

Trademark Registration and Maintenance: Overview (Brazil)

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A Practice Note providing an overview of the general trademark application filing and prosecution process in the Brazilian National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial* (INPI)). It addresses requirements for registration and typical trademark prosecution procedures, including responding to office actions in Brazil. It also addresses specific issues for counsel to consider during prosecution and to maintain the trademark registration once it is granted.

To register a trademark in Brazil, an applicant (foreign or domestic) must apply to the [Brazilian National Institute of Industrial Property](#) (*Instituto Nacional da Propriedade Industrial* (INPI)), which handles and oversees trademark registrations. To be registrable, a trademark must meet certain requirements in relation to its subject matter and distinctiveness, and cannot contain any of the elements prohibited by statute.

This Note discusses important considerations for filing, registering, and maintaining a trademark application in Brazil. This includes key strategic factors to consider when filing a trademark application in the INPI and typical and unique filing and examination procedures associated with Brazil trademark application filing and prosecution. The Note also identifies key post-registration maintenance requirements and considers trademark registration in Brazil as part of a multinational filing system.

What to Know First

Where Trademark Registrations Are Handled in Brazil

To register a trademark in Brazil, all applicants (foreign or domestic) must apply to the INPI, which handles and oversees trademark registrations.

Who Can Apply to Register a Trademark in Brazil

Ownership

Any Brazilian or foreign entity, including both public and private entities, can file a trademark application in Brazil (Article 128, [Law No. 9279/96](#) (known as the IP Law)).

Private legal entities can only apply for trademarks that identify goods or services related to their field of activity (Article 128(1), IP Law).

At any time during examination, an INPI examiner can issue an office action and request that the trademark applicant confirm and provide evidence of their activity in relation to the goods or services specified in the trademark application (for example, copies of the company's articles of association, disclosing its main activity).

It has been possible to jointly own trademark registrations in Brazil since 2020 ([INPI/PR Resolution 245/2019](#)).

Representation

Brazilian individuals and companies can file a trademark application at INPI without legal representation. However, foreign applicants generally must retain counsel in Brazil, subject to an exception discussed below for International registrations (Article 217, IP Law).

An applicant's representative must file a power of attorney with the INPI to establish their capacity to act on behalf of the applicant. A simple power of attorney signed by the representative and applicant (or simply executed by an authorized officer of the applicant), conferring on them the power to receive service of process in relation to the mark suffices. The power of attorney does not need to be notarized or legalized.

In an exception to the usual practice, a foreign applicant does not need to retain counsel when filing an International trademark application designating Brazil under the *Madrid Protocol* (see *Extension of Protection Under the Madrid Protocol*). They must, however, appoint a representative:

- After the INPI grants the application (Article 217, IP Law).
- Before the INPI grants the application if there are proceedings before the INPI related to the application, for example, an office action or third-party opposition (Article 16, *INPI Resolution 247/2019*, in Portuguese).

Registrable Subject Matter

Any visually perceptible distinctive sign can be registered as a trademark except when prohibited by law (Article 122, IP Law).

The INPI currently accepts trademark applications for words, designs, words and designs combined, three-dimensional marks, and, since September 2021, position marks, all subject to certain requirements.

All applications must include a specification of goods or services in relation to which the trademark is to be registered. The requirements for specific categories of marks are:

- Word marks. Applications must include the intended expression.
- Design marks. Applications must include the intended logo. If the logo is in color, the INPI Examiner treats the application as claiming the colors. Ideograms and marks formed by other alphabets, for example, Hebrew and Arabic, are considered design marks.
- Word and design marks. Applications must include both:
 - the intended expression; and
 - the intended logo. As with design marks, if the logo is in color, the Examiner treats the application as claiming those colors.
- Three-dimensional marks. Applications must include both:
 - a main image showing an overall perspective of the intended mark; and
 - additional images showing different features of the mark, including the back, front, top, bottom, and sides.
- Position marks. Applications must include both:
 - a main image showing the support to which the mark will be applied, with dotted or dashed lines, representing the exact positioning and proportion of the applied mark, using continuous lines or filled areas (additional images may be attached but are not required); and
 - a description of the mark.

