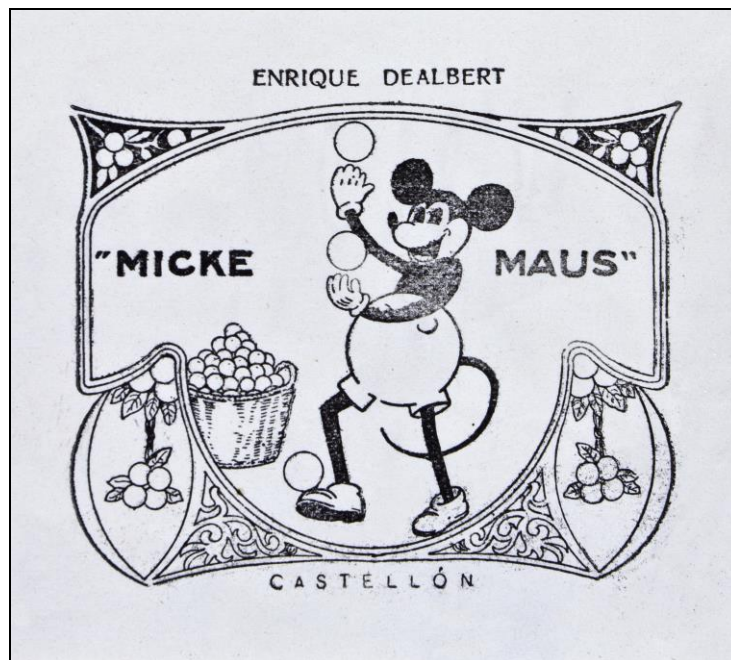


Figure 2. Spanish registered trademark 84,619. Image courtesy of AHOEPM

³² Description of the trademark, Enrique Dealbert Nebot, File 84,619 AHOEPM, filed 11 March, 1931

³³ Trademark Application, File 84,619; AHOEPM, filed 11 March, 1931.

³⁴ Certificate of Registration, File 84,619, AHOEPM filed 23 July, 1931. Trademark law requires traders to stipulate a class of goods to which a particular mark will be applied and further tries to prevent a monopoly emerging that could restrict the rights of other traders in that class by allowing for more fine-grained delineations of rights for competing marks.

³⁵ Felix the Cat and Mickey Mouse both began their corporate lives with the same New York agent, Jack Warner’s former secretary, Margaret [Mintz] Winkler. See Canemaker, *Felix*, 89–95.

Throughout the early 1930s images of celebrities were used to advertise a huge range of products, including sweets and other junk food available for purchase, much of which was individually wrapped and sold in corner stores. For instance, one American parenting manual from 1928 was so concerned by the health implications of this development that the book recommended mothers combat children's resistance to unhealthy foods by mastering the art of 'selling food to children' themselves: 'Why not name a few dishes after these heroes? Why not 'Babe Ruth's Home Plate' or 'Mary Pickford's Beauty Compound'?'³⁶ This strategy was suggested as the foundation for an ambitious campaign to get children to eat spinach three times a week. Spanish Mickey fruit labels reflected a similar interest in 'updating' the image of traditional foods, such as the humble orange, in the face of the increasing availability of new manufactured snack foods. Soon, Pedro Monsonis, another well-known citrus entrepreneur from the same Spanish region,³⁷ labelled his oranges with trade material depicting two Mickeys pulling a giant orange apart.³⁸ His label also included what some commentators have identified as a trademark constant: the introduction of quality indicators (see Figure 3).³⁹

³⁶ *Mother's Own Book*, 61.

³⁷ Caballer, "Enrique Monsonis, un liberal convencido"; *Diario El País*, 8 October 2011; See also Monsonis, *Memorias incompletas* and Monsonis "Extrema preocupación."

³⁸ Lit. J. Aviñó. Valencia, 1930. See also Mir, "Etiquetas de alimentos. Frutas. Miscelánea," 184.

³⁹ Abad, "The Orange Trademarks," 125.

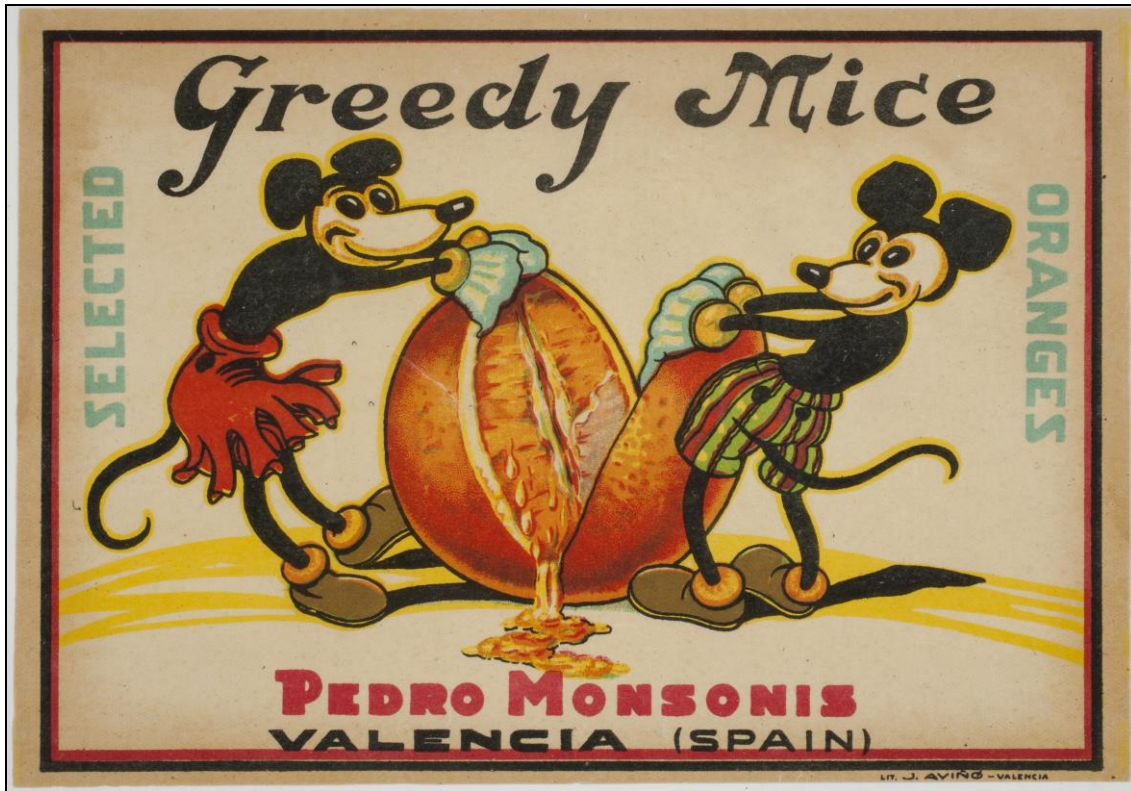


Figure 3: Pedro Monsonis (Valencia) – Unregistered Label. Courtesy of Rafael Llop

Another key figure in the Spanish citrus industry, José Ventura, also tried to create an emotional attachment to his products by using the figure of the lovable mouse. Ironically, the proliferation of similar signs and the particular dynamic context from which these marks sprang paved the way for a creative contest in which the victorious protagonist was undoubtedly Mickey. In popular terms, the mouse had definitely defeated the cat (see Figure 4).⁴⁰ While fruit labels began as marketing tools directed at retailers and distributors, with the trademark most visible on the packing crates, Mickey was also deployed as a signalling device to individualise oranges themselves.⁴¹ In 1930, a citrus export group from Valencia and Alcoy was granted permission to install a new machine that issued silk and tissue paper

⁴⁰ De Mantilla, “Las películas de dibujos animados,” 7; Centeno, “Dibujos Sonoros,” 17; Gómez Mesa, *Los films de dibujos animados*.

