



Intellectual Property

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

EDITORIAL

In this edition, we address the latest developments shaping the landscape of intellectual property in Brazil and worldwide. Brazil celebrates the enactment of the Mercosur-European Union agreement, which protects Brazilian geographical indications such as “Cachaça” and “Vale dos Vinhedos.”

Conar has updated its Guide for Digital Influencers, focusing on transparency in marketing practices. Meanwhile, Pop Mart, a Chinese company, seeks to protect its creations against counterfeiting, highlighting the importance of intellectual property in the entertainment sector.

The Superior Court of Justice (STJ in Portuguese) confirmed an award of over R\$ 100 million in damages to the heirs of Bossa Nova icons, emphasizing the importance of authorization in the exploitation of works. Similarly, São Paulo Court of Justice (TJSP in Portuguese) reinforced the protection of patented technologies in cotton seeds.

Finally, the U.S. Supreme Court exempted ISPs from liability for copyright infringement, establishing clear limits to it.

This selection of news highlights the challenges and opportunities in protecting creative and innovative rights in a constantly evolving world.

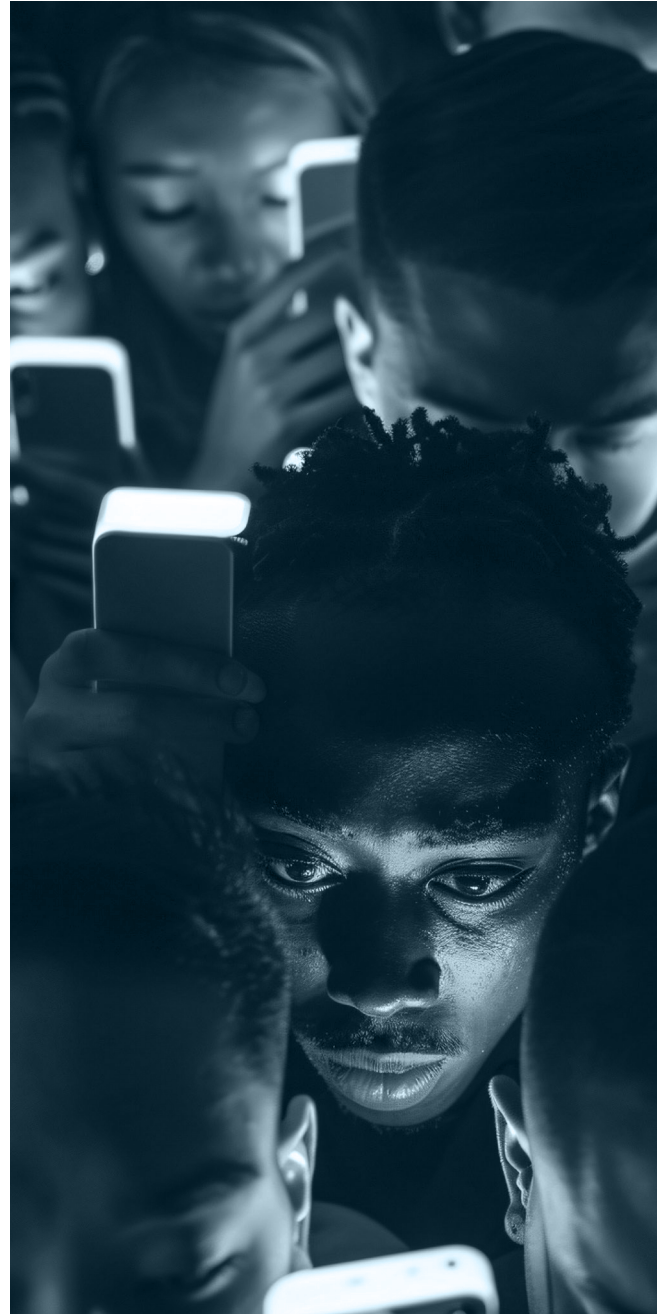
BRAZILIAN REALITY

Brazil enacts Mercosur–EU trade agreement with implications for intellectual property

The text reaffirms commitments under the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and provides for reciprocal protection of geographical indications (GIs), covering 37 Brazilian GIs in the European Union, including “Cachaça”, “Canastra” and “Vale dos Vinhedos”.