- (*INPI Ordinance No. 37/2021 of 13 September 2021.*)

Non-Registrable Subject Matter

Sounds and smells cannot be registered as trademarks in Brazil.

Colors and their names cannot be registered as trademarks except when arranged or combined in an unusual and distinctive manner (Article 124(VIII), IP Law).

Slogans are not registrable because “signs or expressions used only as a means of advertising” cannot be registered (Article 124, IP Law), even though slogans would otherwise fit within the definition of a visually perceptible sign.

To date, the INPI has not formally recognized trade dress applications. However, trade dress protection is recognized by the state courts, as a trade dress violation is considered unfair competition practice (Article 195, III, IP Law). An infringer may be ordered to cease the infringing behavior, and to pay compensation to the registrant of the infringed mark (Article 209, IP Law).

For trade dress protection to be recognized in a specific case, the plaintiff must prove three elements:

- Distinctiveness.
- The elements that compose the trade dress are not functional elements.
- The trade dress identifies the origin of a product or service among the public.

For more on trade dress protection, see Practice Note, Trade Dress Protection (Brazil).

Types of Registrations

Brazil does not distinguish between trademarks and service marks.

The INPI also accepts applications for collective and certification marks.

Collective Marks

A collective mark identifies products or services as originating from members of a particular entity, for example, a trade association (Article 123(III), IP Law). Only a legal entity that represents the collective group and that can act separately from its members (having a main activity that is distinct from its members) can apply for a collective mark (Article 128(2), IP Law).

In addition to the details of the mark and a list of covered goods and services, an application for a collective mark must include a set of regulations for use of the collective mark by the group’s members, including conditions and limits on its use (Article 147, IP Law). These regulations must be filed at the registry along with the application form.

Certification Marks

A certification mark indicates to the public that the goods or services provided in connection with the trademark conform to defined technical norms or specifications, usually regarding the quality, nature, and materials used and the methodology employed (Article 123(II), IP Law). The applicant for a certification mark cannot have any direct commercial or industrial interest in the product or service being certified.

An application for a certification mark must include:

- The characteristics of the product or service to be certified.
- The control measures that the registrant will adopt.

(Article 148, IP Law.)

Priority and Use

Brazil is a first-to-file country. A trademark applicant does not need to show proof of use or intent to use when filing a new application.

However, Brazil is a party to the *World Intellectual Property Organization (WIPO) Paris Convention for the Protection of Industrial Property (Paris Convention)*. Under the Paris Convention, there are two exceptions to the first-to-file rule:

- Prior use in good faith. Any person who, for at least six months before the date of priority or filing, was using an identical or similar mark in good faith in relation to an identical or similar product or service has a preferential right to registration (Article 129(1), IP Law).
- Well-known trademarks. A party cannot register a trademark that is a reproduction, imitation, or translation of, or likely to cause confusion with, a trademark that is well known in its field of activity within the meaning of Article 6bis of the Paris Convention, even if the well-known mark was not previously registered in Brazil (Article 126, IP Law).

Rights and Benefits of Trademark Registration in Brazil

There is no protection for unregistered trademarks in Brazil. A trademark owner must apply to the INPI for registration to protect a mark and to be able to enforce it against third parties.

Trademark applicants and registrants can:

- Assign or license their pending application or registration to third parties.
- Protect the mark's material integrity and reputation.

(Article 130, IP Law.)

Treaties and Multinational Trademark Registration Systems

Brazil is a signatory to:

- The Paris Convention (see *Priority and Use*). The registration process in this case follows the same procedure as a national application. However, the applicant may claim the priority date from the original foreign application. Therefore, a trademark application using the Paris Convention is an exception to the first-to-file rule that applies generally in Brazil.
- The WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*. Since October 2019, Brazil is also a party to the Madrid Protocol (see *Extension of Protection Under the Madrid Protocol*). As opposed to a Paris Convention application, in this case the filing must be made through WIPO. The mark will be examined as a national application, but there are two main differences:
 - International applications are an exception to the requirement that companies established abroad be represented by local counsel (Article 217, IP Law); and
 - the Madrid Protocol system supports multiclass applications, while applications filed before the INPI do not yet.

