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# Intellectual Property

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# BRAZILIAN CONTEXT

## Security Totem Contracts Cause Controversy Due to Lack of Patent Registration

Company Helper, based in Paraná, is being investigated by the Public Prosecutor's Office, state and federal accounting courts, for having signed several contracts - without undergoing a bidding process - for the installation of monitoring totems in governments and municipalities. This equipment, which records 360-degree images and has sirens for alerts, was installed in 2 thousand locations, with prices ranging from R\$9,900 to R\$15,800. The Brazilian Patent and Trademark Office (BPTO) rejected the patent application for the totems, which raises questions on the validity of the impossibility of bidding process.

Helper said it uses a patent licensed from company Hertz, which belongs to the same business group, and assured that all its operations are in compliance with the legislation. The BPTO informed that the process for transferring the ownership of the patent from Hertz to Helper is still under analysis. However, it should be noted that the assignment of patents is only valid after approval from the BPTO, and choosing suppliers should not depend solely on the exclusivity of a patent, as viable alternatives may exist in the market.

This situation highlights that proper analysis of patents presented is essential to ensure legality and fair competition. Transparency in procurement not only protects the government but also ensures that legitimate innovations can thrive in a healthy and competitive environment.



## Osklen and Maserati Enter Into a Trademark Coexistence Agreement

Osklen, a Brazilian clothing brand known for its strong connection to the ocean culture and the world of surfing, has entered into a trademark coexistence agreement with Maserati, the Italian luxury car manufacturer, for the joint use of the Neptune's Trident as a symbol of their trademarks. The BPTO accepted this coexistence by allowing both companies to register the trident. Traditionally, the trident is associated with Osklen's history in Arpoador and with Maserati's prestige in the automotive sector. Both brands can now use and seek the registration of the symbol in a peaceful manner and without conflicts.

This agreement represents a strategic move for both brands. They will share a symbol of great cultural significance, while each of them maintains their own identity and distinct target audience. From a legal perspective, the coexistence agreement shows how Intellectual Property can foster partnerships and add value to brands, while respecting their histories and identities. This is also an interesting strategy in case of disputes between owners of trademarks that are similar but operate in specific and distinct segments.



# CASE LAW

## Nattan x Natanzinho Lima: Duel for the Registration of Trademark “Nattanzinho” With BPTO

In November 2024, singer from Ceará Nattan (Natanael Cesário dos Santos) filed an application for the registration of trademark “Nattanzinho” with the BPTO, generating a controversy with singer from the state of Sergipe Natanzinho Lima (Natã Lima Nascimento).

Four months later, company Camarote Shows, which manages Natanzinho Lima’s career, filed an opposition based on the possibility of confusion among consumers, since Natanzinho Lima has been popularly known under this stage name since 2017. In turn, company Nattan Produções Artísticas, responsible for Nattan’s career, claims that Nattan has been using the name “Nattanzinho” since 2015 and filed his application first; therefore, the first to file principle should be observed.

Currently, the process is waiting for the BPTO to examine the merits of the process. This case is an example of the complexity of disputes involving stage names, especially when these are given names or nicknames that may not be sufficiently distinctive.





## TJSP Rules that Registration with BPTO Prevails Over Prior Use of Trademark

In a decision that highlights the importance of trademark registration, the São Paulo Court of Justice (TJSP in Portuguese) ruled that registration at the BPTO takes precedence over prior use of a trademark. The case involved Haras Rosa Mystica, the owner of trademark “Potro do Futuro,” registered at BPTO since December 2017, which filed a lawsuit against the Brazilian Association of Quarter Horse Breeders (ABQM in Portuguese). The decision not only recognized the exclusivity of the trademark in favor of Haras but also imposed on ABQM the obligation to cease its use and ordered it to pay R\$15,000 for pain and suffering damages.

ABQM’s defense argued that it has used the expression “Potro do Futuro” since 1976 and claimed that Haras’ registration was limited to animal breeding, not applying to event organization. However, the court decision rejected this argument, stating that the protection afforded by the BPTO is superior to any unregistered use. Additionally, the judge reaffirmed that the right to the trademark arises from registration, disregarding prior use as a valid justification in this case.

The Brazilian Industrial Property Law provides for exceptions to the principle of prior use, such as the prior user in good faith, provided for in paragraph 1 of article 129. However, those who claim to have this prior right must prove their use by means of dated

documents. What is often questioned is the timely moment to raise such an argument and contest any third-party trademark - which could be decisive for cases like this - emphasizing the importance of protecting trademarks by registering them, as well as keeping a proactive position in relation to third-party trademarks.

Please see the full decision [here](#).

(Case No. 7007980-78.2023.8.22.0002; Court of Justice of Rondônia. Ariquemes - 3rd Civil Court; Judge: Marcus Vinicius dos Santos Oliveira)



# IP BROAD

## The Role of Intellectual Property in Japanese Anime and its Global Impact

Over the past few months, the popularity of anime and manga has reached new heights, with Studio Ghibli-style being widely reproduced by artificial intelligence (AI) applications, sparking concerns in the Japanese creative industry about the protection of its intellectual property rights. OpenAI, through its new image-generating app, has drawn criticism for failing to adequately remunerate creators, leading to a debate about “Ghiblification” and the protection of traditional art forms.

In addition, the anime industry, which is expensive and complex to produce, is threatened by piracy and poor labor practices. Despite Japanese government initiatives to promote anime culture and increase overseas sales, such as the Cool Japan platform, the industry is struggling to turn its popularity into real profit.

The pressure to monetize this valuable cultural asset is tangible, especially in a context in which competition from other Asian markets, such as South Korea and China, has been growing.

In this scenario, the need for recognition and appreciation of intellectual property transcends the mere economic issue; it is a matter of cultural preservation. To ensure that Japan continues to stand out in the global entertainment landscape, it is important that the country's institutions help create an environment that protects the rights of creators and fosters innovation, thus ensuring the sustainable expansion of this artistic heritage.



## Hollywood Studios Sue Midjourney in Unprecedented Copyright and AI Case

Walt Disney Co. and Universal Studios have joined forces to sue Artificial Intelligence startup Midjourney, Inc., which offers a generative AI tool capable of creating high-quality images from textual descriptions. In the lawsuit, the studios allege that Midjourney's tool improperly reproduces several iconic characters, such as those from Toy Story, Shrek and the Minions from Despicable Me.

The studios' lawyers argue that while AI can be an innovative tool for human creativity, this does not legitimize piracy. Intellectual property experts also point out that many of

the images generated by Midjourney seem to be copies of the copyrighted characters, without significant creative transformations.

The lawsuit, which is the first AI copyright lawsuit filed by Hollywood giants, has complex challenges, including fair use\* issues and the review of Midjourney's terms of service. In this regard, the increasing integration of AI in creative production brings to light significant legal matters, especially regarding the protection of intellectual property.

\*The United States copyright law allows limited use of protected works without the permission of the rights holder, based on factors such as purpose, nature of the work, amount used, and impact on the market.



**Midjourney**







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