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# Intellectual Property

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This is an informative newsletter produced by the **Intellectual Property** practice of TozziniFreire Advogados.

# INDEX

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# BPTO REGULATION

## Public Inquiry on Geographical Indications

On September 17, the Brazilian Patent and Trademark Office (BPTO) opened Public Inquiry No. 04/2025 on technical procedures for Geographical Indications, aiming to promote public participation. The new rules seek to expedite processing, and comments to the inquiry can be sent by October 17. To access the public inquiry, click here.

# LEGAL DISPUTE

## TJSP rules against unfair competition claim related to toothbrush trade dress

The 2nd Chamber of Business Law of São Paulo Court of Justice (TJSP in Portuguese) accepted the appeal filed by Arcem Invest Holding, the manufacturer of toothbrushes under Needs, Qualitá, and Panvel brands, ruling against the claim brought by Curaden AG, which accused the company of unfair competition for allegedly imitating the trade dress of Curaprox toothbrushes. Although the first-instance judge recognized the imitation of Curaden's "image set" and imposed damages and fines, judge-rapporteur Jorge Tosta emphasized that there was no risk of confusion for consumers and pointed out flaws in the expert report, which was based solely on photos and did not involve a physical examination of the products.

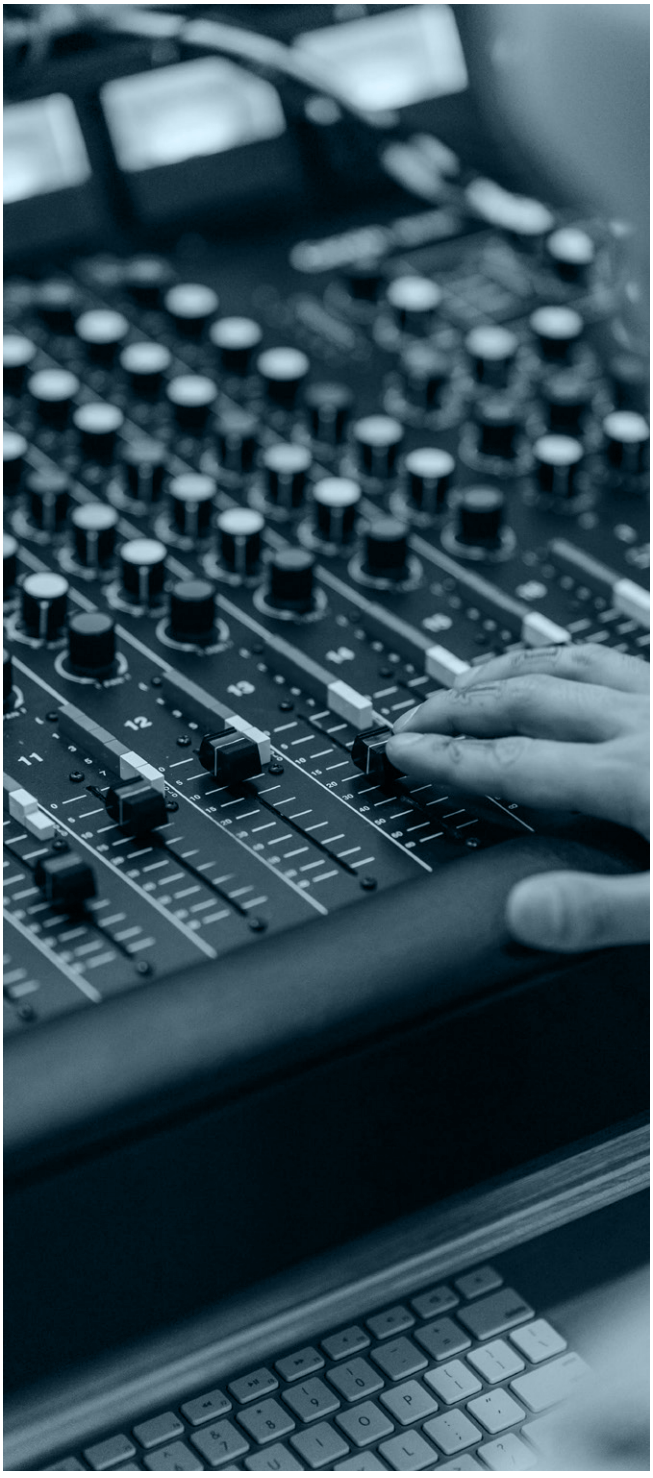
The final decision established that the similarities between the toothbrushes were not sufficient to characterize unfair competition, as the shapes used are common in the oral hygiene market. Consequently, Curaden AG's action was deemed groundless, and the company was ordered to pay court costs and attorney's fees.

The TJSP decision underscores the importance of technical analysis and expertise in allegations of trade dress violation, highlighting that mere visual similarity between products does not automatically justify such claims. Besides, cases like this usually involve subjective and visual aspects, reinforcing the need to present additional documents such as perception tests, market research, among others.

TJSP: Case No. 1001398-29.2021.8.26.0260.

# TJSC authorizes charging AI-related copyrights fees

Santa Catarina Court of Justice (TJSC in Portuguese) ruled in favor of the Brazilian Central Office for Collection and Distribution (Ecad) and authorized charging copyright fees from a company that uses AI-generated music at its theme park, Spitz Pomer.



The court ruled that, even without a human author, the songs show a "significant similarity" to protected works, which justifies charging copyright fees. The 2nd Civil Chamber of TJSC unanimously denied the injunction filed by Spitz Park Aventuras, arguing that publicly performing the songs triggers the duty to pay, regardless of whether the works are registered in Ecad's database.

