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BEST BUSINESS PRACTICES: THE NEXT WEAPON OF TERROR IN ARGENTINA

Tony Godfrey*

Is evil something you are? Or is it something you do?

—“Patrick Bateman,” *American Psycho*¹

ON April 30, 2009, one of America’s “big three” automobile manufacturers, DaimlerChrysler, announced that it was shutting down its factory in Twinsburg, Ohio.² The factory opened in the 1950s, and, at the time of its closing, employed 1,250 residents of the small Ohio town with a total population of 19,000.³ At one point, the factory made up 90 percent of Twinsburg’s overall budget between company payroll taxes and property taxes.⁴ Such a large factory closing in a small town reliant on its business is always an earthquake to the local community. At times, it is also an unavoidable business decision.⁵ But in some countries, for some U.S.-based businesses, these decisions may be acts of terror.

I. ARGENTINA’S ANTI-TERRORISM ACT OF 2011

On December 27, 2011, the Argentine Congress enacted Laws No. 26733 and 26734.⁶ The package was originally submitted in June 2011 by President Kirchner to address deficiencies found by the Financial Action Task Force (FATF) in Argentina to combat money laundering and other

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1. BRET EASTON ELLIS, *AMERICAN PSYCHO* 376 (1991).

2. Michelle Jarboe McFee, *Chryslers Plans to Close Twinsburg Plant by December 2010, Bankruptcy Documents Show*, ASSOCIATED PRESS, (May 1, 2009), http://www.cleveland.com/business/index.ssf/2009/05/associated_press_filechrysler.html.

3. *Id.*

4. Alison Grant, *Twinsburg Stamping Plant: From Bright Beginning to Bleak Ending*, CLEVELAND (March 22, 2011, 2:02 PM), http://www.cleveland.com/business/index.ssf/2010/07/twinsburg_stamping_plant_from.html.

5. *See id.* (discussing the changing landscape of the automobile manufacturing business as it related to Twinsburg specifically, and the business realities confronting Chrysler at the time that led to the factory closing).

6. Law No. 26733, Dec. 27, 2011, B.O. (Arg.), *available at* <http://www.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192139/norma.htm>; Law No. 26734, Dec. 27, 2011, B.O. (Arg.), *available at* <http://www.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192137/norma.htm>.

acts that could finance terrorism.⁷ Passed together, these laws tightened Argentina's restrictions on money laundering and other financial crimes,⁸ and provided a broad brush for combatting terrorism.⁹

A. TERRORIZING

Law No. 26734 specifically amended the Argentinian Penal Code, Article 41, by attaching Article 41(d).¹⁰ This section sets out:

"When any of the offenses under this Code has been committed in order to terrorize the population or compel national authorities or foreign governments or agents of an international organization to do, or abstain from doing, any act, the minimum and maximum punishment will increase by twice the minimum and maximum."

This increase shall not apply if the act or acts are done on the occasion of or in the exercise of human, social, or any other constitutional right.¹¹

This expansive amendment has been met with criticisms. In the absence of reference definitions, or any case law clarifying the statute, acts done with the purpose of terrorizing the population has no definitive definition. The vagueness of this particular clause has concerned a number of human rights organizations.¹² One common concern is the indeterminacy of the subject of the law, as the "act" in question is also undefined.¹³ Additionally, there are concerns that the law, despite its limiting second paragraph, could limit protests and journalism that the government does not approve of.¹⁴ This concern is not entirely unfounded. One journalist has already been threatened with the application of the aggravated charge of terrorism with the intent of terrorizing a population for filming and publishing alleged invalid arrests.¹⁵ The Inter-American Press Association (IAPA) openly condemned the threat of the terrorism charge and

7. See Press Release, Fin. Action Task Force (FATF), Improving Global AML/CFT Compliance: On-Going Process (Oct. 28, 2011), available at <http://www.fatf-gafi.org/countries/a-c/argentina/documents/improvingglobalamlcftcomplianceon-goingprocess-28october2011.html> (discussing the commitment of Argentina's executive branch in June 2011 to address the identified deficiencies).

