



Branding the Chilean Miners

February 3, 2011 by Bob Tarantino

Further to an earlier post ([Chilean Miners: Now That They're Out, What Rights Can They Sell?](#)), Jeremy Phillips, writing in the *Journal of Intellectual Property Law & Practice*, has posted an interesting short comment ([Instant branding, Chile-style](#)):

Branding is a slow process because it requires time to educate the consumer as to what the brand value means, and then more time for the consumer to assess the full meaning of the brand proposition, to decide if it fits the consumer's wish-list and to try it out.

Some forms of branding, for example event brands, can cut corners and accelerate the process of adoption by the public, but usually at the price of their sustainability. Thus Beijing 2008 was an immensely commercial brand proposition for businesses in the years leading up to the Olympic Games held there. Bidding for the right to use it was competitive and laws gave it extra protection. Its core values of international competitiveness and individual excellence were meaningful to consumers and producers alike—yet now the brand is all-but-valueless. London 2012 has replaced it, with Rio 2016 awaiting its turn.

Another form of brand that can spring suddenly into a state of commercial viability is that which is born of the moment, a creature of opportunity. ... A far greater event in terms of its global appeal, and far more likely to be exploited on a grand commercial scale, is the 'Los 33' brand, representing the dreadful plight, stalwart resilience, and unprecedented rescue of 33 trapped Chilean miners from what would otherwise have been a slow, dark, and horrific death.

But what can one do with the brand? The first thing a trade mark attorney wants to know is what classes of goods and services in the Nice Classification should be made watertight by registration. While some things are unlikely to benefit from such branding it is by examination of the brand's core values that one is likely to reach a commercially realistic conclusion.

Jeremy had also [written earlier at the IPKat blog](#) about the potential weaknesses of the "Los 33" brand. The "Los 33" mark comes from the note which the then-trapped miners had sent to the surface, containing the message "Estamos bien en el refugio los 33" (rough translation: "we are alright in the refuge, the 33"). A search of the Canadian Intellectual Property Office's trade-marks database indicates that no filing has been made in respect of the "Los 33" mark. The US Patent and Trademark Office's database shows [two filings](#), both from October 2010 (when the Chilean miners story was at its peak in terms of media coverage) - and covering, respectively, [wines](#) (the applicant appears to be a Chilean winery) and [athletic apparel](#) (the applicant appears to be a private US individual).



Among the different questions which are raised by the prospect of a "Los 33" trade-mark registration: Who would be the owner? (The ideal situation would presumably involve all thirty-three of the miners joining together in some kind of association, whether corporate or otherwise, and then the mark being registered in the name of that association.) To what extent could any one of the thirty-three use the mark in the absence of consent from the others? What would be the ideal mechanism for decision-making in such a large group on how to make use of the mark? (Examples would include majority-rule votes, unanimity, delegation of authority to one or more "officers", etc.)

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