Conar updates Guide for Digital Influencers

On May 12, the Brazilian Council for Advertising Self-Regulation (Conar) published a new edition of its Guide on Marketing and Advertising by Digital Influencers, introducing updated guidelines for social media advertising. Our team has prepared an analysis on the matter ([here](#)).



Pop Mart starts operation in Brazil and takes action against counterfeit products

Chinese company Pop Mart, responsible for the Labubu dolls, started its operation in Brazil and filed a lawsuit with São Paulo Court, seeking to prevent the sale of allegedly counterfeit products of its brands and characters. Pop Mart claims there are companies selling items that improperly reproduce elements protected by trademark and copyright related to the universe “The Monsters,” including versions of the character Labubu.

Pop Mart has pending trademark applications filed with the Brazilian Patent and Trademark Office (BPTO) since 2021 and has been expanding its strategy to protect intellectual property assets in the country, in parallel with the commercial expansion of its operations. The lawsuit includes a request for interlocutory relief to withdraw the products from the market, in a context of growing popularity of the so-called “blind boxes” and the strong circulation of products inspired by characters with great commercial appeal.

The case demonstrates how the formal entry of foreign companies into the Brazilian market is usually followed by stronger enforcement strategies in intellectual

property, especially in sectors related to entertainment. The discussion also highlights the relevance of trademark registration and copyright protection to enable quick measures against pirated products and uses considered parasitic in the physical and digital environment.



COURT CASES

Concert featuring Tom, Vinícius, Toquinho, and Miucha results in R\$ 100 million compensation after 15 years

The Superior Court of Justice (STJ), by means of a single-judge decision rendered by justice Nancy Andrichi, upheld that Solutions2Go (formerly Sony) must pay an amount for damages exceeding R\$ 100 million to the heirs of iconic Bossa Nova artists such as Vinicius de Moraes and Tom Jobim. The controversy pertains to the unauthorized commercial use of a DVD of a historic concert held in 1978, which was released in 2008 without the necessary authorization from the copyright holders, resulting in significant losses.

The court reaffirmed the criteria for determining the damages, based on Brazilian copyright legislation, and rejected the application of a royalties-based model, as this requires prior authorization, which was not granted in this case.

Furthermore, the court validated the methodology of the expert examination that was conducted and considered the amounts related to Toquinho, who, despite not being a party to the case, should be maintained in the damages award calculations. Thus, the decision represents an important precedent on copyright protection and the need for authorization for the exploitation of artistic works.

This case illustrates how the unauthorized use of artistic creations can result in exorbitant financial damage, which goes beyond award of damages and may also affect the company's reputation and public trust. Therefore, understanding and respecting the rights of creators should not only be viewed as a legal obligation but as a business strategy that values cultural legacy and minimizes risks.