Ecad stated that charging copyright fees remains mandatory regardless of the nature of the work's creator and that authors' rights must be protected even in the context of accelerated technological change. The case highlights the growing debate over the originality and protection of copyrights in AI-generated works and points to a path for future rulings that aim to balance technological innovation with copyright protection.

# Judge of the 26th Civil Court of Goiânia recognizes unfair competition and suspends use of textile trademark registered with the BPTO

The Judge of the 26th Civil Court of Goiânia ruled in favor of the owner of LADOFIT trademark — registered with the BPTO in 2024 — and condemned Lado Indústria Têxtil for unfair competition. Compensation for non-pecuniary damages was set at BRL 10,000.00, with no recognition of pecuniary damages due to insufficient evidence. The case file included evidence of consumer confusion (messages and complaints to consumer protection agencies). Although the defendant claimed prior use since 2014 and a right of precedence, the judge concluded there was no demonstrated use of the expression as a trademark, its notoriety or investments sufficient to override the protection granted by the registration.

The decision reinforces the effectiveness of registration protection granted by the BPTO as a basis for injunctive relief and compensation against acts that cause market confusion, as well as highlights the strict burden of proof for those claiming prior use, requiring evidence of distinctiveness, notoriety, or investments that consolidate the sign as a trademark in commerce.

Case no. 5111916-95.2025.8.09.0051.

Read the full decision here.

# Folha de São Paulo sues for the use of materials in AI training

On August 20, Folha de São Paulo filed a lawsuit in São Paulo Court of Justice against OpenAI, company responsible for ChatGPT. According to the newspaper, its articles and news reports were used to train AI models, in some cases even being reproduced in full, bypassing paywall mechanisms. In the lawsuit, Folha alleges copyright infringement and unfair competition for diverting readers from the original website and asks OpenAI to immediately stop capturing and freely distributing its content, to pay compensation for losses and damages, and to destroy the models trained based on its protected collection.

Folha reports that, in July, its website registered about 45 thousand hits attributed to "GPT bots" allegedly used for training. In addition, the newspaper would have tried to negotiate the issue with OpenAI last year, but without success. The lawsuit is closed to the public and is similar to the lawsuit filed by The New York Times against OpenAI and Microsoft in the US in 2023.

Folha's action includes Brazil in a global movement of outlets that seek to hold AI suppliers accountable for the unauthorized use of their collections. The case sparks off the debate, in an incipient way, about the legal limits of the use of copyrighted content for training models, and the decision may reveal the trend of judgment on this issue in Brazil.

# Novo Nordisk vs. BPTO: suspension of liraglutide patent extension

On September 4, Novo Nordisk was granted the right to extend the validity of PI0410972-4 patent (liraglutide), recognizing the administrative delay of the BPTO. The company had requested the recomposition due to the delay in processing the application, filed in 2004 and concluded in 2018, a period in which the process remained more than 13 years at the BPTO. The trial judge granted the extension of the validity for eight years, five months and one day, which, according to the decision, would make the protection valid until 2032.

However, on September 6, EMS - the Brazilian manufacturer of liraglutide-based versions Olire and Lirux - was granted an injunction before the Court to suspend the effects of the first instance judgment, authorizing EMS to continue manufacturing and marketing its products as long as they are placed on the market (the first national versions were marketed in August 2025). The preliminary decision suspended the effects of the original ruling until the judgment on the merits of the appeal. The case is still subject to appeal and final judgment by the Court.

Read the full decision here.

# IP ABROAD

## Dispute between Nokia and Paramount reinforces the relevance of patents in streaming services

Nokia filed a lawsuit against Paramount Skydance in Delaware Federal Court, alleging that the company's streaming services, including Paramount+, Pluto TV and BET+, infringe thirteen of its patents related to video encoding and decoding technology for online streaming. At the same time, Nokia also filed a complaint against Paramount in Brazil.

According to Nokia, its patented technology is essential for enabling the transmission of high-quality video files over the internet, reducing their size for transmission. Faced with the impasse, Nokia filed a lawsuit seeking damages. This case aligns with a number of other lawsuits filed by Nokia against other companies in the industry, such as Acer, Asus and Hisense, highlighting the company's strategy in protecting its intellectual property assets.

This case highlights the strategic relevance of patents related to streaming technologies in a highly competitive and growing market. In addition, it reinforces the importance of preventive licensing strategies and patent portfolio management, since companies that depend on critical technologies may be exposed to litigation with high financial and reputational impact.

# AI company Anthropic agrees to pay USD 1.5 billion in copyright dispute

Anthropic has agreed to pay USD 1.5 billion to settle a collective lawsuit filed by authors who claimed the company used their pirated books to train its chatbot, Claude, without permission.

According to the settlement presented to the federal court in San Francisco, Anthropic promised to destroy identified copies, with the proposed amount equivalent to approximately USD 3,000 for 500,000 identified books, with the possibility of an increase if other titles are identified. The lawsuit was maintained after Judge William Alsup's decision, which recognized fair use for training purposes but understood that maintaining a 'central library' with over 7 million titles constituted infringement.

The outcome is the first significant settlement in a series of similar lawsuits involving large technology companies (including OpenAI, Microsoft, and Meta) and intensifies uncertainty about the limits of so-called "fair use" in the context of generative AI. For rights holders and technology providers, the case highlights the need for clear policies on data acquisition and processing — with an emphasis on licensing, diligence on sources, traceability, and contractual clauses that limit risks. Furthermore, the financial solution, even without an admission of liability, tends to strengthen the negotiating stance of creators and accelerate the adoption of governance and transparency practices by AI companies, which may result in costs and training models more aligned with copyright protection.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