8. Law No. 26733, Dec. 27, 2011, B.O. (Arg.), available at <http://www.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192139/norma.htm>.

9. Law No. 26734, Dec. 27, 2011, B.O. (Arg.), available at <http://www.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192137/norma.htm>.

10. *Id.* at art. 3.

11. *Id.*

12. Charlie Ramsey, *Anti-Terrorism Law Causes Rights Concerns*, THE ARGENTINA INDEP. (Jan. 25, 2012), <http://www.argentinaindependent.com/socialissues/humanrights/anti-terrorism-law-causes-rights-concerns/>.

13. *Id.*

14. *Argentine Human Rights Reference Openly Criticizes the Anti-Terrorism Law*, MERCO PRESS (Dec. 27, 2011), <http://en.mercopress.com/2011/12/27/argentine-human-rights-reference-openly-criticizes-the-anti-terrorism-law>.

15. *Newspaper Editor Facing 12 Years in Prison Under Anti-Terrorism Law*, REP. WITHOUT BORDERS (May 14, 2014), http://en.rsf.org/argentina-newspaper-editor-facing-12-years-14-05-2014_46281.html.

reaffirmed concerns surrounding the indeterminacy of the law.¹⁶ The American Civil Liberties Union (ACLU) echoed these concerns, worrying that such over-broad anti-terrorism statutes may be, and have already been in other countries, applied to “peaceful domestic dissent.”¹⁷

This open-ended definition of a terrorist and terrorist act and the doubling of criminal penalties associated with such a classification are particularly troubling when one looks to the organization that is claimed to have spurred Argentina’s change in law. As a member of the Financial Action Task Force (FATF), Argentina is bound by its membership to enforce the organization’s mandates and recommendations.¹⁸ The FATF has forty clear recommendations that it requires all members to implement in law to combat money laundering and the financing of terrorism.¹⁹ But even the FATF has a limited view of terrorism. At its broadest point, the FATF uses similar language to Argentina’s sweeping definition but limits it to “situation[s] of armed conflict.”²⁰

II. R.R. DONNELLEY: TERRORIST PRINTER

On August 11, 2014, R.R. Donnelley Argentina S.A. filed for bankruptcy and liquidation in Argentina.²¹ R.R. Donnelley Argentina S.A. is a subsidiary of the U.S.-based RR Donnelley & Sons Company²², the world’s largest printing firm.²³ As a part of the company’s bankruptcy liquidation, its printing facility on the outskirts of Buenos Aires was initially shut down, laying off about 400 workers.²⁴ This marks one of the largest closures in Argentina this year.²⁵

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16. *IAPA Voice Concern at Anti-Terrorist Law in Argentina*, INTER AM. PRESS ASS’N (May 13, 2014), <http://www.sipiapa.org/en/iapa-voices-concern-at-anti-terrorist-law-in-argentina/>.
 17. ACLU, “TAKE BACK THE STREETS”: REPRESSION AND CRIMINALIZATION OF PROTEST AROUND THE WORLD, 58 (2013), available at https://www.aclu.org/files/assets/global_protest_suppression_report_incl.pdf.
 18. *FATF Members and Observers*, FATF, <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/> (last visited Mar. 25, 2015).
 19. INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS, FATF 11-22 (2012), available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.
 20. *Id.* at 122.
 21. *RR Donnelley Letter Regarding the Bankruptcy of R.R. Donnelley Argentina S.A.*, GLOBE NEWSWIRE (Aug. 16, 2014), <http://globenewswire.com/news-release/2014/08/16/659154/10094988/en/RR-Donnelley-Letter-Regarding-the-Bankruptcy-of-R-R-Donnelley-Argentina-S-A.html>.
 22. *Id.*
 23. *Open-Book Management*, ECONOMIST (June 8, 2009), <http://www.economist.com/node/13809344>.
 24. Phil Rosenthal, *R.R. Donnelley as an Argentine Terrorist is a Hard Sell*, CHI. TRIB. (Aug. 23, 2014), <http://www.chicagotribune.com/business/columnists/ct-phil-rosenthal-argentine-0824-biz—20140822-column.html>.
 25. Ken Parks, *Christina Kirchner Threatens RR Donnelley with Criminal Charges for Layoffs*, WALL ST. J. (Aug. 14, 2014, 11:21 PM ET), <http://online.wsj.com/articles/cristina-kirchner-threatens-rr-donnelley-with-criminal-charges-for-layoffs-1408072907>.

