

Tozzini Freire.

ADVOGADOS



INTELLECTUAL
PROPERTY.
NEWSLETTER

9th Edition | 2023

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Brazilian Context .

House of Representatives discusses impacts of AI on intellectual property

The Culture Commission of the House of Representatives discussed the impacts of Artificial Intelligence (AI) on intellectual property, especially due to the exponential growth of AI in Brazil, including its use in intellectual works, which are protected by the Copyright Law (Federal Law No. 9,610, of February 19, 1998).

AI creations and their impacts on intellectual property rights owned by their authors are the subject of discussions in several countries. It should be pointed out there is no unanimity on the protection of both AI-created and AI-assisted works.

BPTO holds public inquiry on new normative ordinance related to patent filing

The Federal Official Journal published the Public Inquiry of the Brazilian Patent and Trademark Office (BPTO) regarding the new Normative Ordinance, which provides general rules on the filing of patent applications and certificates of addition. Some articles of the new ordinance are related to priority, grace period, divisional applications, and introduction of amendments.

Suggestions and comments in connection with this public inquiry may be sent until June 18, 2023, to the e-mail saesp@inpi.gov.br or directly to one of the BPTO receptions.

2023 BPTO's Action Plan: increasing efficiency in the registration of trademarks and patents in Brazil

The BPTO has recently unveiled its Action Plan for 2023, outlining ambitious goals and projects and having as main purpose to enhance the efficiency and effectiveness of the patent and trademark registration system in Brazil and, thus, accelerate and improve the process of analysis. For that purpose, the BPTO plans to enhance training programs and implement digital tools and platforms.

Additionally, the plan emphasizes the importance of strengthening international cooperation and harmonizing intellectual property practices to ensure that Brazil remains competitive on a global scale. From a legislative point of view, it is important to mention that one of the goals on the Action Plan for 2023 is to revise the Brazilian Industrial Property Law and create a Bill to optimize the procedures for obtaining intellectual property rights.



Court Orders.

Court of Justice of São Paulo recognized that shoe with red soles is a trademark owned by Christian Louboutin



The Court of Justice of São Paulo, in a recent decision, recognized that shoes with red soles are a trademark owned by French designer Christian Louboutin. Therefore, it prevented Brazilian designer Bruna Silvério from using soles with this characteristic.

Christian Louboutin had already entered into an agreement with the Brazilian designer in the past, in which Bruna Silvério agreed to stop producing and selling shoes “inspired” by Louboutin’s products, including shoes with red soles.

Given the breach of the agreement by the Brazilian designer, Louboutin filed a lawsuit to prevent the unauthorized use of its position trademark.

The appellate judge of this case stated in her decision that “In a specialized market such as fashion, the traits that different stylists put in their works, over time, become synonymous of the trademark, with fabric cuts, uses of styles and, in the case under discussion, with the red soles of the shoes.”



Trademark infringement of trademark “Leite de Rosas” and unfair competition recognized by court decision

In a lawsuit filed by the owner of trademark “Leite de Rosas” – a traditional brand of deodorants, astringents, soaps, moisturizers, and powder – against the owner of trademark “Leite de Arroz e Rosas,” the trial court recognized trademark infringement and unfair competition due to the imitation of trade dress.

The opinion of the court-appointed expert indicated the possibility of confusion by association or primary confusion on the part of consumers, given the visual identity of the product, adopted by the owner of “Leite de Arroz e Rosas” and combining the nomenclature of the infringing product, the choice of the colors pink and white, similar spelling and phonetics, as well as the image of rose petals and the flower on the milk pictured in the package.

Please read the full Case No. 0014515-37.2020.8.19.0001 [here](#).

Justice recognizes trademark misuse and trademark rights of traditional homemade ice cream from Minas Gerais

In March 2023, the 16th Specialized Civil Chamber of Minas Gerais Court of Justice recognized the trademark rights of the traditional homemade ice cream “Picolé do Amado,” owned by Dalmir Vieira. In May 2017, the entrepreneur found out that his trademark was being used without his authorization by a third party who was selling replicas of Dalmir Vieira’s products in Belo Horizonte, claiming to represent a branch of Dalmir’s establishment in São João del-Rei.

Such third party also created a website and social media pages using Dalmir’s business name and logotype to mislead consumers into believing that it was the same business. The third party also filed before the BPTO a trademark application using the same logotype, which was granted. Finally, the judge granted the request for preliminary injunction, ordering the third party to immediately stop using the trademark, recognizing Dalmir Vieira’s prior right to the trademark.

03 IP Abroad.

Ford wins lawsuit involving \$105 million trade secret violation

Ford Motor Company had a jury trial verdict overturned by a Michigan federal judge in early May. With this decision, the company will no longer have to pay the nearly \$105 million in damages that the jury deemed to be owed to software company Versata Software Inc., which accused Ford of misappropriation of trade secrets and breach of a software license contract.

The judge who overruled the jury trial understood that Versata failed to present sufficient evidence to support its claim. Therefore, the jurors did not have sufficient evidence related to the trade secret violation.

US judge rules in favor of company Yuga Labs in recent trademark lawsuit

Yuga Labs, the creator of the popular collection of Non-Fungible Tokens (NFTs) “Bored Ape,” has won a lawsuit involving NFTs and trademarks in the United States (US). The case involved the copying of NFTs by another artist, conceptual designer Ryder Ripps, who satirized Yuga Labs’ works. The Los Angeles court, in charge of the case, held that the NFTs, in this case, had trademark protection and that the imitation of the “Bored Ape” collection by the artist could cause confusion among consumers.

Yuga Labs’ “Bored Ape” collection of NFTs became popular in the digital art world during 2021 and 2022, with each NFT representing a unique digital primate character.

The decision, besides recognizing the potential harm caused by the unauthorized use of a trademark, sets a precedent for NFTs, highlighting the importance of protecting intellectual property rights as the NFTs industry continues to evolve.





Katy Perry loses trademark court case against Australian fashion designer named Katie Perry

In late April 2023, American singer Katy Perry lost a trademark court case with an Australian designer who sells clothes under her birth name and trademark registration “Katie Perry” since 2008. In 2019, Katie sued the singer claiming that the sale of clothing during her 2014 tour in Australia infringed her trademark registration, and recently, the Australian federal court has confirmed the trademark infringement.

However, the judge ruled that the pop star Katy Perry used the name in “good faith” and, therefore, does not have to pay any personal compensation to the designer, but her company Kitty Purry must pay damages, which will be determined next month.

Jack Daniels sues dog toy company for parodying whiskey bottle

Jack Daniels went before the Supreme Court of the United States of America against a company called VIP Products, which was selling dog toys in formats similar to whiskey bottles. Jack Daniels alleged infringement of its trademark rights. The toy would be a parody of Jack Daniels product and made jokes related to dog feces, which could damage Jack Daniels’ reputation.

In its defense, VIP Products claimed that its product is protected by the First Amendment, as it is a parody. It also informed that, on the toy label, the company showed it is not associated with Jack Daniels.

This case raises the visibility of a debate about two distinct rights, trademark rights and the right of freedom of expression. After the appeals court ruled in favor of VIP Products, the case will now be analyzed by the Supreme Court.

Este boletim é um informativo
da área de Propriedade Intelectual
de TozziniFreire Advogados.

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