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ADMINISTRATIVE DISCUSSIONS

Proposal to transform BPTO into regulatory agency

Currently, the Brazilian Patent and Trademark Office (BPTO) is a federal agency, but discussions and studies are underway regarding the proposal to transform it into a regulatory agency to enhance its autonomy and efficiency. The Brazilian Association of Intellectual Property (ABPI in Portuguese) has recently hosted an event to discuss this matter. Please see more details about the event [here](#).



BRAZILIAN REALITY

NR Sports, Neymar's parents' company, acquires Pelé brand in an \$8 million deal

NR Sports, the company owned by the parents of soccer player Neymar Jr., confirmed the purchase of Pelé trademark last month for an amount of approximately US\$ 8 million. The transaction occurred after negotiations with Sport 10, a US agency that held the rights to exploit Pelé's name, image and data related to the world-famous soccer player.

Neymar's father highlighted the cultural importance of the soccer icon, emphasizing that Pelé trademark represents a universal language understood around the world. NR Sports highlighted that the transaction is not limited to the marketing use of the name, but involves a broader brand governance strategy, including license control, reputational alignment, and new institutional projects.

From an intellectual property point of view, the transaction reinforces that well-known personal trademarks can have relevant

proprietary autonomy, requiring legal strategies that reconcile economic exploitation, trademark protection and reputational preservation.



Similarity of figurative elements motivates dispute between Mari Maria Cosméticos and Larissa Manoela

One of the trademarks registered in 2016 by company Mari Maria Cosméticos, owned by an instafamous Brazilian makeup artist, became the center of a controversy after Brazilian actress Larissa Manoela requested, in 2021, the registration of her trademark containing similar figurative elements, especially the design of a crown, present in both visual identities.



According to Mari Maria Cosméticos, its registered trademark consolidated the

distinctive use of the crown in the make-up segment, which could be compromised by the actress's later request. Despite the BPTO's recent administrative decision to maintain the registration of Larissa Manoela's trademark, Mari Maria Cosméticos states that its vested rights remain intact and warns about the possibility of seeking remedies to protect its visual identity and ensure compliance with Law No. 9,279/96 (Brazilian Industrial Property Law or LPI in Portuguese).

The case reinforces the relevance of the analysis of priority and distinctiveness in disputes involving figurative elements, in addition to highlighting the need for coherence between administrative decisions and the effective protection of trademark rights in highly competitive markets.



Court denies Yakult's request to prohibit the use of Isinho packaging

The 11th Civil Court of the state of João Pessoa denied Yakult's request to prevent Laticínio Belo Vale's fermented milk, "Isinho," from using corrugated packaging similar to that of Yakult's trademark. Judge Ricardo da Costa Freitas considered that this format is a market standard for similar products and does not represent unfair competition. Laticínio's defense argued that the characteristics of the packaging, such as colors and the presence of a character, differentiate product "Isinho" from the Yakult one, in addition to highlighting that the wavy format also offers functionality to the product.

The ruling was based on an expert report that found that Yakult has a prior three-dimensional trademark, but that this does not prevent the use of similar shapes, as long as there is no exact reproduction. The decision was considered innovative, according to Yakult's defense,

and the company has already announced its intention to appeal. The analysis of the case also emphasized that the functional elements of the packaging should not be protected by exclusivity, allowing other competitors to exploit similar shapes.

The decision reinforces the understanding that the protection of trade dress requires robust proof of distinctiveness and relevant confusion, so mere aesthetic similarity or operations in the same market is not enough. The precedent advises caution in the excessive expansion of antitrust protection, preserving the balance between protection of intangible assets and free competition, especially in markets of standardized products.

Source: Process No. 0817669-21.2021.8.15.2001



COURT CASES

TJSP dismisses allegation of risk of confusion between Tok&Stok and Tok House trademarks

São Paulo Court of Justice (TJSP in Portuguese) upheld a judgment that rejected allegations of trademark infringement made by Tok & Stok against company Tok House. In the lawsuit, the plaintiff argued that the use of the term “Tok” by the competitor would represent parasitic exploitation and divert its clientele, stating that this element would be the distinctive core of its trademark. The defendant, in turn, claimed there is no illegality, highlighting visual and conceptual differences between the signs, distinction in the niches of activity and even the voluntary change of its denomination to “RDESIGN.”