A. ARGENTINA'S THREAT OF ARTICLE 41(D)

On August 14, 2014, Argentinian President Kirchner went on national television to respond to R.R. Donnelley's bankruptcy.²⁶ President Kirchner's address alleged that the company's filing for bankruptcy and closing of its printing facility was a purposeful attempt to disrupt Argentina's economy.²⁷ Such an act would fall within the wide confines of Article 41(d), and President Kirchner sought to invoke that very law to levy criminal sanctions against R.R. Donnelley.²⁸ Argentina's controversial anti-terrorism act, passed in 2011, was being used for the first time against a U.S.-based printing company.²⁹ When one thinks of terrorist acts, this is not the image that comes to mind. It was certainly not thought a terrorist act in Twinsburg, Ohio.

President Kirchner alleged that R.R. Donnelley's bankruptcy was "an attempt by vulture funds to incite fear,"³⁰ and a "fraudulent maneuver and attempt to sow fear in the population."³¹ At the time of R.R. Donnelley's move to close its Argentine subsidiary, Argentina's economy experienced inflation of 40 percent³², consumer prices had risen 16.7 percent, and unemployment sat at a high of 11 percent.³³ R.R. Donnelley's bankruptcy filing also came just two weeks after a U.S. court ruled Argentina in default of its debts to hedge funds; a decision that threatens to further the country's economic woes.³⁴

B. R.R. DONNELLEY'S BUSINESS RATIONALE

It is no surprise that R.R. Donnelley takes issue with its characterization as a terrorist-minded vulture seeking to incite unrest and destabilize the Argentinian economy. In an open letter published on the same day it filed for bankruptcy, R.R. Donnelley outlined the rationale for its decision to shut down its Argentinian operations.³⁵ The company cited a lack of profitability and the continued decline of its business operations.³⁶ The reasons for this lack of profitability include "rising labor costs, inflation, materials price increases, devaluation, and an inability to pay debts

26. Cristina Fernández de Kirchner, *CFK Anunció Denuncia Penal Contra Imprenta Multinacional Donnelley* [CFK Announced Criminal Complaint Against Printing Multinational Donnelley], YOUTUBE (Aug. 14, 2014), <http://www.youtube.com/watch?v=DE8bBRABFe4>.

27. Parks, *supra* note 25.

28. *Id.*

29. *Id.*

30. *Politics in Argentina: A Game of Polarisation*, ECONOMIST (Sept. 1, 2014), <http://www.economist.com/blogs/americasview/2014/09/politics-argentina>.

31. *From Deadbeat to Despot: Argentina Harasses a U.S. Company for Closing Up Shop in Buenos Aires*, WALL ST. J. (Sept. 3, 2014), <http://online.wsj.com/articles/from-deadbeat-to-despot-1409608642>.

32. *Id.*

33. Rosenthal, *supra* note 24.

34. Parks, *supra* note 25.

35. *RR Donnelley Letter Regarding the Bankruptcy of R.R. Donnelley Argentina S.A.*, *supra* note 21.

