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## 2021 highlights in Brazil: trademarks

### Montaury Pimenta, Machado & Vieira de Mello | Intellectual Property - Brazil

- > **Position mark applications**
- > **Unregistered marks**

This article is part of a series reviewing the IP landscape in 2021. This article looks particularly at two important adjustments to the Brazilian trademark system that took place in the final quarter of 2021.

#### **Position mark applications**

From 1 October 2021, applicants may officially submit position mark applications through a regulation provided by the Brazilian Patent and Trademark Office (BPTO).

According to BPTO Ordinance No. 37 of 13 September 2021:

*the distinctive set capable of identifying products or services and distinguishing them from identical, similar or related products, shall be registered as a mark of position; and the application of the signal in that position of the support may be dissociated from the technical or functional effect.*

This regulation brings greater legal certainty for trademark holders and modernises the Brazilian trademark system, following international trends in this regard.

For further details about this development, please see "Brazil is one step closer to recognising and regulating registration of position marks".

#### **Unregistered marks**

On 3 November 2021, the BPTO changed its understanding with regard to the right of precedence and officially recognised the possibility for users of unregistered marks to claim such rights in administrative nullity actions.

Article 129 of the Trademark Law provides that:

*Any person who, in good faith, on the date of priority or deposit, used in the Country, for at least 6 (six) months, identical or similar mark, to distinguish or certify identical product or service, similar or related, shall be entitled of precedence to registration.*

However, prior to the BPTO's 3 November 2021 announcement, the understanding was that the exercise of such a prerogative should take place during the opposition, after the previous user in good faith proved the filing of their application for registration.

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