⁴¹ For a history of these packaging devices, see Karp, “Orange Wrappers,” 119–124. See also some brief comments in Hyman, *Oranges. A Global History*, 52–53.

to wrap and pack oranges.⁴² For some citrus entrepreneurs, Mickey became an ideal mark to be used in orange wrappers because he could distinctively personalise the humble, individual orange. Moreover, his popularity was imagined to be a magnet to attract the consumer's eye to their oranges, marking their goods out from the near identical produce of the other traders.⁴³ The sign was specifically designed to help distinguish the oranges in fruit shops. In that sense, it marked a crucial stage in the transformation of oranges into commodity products.⁴⁴ Since crates were easily discarded by retailers or distributors, enfolding the orange in wrapping paper helped the trademark to survive shipment contingencies. As we can see from the illustrations, both crate labels and orange wrappers appealed to the foreign eye.⁴⁵ The accompanying messages were not written in Spanish but in the language of the importing country in which these oranges were going to be sold.⁴⁶

Mickey was seen as a naughty, magical film star, a distinctive cultural artefact that came to represent an object and an anthropomorphic subject in one. He was described by American film critic, Leonard Maltin, in these terms: 'Now his eyes had irises and pupils, which meant that they looked more realistic, more human and could effect a greater range of expression, perhaps it might be imagined that Mickey Mouse was also in possession of a soul.'⁴⁷ Anthropomorphism has been well studied in anthropology, psychology and marketing literature.⁴⁸ As evidenced in cave drawing and folklore, attributing human qualities to

⁴² Comité Regulador de la Industria del Papel, *Gaceta de Madrid*, 192, 11 July 1930, 272.

⁴³ 'A new advertising advance was the printing of marks on the silk papers where oranges were packed up; so the advertising of a particular trademark could come sooner to consumers, who could ask for them at their particular fruit shop, if the orange had their quality requirements' in Abad "The Orange Trademarks," 125. See also Abad "La publicidad naranjera," 382.

⁴⁴ Franck Cochoy has traced the material agency of 'packaging'; see Cochoy, "A Brief Theory." See also Pottage, "No (More) Logo."

⁴⁵ As Vicente Abad notes, some traders 'worried about designing their marks according to the tastes of the markets to which they were addressed' in Abad, "The Orange Trademarks," 125.

⁴⁶ Trademarks and labels written in a foreign language were accompanied by the name of the manufacturer and his or her locality as stated in Péraire, *La marca de fábrica*, 39.

⁴⁷ Maltin, *Of Mice and Magic*, 40; as cited in Leslie, *Hollywood Flatlands*, 32.

⁴⁸ See for example, Brown, *Human Universals*; Baker, *Picturing the Beast*; Levy, "Dreams, Fairy Tales, Animals, and Cars."

inanimate objects was considered a universal phenomenon. It helped children interact with and relate to the non-material world and to understand the social order.⁴⁹ Anthropomorphism was, however, also particularly useful to advertisers who, by their selection, sought to invest otherwise mundane goods with a range of emotional qualities to make them appear more interesting and attractive. In trademark terms figurative marks were readily recognisable, often bearing known qualities that can be appropriated to the product that adopts the sign.⁵⁰ However, whilst traditionally the tiger, for example, might signal strength, the arrival of cinema brought with it the capacity to communicate emotional qualities on a mass, cross-cultural scale.



Figure 4. Jose Ventura Oranges (Alcira)- Unregistered Label
Courtesy of Museo de la Naranja de Burriana

⁴⁹ Fournier “Consumers and Their Brands,” 344.

⁵⁰ Mollerup, *Marks of Excellence*, 128.

A glance at these fruit labels and orange trademarks evidences what Henry Jenkins once described as the logic of emotional intensification that shapes most popular culture.⁵¹ Mickey was interviewed, had birthdays and cool fan clubs.⁵² The character was simultaneously traded, read and transacted. In that specific sense, Mickey was a feisty companion to play with, to learn and to have ‘fun’ with. The broader media interest in Mickey, making the mouse ‘one of us’,⁵³ was a trend highly visible in Spanish newspapers and magazines.⁵⁴ This cultural activity only further invested registered and unregistered Mickey-inspired trademarks with commercial value wherever the reportage extended, and this in turn encouraged further appropriations.

The uses of enchantment

Mickey’s media ubiquity generated distinctive local effects. Imaginings of the mouse were quickly merged with local folktales, stories, and myths already in place in Spain. For instance, newspapers reported Mickey’s engagement in traditional festivals.⁵⁵ To some extent it could be argued, as Rosemary Coombe suggests, that ‘texts protected by intellectual property laws [...] are cultural forms that assume local meanings in the lifeworlds of those who incorporate them into their daily lives.’⁵⁶ Yet there is an important issue to be noted here: as discussed above, there were no Spanish intellectual property rights held by Walt

⁵¹ Jenkins, *The Wow Climax*, 3.

⁵² Escobar, “Mickey y Minnie: dos actores internacionales” *Diario El Sol*, 4 June 1933, 8; “Aniversarios- El del nacimiento de Mickey Mouse” *La Vanguardia*, 21 October 1933, 10; “El aniversario de Mickey Mouse”, *La Vanguardia*, 1 December 1934, 15; “Mickey Mouse ha cumplido ya siete años” *La Vanguardia*, 14 September 1935, 15; “Como se celebrará en el extranjero el aniversario de Mickey Mouse” *La Vanguardia*, 17 September 1935, 17.

⁵³ “Introduction” in Craig and Morra-Yoe, *The Art of Mickey Mouse*, 8.

⁵⁴ “El Teatro y el Cinema” *Ellas*, 4 September 1932, 13; “Mickey visita la exposición de Chicago” *La Vanguardia*, 30 November 1933, 12; “Quizá la sorpresa más grande que tuve durante el viaje fue al tropezar con Mickey y Minnie en Manchuli. Allí estaban, de tamaño natural y casi como quien dice coleando [...]” *La Vanguardia*, 11 December 1934, 19; “Mickey demuestra entender en mecánica,” *La Voz*, 18 December 1934, 7.

⁵⁵ “Mickey Mouse admira las fallas valencianas” *Mundo gráfico*, 26 April 1933, 16.

⁵⁶ Coombe, *The Cultural Life*, 7.

Disney in the early 1930s.⁵⁷ Disney lodged no trademark or design registrations. Copyright in an artistic work did not prevent industrial uses of a derivative design. Neither was a corporate strategy clearly established to directly profit from the mouse beyond the money the animated cartoons could generate outside of the US. There were some ad hoc merchandising arrangements in place across Europe, such as the licensing of a Mickey Mouse doll made by the British company Deans and Sons in 1929,⁵⁸ where Deans had registered the design rights in their own name.⁵⁹ More permanent arrangements were beginning to be considered with Disney's engagement of an agent, William Banks Levy, in London in 1930.⁶⁰ Levy had previously worked as general manager for Powers Cinephone, a company that manufactured sound equipment for the cinema that was used by Disney from 1929.⁶¹ He was tasked with licensing Mickey in the UK.⁶² There was a similar arrangement with US toymaker Georg Borgfeldt & Co, who had also registered German Mickey trademarks in association with Disney in 1930.⁶³ Yet for the most part Disney was playing catch-up in Europe – reacting to, rather than initiating, international merchandising activity. In this regard, although North American corporations were effectively exploring patent pools and seeking trademarks which impacted upon the development of various industries,⁶⁴ in this era the activity appears to have been limited to attempts at developing managerial control over the technologies of mass manufacturing abroad. It needs to be noted that one of the techniques adopted in the 1930s that aided syndication by allowed for a speedy Trans-Atlantic transmission of imagery was the dry mat or matrix.⁶⁵

⁵⁷ This is rather surprising since it is now commonly accepted that 'Mickey was created after the Disney Brothers Studio lost the rights to Oswald the Lucky Rabbit,' in Peterson, "Disney, Walt (1901–1966)," 272; see also Bain and Harris, *Mickey Mouse*, 12; Maltin, *Of Mice and Magic*, 34.

⁵⁸ Tumbusch, *Disneyana*, 35; Miller, *The Dean's Rag Book Company*, 48–53. See also generally Cope and Cope, *Dean's Rag Books*.