Before Filing a Trademark Application

Strategic Considerations

Before filing a trademark application, an applicant's counsel should consider the applicant's budget for obtaining trademark protection. Since Brazil does not yet accept multiclass trademark applications, an applicant must be mindful that fees will be paid per mark, per class. This is the case unless they file an International application which supports multiple classes in one, but whether an International application is appropriate will depend on the geographical scope of their current and intended use of the mark.

How the mark is going to be used in the Brazilian market is also relevant. Frequently, companies file for a design or a composite mark that is altered shortly afterwards or for which the logo colors are subsequently modified. If a registrant stops using their trademark in the form set out in their registration (which, in the case of composite marks, includes the precise colorways set out in the registration), then the registration will be at risk of a cancellation action on the ground of non-use. See [Non-Use Cancellation Actions](#).

It is therefore usually better practice to file an application to protect a word mark, rather than a design or a composite mark. A word mark (such as a company or product name, for example) is less likely to change over time, even if a company rebrands. The INPI Examiners also accept different forms of presentation of a word mark as proof of use, and so a registrant is free to alter the font, style, color and other ways in which it applies its word mark, while still making use of their registration as required by the INPI.

Searching and Clearance

Conducting a trademark availability search before filing an application is strongly recommended. Brazil is a first-to-file system, so any prior registrations for the same or similar marks, whether or not in use, could prevent registration of a new application.

Availability searches are more important if the intended mark is not yet in use or well-known in its field of activity and is ineligible for an exemption to the first-to-file rule (see [Priority and Use](#)).

Translation

It is optional, not mandatory, to file a Portuguese translation of the trademark, and a transliteration is not required.

It is advisable to consult local counsel before filing to check whether the trademark has any offensive connotations or inherent obstacles to registrability, even if the mark has already been successfully registered in another country.

Legal Requirements for Filing a Trademark Application

Use or Intent to Use

The applicant does not need to show proof of use or intent to use when filing a trademark application at the INPI because Brazil is a first-to-file country.

However, beginning five years after the registration of a trademark, a third party can file a non-use cancellation action, also known as a forfeiture action, against a trademark that has not been used in the five years since its registration (see [Non-Use Cancellation Actions](#)).

Non-Use Cancellation Actions

Any person with a legitimate interest can seek cancellation of a trademark registration on the ground of non-use in certain circumstances. For information on the meaning of legitimate interest, see [Publication and Advertisement](#).

A trademark is subject to cancellation if:

- At least five years have passed from the date the trademark was granted.
- On the date of the cancellation request:
 - the owner has not begun using the mark in Brazil;
 - the use of the mark has been interrupted for more than five consecutive years; or
 - in the preceding five consecutive years, the mark has been used in a modified form that does not reflect the mark as registered, or the scope of goods and services, for which the registration was filed.

(Article 143, IP Law.)

The registrant must respond within 60 days and either:

- Prove use of the mark in connection with the goods or services set out in the registration.
- Provide legitimate reasons to justify the non-use (for example, regulatory issues preventing use of the mark (most relevant in the pharmaceutical sector); import and export controls around the product to which the trademark is to be applied and the raw materials used in the manufacturing of the specified product; and pending administrative and court nullity actions).

(Article 143(2), IP Law.)

The INPI cancels the registration to the extent to which the registrant fails to respond successfully. For example, if the registrant fails to prove use of the mark in connection with some goods or services, the INPI cancels the registration with respect to those goods and services (Article 144, IP Law).

Distinctiveness Requirement

A trademark can be any visually perceptible distinctive sign (Article 122, IP Law) (see [Registrable Subject Matter](#)). This means that the intended trademark must be distinctive.

Signs that are generic, necessary, common, usual, or simply descriptive and generic terms are generally non-registrable. However, an exception applies if the descriptive or generic terms are combined with elements that make the mark sufficiently distinctive as a whole (Article 124(VI), IP Law). Marks that are considered sufficiently distinctive are those formed by distinctive word and graphic elements, such as the trademarks for McDonalds or VISA. Marks formed by common descriptive elements, without anything sufficiently distinctive (such as an additional graphic element) would not be sufficiently distinctive to be registrable. Examples include the word mark BABY STORE for baby clothing or the word mark CASA DE SUCOS (JUICE HOUSE in Portuguese) for a cafeteria.

