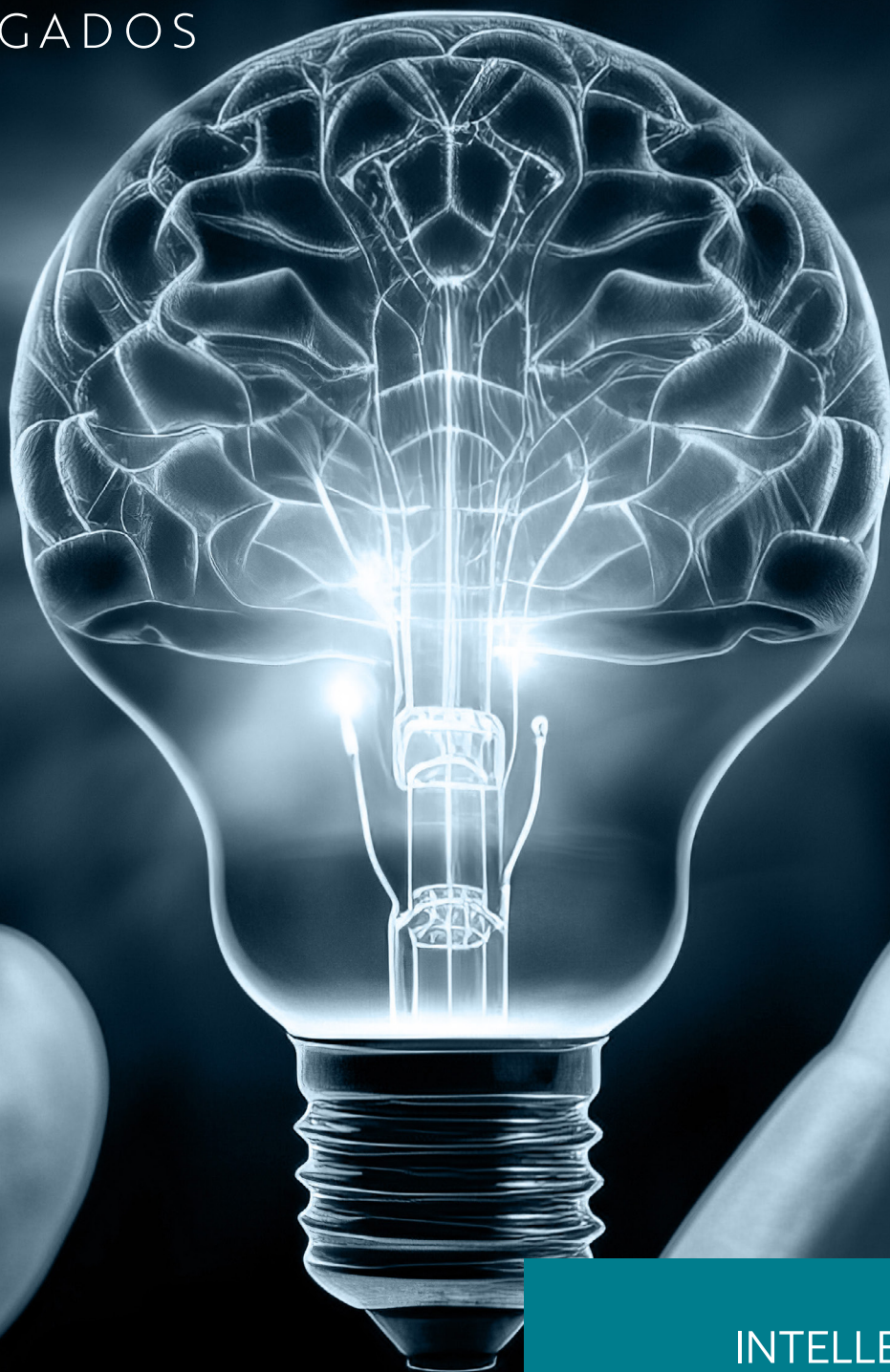


**Tozzini  
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ADVOGADOS



INTELLECTUAL  
**PROPERTY.**

10<sup>th</sup> Edition

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# 01

## Brazilian Context.

### General Sports Law

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On June 14th, 2023, the General Sports Law was enacted. Law No. 14,597 provides for the National Sports System and the National System of Sports Information and Indicators, the sports economic order, sports integrity, and the National Plan for the Culture of Peace in Sports.

The improper use of official symbols, as well as ambush marketing by association and intrusion, are violations of the intellectual property of sporting entities under Section III.

## **BPTO held meeting about plan to reduce period for patent examination**

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On May 25th, 2023, the Brazilian Patent and Trademark Office (BPTO) held a meeting and announced the new plan to reduce the period for patent examination by up to 2 years from the filing of the patent application.

The discussion of the technical effects of this change raised some obstacles to this plan, including article 33 of the Industrial Property Law, which establishes a period of 36 months for patent applicants to request the examination of patents. In this sense, the members attending the event proposed that the new period for patent examination begin from the moment a patent examination is requested, and not from the filing of a patent application. In this case, applicants are free to request the examination the moment a patent is filed or later.



# **02 Court Orders.**

## **Arcor wins dispute against Fini at the Court of Justice of São Paulo**

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The Court of Justice of the State of São Paulo (TJSP) acknowledged to Arcor do Brasil the protection of the expression “momentos mágicos” in its marketing materials. The decision was made in a lawsuit brought against Fini Comercializadora, which also used the expression.

