

**Mickey in Spain: Merchandising Opportunities and Trade Mark Struggles (1930-1936)**

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*‘The Thirties were Mickey’s conquering decade’*<sup>2</sup>

By now it is commonplace of cultural history to say that Mickey Mouse is one of the most important, if not the most important, intellectual property asset of the twentieth and twentieth-first centuries. Such an iconic status enjoyed by the character has fascinated legal scholars, who have repeatedly referred to the tiny little mouse as a metaphor of the evolution of intellectual property laws.<sup>3</sup> While Mickey might indeed be a particularly suitable place to talk about the extension, globalisation and congestion of intellectual property rights,<sup>4</sup> being a magnet for criticism and theoretical claims has simultaneously eclipsed many interesting historical angles surrounding its emergent figure as a merchandising legend. This chapter is an attempt to follow the first steps of Mickey Mouse in Spain. The history is rich in incident and colourful details that

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<sup>2</sup> John Updike “Introduction” in Craig Joe and Janet Morra-Yoe (ed) *The Art of Mickey Mouse* (New York: Hyperion, 1991) p. 18

<sup>3</sup> Alex Kozinsky’s “Mickey and Me” 11 *University of Miami Entertainment and Sports Law Review*. 465 (Spring 1994); Jessica Litman’s Mickey Mouse Emeritus Jessica Litman, Mickey Mouse Emeritus: Character Protection and the Public Domain, 11 *University of Miami Entertainment and Sports Law Review* 429 (Spring 1994); Paul Heald “Testing the Over- and Under-Exploitation Hypothesis: Best-selling Musical Compositions (1913-32) and Their Use in Cinema (1968-2007)” (*John M. Olin Program in Law and Economics Working Paper No. 429, 2008*);

<sup>4</sup> Victoria A. Grzelak, “Mickey Mouse & Sonny Bono Go to Court: The Copyright Term Extension Act and Its Effect on Current and Future Rights”, 2 *John Marshall review of Intellectual Property Law* 95, 99 (2002); Posner responds to “Why Mickey Mouse is Not Subject to Congestion,” by Michele Boldrin and David Levine *The Economists’ Voice*, 2004, vol. 1, issue 2, pages 1-2; Ben Depoorter, “The Several Lives of Mickey Mouse: Expanding the Boundaries of Intellectual Property Law”, 9 *Va. J.L. & Tech.* 4, 8-10 (2004).

demonstrate the complex connections between signs, culture and memory. Whereas many media and legal scholars focus on Mickey as a quintessential US rodent set loose by the Disney corporation upon the rest of the world,<sup>5</sup> this article shows there were much more complex dynamics in play in Spain and for much of the period concerned Disney struggled to assert an exclusive right to Mickey.

The article begins by tracking Mickey's arrival in Spain which heralded a tremendous amount of creative activity, including enthusiastic commercial appropriation of Mickey and repatriation of the character into Spanish folklore, all of which was entirely lawful. We then follow the complex way in which culture, economy and law interacted over the next decade. Disney adopted a very pragmatic approach to expansion of his business. Given the productive engagement with Mickey that was already occurring in Spain, local companies were better placed to service demand, and in the period where the company lacked any extensive managerial infrastructure in the country, Disney tried to avoid the contingencies of patent and trade mark office deliberation altogether. Yet his rights were asserted through license agreements entered into with local traders, regardless of the formal legal credentials of Disney's ownership claims. These authorised interactions with local commercial enterprises fragmented and dispersed earlier playfulness with the icon. Combined with the rise of the international advertising firm, these business strategies helped secure a strong connection between Mickey, Disney and Disney-affiliated enterprise. Marketing ventures centred on licensed product captured the passion of fans and channelled goodwill into modes of consumption that served to reinforce authorised readings of signs, precipitating a shift from trade mark to brand, making the idea of a global franchise possible. However, once his agents were in place the Disney Company did try to assert exclusive rights and started to oppose further Spanish Mickey registrations. However what is noteworthy here is that the company was not particularly successful. Spanish trade mark law did not realign to correspond with and legitimate Disney's licensing practices. Design law was also unaccommodating. Yet licensing practices continued.

We conclude that Patent and Design Office was not especially receptive to Disney's expanding aspirations and this must have been frustrating to the company. The Comptroller was concerned with rights of local traders who sought and obtained Mickey registrations in accordance with

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<sup>5</sup> See for example, Carl Hiaansen, *Team Rodent. How Disney Devours the World*, (New York: Random House, 1998).

routine historic practice. However, what Disney achieved in this period was the establishment of managerial and marketing infrastructure required to unfold and expand the Disney franchise across the globe, and this, combined with licensing of Mickey product becoming ubiquitous, facilitated a major shift in the cultural meaning of signs that the law still struggles to manage with respect to premium brands and well-known marks today.

## 1- Of Mice and Magic

In December 1930, Carlos Gea, contacted a distinguished trade mark agent, Alfonso Ungría,<sup>6</sup> with the idea of registering a peculiar sign in the Spanish patent office.<sup>7</sup> Gea was a well-known figure of the citrus industry in Valencia,<sup>8</sup> one of those entrepreneurs who had contributed to making the fruit to be desired all over the world.<sup>9</sup> Although the fruit came from orange groves near Valencia, its production was mainly destined for export.<sup>10</sup> Therefore he decided to distinguish his products with a pictorial representation of a mouse, as he described in his application, “popularised on films”.<sup>11</sup> That mouse was no other than the famous character Mickey, with his long shoes and oval buttons on his shorts. The following legend was inscribed above this figure, in case of any doubt: "Mickey Oranges".<sup>12</sup> See Figure 1?

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<sup>6</sup> Ungría, who had been a diplomat, became a member of the Spanish Institute of Trade Mark and Patent Agents (COAPI) in 1929, see letter Ungría to the President of COAPI, 11 September 1929; COAPI Archives. His patent and trade mark agency was founded in 1891; see “Advert” *Diario La Vanguardia*, 1 November 1929, p. 4; see also Alfonso Ungría “Ley y Practica en material de Propiedad Industrial” in *Cuatro Conferencias sobre Propiedad Industrial* (Madrid: Colegio Oficial de Agentes de la Propiedad Industrial) pp. 13-31.

<sup>7</sup> Power of Attorney from Gea Uberos to Ungría, Valencia, November 1930; File 83 398; Archivo Histórico OEPM.

<sup>8</sup> “Obituary” *Diario ABC*, 4 August 1972, p. 74

<sup>9</sup> Vicente Abad notes that the zenith of the Spanish orange exports was 1930; see Vicente Abad, *Historia de la Naranja (1781-1939)* (Valencia: Comité de Gestión de la Exportación de Frutos Cítricos, 1984) p. 249.

<sup>10</sup> References to agricultural trade marks with a suggestion that they could have been regulated differently are in Fernando Peraire, *La marca de fábrica. Comentarios a la legislación vigente Jurisprudencia civil y penal*. (Barcelona, Impr. A. Ortega 1927) p. 23.

<sup>11</sup> Trade mark application from Carlos Gea Uberos, 3 December 1930, File 83 398; Archivo Histórico OEPM.

<sup>12</sup> Description of the application; File 83 398; Archivo Histórico OEPM

The application was particularly significant because trade mark registrations, printed labels and artistic design packaging were among the material features that allowed oranges to shift from simple agricultural products to marketable commodities.<sup>13</sup> Since those oranges were ready for international distribution, it is not a surprise that the first Mickey trade mark registration in Spain was precisely in class four of the nomenclature: oranges. If there's one product or trade that epitomised Spain, it was the orange.<sup>14</sup> And if there was an association that could make the product attractive to the targeted consumer, it was the celebrity of the moment: Mickey.<sup>15</sup> Thus in developing the international market for citrus, Gea sought to combine the local and the global, to create a “context of consumption”<sup>16</sup> 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 trade mark gazette.<sup>17</sup> No opposition was filed and having passed all the requirements

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<sup>13</sup> See Julia Hudson-Richards, *The Orange Proletariat Social Relations in the País Valencià, 1860-1939* (The University of Arizona, PhD, 2008); see also *Etiquetas de alimentos. Frutas. Miscelánea*; EPH/554(1)-EPH/554(18); Biblioteca Nacional de España; Tomás Viana Arroyo, *Las etiquetas naranjeras en la Comunidad Valenciana* (València: Conselleria d'Agricultura, Peixca i Alimentació 1998).

