"Don't mess with the Mouse: Protecting your Intellectual Property"

By Sebastián Torres Esq.

He is one of the world's most famous characters. Market researchers estimate a 97% recognition rate in the United States that surpasses even Santa Claus. Brand experts estimate its value to exceed $3 billion. I am talking about the ultimate symbol of Intellectual Property (IP): Mickey Mouse.

Mickey's story, however, did not start with a mouse. Actually, Disney Brothers Studio was a part of Universal Pictures when, Walt Disney created a character named Oswald the "Lucky Rabbit" in 1927. Oswald was an instant hit and Disney thought he was riding first seat on the train to success. As luck would have it, soon after Universal Pictures notified him that it had hired away all his employees and retained the rights to Oswald. This loss of IP could have meant the end of his company, yet Disney and one of his most loyal animators, Ub Iwerks, returned to work until they managed to turn the rabbit into a mouse, and Mickey was born.

As the saying goes "smart people learn from their mistakes," and it seems that Disney Studios learned a lot from theirs since they are quite renowned for enforcing and protecting their IP rights ever since, and so should you.

Most people are not even aware that they own intellectual property. Nevertheless, protecting your IP is crucial to the success of your business. But what is your IP and how should you protect it?

The term IP refers to the mind's work product that is considered an intangible asset. It is a general term for the various legal protections that an author or creator has from the use or implementation of his work by others without his consent. The purpose of IP laws is to encourage new technologies, artistic expressions and inventions while promoting economic growth; it is a constitutionally protected right.

IP is divided into three areas of protection: Copyrights, Trademarks and Patents. Copyrights protect an original artistic or literary work. Trademarks typically protect brand names and logos used on goods and services. Patents protect inventions.

For example, if you create a new product, you would apply for a patent to protect its design and workings. When you name the product, you should register that brand name as your trademark to protect it from use by others. And, you might register a copyright for the TV commercial that you use to market the product.

These rights have their particular and complex legal requirements, under both state and federal law. You should consult with an IP law firm that can assist you in taking the necessary steps to protect your intangible assets. Our lawyers represent clients in their most challenging and complex intellectual property transactions and litigations.

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Prepa review

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and power-purchase charges. The move would follow standard electric-utility industry practices that investors seem eager to put in place and would help stabilize Prepa rates and make them more transparent, which is one of PREC's priorities.

For residential customers, Prepa's basic rate is nearly 5 cents per kWh, while the fuel adjustment and power-purchase charges are currently pushing the overall cost of residential electricity bills to 27.32 cents per kWh.

"While typical utilities recover operating and capital costs in base rates, which are adjusted periodically, Prepa's base rates aren't sufficient to cover its nonfuel costs and haven't been changed since 1989," the A&M report states.

In 2011, the base-rate shortfall in covering all operating and capital costs was $670 million, or 3.6 cents per kWh, but this was offset by the 11% margin Prepa charges clients in the fuel adjustment and power-purchase charges, which added up to $370 million or 2 cents per kWh. That means that base rates would have had to increase an additional $300 million, or 1.6 cents per kWh, to cover these costs.

Factoring in the required capital expenditures for Prepa's plan to convert its plants to natural gas from oil would require an additional 4 cents per kWh jump in the basic rate, according to the A&M study. Once the natural gas plan is operational, however, and Prepa realizes an estimated $500 million in annual fuel savings, there would be a 5 cents per kWh reduction in the fuel adjustment rates, leading to an overall rate reduction of 1 cent per kWh.

The current rate structure creates incentives for Prepa that are "fundamentally misaligned with its customers," the report found. That's because Prepa profits when the costs of its fuel and power goes up, and it has no incentive to make capital expenditures because it doesn't get compensation for it through adjustments to the basic rate.

Critics also accuse Prepa of using the fuel adjustment and power-purchase charges as a "garbage can" for all its inefficiencies, employing the 11% markup to not only cover mandated subsidies, but also electricity theft, operational losses and other costs, stripping it of any incentive to improve operations and services.

The continued reliance on oil to produce electricity is probably the costliest of these inefficiencies, with rates skyrocketing to the current 27.32 cents per kWh from 12.44 cents in 2001. Nearly all the increase in rates (98% according to A&M) stem from increased costs of fuel.

Besides assuring that the only fuel and power purchase costs are included in the two charges, PREC's upcoming rate review is also expected to curtail Prepa's ability to change the fuel adjustment and power-purchase charges on a monthly basis, but rather quarterly or annually, according to several sources.

Investors have always had a strong position regarding their ability to force Prepa to raise rates. Prepa's original Trust Agreement with bondholders enables investors to sue the utility to force it to raise rates if it fails to maintain a 1.2X coverage ratio of its outstanding debt.

Prepa has been avoiding getting sued by its investors because of how it factors in its accounting the electricity it grants to municipalities in exchange for not paying them taxes, the contributions in lieu of taxes (CILT) and claiming the tax benefit as revenue, although no cash trades hands, according to sources. In fiscal 2013, the coverage fell below the 1.2X rate to 1.06X after CILT expenses were deducted from net revenue, according to the report.

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>
> —A&M report

The ability by investors to force rate increases was maintained in last month's agreement with bondholders, which lays out a path for a possible restructuring, as creditors gave the troubled utility until year's end to cement the deal before pulling the trigger on $671 million in maturing loans.

The agreement states: " Notwithstanding the foregoing, during the Amendment Period, in the event that the Authority shall fail to adjust the schedule of rates and charges in accordance with the provisions of this Section, the Trustee, without regard to whether an event of default, as defined in Article VIII of this Agreement, shall have occurred, shall, upon the request of the holders of a majority in principal amount of all bonds then outstanding upon being indemnified to its satisfaction, institute and prosecute in a court of competent jurisdiction an appropriate suit, action or proceeding to compel the Authority to adjust such schedule in accordance with the requirements of this Section, and the Authority covenants that it will adopt and charge rates and charges in compliance with any judgment, order or decree entered in any such suit, action or proceeding."

Investors are demanding clarity regarding the CILT, with last month's deal mandating changes to how Prepa accounts for it on its balance sheet. "To the extent such practice isn't already in effect, for the period from and after Sept. 1, 2014 (and, for the avoidance of doubt, not on a retroactive basis), Prepa shall record (i) revenue from municipalities and associated receivable balances on a gross basis, without reflecting any offset or accounting adjustment for contributions in lieu of taxes (CILT) and (ii) CILT liabilities on a gross basis," the agreement states. ■