Other Legal Requirements

The only substantive legal requirements for a trademark to be registered in Brazil are:

- The mark must be distinctive. See [Distinctiveness Requirement](#).
- Registration of the mark must not be expressly prohibited under Brazilian law. See [Statutory Exclusions](#).

Statutory Exclusions

The following are not registrable as trademarks in Brazil:

- Government insignia. Any official, national, foreign, or international crests, coats of arms, medals, flags, emblems, official public badges, and monuments, and any designations, figures, or imitations of these items.
- Letters, digits, and dates. An isolated letter, digit, or date, except when sufficiently distinctive (for example, in composite form with distinctive elements).
- Offensive signs. Expressions, figures, drawings, or any other signs that:
 - are contrary to Brazilian morals and good customs;
 - offend a person's honor or image; or
 - are an affront to the liberty of conscience, beliefs, religious sects, or ideas and sentiments worthy of respect and veneration.
- Public entity and establishment designations and acronyms. Designations or acronyms of a public entity or establishment, unless the public entity or establishment is the applicant.
- Third party establishments or businesses. Reproductions or imitations of a characteristic or differentiating element of a title of establishment or the name of a third party's business that are likely to cause confusion or association with the distinctive characteristic or element.
- Non-distinctive signs. Signs of a generic, necessary, common, usual, or simply descriptive character, when related to the product or service to be distinguished, or those commonly used to designate a characteristic of the product or service with respect to its nature, nationality, weight, value, quality, and time of production or of giving a service, except when presented in a sufficiently distinctive manner (see *Distinctiveness Requirement*).
- Advertising. Signs or expressions that are used only as a means of advertising.
- Colors. Colors and their names, except when arranged or combined in a particular and distinctive manner.
- Misleading geographic indications and imitations. Geographic indications and imitations likely to cause confusion or signs that might falsely suggest a geographic indication.
- Misleading characteristic of product or service. Signs that mislead regarding the origin, source, nature, quality, or utility of the product or service to which the mark is directed.
- Official seals. Reproductions or imitations of official seals that are normally adopted to guarantee a standard of any type or nature.
- Registered third-party collective or certification marks. Reproductions or imitations of signs that have been registered as a collective or a certification mark by a third party, subject to Article 154 of the IP Code, which allows registration of a previously registered but cancelled collective or certification mark when five years have passed from the cancellation.
- Names, prizes, and symbols of events. Names, prizes, or symbols of sporting, artistic, cultural, social, political, economic, or technical official or officially recognized events, and imitations likely to cause confusion, except when authorized by the competent authority or entity promoting the event.
- Banking and currency signs. Reproductions or imitations of titles, bonds, coins, and bank notes of any level of domestic or foreign government.
- Names, signatures, and images. Personal names or signatures, family or patronymic names, and images of third parties,

except with the consent of the owner, their heirs, or their successors.

- Well-known names. Well-known pseudonyms, nicknames, and singular or collective artistic names, except with the consent of the owner, their heirs, or their successors.
- Literary, artistic, and scientific works. Literary, artistic, or scientific works, and titles protected by copyright and likely to cause confusion or association, except with the consent of the author or owner.
- Technical terms. Technical terms used in the industry, science, or art that are related to the product or service to be distinguished.
- Sign likely to cause confusion with registered mark. Reproductions or imitations, in whole or in part, even with additions, of a mark registered by a third party, to distinguish or certify a product or service that is identical, similar, or related, and which are likely to cause confusion or association with the third party's mark.
- Duplications. Duplications of marks of a single owner for the same product or service, except when, in the case of marks of the same nature, they are presented in a sufficiently distinctive manner.
- Shapes. Necessary, common, or usual shapes of a product or of its packaging, or shapes that cannot be disassociated from a technical effect.
- Third-party industrial design registrations. Objects that are protected by industrial design registrations in the name of third parties.
- Signs likely to cause confusion or association with a third-party mark. Signs that imitate or reproduce, in whole or in part, a mark of which the applicant could obviously not fail to have knowledge in view of their activity, and of which the owner is established or domiciled in Brazil or in a country with which Brazil maintains an agreement or guarantees reciprocity of treatment, if the mark is intended to distinguish a product or service that is identical, similar or akin, and is likely to cause confusion or association with the third-party mark.