<sup>14</sup> 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” *Diario El Sol*, 5 January 1930, p. 6; Enrique Malboisson “El maravilloso espectáculo que ofrece el puerto de Valencia” *Revista Estampa*, 7 January 1930, pp. 25-27. That oranges conquered the Spanish imaginary is also reflected in novels (Blasco Ibañez’ *Entre Naranjos*) and mascots (the 1982 world cup mascot organised in Spain was unsurprisingly, an orange). See Juan Benet “Del naranjero al naranjito” *El País*. 2 June 1979,

<sup>15</sup> See *revista Gutiérrez*, 6 December 1930, pp. 18-19; “Cosas del Cine” *La Vanguardia*, 3 January 1931, p. 14 [“the star that interests us now is Mickey Mouse”]; “Ecos y Noticias” *La Vanguardia* 1 May 1931, p. 16; Vicente Abad “The Orange Trademarks” in *The Golden Fruit. The Spanish Citrus Industry 1781-2000* (Valencia: Generalitat Valenciana: 2000) pp. 121-128; at 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”].

<sup>16</sup> Adam Arvidsson, “Brands: A Critical Perspective,” *Journal of Consumer Culture*, Vol. 5(2): 235-258, 2005

<sup>17</sup> *Boletín Oficial de la Propiedad Industrial*, 16 December 1930, p. @; For some references to the institutional history of trade mark law in Spain, see Patricio Sáiz and Paloma Fernández “Catalonian Trademarks and the Development of Marketing Knowledge in Spain, 1850–1946” *Business History Review*, vol. 86, issue 02, summer 2012 pp 239-260.

stipulated in the corresponding trade mark law,<sup>18</sup> the application was successful.<sup>19</sup> In February 1931 a registered trade mark was granted to Carlos Gea for “Mickey Oranges”. It was first Mickey Mouse mark definitively introduced into the Spanish trade mark office and Gea was given a certificate of registration that constituted a presumption of property *juris tantum*.<sup>20</sup>

That this character mark was particularly attractive to the citrus industry could be seen by another application that followed suit. A few weeks after Gea had received the news of his mark being registered another application of a label representing Mickey was received in the patent office. It was a citrus entrepreneur from the same province trying to register a similar label for his overseas trade.<sup>21</sup> However, there were some differences in the label design. Instead of a verbal reference to the products, the new application relied on an overall visual connection, showing the lovely mouse juggling with oranges.<sup>22</sup> In order to avoid being held confusingly similar, the application transliterated the word mouse (“maus”) and dropped one letter to become “Micke”.<sup>23</sup> However, these efforts were not enough. Although crate labels decorated with Mickey in his full juggling abilities 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.<sup>24</sup> See Figure 2.

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<sup>18</sup> *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)

<sup>19</sup> Certificate of Registration, 21 February 1931, File 83 398; Archivo Histórico OEPM.

<sup>20</sup> See Stephen Pericles Ladas, *Patents, Trademarks, and Related Rights: National and International Protection*, Volume 1; (Boston: Harvard University Press, 1975) p. 1067.

<sup>21</sup> Trade mark application from Enrique Dealbert Nebot, 11 March 1931, File 84619; Archivo Histórico OEPM

<sup>22</sup> Description of the trade mark, Enrique Dealbert Nebot, 11 March 1931, File 84619; Archivo Histórico OEPM

<sup>23</sup> Trade Mark Application, 11 March 1931, File 84619; Archivo Histórico OEPM

<sup>24</sup> Certificate of Registration, 23 July 1931, File 84619; Archivo Histórico OEPM

*Spanish Mickey in the Media*

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 character that, as with Felix the cat a few years earlier,<sup>25</sup> it generated a marketing craze. Throughout the early 1930s, the film star was very artfully and creatively exploited and eye-catching and appealing fruit crate labels flourished. For example, Pedro Monsonís, another well-known citrus entrepreneur from the same region,<sup>26</sup> labelled his oranges with trade material depicting two Mickeys pulling a giant orange apart.<sup>27</sup> His label also included what some commentators have identified as a trade mark constant: the introduction of quality indicators (see figure 3).<sup>28</sup> 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 (see figure 4) Ironically, the proliferation of similar signs and the particular dynamic context from which these marks sprang paved the way for a particular creative scene in which the protagonist was undoubtedly Mickey. In popular terms, the mouse had definitely defeated the cat.<sup>29</sup>

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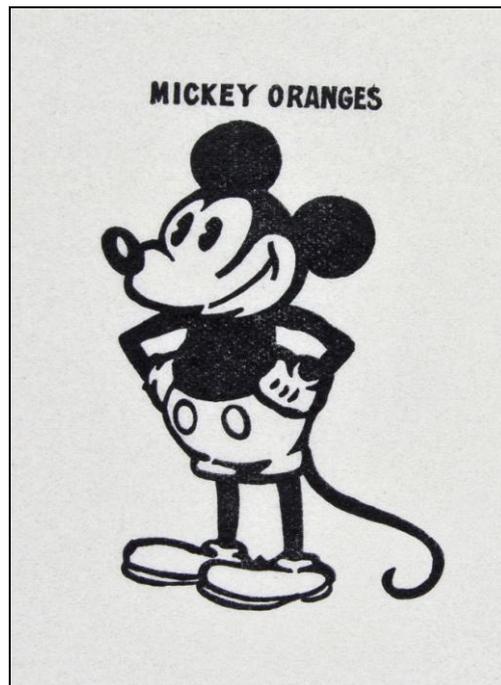
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<sup>26</sup> Neus Caballer, “Enrique Monsonís, un liberal convencido, *Diario El País*, 8 October 2011; see also Enrique Monsonís, *Memorias incompletas* (Burriana: Fundación Individuo y Sociedad, 2007); Pedro Monsonís “Extrema preocupación ante la próxima campaña naranjera” in Bon Bono et al (eds), *Seis estudios sobre la coyuntura actual de la riqueza naranjera* (Castellón de la Plana: Hijos de F. Armengot, 1959).

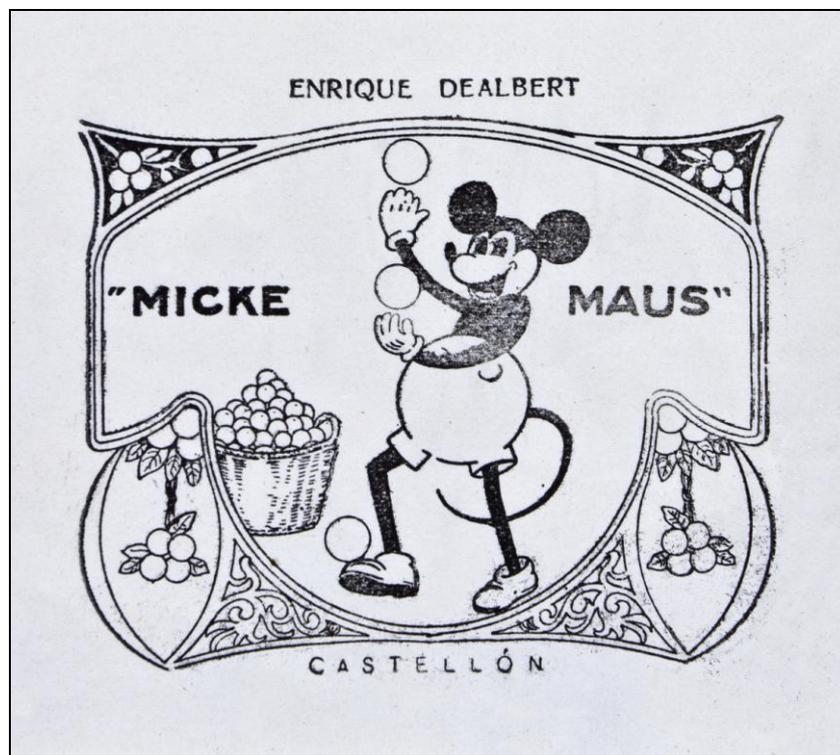
<sup>27</sup> Lit. J. Aviñó. Valencia, 1930; see also Ramón Mir “Etiquetas de alimentos. Frutas. Miscelánea (1930) in *Ephemera : la vida sobre papel*, p. 184, cat. 206, Biblioteca Nacional de España.

