

Brazilian presidential election: what a Bolsonaro or Lula win means for trademark owners

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- Polls open in Brazil on 2 October to vote for country's next president
- Left-wing Lula leading in polls, with incumbent Bolsonaro trailing
- IP protection implications of result could be significant, experts say

We are just days away from Brazilians heading to the polls to pick their next leader, and the result could have a significant impact on the brand protection ecosystem in Brazil. WTR talks with experts in the region about what the implications could be should incumbent president Jair Bolsonaro or his rival, former president Luiz Inácio Lula da Silva, prevail.

The general elections in Brazil are scheduled to be held this upcoming Sunday (2 October 2022), which will see the country elect a president, vice president, and National Congress. The two major candidates for president are right-wing populist Bolsonaro, who was elected president in 2018, and the left-wing Lula, who governed Brazil from 2003 to 2010 but became involved in a corruption scandal that led to him being jailed for over a year until the decision was overturned by the Brazilian Supreme Court. At present, the favorite to win is Lula, with recent polls showing him holding 52% of valid votes in the first round, with Bolsonaro at 34%. However, Bolsonaro has been “laying the groundwork to contest the results”, [as Reuters reports](#), “echoing Donald Trump's claims of a stolen election”.

Ultimately, as recent elections around the world have shown, polls are not always accurate and the vote count could go either way. And for trademark practitioners, especially those with brands operating in Brazil, the results could matter.

If Bolsonaro was to prevail, it would – in theory – represent a continuation. From the perspective of the Brazilian Intellectual Property Office (BPTO), that could be a positive, claims [Andre Oliveira](#), partner at Daniel-IP. “The BPTO has greatly evolved over the last years, especially in connection with the reduction of the backlog both for patents and trademarks and adoption of patent prosecution fast track options,” he explains. “This trend started during the Temer administration and continued during the Bolsonaro administration.”

Indeed, recent evidence suggests that the BPTO has been making notable strides forward in recent years. In WTR's annual IP Office Innovation Ranking, which ranks IPOs by their use of modern tools and systems, the agency has made huge progress. In 2018, it ranked 41st place in our list. In our latest research, [published earlier this year](#), the BPTO had risen to sixth place alongside the IP institutions of Australia and Chile. Furthermore, after [years of stalling and debate](#), the BPTO finally implemented the Madrid Protocol in 2019, which the office has described as “[successful](#)” (although local counsel have given [a more mixed response](#)). It has also [stepped up its diversity efforts](#) and [curtailed](#) its huge trademark application backlog.

According to [Eduardo Magalhães Machado](#), senior partner at Montaurio Pimenta, Machado & Vieira, the progress isn't due to Bolsonaro himself, but "because of the ministers that he picked to work in government, and especially the minister of economy, Paulo Guedes". However, Oliveira says this year "there was a significant budget restriction at the BPTO" which "has the potential to undermine recent progress". Therefore, he says, any further budget restrictions at the BPTO (or at the Federal Revenue on the enforcement side) "could play a significant role within the next couple of years". For Machado, a win for the incumbent will mean "everything related to a not-so-big (and heavy) state will continue", as will "everything in favour of reinforcing Brazilian rights, such as stronger protection for GIs".

Unsurprisingly, a Lula win is less certain as it will involve a complete change of administration. Indeed, Oliveira says it will be "hard to believe that the BPTO, or IP more generally, will be top priorities – at least within the first initiatives of a possible Lula administration given the structural challenges that will have to be faced next year". Those most significant impact he foresees, then, is "a change of command at the BPTO (a new president would likely be chosen) and budget restrictions that may be applicable to every administration". However, Machado sees more significant implications. "I can imagine [a] return to the time in which we needed three or four years to get a trademark registration because of all the bureaucracy", he says. "So, not great change in terms of legislation, but rather on *how* the state functions. [This is] not a win, neither a blow: previous 'socialists' governments we had, for every step forward, you needed 10 or 12 state authorisations from different governmental levels and from people that occupied their position without any technical background, but just supporters of the party."

Expanding on this point, Machado states that the election is "not important in terms of IP law, but rather in terms of the role to be played by the state in our lives". As an example, he explained: "For years, we have struggled to have a greater part of the revenue of our BPTO used to develop the agency itself, but previously it was said that the money should go to the central government and, then, reverted to the BPTO. At that time, the BPTO was receiving only 33% of the total amount sent to the central government. When we had the ideas of a 'socialist' government, it was impossible to convince them to increase that amount of money that, ultimately, belonged to the users of the BPTO system. Now, with this [current] government, we already have 67% and the promise to increase that percentual."

Of course, that is not to suggest support in everything Bolsonaro does, Machado clarifies. "Don't get me wrong, I am 99% against what Bolsonaro says, does and represents to us, but he has found some good people to work with him – especially in the areas that are linked to freeing the economy. The question that has puzzled me for four years is why he does not keep his mouth shut and let the ministers work to show he is right."

For Oliveira, it "is an important election" in the sense that the next administration, whoever leads it, "should strive to maintain the recent progress seen on both the BPTO and enforcement sides".

By this time next week, we may know what the future entails for Brazil – whether it will be a country run by the right-wing Bolsonaro or the left-wing Lula (this is assuming that both sides accept the result). Either way, the global trademark community will have their fingers' crossed that progress continues on Brazil's brand ecosystem in the years ahead.

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