(Article 124, IP Law.)

Filing the Trademark Application

Where to File

All trademark applications in Brazil are filed online through INPI's *E-Marcas system*.

It is not possible to file paper trademark applications.

Timing and Expedited Review

A trademark prosecution takes approximately 12 months from the filing of the application to the date of registration.

There are no expedited procedures or fast-track processes for trademarks in Brazil from the filing of the application to the date of registration. Once the application is published, the remaining process to the decision granting the registration takes about eight to ten months.

These estimates reflect a normal course of examination without, for example, office actions or third-party oppositions.

Fees

Trademark applications can be filed with either:

- Pre-approved specifications. A pre-approved specification includes for each class of goods or services only goods or services that are listed in the *Nice Classification*, the international classification system for goods and services for trademark registrations used widely around the world.
- Free specifications. A free specification can contain goods or services that are not included in the Nice Classification if they are within one of the classes set out in the application.

The fee for filing a trademark in one class, with a pre-approved specification, is BRL 355. A further BRL 355 is charged for every additional class included in the application.

The fee for filing a trademark in one class, with a free specification, is BRL 415. A further BRL 415 is charged for every additional class included in the application.

Fee discounts are available to natural persons and small businesses that meet criteria defined in Brazilian law. For example, the discounted fee for filing with a pre-approved specification is BRL 142 per class.

Trademark applications can only be filed electronically. Paper applications are not accepted.

For information on other INPI fees, see *INPI: Table of Fees for Services Offered by INPI*.

Priority Based on Prior Filing

An applicant for a Brazilian trademark registration is entitled to an earlier filing date based on a previously filed application or existing registration if the country of the earlier application or registration is a signatory to the Paris Convention (Article 127, IP Law).

The Brazilian application receives the same priority date as the foreign application or registration if:

- The earlier application or registration was filed at the trademark registry of a country that is a signatory to the Paris Convention.
- The applicant files an identical application with the INPI within six months of:
 - the filing date of the earlier mark, if the prior right is an application; or
 - the registration date of the earlier mark, if the prior right is a registration.
- The applicant makes the claim of priority at the time of filing. The applicant can supplement the priority claim by claiming additional priority dates within 60 days. In this instance, the applicant claims priority based on two separate earlier foreign filings, each with different filing dates.

The applicant must submit evidence of the earlier application or registration to INPI by providing a document from the foreign authority that contains the number and date of the application and a copy of the application or registration. The applicant is also responsible for providing a translation. If the applicant does not provide this evidence at filing, the applicant must do so within four months. If the applicant does not, the applicant loses the priority claim, and the INPI republishes the application for opposition purposes, stating the filing date as the revised priority date.

(Article 127, IP Law.)

Application Elements

The minimum elements required to receive a filing date for a trademark application are:

- Details of the mark to be registered and the corresponding images and description, if applicable.

- The list of goods and services to be protected in connection with the mark.
- The applicant's complete name and address.

When applicable to a specific application, the following documents also must be filed at INPI within specific time periods after filing to complete the application process:

- Power of attorney (POA). A POA is mandatory for all foreign applicants, and for those domestic applicants that choose to be legally represented. The POA does not need to be notarized or legalized, but an authorized representative of the applicant must sign it. The POA must be filed within 60 days of the application filing date.
- Priority document. The applicant must file a priority document for applications that seek to benefit from Paris Convention priority. The document must be filed within four months of the application filing date.

Extension of Protection Under the Madrid Protocol

In Brazil, there is no special treatment of and no special requirements applicable to International applications under the Madrid Protocol. Any International application that designates Brazil that is received by the INPI is subject to the same rules as all national applications. The INPI examines International applications under the same standards as it applies to national applications. The INPI rejects all types of marks that are non-registrable under Brazilian trademark law regardless of whether the application is a national application or a Brazilian designation through the Madrid System.