⁵⁹ Design Registration Number 750,611, Class 12; BT52/1,435; NA, filed 6 December 1929.

⁶⁰ Johnson, Ehrbar, and Ghez, *Inside the Whimsy Works*, 47–48.

⁶¹ Kellogg, "History of Sound Motion Pictures," 356.

⁶² 'George Kamen appointed....' *Playthings*, July 1933: 60.

⁶³ See Gerstein, "Mickey Mouse Annual"; Ghez, *Disney's Grand Tour*, 22; Barrier, *The Animated Man*, 83.

⁶⁴ Serafino, "Survey of Patent Pools."

⁶⁵ Bellido "King Features Syndicate, Inc. and Betts v O. & M. Kleemann Ltd. (1940)," in Bellido, *Landmark Cases*.

Contemporary cultural studies and intellectual property scholars often criticise Disney as housing corporate plans to appropriate and homogenise national folklore, particularly after the success of the film *Snow White and the Seven Dwarfs* (1937).⁶⁶ But the dynamic in Spain was precisely the opposite. There was no plan to appropriate traditional narratives and folk tales. However, Mickey's popularity unintentionally brought the mouse into interaction with local myths and legends. Suitably nicknamed 'Ratón Miguelito',⁶⁷ the first encounter the Spanish Mickey had with a local narrative was with another anthropomorphic mouse: a character from an anonymous fairy tale legend known as 'Ratón Pérez'.⁶⁸ Unlike Mickey, Pérez was a tooth fairy in a tale that had its origins in oral tradition and had made an appearance in the printed world via a book written by Luis Coloma in 1902.⁶⁹ The meeting between mice was so productive for the Spanish and Latin American media that some commentators rebranded Mickey (or Miguelito) as Ratón Pérez, while others preferred to think of a battle between them.⁷⁰ These games of free association also influenced some corporate attempts to register a new Mickey trademark. In the summer of 1931 the Spanish Patent and Trademark Office received a trademark application depicting a grotesque version of Mickey Mouse playing the fiddle (see Figure 5).⁷¹ While it is possible to recognise the Mickey image from the film released by Disney in 1930,⁷² the striking point to note here is that the application was not made by the US company itself but by a company located in Barcelona, the record and publishing company Odeon S.A.

⁶⁶ Zipes, "Breaking the Disney Spell."

⁶⁷ *La Vanguardia*, 9 September 1934, 12; Chapman, "Mickey Mouse and Other Things," 271–272.

⁶⁸ "El Ratoncito Pérez (Mickey Mouse) se une a los Artistas Asociados" *La Vanguardia*, 1 May 1931, 16; "Todo el mundo conoce al saladísimos Mickey Mouse, o sea el Ratoncito Pérez" in "Ecos y Noticias" *La Vanguardia*, 16 June 1931, 19.

⁶⁹ See, generally Pedrosa, *La historia secreta del Ratón Pérez*.

⁷⁰ Fernando G. de Mantilla 'Las películas de dibujos animados' *El Imparcial*, 7 September 1930, 7; Carlos Fernández Cuenca, 'Las películas de dibujos' *La Época*, 15 January 1931, 3; 'Mickey Mouse admira las fallas valencianas' *Mundo gráfico*, 26 April 1933, 16; Bayardi, *Ratón Pérez*.

⁷¹ Description of the trademark, Odeón, SA, File 0,086,388; AHOEPM, Filed 28 July 1931

⁷² The film was *Fiddlin' Around*. See Maltin, *Of Mice and Magic*, 345.

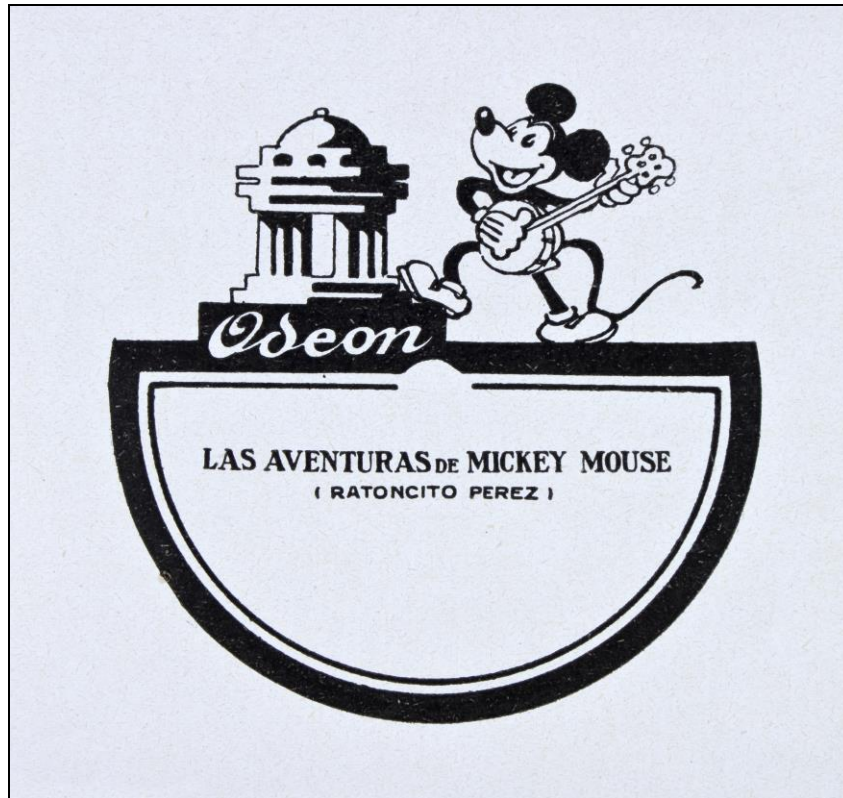


Figure 5. Spanish registered trademark 86,388
Courtesy of AHOEPM

Represented by the doyen of Spanish trademark agents, Alberto de Elzaburu,⁷³ the application was for a label to be applied on discs in order to distinguish a song written by Harry Carlton.⁷⁴ Curiously, and somewhat ironically, the trademark combined the names Mickey Mouse and Ratón Pérez to fix the connection in the mind of Spanish consumers.⁷⁵ However, the impression did not last. No Spaniard today would identify Mickey with Pérez. Each mouse came to lead a distinctive commercial life. A plausible explanation as to why the

⁷³ Power of Attorney from Odeón, SA to Elzaburu, 21 July 1931, File 0086388; AHOEPM; the firm (Elzaburu) was founded in 1865 and was one of the most active members of the International Association for the Protection of Industrial Property since the late nineteenth century; see “Asociación Internacional para la Protección de la Propiedad Industrial” *Industria é invenciones*. 28 May 1898, n. 22, 11; see also de Elzaburu “Comentarios sobre Propiedad Industrial” *El Sol*, 5 July 1924, 6; *Annuaire de l'Association internationale pour la protection de la propriété industrielle* 4 (2) 1932: 77.

⁷⁴ Holliss and Sibley, *Mickey Mouse*, 23.

⁷⁵ “El famosísimo disco Odeón Ratoncito Pérez (Mickey Mouse) lo vende Zato, Peligros, 14” in “Noticias e Informaciones Diversas,” *diario ABC*, 28 December 1930, 71.

two characters came to be distinguished over the years is not to be found by reading the records of the law courts. No case was ever brought to delineate what was public and what was private around any intangible property rights that could be claimed. However, it might be possible to hypothesise an answer outside of positive law.