36. *Id.*

as they become due.”³⁷ The bankruptcy and printing operations closure also comes after months of ultimately fruitless negotiations with national and local labor unions to reduce labor costs and make profitability feasible.³⁸

Taken together, along with Argentina’s overall economic instability, none of these factors reek of a terrorist agenda to incite civil unrest or fear, or to illicitly gain money. On the contrary, in a recent SEC filing, R.R. Donnelley expects to pay between \$15 and \$20 million to pull its operations from Argentina.³⁹

C. ARGENTINIAN REVERSAL AND WORKERS’ RESPONSE

After President Kirchner’s impassioned criticism of R.R. Donnelley and its vulture intentions, the Argentine government ultimately declined to pursue its terrorist allegations against the company.⁴⁰ Instead, the government is pursuing, in its courts, application of Law No. 27333 and its economic crime provisions.⁴¹ But this reversal is still no victory for R.R. Donnelley, as under the economic crime provisions Argentina seeks the arrest of R.R. Donnelley executives and prison sentences of up to six years.⁴² These laws and their application in the case of R.R. Donnelley have been compared to bills “that helped the Venezuelan government to expropriate 1,193 companies, close 400,000 stores, and more than 2,000 industries” by political opponents of President Kirchner.⁴³

More recently, the judge overseeing the charges of fraudulent bankruptcy against R.R. Donnelley has permitted the impacted workers to form a co-op and take control of the facility.⁴⁴ This also furthers the immediate attempts of workers to continue operations at the facility as soon as the day after its closure.⁴⁵ The workers’ protests and control of the facility even included placing a handmade sign renaming the facility for themselves, the “Trabajadores RR Donnelley.”⁴⁶

37. *Id.*

38. *Id.*

39. R.R. Donnelley & Sons Co., Current Report (Form 8-K) (Aug. 11, 2014), available at <http://www.sec.gov/Archives/edgar/data/29669/000118143114028833/rrd414358.htm>.

40. *Argentina Back-Steps on Applying ‘Anti-Terrorism’ Law on a U.S. Company*, MERCO PRESS (Aug. 21, 2014), <http://en.mercopress.com/2014/08/21/argentina-back-steps-on-applying-anti-terrorism-law-on-a-us-company>.

41. *Id.*

42. *From Deadbeat to Despot*, *supra* note 31.

43. *Id.*

44. *Judge Hands Donnelley Control Over to Workers’ Co-Operative*, BUENOS AIRES HERALD (Oct. 6, 2014), <http://www.buenosairesherald.com/article/171562/judge-hands-donnelley-control-over-to-workers-cooperative->.

45. *Argentina: Workers Occupy RR Donnelley Factory After Illegal Foreclosure*, REVOLUTION NEWS! (Aug. 13, 2014) <http://revolution-news.com/argentina-workers-occupy-rr-donnelley-factory-illegal-closure/>.

46. *Id.*

III. LOOKING AHEAD

With the criminal litigation ongoing against R.R. Donnelley, there should likely be concern for other U.S.-based businesses in decline in Argentina. Even though the threats of pursuing an Article 41(d) action were ultimately empty, their attempted use bolsters the concerns that such laws are overbroad and may be used to deter otherwise legal action for both individuals and businesses.⁴⁷ At the very least, Article 41(d)'s prohibition of its use against acts exercising "human, social, or any other constitutional right"⁴⁸ may not be strong enough to protect business actions that appear on face to be motivated by determinations of best business practices. The 150-year-old printing firm⁴⁹ may not be forced to take arms against a sea of terrorist accusations.⁵⁰ This is not due to exoneration, but instead due to the ever-changing whims of a government choosing not to use a law that it believes it has every right to use in cases such as this. The threat of the slings and arrows of outrageous fortune and governmental whims remain ever-present. Is evil something a business is, or something a business does? In Argentina the question remains unanswered. Businesses would do well to consider the question seriously, as their answer may not align with Argentina's.

47. ACLU, *supra* note 17.

48. Law No. 26734, Dec. 27, 2011, B.O. art. 3 (Arg.), available at <http://www.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192137/norma.htm>.

49. Steven Rosenbush, *Can 150-Year-Old Printer Go High Tech?: R.R. Donnelley Plunges Into Developing Market for Printed Electronic Parts*, WALL ST. J. (Aug. 18, 2014, 7:47 PM ET) <http://online.wsj.com/articles/can-150-year-old-printer-go-high-tech-1408405637>.

50. See WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 1.