<sup>28</sup> Vicente Abad “The Orange Trademarks” in *The Golden Fruit. The Spanish Citrus Industry 1781-2000* (Valencia: Generalitat Valenciana: 2000) pp. 121-128; at 125

<sup>29</sup> Fernando G. de Mantilla “Las películas de dibujos animados” *El Imparcial*, 7 September 1930, p. 7; Felipe Centeno, “Dibujos Sonoros” *La Vanguardia*, 23 November 1930, p. 17; Luis Gómez Mesa, *Los films de dibujos animados* (Madrid: C.I.A.P. 1930),



**Fig. 1 - Spanish registered Trade Mark 83398**  
Courtesy of Archivo Histórico OEPM



**Fig. 2 - Spanish registered Trade Mark 84619**  
Courtesy of Archivo Histórico OEPM

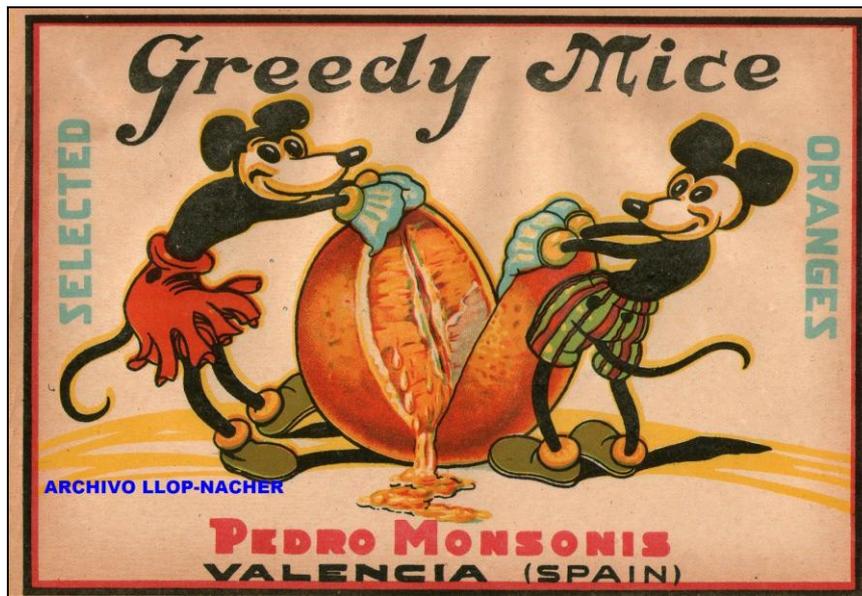


Fig. 3. Pedro Monsonis (Valencia) - Unregistered Label  
Courtesy of Rafael Llop

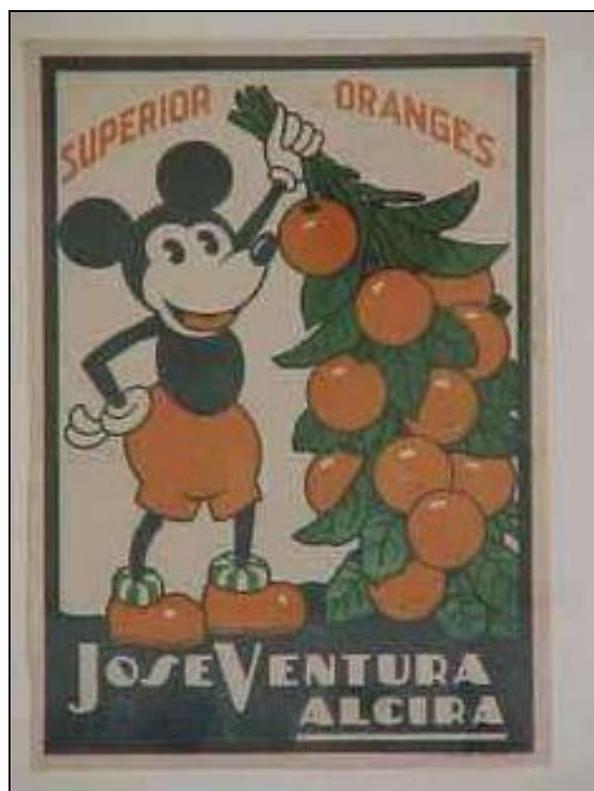


Fig. 4. José Ventura Oranges (Alcira) - Unregistered Label  
Courtesy of Museo de la Naranja de Burriana

A glance to these fruit labels and orange trade marks evidences what Henry Jenkins once described as the logic of emotional intensification that shapes most popular culture.<sup>30</sup> Mickey was seen as a naughty, magic film star, a distinctive cultural artefact that became to represent an object and an anthropomorphic<sup>31</sup> subject in one. It was interviewed; it had birthdays and cool fan clubs.<sup>32</sup> It was simultaneously traded, read and transacted. In that specific sense, it 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”,<sup>33</sup> was a trend highly visible in Spanish newspapers and magazines.<sup>34</sup> This cultural activity only further invested the registered and unregistered Mickey inspired trade marks with commercial value, wherever the reportage travelled and this only encouraged further appropriations.

While fruit labels were marketing tools directed to retailers and distributors, Mickey also served as a signalling device to individualise oranges themselves.<sup>35</sup> In 1930, the export citrus group from

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<sup>30</sup> Henry Jenkins, *The Wow Climax. Tracing the Emotional Impact of Popular Culture* (New York University Press, 2007) p. 3.

<sup>31</sup> Leonard Maltin, *Of Mice and Magic: a History of American Animated Cartoons*. Von Hoffmann Press, Inc., 1980, p. 40; “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” in Esther Leslie, *Hollywood Flatlands. Animation, critical Theory and the avant-garde* (London and New York: Verso, 2002) p. 32

<sup>32</sup> I.S. Escobar, “Mickey y Minnie: dos actores internacionales” *Diario El Sol*, 4 June 1933, p. 8; Aniversarios- El del nacimiento de Mickey Mouse” *La Vanguardia*, 21 October 1933, p. 10; “El aniversario de Mickey Mouse”, *La Vanguardia*, 1 December 1934, p. 15; “Mickey Mouse ha cumplido ya siete años” *La Vanguardia*, 14 September 1935, p. 15; “Como se celebrará en el extranjero el aniversario de Mickey Mouse” *La Vanguardia*, 17 September 1935, p. 17; as Clowry Chapman noted: “could anything be more eloquent than the column-long editorials in English newspapers that greeted Mickey Mouse on his fifth birthday anniversary last fall!” Clowry Chapman “Mickey Mouse and other things” *Bulletin of the United States Trademark Association*, vol. 29, November 1934, pp. 271-272.

<sup>33</sup> Introduction” in Joe Craig and Janet Morra-Yoe (ed) *The Art of Mickey Mouse* (New York: Hyperion, 1991) p. 8.

<sup>34</sup> “El Teatro y el Cinema” *Ellas*, 4 September 1932, p. 13; “Mickey visita la exposición de Chicago” *La Vanguardia*, 30 November 1933, p. 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, p. 19; “Mickey demuestra entender en mecánica” *La Voz*, 18 December 1934, p. 7.

<sup>35</sup> For a history of these packaging devices, see David Karp “Orange Wrappers” in Harlan Walker (ed) *Food in the Arts: Proceedings of the Oxford Symposium on Food and Cookery* (Devon: Prospect Books, 1998) pp.

Valencia and Alcoy was granted permission to install a new machine that issued silk and tissue paper to wrap and pack oranges.<sup>36</sup> For some citrus entrepreneurs, Mickey became an ideal mark to be used in orange wrappers because it distinctively personalised individual oranges. Moreover, its popularity was imagined as a direct magnet to attract the costumer's eye to their oranges.<sup>37</sup> It was a sign specially designed to distinguish the oranges in fruit shops. In that sense, it marked the crucial stage for the transformation of oranges into commodity products.<sup>38</sup> Since crates were easily discarded by retailers or distributors, enfolding the orange into wrapping paper helped the trade mark to survive shipment contingencies. As we can see from the illustrations shown above, both crate labels and orange wrappers appealed to the foreign eye.<sup>39</sup> 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.<sup>40</sup>

## 2. The Uses of Enchantment

Mickey's media ubiquity also generated distinctive local effects. When the mouse made its first appearance, it quickly merged with local folktales, stories, and myths already in place in Spain.