In the 1920s and 30s cinemas would rent films from distribution companies, and film trade magazines and ‘film exploitation services’ provided creative marketing advice and advertised strategies to independent cinema owners to accompany new and popular releases.⁷⁶ With the arrival of children’s films and Saturday children’s matinees, children-centred social activities were also encouraged. These could involve talent contests, competitions, fancy-dress and tie-ins with local businesses. The Mickey Mouse fan club owes its heritage to this practice.⁷⁷ Though presented as innocent, family-oriented community activity, it is a good example of the commodification of play, where spontaneous, ‘natural’ social behaviour of children that has little direct economic value comes to be organised into social activity that is much more economically productive. The fan club and the overall interest in Mickey played a critical role in constructing a distinctive cultural popular icon, a media personality, consequently helping to differentiate the authorised character from that of other local legends.⁷⁸ Fan clubs provided an opportunity for the social regulation of fans. Guided by the Disney campaign booklet, the clubs helped promote desired readings of the character and to ‘correct’ unwelcome local associations, such as the connection with Ratón Pérez. Fan clubs played a normative role in delineating property boundaries and investing trademarks with preferred meaning. By 1932 Mickey Mouse clubs boasted more than a million members.⁷⁹ Spain was

⁷⁶ ‘Publicity in Practice’ *The Bioscope Service Supplement*, 7 November 1928, iii; ‘Selling Angles’ *The Bioscope*, 12 November 1930, 31–33; ‘An ideal set of publicity aids’ *The Bioscope*, 18 February 1931, xiii; ‘Selling the Picture to the Public. Goodwill and How to Get it’ *The Bioscope*, 9 August 1929.

⁷⁷ ‘The principle elements of the Mickey Mouse Club scheme were outlined in a general campaign booklet published in 1930 by the Disney Company. According to the plan, exhibitors would arrange a series of Saturday matinees for children, organizing the audience for these matinees into a club built around the character of Mickey Mouse. ... The club programs were not designed simply to appeal to children, but to incorporate as fully as possible the cultural activities within a community’ in deCordova; ‘The Mickey in Macy’s Window,’ 207.

⁷⁸ See Martínez, ‘Apuntes para una historia de los tebeos.’

⁷⁹ Alcacer & Collis, ‘Walt Disney Company’; Thomas, *The Walt Disney Biography*, 80; Watts, *The Magic Kingdom*, 147.

not an exception.⁸⁰ The Mickey fan club not only contributed to making sales,⁸¹ it facilitated Mickey's universal appeal at the grassroots, removing the cultural resonance of local attempts to ascribe different characteristics to the popular figure so he could 'correctly' function as an international brand. Clubs were, however, only one of the important means by which consumers were directly linked to the production, marketing and distribution of Mickey Mouse as a distinctive form of intangible property.⁸²

Toys, sweets and biscuits

Toys, cigarette cards and sweets associated with popular children's film characters were an obvious tie-in.⁸³ As Kenneth Brown has recently noted in relation to toys, all these objects constitute the epitome of a modern consumer good: 'a non-essential item subject to a demand that fluctuates not only with the availability of disposable income but also according to the whims of popular taste and fashion'.⁸⁴ The commercial value of tie-ins was noted by Roy Disney: 'The sale of a doll to any member of a household is a daily advertisement in that household for our cartoons and keeps them all Mickey Mouse Minded.'⁸⁵ The orange trader's distinctive marketing plan was significantly undermined when Spanish candy bars bearing Mickey Mouse also emerged to compete for consumer attention. Mickey also started to take the form of distinctive toys, locally made. One citrus entrepreneur astute enough to see profit in these media flows was Rogelio Sanchís Bernia (1888–1936), who supplemented his citrus trade by making toys in a small town in the region of Valencia.⁸⁶ In the late 1920s his toy

⁸⁰ *La Vanguardia*, 3 February 1933, 13.

⁸¹ Pellisier, "Making Sales Through Clubs," 40.

⁸² For an insightful reference to the first years of merchandising and the changing managerial attitudes developed by Disney, see Gadducci and Tavosanis, *Casa Disney*, 9–11.

⁸³ As a trade journal noted in the summer of 1930, 'Mickey Mouse means business' *The Fancy Goods Trader*, July 1930, 9; see also "La enorme popularidad del ratón Mickey," *La Vanguardia*, 12 May 1933, 16.

⁸⁴ Brown, *Factory of Dreams*, 110.

⁸⁵ Roy Disney as quoted in deCordova, "The Mickey in Macy's Window," 205. DeCordova notes 'the Disney Company was interested in the publicity value of these items as much as the substantial royalties they would generate'.

⁸⁶ 'In 1926, Sanchís started up a tin toy company at the castle, naming the firm 'La Isla.' 'I don't think he had any previous experience in toy manufacture,' said Wengel. 'He started in fruit packing and somehow got

company, La Isla, was getting a name for making distinctive toys representing Hollywood film and cartoon stars such as Felix the Cat, Laurel & Hardy and Buster Keaton.⁸⁷ Immediately after Mickey was released, he incorporated the mouse into his portfolio of tinplate sparklers and wind-up toys (see Figure 6).⁸⁸ What made these toys remarkable was not that they were – as one collector says – ‘the finest Disney wind-ups ever made’.⁸⁹ Rather, their most interesting feature was how they became to be considered as ‘Disney toys’. The combination of distinctiveness and local imagination was not only attractive to children – Disney representatives in Europe appear to have been so enchanted with Rogelio’s toys that, instead of suing him, they decided to enrol him as a licensee.⁹⁰

interested in toys. That’s amazing, because the toys are of such great quality and are so complex,’ in Saunders-Watson, “La Isla Toys,” 20. See also generally ‘Rogelio Sanchís’ Oranges Fruit Crane Label’ in RS.

⁸⁷ Lobel, “Spanish Dancing Sparklers”; Sellés, *Juguetes valencianos; Avilés, Informe*, 6.

⁸⁸ Saunders-Watson, “La Isla Toys”; see also Wengel and Wengel, “Origins and Examples,” 36–40.

⁸⁹ Saunders-Watson, above, 22; Hillier and Shine, *Walt Disney’s Mickey*, 45 [‘As far as character toy making in Spain is concerned, Rogelio Sanchís is the beginning and the end. He was a genius at designing and producing toys’]. See also Hendeles et al., *Partners*, 21; Bock, *Exhibiting Trauma*, 29–31

⁹⁰ Contract between Walt Disney Enterprises and Rogelio Sanchís; 6 September 1934 in RS. It is also worth noting that the cheeky incorporation of a caged Felix the Cat, carried by a mouse, in the toy clearly speaks to the supremacy of the newer character on the scene.



Figure 6: Minnie Mouse carrying Felix in a cage (RS La Isla Toys)
Courtesy of Hake's Americana & Collectibles

It should be remembered that it would have been difficult for Disney to sue. The La Isla toy could not be described as an unauthorised appropriation of Mickey or a 'piracy', given that Disney had still failed to register any trademarks or design rights in Spain, and the scope of copyright protection for industrial objects was at best, undetermined. Indeed, if Disney had lodged applications for industrial rights, as will be discussed shortly, it is not clear how any registrations would have been determined. Yet, such was the confidence of the Disney company's entitlement to authorise all Mickey-related enterprise that in September 1934 the new Disney representative for Spain, Portugal and Italy, Pierre de Beneducci, granted La Isla one of the first Disney licences for Spain.⁹¹ While close analyses of early Disney contractual

⁹¹ For an interesting reference to Beneducci's role in Italy, see Gadducci, Gori, and Lama, *Eccetto topolino*, 86. Disney distributed Europe into two territories and appointed two representatives. While Beneducci was in

arrangements are scarce, probably due to the restrictions of access imposed by corporate archivists and lawyers,⁹² these documents are an invaluable source for considering the ways in which intellectual property ‘rights’ were conceived, negotiated and constituted in this period. The Spanish 1934 contract appears to have been Disney’s main attempt to assert intangible ‘rights’ over what were aspirationally described as ‘Disney creations’. This generic term elides the legal definitional problem of the rights constituted by the agreement. The content of the rights came to be defined by the business practices engaged to commodify the ‘creations’. Interestingly, Disney placed itself under the specific obligation to provide samples and models that might be suitable for character merchandising to the licensee. In return, La Isla conceded by giving Disney the right to approve the Disney products they created. The constant exchange of information and materials authorised by the contract created a dynamic logistical network that generated the possibilities for exploitation and creation of ‘intellectual property’ value. Although the contract included a security clause, the commission fee paid by the Spanish licensee was significantly low (5%), a term that surely made the engagement attractive to the local manufacturer. Another element that made the contract particularly interesting was the careful way in which it limited the scope of the right to manufacture ‘Disney creations’. Disney framed the right as only covering tin plate and mechanical toys. This confinement followed a similar logic to that of the trademark registry, carving out the specific goods and services for the constitution of a trademark, while leaving open the potential for other exclusive licensing arrangements that could arise utilising other equipment and plant.