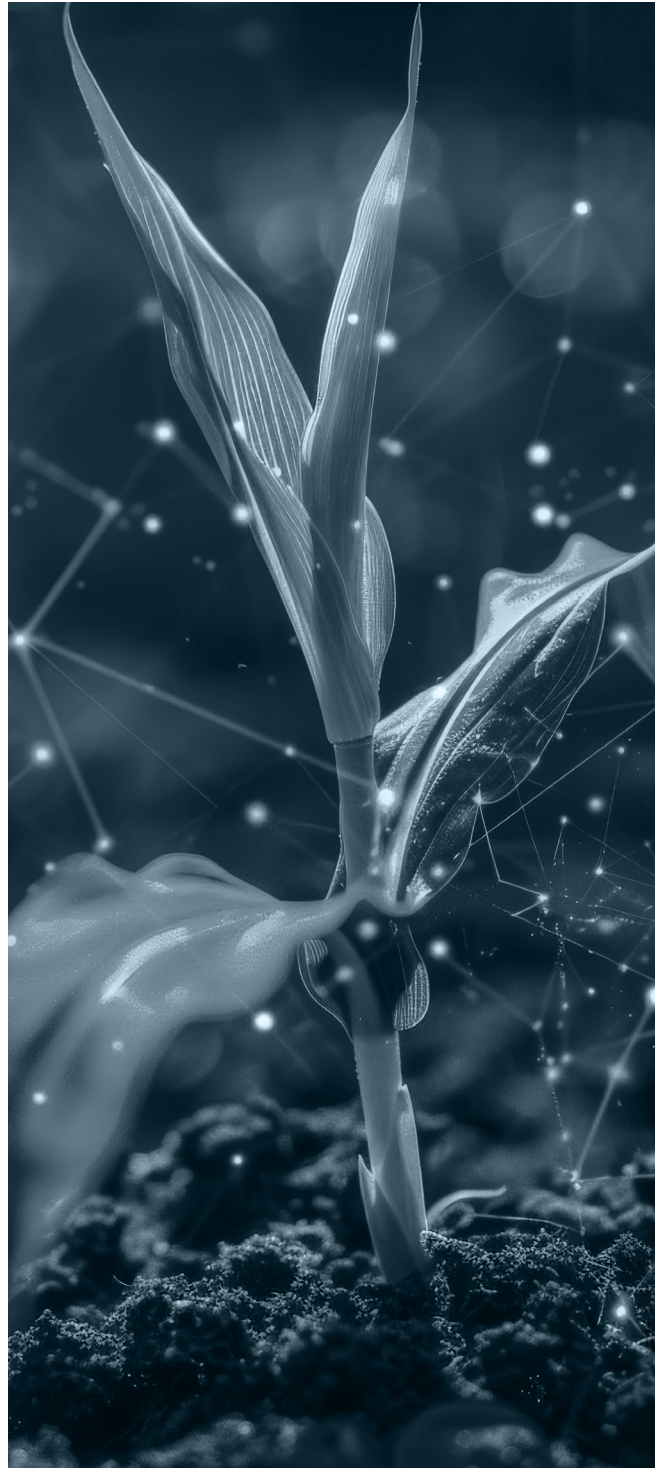
TJSP confirms protection of patented technologies in cotton seeds

The Court of Justice of the State of São Paulo (TJSP in Portuguese) upheld a decision prohibiting a rural producer from using, cultivating, commercializing or distributing cotton containing patented technologies applied to seeds, including “WideStrike,” “Glytol x LibertyLink” and “Glytol x LibertyLink x TwinLink,” registered with the Brazilian Patent and Trademark Office (BPTO).

The decision was based on technical reports covering different crop seasons and properties, which identified the presence of the technologies in the fields and were deemed sufficient by the Court. The TJSP also upheld the producer’s liability for areas administered by him as estate administrator and confirmed the obligation to destroy the seeds, cease using the technologies and indemnify the patent holders.

The decision shows that patent protection in agribusiness depends not only on registration of the technology, but also on the ability to demonstrate its use in the field. From an intellectual property perspective, the case reinforces the importance of documentation, use controls and technical evidence on genetically modified seeds.

Case No.: 1073439-52.2022.8.26.0100



TJRJ decision reinforces relevance of registrations and evidence in copyright disputes

The Court of Justice of the State of Rio de Janeiro (TJRJ in Portuguese) ordered the re-opening of the evidentiary stage in a lawsuit involving the authorship of songs recorded by Seu Jorge, including “Carolina,” “Tive Razão” and “Gafieira S.A..” Musicians Ricardo Garcia and Kiko Freitas allege that the works would have been previously composed by them and later registered in the singer’s name without authorization, while Seu Jorge’s defense claims that the songs were entirely created by the artist after the production of album “Gafieira S.A..”