Examination of the Trademark Application

The examination of a trademark application consists of two phases:

- Formal examination. This phase occurs as soon as the mark is filed. The INPI analyzes only the formal elements of the application, for example, if the official fees have been paid and, for a design mark, it checks that the image attached is clear.
- Substantive examination. The substantive examination takes approximately eight months from the date of publication of the trademark application (see *Publication and Advertisement*). This phase takes longer if the application is subject to any oppositions or office actions. During the substantive examination, the INPI examiner checks all absolute grounds of refusal for the mark (see *Refusals*). Then, the examiner checks all relative grounds and, if a third party has filed an opposition, it reviews the opposing party's claim.

Refusals

A refusal can be based on absolute or relative grounds.

Absolute grounds for a refusal in Brazil are:

- Government insignia. Any official, national, foreign, or international crests, coats of arms, medals, flags, emblems, official public badges, and monuments, and any designations, figures, or imitations of these items.
- Letters, digits, and dates. An isolated letter, digit, or date, except when sufficiently distinctive.
- Offensive signs. Expressions, figures, drawings, or any other signs that:
 - are contrary to Brazilian morals and good customs;
 - offend a person's honor or image; or

- are an affront to the liberty of conscience, beliefs, religious sects, or ideas and sentiments worthy of respect and veneration.
- Public entity and establishment designations and acronyms. Designations or acronyms of a public entity or establishment, unless the public entity or establishment is the applicant.
- Non-distinctive signs. Signs of a generic, necessary, common, usual, or simply descriptive character, when related to the product or service to be distinguished, or those commonly used to designate a characteristic of the product or service with respect to its nature, nationality, weight, value, quality, and time of production or of giving a service, except when presented in a sufficiently distinctive manner (see *Distinctiveness Requirement*).
- Advertising. Signs or expressions that are used only as a means of advertising.
- Colors. Colors and their names, except when arranged or combined in a particular and distinctive manner.
- Misleading characteristic of product or service. Signs that mislead regarding the origin, source, nature, quality, or utility of the product or service to which the mark is directed.
- Official seals. Reproductions or imitations of official seals that are normally adopted to guarantee a standard of any type or nature.
- Banking and currency signs. Reproductions or imitations of titles, bonds, coins, and bank notes of any level of domestic or foreign government.
- Technical terms. Technical terms used in the industry, science, or art that are related to the product or service to be distinguished.
- Duplications. Duplications of marks of a single owner for the same product or service, except when, in the case of marks of the same nature, they are presented in a sufficiently distinctive manner.
- Shapes. Necessary, common, or usual shapes of a product or of its packaging, or shapes that cannot be disassociated from a technical effect.

(Article 124, IP Law.)

Relative grounds for a refusal are:

- Third party establishments or businesses. Reproductions or imitations of a characteristic or differentiating element of a title of establishment or the name of a third party's business that are likely to cause confusion or association with the distinctive characteristic or element.
- Misleading geographic indications and imitations. Geographic indications and imitations likely to cause confusion or signs that might falsely suggest a geographic indication.
- Registered third-party collective or certification marks. Reproductions or imitations of signs that have been registered as a collective or a certification mark by a third party, subject to Article 154 of the IP Code, which allows registration of a previously registered but cancelled collective or certification mark when five years have passed from the cancellation.
- Names, prizes, and symbols of events. Names, prizes, or symbols of sporting, artistic, cultural, social, political, economic, or technical official or officially recognized events, and imitations likely to cause confusion, except when authorized by the competent authority or entity promoting the event.
- Names, signatures, and images. Personal names or signatures, family or patronymic names, and images of third parties, except with the consent of the owner, their heirs, or their successors.
- Well-known names. Well-known pseudonyms, nicknames, and singular or collective artistic names, except with the

consent of the owner, their heirs, or their successors.