In sum, the La Isla contract illustrated an early Disney synergistic business practice,⁹³ an attempt to strengthen the marketing chain by enlisting entrepreneurs who were already manufacturing Disney products locally. Rather than being a threat, unlicensed Spanish ‘pirate’ activity initially helped develop the value of the Disney brand in Spain. It made more

charge of Portugal, Spain and Italy, William Banks Levy and then George Kamen, were appointed to manage Disney merchandising in London; see Munsey, *Disneyana*, 81–85; see also the contract appointing Beneducci as the Disney representative in Southern Europe in ‘Mondadori – 1934–1974, bb. 3’ in AME.

⁹² On the history of these archives, see Smith, “The Walt Disney Archives”.

⁹³ Wasko goes further to claim that with Disney, ‘synergy’ involves establishing an ‘architecture of merchandising’ in Wasko, *Understanding Disney*, 159. However, we would argue that in this era the arrangements lacked the degree of solidity or permanence suggested by her structural metaphor.

commercial sense to work with existing channels and bring them into the fold. Outsourcing manufacturing also avoided the administration and costs associated with tariffs on imported goods and with establishing new distribution and retail chains.⁹⁴ This low-key strategy allowed the company to quickly and efficiently establish a presence in new areas, connecting the US company with a much broader class of goods and services. An association with Disney was facilitated, regardless of the actual origins of the product design and manufacturing. Instead of using the law defensively, an informal use of intellectual property claims served as a framework to set up the conditions for international production and distribution going forward. These local engagements are also credited with providing a feedback effect for Disney's future creativity. As Forgacs has observed:

[I]t is likely that the success of character licensing and merchandising, which took off almost immediately after the film debut of Mickey Mouse in 1928, played a part in shifting Disney animation towards both cuteness and a more 'family'-oriented product because it demonstrated the potential of the toys and gadgets market as a source of additional revenue. The syndication to newspapers and magazines of cartoon strips (handled by King Features Syndicate) and the licensing arrangements with foreign publishers probably reinforced this feedback effect on the Studio, because they confirmed the worldwide success of the core Disney characters (Mickey, Goofy, Donald, the Three Little Pigs) and encouraged the Studio to produce more characters like them who could undergo development in the comics and consumer goods markets.⁹⁵

After the citrus entrepreneurs, the second wave of businessmen to come to the Spanish Patent and Trademark Office, hoping that a registered Mickey would distinguish their products, were the makers of biscuits and sweets. A confectionary manufacturer successfully registered the trademark 'Miki' for biscuits in 1933.⁹⁶ One year later, biscuit entrepreneur María Bea Biosca visited the patent and trademark office with similar ambitions.⁹⁷ The subject of her trademark application, a humorous drawing of Mickey Mouse with large hands and open

⁹⁴ The US Depression era 'Smoot-Hawley' Tariff Act 1930 increased tariffs on over 20,000 items, leading to retaliation by America's trading partners including Spain, who removed most favored nation treatment. See Jones, *Tariff Retaliation*, 34–67.

⁹⁵ Forgacs, "Disney Animation," 366.

⁹⁶ Trademark Application, File 0,093,620; AHOEPM, filed 17 March, 1933.

⁹⁷ Trademark Application, File 100,578; AHOEPM, filed 27 September, 1934.

mouth,⁹⁸ successfully passed the bureaucratic hurdles and the trademark was granted on 14 January 1935.⁹⁹ Presumably both traders applied for a trademark thinking that they had found a novel means to attract customers – real sales appeal of particular interest to children and families. However, the surprising thing is that after making the effort to navigate the bureaucratic process of registering the trademarks, both renounced their rights to their marks in 1935.¹⁰⁰ This action is most astonishing in the case of the second applicant, since she abandoned the trademark only two weeks after obtaining it.¹⁰¹ Neither party gave an explanation as to why they had so suddenly and completely renounced their rights; it is plausible to surmise that they did so after feeling the pressure of a licensed network that was spreading across Spain, a spider’s web of licensing and associated income streams underlying intangible properties. The culturally imperialistic implications of this acquiescence to Disney’s ambitions were publically acknowledged when a satirical magazine in 1934 commented: ‘the Arab domination in the peninsula in comparison with Mickey’s expansion is a historical joke.’¹⁰²

Globally licensed networks

Less than a decade after Mickey was born, lawyers came to recognise him as ‘one of the most powerful merchandising forces in the world’.¹⁰³ And as Jane Gaines declared much later, it is a paradigmatic, textbook example of the productive use of intellectual property.¹⁰⁴ Disney had built a network of licensees by forging alliances locally,¹⁰⁵ and had developed the ambition to succeed as an international business. However, rather than reading this as the origins of a distinctive West Coast or American hegemony, we would draw attention to the

⁹⁸ Description of Trademark, File 100,578; AHOEPM, filed 27 September, 1934.

⁹⁹ Trademark Certificate, File 100,578; AHOEPM, filed 14 January, 1935.

¹⁰⁰ Instancia de Renuncia, File 0,093,620; AHOEPM, filed 9 July, 1935.

¹⁰¹ Instancia de renuncia, File 100,578; AHOEPM, filed 1 February, 1935.

¹⁰² Huertas “Mickey y sus 55.000 amigos” *El Periódico de Catalunya*, 15 November 1998, 41.

¹⁰³ Berle and Sprague de Camp, *Inventions and their Management*, 563–564.

¹⁰⁴ Gaines described Mickey as a ‘merchandising legend’ in Gaines, *Contested Culture*, 158.

¹⁰⁵ For a wonderful history of early Disney marketing in the US, see deCordova, “The Mickey in Macy’s Window,” 203–213.

role of local collaborations, networks and expertise that was central to the development of Disney's licensing activity. Global cultural awareness of this modern corporation originated from turning ad hoc relations between the US filmmaker and local businesses into a more orderly and controlled web of association. As we have seen, business ventures originated with free play that sought to capitalise on the popularity of the Mickey character in Spain, at a time when centralised control by the company was impossible. Foreign corporate enterprises were much better suited at that time to reading local demand and servicing production, wholesaling and retailing. For Mickey marks to become truly productive for Disney as a distinctive global brand that they controlled, there were other important developments and trade connections that needed to occur. The maturation of commercial dynamics that assisted Disney in securing control is best explained with reference to a particularly innovative commercial venture that took place in the early 1930s. An alliance was formed between Lambert Pharmaceutical, toy and card publisher Waddington, and Disney (See figure 7). Spanish children were given a free paper mask when their parents bought them a tube of a particular branded toothpaste (a product of increasing importance, perhaps, given the dental cavities that must have formed following the consumption of too many Mickey sweets and biscuits!).¹⁰⁶

¹⁰⁶ “Una careta de Mickey Mouse o Minnie Mouse la obtendrá gratis con cada tubo que adquiera de crema dentífrica Listerine (con la autorización de Walt Disney-Mickey Mouse Ltd)” *La Vanguardia*, 28 December 1933, 6; ‘Ya hay de nuevo caretas’ *La Vanguardia*, 24 April 1934, 2; ‘Ya hay de nuevo caretas’ *La Vanguardia*, 22 May 1934, 7.



Figure 7. Mickey's Spanish mask (Lambert Pharmaceutical, Waddington and Disney).
Courtesy of UCL Photography Department.