The lawsuit had been dismissed in the lower court, with a summary judgment upon the merits. However, when analyzing the appeal, the 18th Chamber of Private Law of TJRJ understood that there was denial of the right to be heard, since the court had initially

authorized the production of oral evidence and, later, judged the case precisely because of the lack of sufficient proof of the alleged facts. As a result, the judgment was annulled and the case will return to the evidentiary stage for a hearing and production of oral evidence and testimony of the parties.

The case draws attention to the importance of adopting preventive measures aimed at the formalization of creative processes and the clear definition of the ownership of intellectual works. The controversy highlights how registrations, contracts, production files and other elements related to the development of the work can play a strategic role not only in any legal disputes, but also in mitigating risks and preserving legal certainty involving copyright.

Process No.: 0127721-83.2007.8.19.0001.



São Paulo Court rules that Lacta did not violate Hershey's packaging trade dress



The 2nd Business Court of TJSP dismissed the unfair competition lawsuit filed by The Hershey Company (Hershey's) against Mondelez Brasil (Mondelez), the manufacturer of Lacta chocolates. Hershey's has operated in the Brazilian market since 1998 and claimed that "Lacta Intense" line copied the trade dress of its "Hershey's Special Dark" line by adopting black and gold packaging with a similar graphic layout.

Hershey's argued that the change aimed to confuse consumers and divert clientele, thereby constituting unfair competition. Mondelez countered that the shared visual elements between the products are widely used in the dark chocolate segment and reflect a market trend that existed before Hershey's

had even launched its product. Judge Mariana Cavalcanti accepted Mondelez's argument and rejected all of Hershey's claims in full. She held that the colors black and gold are not exclusive to any competitor and instead form part of a "common visual repertoire of the bitter chocolate market segment."

The ruling reinforces that trade dress protection cannot serve to monopolize generic or common visual elements within a given market segment. Colors and aesthetic patterns that are widespread in a product category belong to the domain of legitimate competition, and their exclusive appropriation by a single economic agent may constitute an undue restriction on free competition.

IP ABROAD

Taylor Swift files trademark applications to protect her AI-Generated voice and image

Singer Taylor Swift has recently filed three trademark applications to protect her voice and image against potential misuse by Artificial Intelligence (AI) technologies. These applications include two sound trademarks covering the phrases “Hi, I’m Taylor Swift” and “Hi, I’m Taylor,” as well as a visual trademark depicting the singer during a famous performance on her “Eras” tour, characterized by an iconic image featuring a pink acoustic guitar and a sparkly outfit. This initiative follows a similar move by actor Matthew McConaughey, who registered his famous phrase “All right, all right, all right” to ensure that his image and voice are not used without authorization.

The growing use of AI to create content that mimics artists’ voices, without the need to reproduce existing recordings, raises new challenges in the field of intellectual property. The attempt to register celebrity voices as trademarks is an innovative approach that could help fill a gap in intellectual property protection in the face of technological advancements. By registering specific phrases associated with her voice, Taylor Swift will be able to challenge identical reproductions or imitations that cause confusion, strengthening her defense against unauthorized uses of her identity in the digital environment.



U.S. Supreme Court decides that ISPs are not liable for user copyright infringement




The U.S. Supreme Court unanimously decided that record labels cannot hold internet service providers (ISPs) liable for music and video copyright infringement committed by their users. The decision was handed down in the case *Grande Communications Networks v. UMG Recordings, Inc.*, in which the Court reaffirmed an important precedent established in a previous case, *Cox Communications, Inc. v. Sony Music Entertainment*. The Supreme Court emphasized that liability for copyright infringements rests with the direct infringers and not with ISPs, unless it is proven that there was an intent for the service provided to be used to commit such infringements.

The court clarified that contributory liability requires demonstrating that the provider was aware of the infringements and failed to take steps to prevent them, or that the service was designed in a manner that actively induces copyright infringement. This decision directly influences how record labels may sue for damages caused by copyright infringement, strengthening the legal protection of ISPs and limiting the extent of these platforms' liability regarding the behavior of their users.





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