In analyzing the appeal, the judge-rapporteur pointed out that the only similarity between the trademarks lies in the use of the term “Tok,” an expression considered to be of low originality and incapable of ensuring isolated exclusivity. For the judge, trademark protection falls on the trademark as a whole, and not on fragmented portions, in addition to

the fact that there are not enough elements to generate undue association between the public. The difference between the business models was also considered for the judgment: while Tok & Stok operates in the retail of ready-to-deliver furniture, the defendant is dedicated to manufacturing custom-made furniture, therefore, there is no possibility of confusion or diversion of clientele.

The decision reinforces that slightly distinctive terms do not generate a monopoly on the trademark and that the risk of confusion must be evaluated considering the trademark as a whole and the market context. On the other hand, as “Tok” is not a term from the Brazilian vernacular and there is no apparent dilution in the market, we also reflect on the understanding of what would be an expression of low originality and its distinctive power.

Case No. 1165063-17.2024.8.26.0100.



TJSP confirms presumed non-pecuniary damages in case of misuse of trademark

São Paulo Court of Justice prohibited the use of “Sigvara” trademark by two entrepreneurs in the semi-jewelry sector, recognizing its similarity to trademark “Vivara.” The panel determined that the graphic and phonetic proximity between the names could mislead consumers and constitute unfair competition. The ruling determined the immediate cessation of use and set compensation for non-pecuniary and property damages.

The judge-rapporteur highlighted that the BPTO had already rejected trademark registration “Sigvara” due to its similarity with “Vivara.”

The Court concluded that the conduct not only constituted unfair competition but also resulted in presumed non-pecuniary damage due to the infringement of a widely recognized trademark.

The case underscores the importance of originality in creating trademarks and visual identities for businesses. Investing in prior research and legal guidance before launching a trademark is a measure that avoids litigation and protects business’s credibility.

Source: Case No. 0022886-47.2024.8.26.0100

IP ABROAD

Apple gets fined \$634 million for patent infringement

A federal jury in California has ruled that Apple Inc. must pay \$634 million to medical technology company Masimo Corp. for patent infringement related to Apple Watch features. Apple has stated that it disagrees with the decision and plans to appeal, arguing that the patent in question expired in 2022 and that the verdict does not reflect the facts presented in the trial.



This is a long-standing and multifaceted dispute: in 2023, the U.S. International Trade Commission determined that Apple was infringing Masimo's patents, leading to a ban on the imports of Apple Watch models with blood oxygen technology into the U.S. market. The dispute also involves accusations of appropriation of personnel and know-how between the companies and multiple patent claims over the past few years.

The decision highlights the importance of careful due diligence on the scope and validity of patents, especially in complex products that add multiple technologies. It also reinforces that even large companies, such as Apple, can be held liable for incorporating other companies' technologies without proper licenses. However, the possibility of appeal and the expiration of the central patent generate uncertainties about the final impact of the decision, demonstrating that patent litigation may require effective legal strategies to reduce the risk of infringement.

Disney and OpenAI reach an agreement and may be a trendsetting one

Disney announced a three-year deal with OpenAI to become the first major content licensing partner on Sora, enabling user-prompted short videos featuring more than 200 characters from Disney, Marvel, Pixar, and Star Wars, plus iconic costumes, props, vehicles, and environments. The agreement also allows ChatGPT Images to generate images using the same intellectual property collection. The partnership explicitly excludes the use of any talent likeness or voices, and curated selections of fan-inspired videos will stream on Disney+ starting in early 2026.

Beyond licensing, Disney will become a major client of OpenAI (using its APIs to build products, tools, and experiences, including for Disney+,




and rolling out ChatGPT for employees) and will make a \$1 billion equity investment, receiving warrants for additional equity. Both companies affirmed a shared commitment to responsibly using AI to safeguard user safety and creators' rights. The transaction remains subject to final agreements, corporate approvals, and customary closing conditions.

This is a first-of-its-kind, official licensing move that creates an "on the record" channel for generative UGC using Disney's intellectual property.





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