Combining the commercial forces of a toothpaste manufacturer, a paper maker and an entertainment company is an excellent example of market penetration through creative, specialist novelty marketing to children.¹⁰⁷ The trick of making toothpaste 'kid-friendly' was a smart advertising idea that worked well for all three parties involved.¹⁰⁸ Exactly the same campaign was simultaneously launched in distant places such as the United Kingdom,¹⁰⁹ Australia,¹¹⁰ and New Zealand.¹¹¹ While it was a significant premium-based strategy in which incentive-gifts were given to consumers promoting brand loyalty, the idea of having a

¹⁰⁷ For a history of the toy and card publishing company, see Watson, *The Waddingtons Story*.

¹⁰⁸ As Evalyn Grumbine noted 'millions of paper masks of comic and screen stars were used as juvenile premiums. ... In Great Britain Listerine tooth paste used masks of Mickey and Minnie Mouse. Sales were doubled almost overnight. It is reported that more than 10 million masks were distributed in England alone during a period of two months' in Grumbine, *Reaching Juvenile Markets*, 87.

¹⁰⁹ 'Masks of Mickey Mouse and Minnie Mouse can be obtained from any chemist by purchasing a tube of Listerine Tooth Paste' *The Teesdale Mercury*, 8 November 1933, 14.

¹¹⁰ 'For the Kiddies, while they last! Free! Mickey Mouse or Minnie Mouse- Party mask with every 1/3 tube of Listerine Tooth Paste' *The Argus*, 12 February 1934, 14.

¹¹¹ 'Kiddies delighted with Mickey or Minnie Mouse Paper Masks – free with every 1/3d tube of Listerine Tooth Paste' *Akaroa Mail and Banks Peninsula Advertiser*, 22 May 1934, 2.

globally synchronised campaign was highly innovative.¹¹² There are (at least) two features underlying this marketing scheme that need to be highlighted. First, the campaign could only take place thanks to the global expansion of multinational advertising agencies that had occurred in the late 1920s.¹¹³ The infrastructure and connectivity of multinationals such as J. Walter Thompson (JWT) and their local correspondents appear to have been crucial to forging these innovative trade alliances.¹¹⁴ Secondly, the masks given away (and the ads that announced them) were among the first products in Spain to incorporate the legend, ‘Authorised by Walt Disney Enterprises’. Simply by giving licensed Mickey and Minnie masks for free, Disney cemented ties with consumers and educated them into the protocols of consumption. In that sense, the advertising scheme helped to shift the balance of forces in the company’s favour, enabling trademark licences to become advertising tools in themselves, and in turn allowing for the further professionalisation and growth of the advertising industry in marketing ‘premium brands’.¹¹⁵ This facilitated the development and internationalisation of trademark practice in the following decade.¹¹⁶

That Spanish licensees perceived a change in commercial culture as being underway can be seen in trademark disputes that arose after the mysterious trademark withdrawal of the first biscuit purveyor, mentioned above. Three days after Biosca renounced her trademark on 4 February 1935, another biscuit manufacturer applied for a Mickey trademark.¹¹⁷ The applicant was a company named Lose, headquartered in Tarragona and one of the best-known Spanish biscuit manufacturers of the twentieth century.¹¹⁸ Curiously enough, a covering letter from the Disney representative in Europe, Pierre de Beneducci, was part of

¹¹² For an interesting study of similar strategies, see Robinson, “Marketing Gum,” 4–44.

¹¹³ ‘The advertising multinationals began arriving in Spain in the 1920s, among them Publicitas, Germany’s Rudolf Mosse, Britain’s Crawford, France’s Havas, and from the United States, the J. Walter Thompson Company (JWT) ...’ in Pérez-Latre, “Spain,” 1464

¹¹⁴ Bravo, *Walter Thompson España*.

¹¹⁵ *Trademark Selection: The Management Team Method*.

¹¹⁶ Bellido, “Toward a History”

¹¹⁷ Trademark Application, File 0,102,173; AHOEPM, filed 14 February, 1935.

¹¹⁸ Moreno Lázaro, “La dulce transformación.” 205–248 and Moreno Lázaro, “Tecnología, empresa y mercado,” 15–35; Monroig, “La industria,” 3.

their application.¹¹⁹ The letter was directly addressed to the comptroller, letting him know that they had granted the company an authorisation to use and register Mickey Mouse as a trademark in Spain for confectionary, chocolates, candies and jams.¹²⁰ Unsurprisingly, the application was opposed by the holder of the trademark ‘Miki’, who had been producing biscuits so labelled since 1933. He argued that there were phonetic, conceptual and visual similarities between the marks that precluded the granting of the new application under section 124.1 of the Spanish Industrial Property Code (1929).¹²¹ Despite the force of his argument, it is unclear whose rights would have prevailed as a matter of law because, again, there was an intriguing and sudden trademark withdrawal before the decision of the comptroller was made.¹²² Combined with the earlier examples, this was clear evidence of a reluctance to let the comptroller publically decide who owned what rights, in favour of the parties coming to terms under a veil of confidentiality. This raises the notion of licensing arrangements operating as a form of private registration of rights, with, in the event of litigation, a practice of coming to terms with the other side to ensure the minimum amount of public oversight.

In 1934 Disney launched an annual merchandising catalogue.¹²³ It listed licensed products and manufacturers. It also included notation of the European branches established to manage the rights available to facilitate further licensing and revenue streams.¹²⁴ The production of an annual catalogue reinforced the idea that discrete products were connected through a chain of authorisation of ‘rights’ managed by Disney’s agents, and that opportunities were to be

¹¹⁹ Letter from Pierre de Beneducci, Representante Exclusivo en España, Italia y Portugal, 24 January 1935; File 0,102,173; AHOEPM.

¹²⁰ Ibid.

¹²¹ *Estatuto sobre Propiedad Industrial, aprobado por Real Decreto-Ley de 26 de julio de 1929* (Industrial Property Code, approved by Royal-Decree Law, July 1929).

¹²² Instancia de Renuncia. 9 July 1935; File 0,093,620; AHOEPM.

¹²³ Munsey, *Disneyana*, 113.

¹²⁴ The first issue of the merchandising catalogue was arranged by Disney’s merchandising director Kay Kamen; see Mosley, *The Real Walt Disney*, 148–150; Bain and Harris, *Mickey Mouse*, 150; Beezy, “Good Marksmanship,” 22; Thomas, *The Walt Disney Biography*, 81–82; Munsey, *Disneyana*, 107–126; Hollis, *Toons in Toyland*, 11.

constantly renewed. Over time, this coordination also made possible the idea of ‘standardisation’ of the Disney range. According to cultural historians and collectors, 1935 was ‘the most successful year ever known to the manufacturers of the Walt Disney Character Merchandise’.¹²⁵ The curating of Disney product into a catalogue not only increased the number of products bearing Disney characters and made it easier for retailers to source desirable merchandise;¹²⁶ it also led to a new integration between products and signs that mushroomed in the Spanish marketplace and abroad.¹²⁷ It affected the meaning of signs, heralding a shift from production to merchandising, from trademark to international brand. Rather than the mark operating as a sign attached to particular goods and services, it was increasingly associated with the much more abstract, affective properties of the Mickey character which was coming to be represented in essentially the same way across the globe.¹²⁸ Mickey products such as paper masks were not just given away with toothpastes to influence purchasing choices about a particular branded toiletry product.¹²⁹ Branding came to dictate consumer choice in a different way to the past. Originally a label and recognisable trademark merely helped to communicate fitness for purpose and the source of the product, and to allow for consumer past experience to be brought to bear on consumption choice. But through the management of brand associations a chain of signs became a much more complex conduit of cultural meaning and ‘symbolic capital’ through its association with the Disney brand. As Pierre Bourdieu has noted:

This economy demands a social world which judges people by their capacity for consumption, their ‘standard of living’, their lifestyle, as much as by their capacity for production. It finds ardent spokesmen in the new bourgeoisie of the vendors of symbolic goods and services, the directors and executives of firms in tourism and

¹²⁵ “Mickey Mouse Looks Forward to 1936” Playthings, February 1936, 56.