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119-124; see also some brief comments in Clarissa Hyman, *Oranges. A Global History* (London: Reaktion Books, 2013) pp. 52-53.

<sup>36</sup> Comité Regulador de la Industria del Papel, *Gaceta de Madrid*, 192, 11 July 1930, p. 272.

<sup>37</sup> "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 Vicente Abad "The Orange Trademarks" in *The Golden Fruit. The Spanish Citrus Industry 1781-2000* (Valencia: Generalitat Valenciana: 2000) pp. 121-128; at 125.

<sup>38</sup> Franck Cochoy has traced the material agency of "packaging"; see Franck Cochoy "(2007): "A Brief Theory of the Capitation of the Public", *Theory, Culture & Society*, 24:7-8, 213-233. See also Alain Pottage "No (more) logo: plain packaging and communicative agency" *UC Davis Law Review*, 47 (2) 2013, pp. 515-546.

<sup>39</sup> As Vicente Abad notes, some traders "worried about designing their marks according to the tastes of the markets to which they were addressed" in Vicente Abad "The Orange Trademarks" in *The Golden Fruit. The Spanish Citrus Industry 1781-2000* (Valencia: Generalitat Valenciana: 2000) pp. 121-128; at 125

<sup>40</sup> Trade marks and labels written in a foreign language were accompanied by the name of the manufacturer and his or her locality as stated in Fernando Peraire, *La marca de fábrica. Comentarios a la legislación vigente Jurisprudencia civil y penal*. (Barcelona, Impr. A. Ortega 1927) p. 39.

For instance, newspapers reported Mickey's engagement in traditional festivals.<sup>41</sup> 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".<sup>42</sup> Yet there is an important issue to be noted here: no Spanish intellectual property right was held by Walt Disney in the early 1930s.<sup>43</sup> 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.<sup>44</sup> Similarly, although contemporary scholars often criticise Disney as hiding corporate plans to appropriate folklore, particularly after the success of *Snow White and the Seven Dwarfs* (1937),<sup>45</sup> the dynamic here was precisely the opposite. There was no plan to appropriate traditional narratives and folktales. However, the popularity unintentionally brought the mouse to interact with local myths and legends. Suitably nicknamed "Ratón Miguelito",<sup>46</sup> 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".<sup>47</sup> Unlike Mickey, Pérez was a tooth fairy 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.<sup>48</sup> The meeting between the mice was so productive for the Spanish and Latin American imaginary

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<sup>41</sup> "Mickey Mouse admira las fallas valencianas" *Mundo gráfico*, 26 April 1933, p.16

<sup>42</sup> Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke University Press, 1998) p. 7.

<sup>43</sup> 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 D. K. Peterson "Disney, Walt (1901-1966)" in Donald Haase (ed) *The Greenwood Encyclopaedia of Folktales and Fairy Tales. Vol. 1: A-F* (Westport: Greenwood press, 2008) pp. 271-275; at 272; see also David Bain and Bruce Harris (ed) *Mickey Mouse. Fifty Happy Years* (London: New English Library, 1977) p. 12; Leonard Maltin, *Of Mice and Magic: a History of American Animated Cartoons*. Von Hoffmann Press, Inc., 1980, p. 34.

<sup>44</sup> It was however beginning to be plotted, see Didier Ghez, *Disney's Grand Tour: Walt and Roy's European Vacation, Summer 1935*, (PLACE, Theme Park Press, 2013).

<sup>45</sup> Jack Zipes "Breaking the Disney Spell" in Maria Tatar (ed) *The Classic Fairy Tales* (New York: W. W. Norton & Company, 1999) pp. 332-352.

<sup>46</sup> *La Vanguardia*, 9 September 1934, p. 12; Clowry Chapman "Mickey Mouse and other things" *Bulletin of the United States Trademark Association*, vol. 29, November 1934, pp. 271-272.

<sup>47</sup> "El Ratoncito Pérez (Mickey Mouse) se une a los Artistas Asociados" *LA Vanguardia*, 1 May 1931, p. 16; "Todo el mundo conoce al saladísimo Mickey Mouse, o sea el Ratoncito Pérez" in "Ecos y Noticias" *La Vanguardia*, 16 June 1931, p. 19.

<sup>48</sup> José Manuel Pedrosa, *La historia secreta del Ratón Pérez* (Madrid: Páginas de Espuma, 2005)

media that some commentators rebranded Mickey (or Miguelito) as Ratón Pérez while others preferred to think of a battle between them.<sup>49</sup> These games of free association also influenced some corporate attempts to register a new Mickey trade mark. In the summer of 1931, the Spanish patent office received a trade mark application depicting a grotesque figure of Mickey Mouse playing the fiddle.<sup>50</sup>

While it is possible to recognise such a Mickey image from the film released by Disney in 1930,<sup>51</sup> 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.<sup>52</sup> Represented by the doyen of the Spanish trade mark agents, Alberto de Elzaburu,<sup>53</sup> the application was a label to be applied on discs in order to distinguish a song written by Harry Carlton.<sup>54</sup>

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<sup>49</sup> Fernando G. de Mantilla “Las películas de dibujos animados” *El Imparcial*, 7 September 1930, p. 7; Carlos Fernández Cuenca, “Las películas de dibujos” *La Época*, 15 January 1931, p. 3; “Mickey Mouse admira las fallas valencianas” *Mundo gráfico*, 26 April 1933, p. 16; Miguel Angel Bayardi, *Ratón Pérez contra Miguelito*, (México: Secretaria de Educación Pública, 1945)

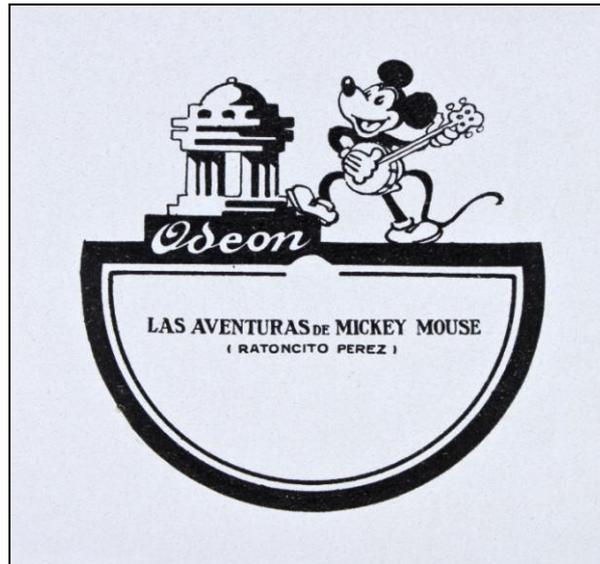
<sup>50</sup> Description of the trade mark, Odeón, SA, 28 July 1931, File 0086388; Archivo Histórico OEPM

<sup>51</sup> The film was “Fiddlin’ Around”; see Leonard Maltin, *Of Mice and Magic: a History of American Animated Cartoons*. Von Hoffmann Press, Inc., 1980, p. 345

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<sup>53</sup> Power of Attorney from Odeón, SA to Elzaburu, 21 July 1931, File 0086388; Archivo Histórico OEPM; 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, p. 11; see also Alberto de Elzaburu “Comentarios sobre Propiedad Industrial” *El Sol*, 5 July 1924, p. 6.

<sup>54</sup> Richard Holliss and Brian Sibley, *Mickey Mouse. His Life and Times* (New York: Harper & Row, 1986) p. 23.



**Fig. 5 - Spanish registered Trade Mark 86388**  
Courtesy of Archivo Histórico OEPM

Curiously and somewhat ironically, the trade mark combined the names Mickey Mouse/Ratón Pérez to fix the connection in the mind of Spanish consumers.<sup>55</sup> 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 two characters came to be distinguished over the years is not found from 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 here. However, it is possible to find an answer outside of positive law. In 1909, Ellen Key wrote the acclaimed book *The Century of the Child*<sup>56</sup>, presaging the twentieth century as the period to focus on the child as a bearer of rights and as an object of increasing societal interest. Throughout the twentieth century educators, sociologists and cultural theorists have explored how childhood has become associated with marketing as play becomes a primary site of consumption.<sup>57</sup> In the 1920s and 30s, when cinemas were largely independently owned, film producers and distribution companies provided creative marketing advice and

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<sup>55</sup> “El famosísimo disco Odeón Ratoncito Pérez (Mickey Mouse) lo vende Zato, Peligros, 14” in “Noticias e Informaciones Diversas” *diario ABC*, 28 December 1930, p. 71.

