

Can a company trademark ‘eco-friendly’ branding?

A decision over a sustainability-centric trademark in Argentina provides one of the latest looks at how trademark offices and courts are approaching green branding. In a newly-issued order, the Federal Court of Appeals in Civil and Commercial Matters in Argentina overturned determinations from the National Institute of Industrial Property (“NIIP”) and the district court, both of which rejected water company ECO DE LOS ANDES’s trademark applications for a stylized mark consisting of the words “ECO DE LOS ANDES LOGICA USEMOS UNA NUEVA LOGICA” (“ECO OF THE ANDES LOGIC, LET’S USE A NEW LOGIC”) for use on paper products and mineral water.

According to the NIIP and the lower court, the issue with ECO DE LOS ANDES’s trademark is two-fold: (1) It runs afoul of Trademark Law No. 22362 Article 3(d), which bars the registration of marks that “mislead as to the nature, properties, merit, quality, manufacturing techniques, function, origin, price or other characteristics of the goods or services; and (2) It is at odds with the Ecological, Biological or Organic Production Law (Article 11 of Decree 206/2001), which mandates that marks that make use of the terms “biological, ecological or organic” cannot be registered for use on “eco or bio products of agricultural origin, such as food, fiber, wood, furniture, or paper.”

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The applicability of the case at hand is limited given the fact specific nature of the case and its focus on spring water. It is, nonetheless, interesting in light of the fact that brands have been actively incorporating sustainability-centric terms, such as “eco”, into their branding – from Splendid filing trademark applications for registration for [SLPENDID ECO](#) and ECO BY SPLENDID for clothing, for example, and Vans nabbing a notice of allowance for (but seemingly never using) the [ECO WAFFLE](#) trademark for footwear to a company (that is not Ralph Lauren) amassing a registration for [ECO POLO](#) for use on ... polo shirts.

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