Arcor proved to be the owner of trademark registrations comprised by the expression “Arcor Momentos Mágicos” and claimed it is entitled to make exclusive use of it. Fini, on the other hand, claimed to have used the phrase “Promoção Momento Mágico Fini” for a brief period in 2021 for an advertising campaign. The Court of Justice of São Paulo overturned the lower court decision and awarded compensation for property damage, but the amount has not been determined yet.

Given that the parties are direct competitors in the same industry, the judge found that there was unfair competition and considered that the mentioned slogan should be protected, since it is a significant differentiator in business competition.

Fini intends to appeal.



## Judgment about the use of the trademark iPhone is tied and has been interrupted in

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On June 9th, 2023, the judgment to decide who has the right to use the trademark iPhone in Brazil, which began on June 2nd in the virtual plenary of the Brazilian Federal Supreme Court (“STF”), has been interrupted due to a request for examination by justice Alexandre de Moraes, who will have more time to analyze and decide on the case.

Up to this moment, the score of the Appeal to the Federal Supreme Court ([ARE n° 1,266,095](#)) is tied with two votes in favor of Apple from Justices Luiz Fux and Roberto Barroso against two votes in favor of Gradiente from reporting justice Dias Toffoli and Gilmar Mendes. This is a complex case and of great importance for the market and for the BPTO’s trademark scenario, so we will continue to follow the case cautiously.

Our full article on this case can be found [here](#) (only in Portuguese).

## CBF X Adidas: Court of Justice of Rio de Janeiro allows the sale of yellow shirts

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The Brazilian Soccer Confederation (CBF), which litigates with Adidas Brasil over the sale of shirts with the green and yellow colors of the Brazilian National Soccer Team, will have to share the sale and distribution of these products with the German company, according to a decision of the 12th Chamber of Private Law from the Court of Justice of Rio de Janeiro, in the decision of the appeal and motion for clarification filed in May by CBF.

The appeal was filed after the lower court judge considered that there was no act of unfair competition or detour of clients. CBF’s allegations included the blatant imitation of the layout of shirts worn by the Brazilian national soccer team. There is still the possibility that CBF will appeal to the Superior Court of Justice (STJ), bringing, to the higher court, the discussion about unfair competition and protection of the colors.







## **BPTO rejects trademark registration of French brand Christian Louboutin's red sole**

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The French brand Christian Louboutin had its application for registration of a position trademark rejected by the Brazilian Patent and Trademark Office (BPTO) in the beginning of June. For the BPTO, the red sole, characteristic of the brand's heels, would not be considered a position trademark due to lack of distinctiveness. An appeal against rejection could still be filed, and the French brand might even go to court.

In parallel, in April, the Court of Justice of São Paulo (TJSP) decided on a case involving Christian Louboutin's brand and a Brazilian shoe manufacturer that, according to the brand, would be copying its characteristic red sole. The Court recognized the association between the red sole and the French brand and ordered the Brazilian company to stop manufacturing shoes with this characteristic, for violation of trade-dress. It is possible that this decision will be taken into consideration should Christian Louboutin's company decide to file an appeal against the BPTO.

# 03 IP Abroad.

## AI Generated Songs and Copyrights

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Over the last month, the Internet and social media have been virtual stages for several songs created by Artificial Intelligence (AI)<sup>1</sup>. Copyright discussions arose from this trend, including on the authorship of such works and on the legality of musical works generated from previous songs without prior authorization from their copyright owners.

The discussion about the authorship of AI generated works is a key issue, which is not restricted to AI generated songs, as it also covers all categories of intellectual works created by computer programs without human intervention. The U.S. Copyright Office, for example, has already expressed its understanding that works created by AI, without human intervention, are not subject to copyright protection.

Besides authorship, the use of previous works to create new intellectual works also tackles the issue of fair use of intellectual works by third parties. In Brazil, the use of intellectual work, including songs, depends on the prior

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<sup>1</sup> Among the new songs available on streaming platforms and social media, songs created by AI using voices of famous singers are the ones most listened to and shared by users – from Michael Jackson singing “Evidências” to Harry Styles singing June festival songs.

and express authorization from the work author, whether for partial or full reproduction, adaptation, musical arrangement, and any other transformations, inclusion in phonogram or audiovisual production, among other uses.

Even though most of the songs generated by AI and shared worldwide on social media over the last month do not have an economic purpose and only represent “memes,” the issues on authorship and use of previous works without authorization remain and are even employed as grounds for out-of-court actions taken by owners of copyright and related rights, such as requests for removing some of those AI generated songs from famous music streaming services. Although this debate is still at an early stage in Brazil, court and out-of-court actions can be taken any time against copyright violations.

## European unitary patent comes into force to facilitate intellectual property protection

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The European unitary patent, which entered into force on the 1st of June, aims to both legalize and protect intellectual property in 17 European countries. The system represents a “historic milestone in the accomplishment of the European Union’s internal market” and will allow for a significant evolution in the geographical coverage of intellectual property protection, simplifying administrative management, reducing costs, and above all, allowing the centralization of litigation. In addition, the system complements the current national and European patent system, considering that each country will be free to adhere to it or not.





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