<sup>56</sup> Ellen Key, *The Century of the Child*, (New York and London: Knickerbocker Press, 1909)

<sup>57</sup> See generally Viviana A. Zelizer, *Pricing the Priceless Child, The Changing Social Value of Children* (New York: Basic Books, 1985); (ed) Henry Jenkins, *The Children's Culture Reader*, (New York: New York University Press, 1998)

strategies to theatre owners to accompany new and popular releases.<sup>58</sup> 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 clubs owes its heritage to this practice.<sup>59</sup> 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.<sup>60</sup> Fan clubs involved an opportunity for the social regulation of fans. Guided by the Disney campaign booklet, the clubs helped promote desired readings of the character and 'correct' unwelcome local associations, such as the connection with Ratón Pérez. Fan clubs played a normative role in delineating property boundaries and investing trade marks with preferred meaning. By 1932, Mickey Mouse Clubs boasted more than a million members.<sup>61</sup> Spain was not an exception.<sup>62</sup> The Mickey fan club not only contributed to making sales,<sup>63</sup> it facilitated Mickey's "universal" appeal at the grassroots, removing the cultural resonance of local attempts to inscribe different characteristics to the popular identity so it could

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<sup>58</sup> Film trade magazines of the 1920s and 1930s are full of marketing strategies that could be adopted by independent theatre owners. See for example, "Publicity in Practice" 7 November 1928, *The Bioscope Service Supplement*, p iii; "Index to Exploitation Suggestions June- Sept 13 Appearing in Bioscope", *Bioscope*, YEAR?; "Selling the Picture to the Public. Goodwill and How to Get It", *Bioscope*, 9 August, YEAR

<sup>59</sup> "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". Richard deCordova "The Mickey in Macy's Window: Childhood, Consumerism, and Disney Animation," in Eric Smoodin (ed.) *Disney Discourse: Producing the Magic Kingdom* (New York 1994) pp. 203-13; at 207.

<sup>60</sup> See Antonio Martín Martínez, "Apuntes para una historia de los tebeos: La civilización de la imagen (1917-1936)" *Revista de Educación-Estudios*, 1968, pp. 139-153;

<sup>61</sup> David J. Collis, "Walt Disney Company (A), The: Corporate Strategy TN." *Harvard Business School Teaching Note* 795-152, April 1995; Bob Thomas, *The Walt Disney Biography* (London: New English Library, 1977) p, 80; Steven Watts, *The Magic Kingdom. Walt Disney and the American Way of Life* (Columbia and London: University of Missouri Press, 1997) p. 147.

<sup>62</sup> *La Vanguardia*, 3 February 1933, p. 13.

<sup>63</sup> Carroll E. Pellisier "Making sales through clubs: RH White Co. Mickey Mouse Club" *Playthings*, June 1932, p. 40.

‘correctly’ function as a 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.

### 3. Toys and Cookies

Toys, cigarette cards and candies associated with popular children’s film characters were an obvious tie-in.<sup>64</sup> 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”.<sup>65</sup> Hence there was no better way to bring customers into custom than to link a toy and candy trade with a popular children’s film character.<sup>66</sup> Mickey was obvious site for development.<sup>67</sup> Mickey began to appear in Spanish candy bars and started to take the form of distinctive toys, locally made.

One of the citrus entrepreneurs astute enough to see profit in these media flows was Rogelio Sanchís Bernia (1888-1936), who turned to making toys from a small town in the region of Valencia.<sup>68</sup> In the late 1920s his toy company, La Isla, was getting a name for making

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<sup>64</sup> Felix the cat took this path in the 1920s, well before Mickey Mouse, although both characters began with the same New York agent, Margaret Winkler see John Canemaker, *Felix: The Twisted Tale of the World's Most Famous Cat*, (New York Pantheon Books, 1991).

<sup>65</sup> Kenneth Brown, *Factory of Dreams. A History of Meccano Ltd* (Lancaster: Crucible Books, 2010) p. 110.

<sup>66</sup> In fact, as Richard deCordova notes “the Disney Company was interested in the publicity value of these items as much as the substantial royalties they would generate”. De Cordova continues quoting Roy Disney writing that “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” in Richard deCordova “The Mickey in Macy’s Window: Childhood, Consumerism, and Disney Animation,” in Eric Smoodin (ed.) *Disney Discourse: Producing the Magic Kingdom* (New York 1994) pp. 203-13; at 205.

<sup>67</sup> As a trade journal noted in the summer of 1930, “Mickey Mouse means business” *The Fancy Goods Trader*, July 1930, p. 9; see also “La enorme popularidad del ratón Mickey” *La Vanguardia*, 12 May 1933, p. 16.

<sup>68</sup> “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 interested in toys. That’s amazing, because the toys are of such great quality and are so complex” in Catherine Saunders-Watson “La Isla Toys: Radical characters of the pre-war era” *Antique*

distinctive toys representing Hollywood film and cartoon stars such as Felix the Cat, Oliver Hardy and Buster Keaton.<sup>69</sup> Quickly after Mickey was released, he incorporated it into his portfolio of tinsplate sparklers and wind-up toys.<sup>70</sup> What made these toys remarkable was not that they were – as one collector says- “the finest Disney wind-ups ever made”.<sup>71</sup> Rather, their most interesting feature was how they became to be considered as “Disney toys”. Their combination of distinctive local imagination attracted not only children. Disney representatives in Europe appeared to have been so enchanted with Rogelio’s toys that, instead of suing him, they decided to enrol him as a licensee.<sup>72</sup>

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*Toys*, July 2007, pp. 18-24; at 20; see also generally “Rogelio Sanchís’ Oranges Fruit Crane Label” in Archivo Rogelio Sanchís.

<sup>69</sup> Carl Lobel, “Spanish dancing Sparklers” *Antique Toy World*, April 1995 n° 25; José Pascual Sellés *Juguetes valencianos: un siglo en la historia de una industria peculiar* (Valencia: Generalitat Valenciana, Conselleria de Cultura, Educación y Ciencia, 1997) pp. 118-119; Pilar Avilés, *Informe: El museo valenciano del juguete* (Valencia, 2011) p. 6.

<sup>70</sup> Catherine Saunders-Watson “La Isla Toys: Radical characters of the pre-war era” *Antique Toys*, July 2007, pp. 18-24; see also Doug and Pat Wengel “Origins and examples of those great R.S. La Isla Toys made in Spain” *Antique Toy World*, April 1995, vol. 25, Number 4, pp. 36-40

<sup>71</sup> Catherine Saunders-Watson “La Isla Toys: Radical characters of the pre-war era” *Antique Toys*, July 2007, pp. 18-24; at 22; Bevis Hillier and Bernard C. Shine, *Walt Disney's Mickey Mouse Memorabilia -- The Vintage Years 1928-1938* (London: Octopus Books Ltd, 1986), p. 45 [“As far as character toy making in Spain is concerned, Rogelio Sanchis is the beginning and the end. He was a genius at designing and producing toys”]. See also Chris Dercon and Thomas Weski (Eds) *Partners, Ydessa Hendeles*, 21 ; and Anja Bock, *Exhibiting Trauma: Ydessa Hendeles at the Haus der Kunst in Munich* (Thesis Concordia university, Quebec, 2004), pp. 29-31

<sup>72</sup> Contract between Walt Disney Enterprises and Rogelio Sanchís; 6 September 1934, Archivo Rogelio Sanchís. 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.



**Fig. 6 - Minnie Mouse Carrying Felix in Cages (La Isla- R.S.- Toys)**  
Courtesy of the Ydessa Hendeles Art Foundation – Photo by Robert Keziere

It needs to be remembered that it is difficult to call the La Isla toy an unauthorised appropriation of Mickey or a ‘piracy’ given that Disney had failed to register any marks in Spain until DATE and it is not clear how any registration would have been determined.<sup>73</sup> Yet such was the confidence of the Disney company’s entitlement to authorise all Mickey-related enterprise that in September 1934, the Disney representative for Spain, Portugal and Italy, Pierre de Beneducci, granted the toy maker one of the first Disney licences for Spain.<sup>74</sup> The contract signed illustrates

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<sup>74</sup> For a brief reference to Beneducci’s role in Italy, see Fabio Gadducci, Leonardo Gori, Sergio Lama, *Eccetto topolino* (Battipaglia Nicola Pesce Editore, 2011) p. 86; see also [Mondadori archives](#) - Disney distributed Europe into two territories and appointed two representatives. While Beneducci was in charge of Portugal, Spain and Italy, William Banks Levy, was appointed to manage Disney merchandising in London,. See Cecil Munsey, *Disneyana: Walt Disney Collectibles* (New York: Hawthorn Books, 1974) pp. 81-85.

an early Disney's synergistic<sup>75</sup> business practice, an attempt to strengthen the marketing chain by enlisting entrepreneurs who were already manufacturing Disney products locally.