¹²⁶ “Jabón y Pasta dentífrica Mickey Mouse- Con la Autorización de Walt Disney,” *La Vanguardia*, 5 November 1935, 5; ‘Soon kids all over the world were clamouring for Mickey Mouse toothbrushes, drinking glasses, combs, trains, watches, and an incredible assortment of toys and figurines that would number in the hundreds by 1935 and the thousands by 1960’ in Bain and Harris, *Mickey Mouse*, 15.

¹²⁷ Papeles Wipa (Barcelona) was one of the licensees that began producing Mickey fountain pens and other stationary material with the film star.

¹²⁸ Though discussed in relation to a later period, Henry Jenkins describes affective economics as a discourse that ‘emphasizes the emotional commitments consumers make in brands as a central motivation for their purchasing decisions’, Jenkins, *Convergence Culture*, 319.

¹²⁹ Grumbine, *Reaching Juvenile Markets*, 87–88.

journalism, publishing and the cinema, fashion and advertising, decoration and property development.¹³⁰

Character merchandising assisted in the development of symbolic capital, to the mutual advantage of all the authorised producers and manufacturers that appeared in the catalogue. The specific toothpaste, for instance, could then be distinguished by a characterisation and meaning that was beyond the reach of competitors. In exchange, the Disney brand was further universalised and entrenched in the global consciousness. This activity led to a complex overlaying of meanings associated with signs, and this complexity ‘empowered’ consumers in their consumption choices, allowing them to playfully engage with brands within the confines of corporate-sanctioned associations. Disney continued licensing without necessarily resolving all potential conflicts or obstacles posed by rights to other marks on the register and in the marketplace, and without registering its own marks across a range of classes of goods and services. Their ambiguous legal status in Spain produced more than one headache for newly established Disney licensees. In the last months of 1934 and the beginning of 1935 there were contenders, who were encouraged because there remained nothing on the register in Disney’s name.¹³¹

Walt Disney, from Barcelona

Not everybody who applied for a Mickey trademark withdrew or abandoned their application. In March 1934, José Geis Bosch went to the patent and trademark office to register a beautiful trademark in class 44 (textiles) depicting not only Mickey but also his girlfriend Minnie (see Figure 8).¹³² His application too, was opposed. What made this opposition different from the cases mentioned above was the profile of the opponent. The opposition

¹³⁰ Bourdieu, *Distinction*, 328–329.

¹³¹ Similar trademark struggles were soon after experienced by Disney in Australia where Disney was more successful, the significance of which was noted in the USA; see *Radio Corporation Pty Ltd v Disney* (‘Mickey Mouse case’) (1937) 57 CLR 448; see also George G. Turri, ‘Mickey Mouse in Australian High Court’; ‘Mickey Mouse’s Rights are argued in Australia,’ *New York Times*, 30 April 1936, 16.

¹³² Trademark Application, File 98,076; AHOEPM, filed 10 March, 1934.

was not raised by a Disney licensee but by Disney himself. Walter E. Disney, astonishingly described as a subject domiciled in Barcelona, formally opposed Geis Bosch's application.¹³³ He claimed to be the creator of the two beloved characters as evidenced by the posters and adverts he forwarded to the office. The applicant, Geis Bosch, did not desist in his attempt to register, and submitted a forceful response that attacked the form and the substance of Disney's opposition. In fact, the awkward way in which Disney had opposed the application indicated a weakness which was of strategic advantage to Geis Bosch.¹³⁴ Disney's self-description as the creator and proprietor of the characters enabled the applicant to argue a significant point of law. A trademark was an industrial property right, where ownership came from local use and registration of the sign. This was not about copyright, which arises with authorship.¹³⁵ The submission of adverts and posters for films only underlined a lack of documentary proof to support a trademark opposition. Since there was no trademark certificate that could challenge the application, Geis Bosch was granted the trademark a few months later.¹³⁶

Another trader who frustrated Disney in registering a Mickey trademark in the Spanish Patent and Trademark Office was Manuel Osa. In November 1934, he applied for a Mickey trademark consisting of an original drawing of the mouse pouring a sparkling beverage into a narrow glass with the legend 'always order the delicious aperitif' (see Figure 9).¹³⁷ Despite (or because of) the application being limited to aperitifs and carbonated drinks, his attempt to register a trademark was opposed by Walt Disney.¹³⁸ Interestingly, Disney now included in his opposition an appendix with a copy of the US copyright certificate he received in 1931.¹³⁹

¹³³ Trademark Opposition, File 98,076; AHOEPM filed 15 June, 1934. Walt and Roy Disney and their wives did tour the Continent for two months in 1935. See Ghez, *Disney's Grand Tour*.

¹³⁴ Response by Geis Bosch, 4 September 1934; File 98,076; AHOEPM.

¹³⁵ For a discussion of US-Spanish copyright relations, see Bellido, Xalabarder, and Casas Vallès, 'Commentary on US-Spanish Peace Treaty.'

¹³⁶ Trademark Opposition Decision, File 98,076; AHOEPM filed 16 March, 1935.

¹³⁷ Trademark Application, File 101,116; AHOEPM, filed 22 November, 1934.

¹³⁸ Opposition to the Trademark application, File 101,116; AHOEPM, filed 14 February, 1935.

¹³⁹ Appendix: US Copyright Certificate Entry Class G. No. 6,499 (Walt Disney's Mickey Mouse) File 101,116; AHOEPM, filed 1 June, 1931.

Instead of withdrawing the application, Osa defiantly contested the opposition to his application. He homed in on three major issues. Firstly, echoing Geis Bosch's argument, he used the lack of Spanish trademark registrations held by Disney as a touchstone to interrogate the basis of this opposition. Secondly, he criticised the ongoing Disney licensing practices in Spain as an attempt to create a de facto monopoly which, if sanctioned by the comptroller, would undermine the very logic of trademark registration which limited rights to particular classes of goods and services. Thirdly, he suggested that a pending trademark application, recently submitted by Disney for a magazine for children, was the appropriate scope of any intangible property right Disney should be given, if any.¹⁴⁰



Figure 8. Spanish registered trademark 86,388. Courtesy of AHOEPM

Additionally, Osa drew attention to the existence of a variety of Mickey orange trademarks already on the register.¹⁴¹ Osa's (or his trademark agent's)¹⁴² argumentative strategy proved

¹⁴⁰ Trademark Application, File 101,717; AHOEPM, filed 22 December, 1934.

¹⁴¹ Response to the Opposition, File 101,116; AHOEPM, filed 28 February, 1935.

successful.¹⁴³ The comptroller determined that the lack of previous registered Spanish trademarks by Disney precluded him from opposing Osa's application.



Figure 9. Spanish registered trademark 101,116
Courtesy of AHOEPM

These major defeats put Disney international licensing practices at risk. From this time onward Disney representatives paid much more attention to their trademark strategies and the contractual arrangements underpinning them in Spain.¹⁴⁴ In February 1935, Disney opposed a trademark application lodged by the famous Italian publisher Lotario Vecchi.¹⁴⁵ Although

¹⁴² Power of attorney from Manuel de la Osa to Luis María de Zunzunegui, File 101,116; AHOEPM, filed 22 February, 1935.

¹⁴³ Trademark Opposition Decision, File 101,116; AHOEPM, filed 13 March, 1935.

¹⁴⁴ Surely one of the aspects that made licensing arrangements attractive and successful was the infrastructural support given by Disney to its licensees. For instance, as Heide and Gilman observe, 'design and artwork was supplied free of charge to licensees ...,' in Heide and Gilman, *Disneyana*, 43.

¹⁴⁵ Trademark Application, 4 December 1934, File 101.449; AHOEPM, filed 4 December, 1934.

Vecchi had agreed with the Disney agent to withdraw his application,¹⁴⁶ Disney still filed an opposition, presumably as a shot across the bow of other traders. The defence was unnecessary since Vecchi had already withdrawn his application.¹⁴⁷

Whilst legal struggles concerning trademark were a most frustrating experience for the Disney company, there were also problems with design rights. In February 1935, Disney had tried to register the mouse as a design (see Figure 10),¹⁴⁸ a move the company had made in several countries.¹⁴⁹ In Spain, the application did not go as smoothly as expected. It faced two powerful oppositions.¹⁵⁰ The opponents used a repertoire of arguments to persuade the comptroller of the need to reject the application as non-compliant with the technicalities of Spanish law. This included highlighting that Walt Disney was obviously not resident in Barcelona, and thus in accordance with Spanish design law was not entitled to apply for industrial property protection.