Thus rather than being a threat, unlicensed Spanish 'pirate' activity initially helps develop the value of the Disney trade marks in Spain. It made more commercial sense to work with existing channels and bring them into the fold, whilst outsourcing manufacturing and retailing associated with the films. This allowed the company to quickly establish a presence in new areas, connecting the US company with a much broader class of goods and services, and the association with Disney was made possible, regardless of the actual antecedent of the products. Instead of using the law defensively, intellectual property served as a framework to set up the conditions of production and distribution going forward.

These local engagements are also attributed as providing a feedback effect on Disney's future creativity. As Forgacs notes:

it 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.<sup>76</sup>

After citrus entrepreneurs, the second distinctive entrepreneurs coming to the Spanish patent office with the hope that a registered Mickey could distinguish their products were cookie and confectionary traders. The first applicant was a candy manufacturer who successfully registered the trade mark "Miki" for cookies in 1933.<sup>77</sup> One year later, María Bea Biosca, another candy purveyor, visited the patent office with similar ambitions.<sup>78</sup> Her trade mark application, a

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<sup>75</sup> Wasko goes further to claim that with Disney, 'synergy' involves establishing an "architecture of merchandising". Janet Wasko, *Understanding Disney*, (Cambridge: Polity Press, 2001) p. 159.

<sup>76</sup> David Forgacs, (1992), "Disney Animation and the business of childhood", *Screen* 33,4:361-374; at 366.

<sup>77</sup> Trade Mark Application, 17 March 1933, File 0093620; Archivo Histórico OEPM

<sup>78</sup> Trade Mark Application, 27 September 1934, File 100578; Archivo Histórico OEPM

humorous drawing of Mickey Mouse with large hands and open mouth,<sup>79</sup> successfully passed the bureaucratic hurdles and the trade mark was granted in 14 January 1935.<sup>80</sup> Surely, both traders applied for a trade mark thinking that they had already found the means to attract customers, a real sales appeal since they were going to be of particular interest to children and families. However, the most surprising thing is that after all their effort to go through the bureaucratic process of registering the trade mark, they both renounced rights to the trade mark in 1935.<sup>81</sup> The case was more astonishing regarding the second applicant since she abandoned the trade mark just two weeks after she obtained it.<sup>82</sup> Neither party gave an explanation as to why they had so drastically renounced their rights, however it is possible to surmise that they did so after feeling the pressure of a licensed network that was spreading across Spain, a spider web of licensing and associated income streams underlying intangible properties. The culturally imperialistic implications of this acquiescence to Disney's ambitions was 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".<sup>83</sup>

#### 4. Globally Licensed Networks

Less than a decade after Mickey was born, even lawyers came to recognise Mickey as "one of the most powerful merchandising forces in the world",<sup>84</sup> and as Jane Gaines referred to much later, it is paradigmatic textbook example of productive use of intellectual property.<sup>85</sup> Disney had built

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<sup>79</sup> Description of Trade Mark, 27 September 1934, File 100578; Archivo Histórico OEPM

<sup>80</sup> Trade Mark Certificate 14 January 1935, File 100578; Archivo Histórico OEPM

<sup>81</sup> Instancia de Renuncia. 9 July 1935; File 0093620; Archivo Histórico OEPM

<sup>82</sup> Instancia de renuncia, 1 February 1935, File 100578; Archivo Histórico OEPM

<sup>83</sup> Josep María Huertas "Mickey y sus 55.000 amigos" *El Periódico de Catalunya*, 15 November 1998, p. 41

<sup>84</sup> Alf K. Berle and L. Sprague de Camp, *Inventions and their Management* (Pennsylvania: International Textbook Company, 1937) pp. 563-564.

<sup>85</sup> Gaines described Mickey as a "merchandising legend" in her *Contested Culture. The Image, the Voice, the Law* (The University of North Carolina Press, 1991), p. 158.

a network of licenses by forging alliances locally<sup>86</sup> and developed the ambition to succeed as a multinational corporation. However, rather than reading this as the origins of a Disney octopus stretching arms out across the globe, we would like to draw attention to the role of other players who assisted in the creation of this enterprise that were central to the development of Disney licensing activity and to turning ad hoc relations between the US film maker and local businesses into something of global significance.

As we have seen, business ventures arose from the popularity of the Mickey character in Spain, coupled with the impossibility of centralised control by the company. Foreign corporate enterprises were much better placed, at this point in time, to read local demand and to service production, wholesaling and retailing. But for Mickey marks to become particularly productive for Disney as a global brand, there were other important developments that needed to occur.

This is best explored 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. Spanish children were given a free paper mask when their parents bought them a tube of particular branded toothpaste.<sup>87</sup> Combining the commercial forces of a toothpaste manufacturer, a paper maker and an entertainment company is an excellent example of the creative penetration of specialist novelty marketing to children.<sup>88</sup> The trick of making toothpaste ‘kid-friendly’ was a smart advertising idea that worked well for all three parties involved.<sup>89</sup> Also, exactly the same campaign was simultaneously launched in distant

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<sup>86</sup> For a wonderful history of early Disney marketing in the US, see Richard deCordova, "The Mickey in Macy's Window: Childhood, Consumerism, and Disney Animation," in Eric Smoodin (ed.) *Disney Discourse: Producing the Magic Kingdom* (New York 1994) pp. 203-13.

<sup>87</sup> “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, p. 6; “Ya hay de nuevo caretas” *La Vanguardia*, 24 April 1934, p. 2; “Ya hay de nuevo caretas” *La Vanguardia*, 22 May 1934, p. 7;

<sup>88</sup> Victor Watson, *The Waddingtons Story: From the Early Days to Monopoly, the Maxwell Bids and into the Next Millennium* (Jeremy Mills Publishing, 2008)

<sup>89</sup> 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 E. Evalyn Grumbine, *Reaching Juvenile Markets* (New York and London: McGraw-Hill Book Co., 1938) p. 87.

places such as the United Kingdom,<sup>90</sup> Australia,<sup>91</sup> and New Zealand.<sup>92</sup> While it was indeed a significant premium-based strategy in which incentive-gifts were given to consumers,<sup>93</sup> facilitating brand loyalty devices and identity-kits to them, the idea of having a globally synchronised campaign was very innovative.

There are at least two additional features underlying this marketing scheme that need to be highlighted. Firstly, the campaign could only take place thanks to the global expansion of multinational advertising agencies that had occurred in the late 1920s.<sup>94</sup> 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.<sup>95</sup> 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 its favour, enabling trade mark licences to become selling tools in themselves, and in turn allowing for further professionalization and growth of the advertising industry in marketing 'premium brands'.<sup>96</sup> This development facilitated the professional development and internationalisation of trade mark practice in the following decade.<sup>97</sup>

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<sup>90</sup> "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, p. 14

<sup>91</sup> "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, p. 14.

<sup>92</sup> "Kiddies delighted with Mickey or Minnie Mouse Paper Masks – free with every 1/3d tube of Listerine Tooth Paste" *Akaroa Mail and Banks Peninsular Advertiser*, 22 May 1934, p. 2.

<sup>93</sup> For an interesting study of similar strategies, see Daniel J. Robinson "Marketing Gum, Making Meanings: Wringley in North America 1890-1930" *Enterprise & Society*, March 2004, pp. 4-44.