¹⁴⁶ Letter from Vecchi to Pierre Beneducci (Disney agent), 12 February 1935, File 101.449; AHOEPM. Some references to Vecchi in Spain can be read in Sanchis, *Franco contra Flash Gordon*, 60–61. See also Martín, *Historia del comic español: 1875–1939*, 118–133.

¹⁴⁷ Opposition to Trademark Application, File 101.449, filed 26 February, 1935; AHOEPM; Renuncia al Registro, File 101.449; AHOEPM, filed 14 March, 1935.

¹⁴⁸ Design Application, File 482, AHOEPM, filed 15 February, 1935.

¹⁴⁹ When tested in court, the UK design registration held by the British toy maker, Deans Rag Book Co, ultimately provided little protection for Mickey for similar reasons to those raised in the Spanish opposition; see *Deans Rag Book Company Limited v Pomerantz and Sons* (1930) 47 RPC 485; *The Times*, 18 July 1930, 5; *The Times*, 19 July 1930, 4; *The Times*, 23 July 1930, 5.

¹⁵⁰ Opposition to Design Application, (Don Emilio Urquizo y Falcó), filed 15 May, 1935; and opposition to Design application, (Francisco Tribó Capdevila), File 482, AHOEPM, filed 1 June, 1935.

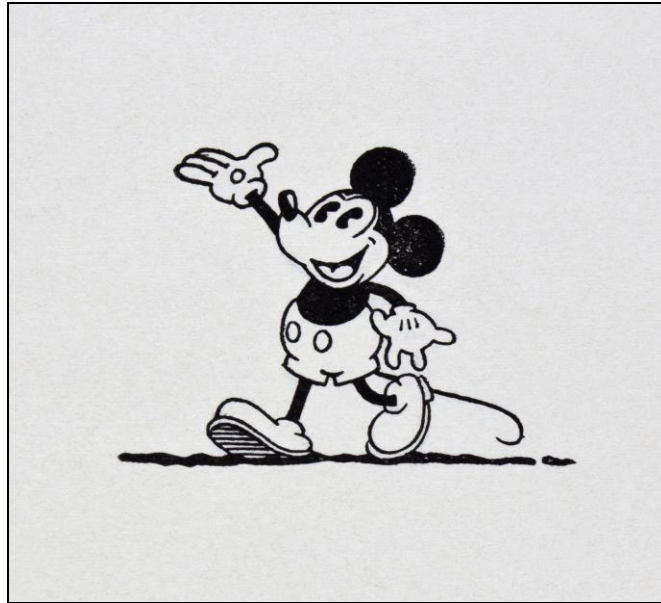


Figure 10: Spanish Design Application 482
Courtesy of AHOEPM

A challenge was also mounted to the novelty of the design, a legal requirement akin to originality in copyright that prevented monopoly rights being granted to familiar shapes and appearances of commodities that could stifle competition. It was argued that the huge exposure of the Mickey Mouse films, advertising and other merchandise meant that any claim to novelty in the appearance of the character had long since expired. In one sense, this turned Disney's evidence of his claim to ownership against him. The development of a large and successful licensed network (and unlicensed uses) of 'intellectual property' ironically prevented him from claiming the requisite level of novelty required to register his own design right. Still, Disney insisted on submitting a copy of the US copyright certificate, which predictably led to the distinction between copyright and industrial property again being raised as an obstacle to the registration.¹⁵¹ Finally, the lack of specification of the class of goods and

¹⁵¹ Following difficulties with industrial property rights, a global strategy of linking licensing with copyright is confirmed in the 1940s by a letter written by Gunther Lessing, Disney's legal counsel, to Art Arthur, Motion Picture Industry Council. He wrote: 'the patent lawyers told us that it "couldn't be done" as such licenses as we contemplated would put our trademarks in the public domain. Roy Disney and I decided that there was money to be derived from this endeavour so we based it on the copyright laws and the laws of unfair competition'; Lessing to Arthur, November 18, 1949; AMPAS.

services in which his design was going to be applied was also highlighted as an impediment to registration. Disney's application for an industrial design failed; however, an application for an artistic design was granted in December 1935, recognising the existence of a Disney representative in Barcelona. From these examples it is clear that the Spanish people truly loved this mouse, across many iterations. However, from a legal point of view, the most interesting aspect to note is that the first steps of Disney in Spain were marked by a significant struggle to ascertain any rights against local entrepreneurs. There was an initial successful resistance to the expansion of the Disney empire. Rather than assist Disney's ambitions, Spanish copyright and industrial property law was initially helpful in maintaining local rights and activities against the claims of the larger US corporation. But Disney was able to mobilise those local rights and capitalise on them to create an infrastructure for his international enterprise. This raises an important but familiar question about the relationship between law, culture and economy.

Conclusion

In legal literature there is a presumption that law is not only master of its own domain, but also rules over social and economic life, dictating what is possible and policing infringements and violations. Many business historians have also followed this approach. However, whilst culture and economy do not operate in ignorance of this legal will to power and influence, as the first years of Disney in Spain show, there has always been a wide scope for selection, negotiation, mediation, indifference and resistance. This essay shows how productive those processes were, without necessarily disrupting the orderly appearance of the established categories of copyright, design and trademark. While Spanish law did not appear to advance in this period to facilitate the growth of international trade, processes of appropriation, collaboration and investment advanced nonetheless, repositioning simple agricultural produce like oranges to link them to and develop a cultural economy. Thus we argue that in this period the most significant legal changes to appreciate are not those that occurred on the surface of the positive law, but the legal and commercial practices that emerged alongside it.

Our brief historical account appears to evidence a business shift in the early twentieth century – significant changes in activities and orientations whereby manufactures came to support

merchandising, advertising and distribution. Along with this shift there was a corresponding change underway in the genealogy of signs, from trademarks to brands. The two are often perceived as encompassing different traditions and patterns of circulation; to signify different relationships and values. While trademark affords legal rights, associated with particular signs and attached to nominated goods, and later services, brands have been frequently defined as far more amorphous entities. Counter-intuitively, trademark ownership was not essential for effective licensing of the marks, probably to avoid being bogged down in legislative differences manifested in comparative trademark law throughout the twentieth century. Brands generated meaning and authority from their deployment and interactions with traders and the public. Accordingly, we argue that the significance of the Disney corporation as a metaphor for the evolution of intellectual property laws should not be read in terms of the idea of Disney as an aggressive rights holder from the start, stifling creativity and competition across time and space, with the advantage of a privileged position before the law. Rather, the company exemplifies a much more complex and remarkable achievement – turning a small mouse character into a famous brand and able to capitalise in the way the sign came to imbue ordinary, everyday objects and experiences with symbolic meaning. In doing so, the most important strategy was surely collaborative in nature, enrolling and learning from local entrepreneurs, consumers and manufacturers already in place before Disney’s definitive corporate arrival in Europe by the mid-1930s.

* Archival sources are from collections abbreviated as follows: AHOEPM = Archivo Histórico de la Oficina Española de Patentes y Marcas, (Madrid, Spain); AME: L'archivio storico Arnoldo Mondadori Editore (Milan, Italy); AMPAS = Academy of Motion Pictures Arts and Sciences (Los Angeles, California); BN = Biblioteca Nacional de España (Madrid, Spain); COAPI = Archivo del Colegio de Agentes de la Propiedad Industrial (Madrid, Spain); NA = National Archives (Kew, UK); RS = Archivo Rogelio Sanchís (Valencia, Spain). Thanks to Patricio Sáiz, Tiziano Chiesa, Ángel Fernández González, Julia Hudson-Richards, Rogelio Sanchís, Fabio Gadducci, Emilia de la Peña, Carlos González, Didier Ghez and David Lobenstine.

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