<sup>94</sup> "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 Francisco J. Perez-Latre "Spain" in John McDonough and Karen Egolf (eds) *The Encyclopaedia of Advertising* (London: Taylor and Francis, 2003) pp. 1464- 1468 at 1464

<sup>95</sup> Julián Bravo, J. *Walter Thompson España. De 1927 a 1936* (Madrid, J.Walter Thompson, 1978)

<sup>96</sup> *Trademark selection: The management team method* (New York, USTA, 1960)

<sup>97</sup> Jose Bellido, "Toward a History of Trade Mark Watching" in Evaluations: Cases, experiments and models as tools of appropriation and valuation, University of Lucerne, 12 – 13 June 2014

That Spanish licensees perceived a change in commercial culture underway can be seen in trade mark disputes that arose after the mysterious trade mark withdrawal of the first cookie purveyor above mentioned. Three days after Biosca renounced her trade mark on 4 February 1935, another cookie manufacturer applied for a Mickey trade mark.<sup>98</sup> The applicant was a company named Lose, headquartered in Tarragona, and one of the most well-known Spanish cookie manufacturers in the twentieth-century.<sup>99</sup> Curiously enough, a covering letter from the Disney representative in Europe, Pierre de Beneducci, was part of their application.<sup>100</sup> 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 trade mark in Spain for confectionery, chocolates, candies and jams.<sup>101</sup> Unsurprisingly, the application was opposed by the holder of the trade mark “Miki”, who had been producing cookies labelled so since 1933.<sup>102</sup> He argued that there were phonetic, conceptual and visual similarities between the marks that precluded the registration of the new application according to section 124.1 of the Spanish Intellectual Property code (1929).<sup>103</sup> 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 trade mark withdrawal of the opposition just filed before the decision of the comptroller was made.<sup>104</sup> Combined with the other examples there is clearly some reluctance to let the comptroller publically decide who owns what rights, in preference to coming to terms with parties under a veil of confidentiality. This raises the notion of license agreements operating as a form of private

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<sup>98</sup> Trade Mark Application, 4 February 1935, File 0102173; Archivo Histórico OEPM

<sup>99</sup> Javier Moreno Lázaro, “La dulce transformación. La industria gallega española en la segunda mitad del siglo XX” *Revista de historia industrial*, n. 19, 2001, pp. 205-248; Javier Moreno Lázaro. “Tecnología, empresa y mercado en la fabricación española de galletas, 1790-1936” *Revista de historia industrial*, n. 37, 2008, pp. 15-35; Manuel Monroig, “La industria de productos Lose: Honra y orgullo de España” *Imperio: Diario de Zamora*, 18 July 1956, p. 3.

<sup>100</sup> Letter from Pierre de Beneducci, Representante Exclusivo en España, Italia y Portugal, 24 January 1935; File 0102173; Archivo Histórico OEPM

<sup>101</sup> Letter from Pierre de Beneducci, Representante Exclusivo en España, Italia y Portugal, 24 January 1935; File 0102173; Archivo Histórico OEPM

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<sup>103</sup> *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)

<sup>104</sup> Instancia de Renuncia. 9 July 1935; File 0093620; Archivo Histórico OEPM

registration of rights, with litigation practice ensuring that there is little public oversight of these arrangements.

In 1934 an annual merchandising catalogue was launched.<sup>105</sup> It listed licensed products and manufacturers. It also included notation of the European offices established to manage the rights available to facilitate further licensing and revenue streams.<sup>106</sup> The production of an annual reinforced the idea that the discrete products were connected through a chain of authorisation of ‘rights’ managed by Disney’s agents and that opportunities were to be constantly renewed. With time, this co-ordination 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”.<sup>107</sup> 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, it led to a different integration between the products and signs that mushroomed in the Spanish marketplace.<sup>108</sup> It affected the meaning of signs, heralding a shift from production to merchandising, from trade mark to brand. Rather than the marks operating as a sign attached to particular goods and services, it comes to be associated with the much more abstract, affective properties of the Mickey character.<sup>109</sup> Mickey products, such as paper masks were not just given away with toothpastes to influence mother’s choice about purchasing a particular branded toiletry product for her children.<sup>110</sup>

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<sup>105</sup> Cecil Munsey, *Disneyana: Walt Disney Collectibles* (New York: Hawthorn Books, 1974) p. 113.

<sup>106</sup> The first issue of the merchandising catalogue was arranged by Disney’s merchandising director Kay Kamen; see Leonard Mosley, *The Real Walt Disney. A Biography* (London: Grafton, 1985) pp. 148-150; David Bain and Bruce Harris (ed) *Mickey Mouse. Fifty Happy Years* (London: New English Library, 1977) p. 150; Miriam Claire Beezy “Good Marksmanship” *Los Angeles Lawyer*, December 2006, pp. 20-26; at 22; Bob Thomas, *The Walt Disney Biography* (London: New English Library, 1977) pp. 81-82; Cecil Munsey, *Disneyana: Walt Disney Collectibles* (New York: Hawthorn Books, 1974) pp. 107-126..

<sup>107</sup> “Mickey Mouse Looks Forward to 1936” *Playthings*, February 1936, p. 56

<sup>108</sup> Papeles Wipa (Barcelona) was one of the licensees that began producing Mickey fountain pens and other stationary material with the film star.

<sup>109</sup> 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”. *Convergence Culture: Where Old and New Media Collide*, (New York and London, New York University Press) p. 319.

<sup>110</sup> E. Evalyn Grumbine, *Reaching Juvenile Markets* (New York and London: McGraw-Hill Book Co., 1938) p. 87-88.

Rather, the additional character connection, invested a utilitarian toiletry product with emotional connections.<sup>111</sup> Here branding comes to dictate consumer choice in a different way to the past where the label merely helped to communicate fitness for purpose, source of the product and allow for consumer past experience to be brought to bear on consumption choice. Through the chain of brand associations the signs generate more abstract affective relationships with products. Marks become much more complex bearers of cultural meaning and “symbolic capital”. As Pierre Bourdieu notes,

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 journalism, publishing and the cinema, fashion and advertising, decoration and property development.<sup>112</sup>

Character merchandising assists in the development of symbolic capital, to the mutual advantage of all the authorised producers that appear in the catalogue. The toothpaste can now be distinguished by a characteristic and meaning that is unobtainable to competitors. In exchange, the Disney brand is further universalised and entrenched in the global consciousness. This activity leads to a complex overlaying of meaning being associated with signs, and this complexity, ‘empowers’ 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 their 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 representatives. In the last months of 1934 and the beginning of 1935 there were the contenders who were encouraged because there remained

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<sup>111</sup> “Jabón y Pasta dentífrica Mickey Mouse- Con la Autorización de Walt Disney” *La Vanguardia*, 5 November 1935, p. 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 David Bain and Bruce Harris (ed) *Mickey Mouse. Fifty Happy Years* (London: New English Library, 1977) p. 15.

<sup>112</sup> Pierre Bourdieu, *Distinction. A social critique of the production of taste*, (trans. Richard Nice) (London: Routledge & Kegan Paul, 1984) p. 328-9.

nothing on the register in Disney's name.<sup>113</sup> This allows us to consider localised resistance to the Disney and friends' expanding empire.

## 5. Walt Disney, from Barcelona

Not everybody who applied for a Mickey trade mark withdrew or abandoned their application. In March 1934, Jose Geis Bosch went to the patent office to register a beautiful trade mark in class 44 (textiles) depicting not only Mickey but also his girlfriend Minnie.<sup>114</sup> His application was also opposed. What made this opposition different from the previous cases mentioned was the profile of the opponent. The opposition was not raised by the typical Disney licensee but by Disney himself. Walter E. Disney, astonishingly described as a subject domiciled in Barcelona, formally opposed Geis Bosch's application.<sup>115</sup> He claimed to be the creator of the two beloved characters as evidenced in the posters and adverts he forwarded to the office. The applicant did not desist on 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 his application indicated a weakness of strategic advantage to Geis Bosch.<sup>116</sup> On the one hand, his self-description as the creator and proprietor of the characters enabled the applicant to argue that the discussion was not about copyright but industrial property. On the other hand, the submission of adverts and posters was particularly revealing of the lack of documentary proof to support the opposition. Since there was no trade mark certificate that could challenge the application, Geis Bosch was granted the trade mark a few months later.<sup>117</sup>

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<sup>113</sup> Similar trade mark 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] HCA 38; (1937) 57 CLR 448; see also George G. Turri, "Mickey Mouse in Australian High Court" *Bulletin of the United States Trademark Association*, vol. XXXII, October 1937, No. 10, pp. 297-306.; "Mickey Mouse's Rights are argued in Australia" *New York Times*, 30 April 1936, p. 16.

<sup>114</sup> Trade Mark Application, 10 March 1934; File 98076 Archivo Histórico OEPM

<sup>115</sup> Trade Mark Opposition, 15 June 1934; File 98076 Archivo Histórico OEPM

<sup>116</sup> Response by Geis Bosch, 4 September 1934; File 98076 Archivo Histórico OEPM

<sup>117</sup> Trade Mark Opposition Decision, 16 March 1935; File 98076 Archivo Histórico OEPM



**Fig. 7 - Spanish registered Trade Mark 86388**  
Courtesy of Archivo Histórico OEPM

Another trader who also frustrated Disney in registering a Mickey trade mark in the Spanish patent office was Manuel Osa. In November 1934, he applied for a Mickey trade mark consisting of an original drawing of the mouse pouring a sparkling beverage into a narrow glass with the legend “always order the delicious aperitif”.<sup>118</sup> Despite (or because of) the application being limited to aperitifs and carbonated drinks, his attempt to register it was opposed again by Walt Disney.<sup>119</sup> Interestingly, Disney now included in his opposition an appendix with a copy of the US copyright certificate he received in 1931.<sup>120</sup> Instead of withdrawing the application, Osa defiantly contested the opposition to his application. He argued that the goods or services of his application were too far away from opponent’s typical goods to cause confusion. Astutely, he continued his argument around three major issues. Firstly, he used the lack of Spanish trade mark registrations held by Disney as a touchstone to interrogate the basis of the opposition. Secondly, he criticised the ongoing Disney licensing practice as an attempt to create a *de facto*

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<sup>118</sup> Trade Mark Application, 22 November 1934, File 101116; Archivo Histórico OEPM

<sup>119</sup> Opposition to the Trade Mark application, 14 February 1935; File 101116; Archivo Histórico OEPM

<sup>120</sup> Appendix: US Copyright Certificate; June 1, 1931. Entry Class G. No. 6499 (Walt Disney’s Mickey Mouse) File 101116; Archivo Histórico OEPM

monopoly. And thirdly, he suggested that a pending trade mark application in the registry, precisely submitted by Disney for a magazine for children was the right scope of the intangible property he should be given, if any.<sup>121</sup> The final point that really provided the icing on the cake was to focus on the existence of a variety of Mickey orange trade marks already in the registry.<sup>122</sup> By pinning the blame on either Disney or the comptroller, Osa's (or his trade mark agent)<sup>123</sup> argumentative strategy proved successful.<sup>124</sup> The comptroller picked David over Goliath on the basis that the lack of previous registered Spanish trade marks precluded Disney to oppose such an application.



**Fig. 8 - Spanish registered Trade Mark 101116**  
Courtesy of Archivo Histórico OEPM

After these clamorous defeats that put Disney licensing practices at risk, Disney representatives paid even more attention to their trade mark policy strategies and the contractual arrangements

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<sup>121</sup> Trade Mark Application, 22 December 1934, File 101717; Archivo Histórico OEPM

<sup>122</sup> Response to the Opposition, 28 February 1935, File 101116; Archivo Histórico OEPM

<sup>123</sup> Power of attorney from Manuel de la Osa to Luis María de Zunzunegui, 22 February 1935 File 101116; Archivo Histórico OEPM

<sup>124</sup> Trade Mark Opposition Decision, 13 March 1935; File 101116; Archivo Histórico OEPM

underpinning them in Spain. In February 1935, Disney opposed another trade mark application lodged by the famous Italian publisher Lotario Vecchi.<sup>125</sup> Although Vecchi had agreed with the Disney agent for his application to be withdrawn,<sup>126</sup> Disney filed an opposition in an attempt to avoid any more pitfalls.<sup>127</sup> This was not necessary since Vecchi in fact withdrew his application.<sup>128</sup>

If legal struggles concerning trade mark 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,<sup>129</sup> which was a move the company had followed in several countries.<sup>130</sup> In Spain, the application did not go as smoothly as expected. It faced two powerful oppositions from the outset.<sup>131</sup> The opponents used a repertoire of arguments to persuade the comptroller of the need to reject the application. After highlighting that Walt Disney was obviously not a resident from Barcelona, they also mentioned that the novelty of the design claimed had expired. In that sense, they emphasised the description given by Disney himself as evidence that novelty no longer existed. To put it differently, the development of a large and successful licensed network (and unlicensed uses) ironically prevented him from claiming the requisite level of novelty required to register the design. Disney insisted on submitting a copy of the US copyright certificate which led to the distinction between copyright and industrial property again being raised as an obstacle for the registration. Finally, the lack of specification of the goods and services in which the design was going to be applied was also highlighted as an impediment for its registration. Disney's application failed.

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<sup>125</sup> Trade Mark Application, 4 December 1934, File 101.449; Archivo Histórico OEPM

<sup>126</sup> Letter from Vecchi to Pierre Beneducci (Disney agent), 12 February 1935, File 101.449; Archivo Histórico OEPM. Some references to Vecchi in Spain can be read in Vicent Sanchis, *Franco contra Flash Gordon* (Barcelona: Tres I Quatre, 2009) pp. 60-61; see also Antonio Martín, *Historia del comic español: 1875-1939* (Barcelona: Gustavo Gili, 1978) pp. 118-133.

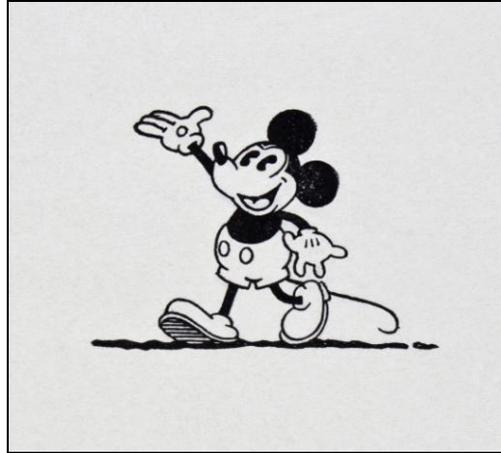
<sup>127</sup> Opposition to Trade Mark Application, 26 February 1935; File 101.449; Archivo Histórico OEPM

<sup>128</sup> Renuncia al Registro, 14 March 1935, File 101.449; Archivo Histórico OEPM

<sup>129</sup> Design Application, 15 February 1935, File 482, Archivo Histórico OEPM

<sup>130</sup> 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* (unreported); *The Times*, Friday, Jul 18, 1930, pg. 5; *The Times*, Saturday, Jul 19, 1930, pg. 4; *The Times*, Wednesday, Jul 23, 1930; pg. 5

<sup>131</sup> Opposition to Design Application, 15 May 1935 (Don Emilio Urquizo y Falcó) and opposition to Design application, 1 June 1935, (Francisco Tribó Capdevila), File 482, Archivo Histórico OEPM



**Fig. 9 - Spanish Design Application 482**  
Courtesy of Archivo Histórico OEPM

From these examples it is clear that there was successful local resistance to the mouse and that the law was helpful in maintaining local rights against the larger global corporation. 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 master, not only of its own domain, but it also rules over social and economic life, dictating possibilities and policing infractions. Culture and economy do not operate in ignorance to this legal will to power, but as Mickey in Spain shows, there is ample room for private negotiation, mediation, indifference and resistance. Our case study shows how productive those interactions can be, without necessarily disrupting the orderly appearance of intellectual property law and the established categories of copyright, design and trade mark. While Spanish law does not appear to advance in this period to facilitate the growth of the global economy, commodification advances nonetheless, repositioning simple agricultural produce like oranges and childhood alike. Thus the most significant legal change to appreciate is not that which occurs on the surface of the law but the movement hidden beneath it. The early twentieth century is a very important period to study because it is here that there is a

change in trade mark practice, a shift in orientation occurring from facilitating production to merchandising. There is also a corresponding change underway in the genealogy of signs, from trade mark to brand. The two encompass different traditions, have different modes of circulation and signify relationships that are entirely different in character. They do not connect with culture and economy in the same way. The significance of Disney as a metaphor of the evolution of intellectual property laws should not be read in terms of the idea of Disney as an aggressive rights holder, 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- embedding ordinary, everyday objects and experiences with symbolic meaning, that turn them into commodities that acculturate us all into the world of intellectual property rights, regardless of our personal affection for the mouse or the Disney company.