- Literary, artistic, and scientific works. Literary, artistic, or scientific works, and titles protected by copyright and likely to cause confusion or association, except with the consent of the author or owner.
- Sign likely to cause confusion with registered mark. Reproductions or imitations, in whole or in part, even with additions, of a mark registered by a third party, to distinguish or certify a product or service that is identical, similar, or related, and which are likely to cause confusion or association with the third party's mark.
- Third-party industrial design registrations. Objects that are protected by industrial design registrations in the name of third parties.
- Signs likely to cause confusion or association with a third-party mark. Signs that imitate or reproduce, in whole or in part, a mark of which the applicant could obviously not fail to have knowledge in view of their activity, and of which the owner is established or domiciled in Brazil or in a country with which Brazil maintains an agreement or guarantees reciprocity of treatment, if the mark is intended to distinguish a product or service that is identical, similar or akin, and is likely to cause confusion or association with the third-party mark.

(Article 124, IP Law.)

Responding to Refusals

The INPI usually communicates a refusal to the applicant by publication in the Industrial Property Journal, disclosed in the INPI's database. The applicant is not directly informed by the INPI, except in the case of the Madrid Protocol system, where the applicant is notified of publication by WIPO. From the date of publication (or notification in a Madrid Protocol case), the applicant has 60 days to file an administrative appeal against the refusal (see [Appealing](#)).

Publication and Advertisement

The INPI publishes the trademark application in the *Industrial Property Gazette* (*Revista da Propriedade Industrial*). Third parties have 60 days from publication to file an opposition against the application (Article 158, IP Law). Third parties can oppose trademark applications if they have a legitimate interest, which means that they must own an earlier trademark application or registration at the INPI for the mark that they claim will be infringed by the pending new application.

Oppositions are published in the Industrial Property Gazette. The INPI notifies the applicant directly regarding the opposition. The applicant has 60 days to respond. Responding is not mandatory but is highly recommended. Once the applicant has filed a response or the 60-day period expires, the INPI Examiner issues a decision and either allows the trademark application to proceed to registration or rejects it. INPI opposition decisions are not published.

The fee for filing an opposition is BRL355, and the fee for filing a response is BRL280.

For more detailed information on trademark oppositions, see Trademark Opposition Proceedings (Brazil).

Appealing

If the INPI rejects a trademark application because of a third-party opposition or an *ex officio* decision by the INPI examiner, the applicant can file an administrative appeal. The appeal must be filed within 60 days of the publication of the rejection decision in the Industrial Property Gazette. The *Coordenação Geral de Recursos e Processos Administrativos de Nulidade – CGREC* hears the appeal (the second instance of the INPI). The INPI fee for filing an appeal is BRL475 per class (see [INPI: Table of Fees for Services Offered by INPI](#)).

In the appeal, the applicant can rebut the grounds for refusal the INPI has raised. The applicant can submit supporting evidence, including clippings, invoices, photographs, and publicity materials. The type of evidence required depends on the grounds of refusal. The INPI only requires digital copies of documents, and legalization and notarization are not required.

Once the appeal is filed, the INPI examines the appeal within about 14 months.

If the rejection decision is maintained by the INPI, the only way to challenge the decision is through the filing of a nullity lawsuit before one of the Federal Courts of Brazil within five years, counted from the date that the maintenance of the rejection decision was published in the INPI's Official Gazette.

As the nullity lawsuit would seek to invalidate INPI's act in maintaining the rejection of the trademark application, the INPI must be listed as a defendant in the lawsuit, along with the company or individual that owns the prior trademark registration (if the rejection decision rendered by the INPI is based on a prior trademark application or registration).

After the filing of the initial brief, the INPI (and the possible prior owner of the trademark application or registration) will be summoned to file their arguments in the lawsuit. INPI can, within the lawsuit, review its own prior decision to reject and grant the plaintiff's request for the allowance of the trademark. After the INPI (and the prior owner) file their arguments, the plaintiff will be summoned to file a reply. After the reply, the judge will ask the parties if they have any additional evidence to submit and if not, the judge will issue a decision on the merits.

A merits decision in a nullity lawsuit is normally issued by the trial court judge within one to two years. If the lawsuit is taken to the Court of Appeal, it would likely take another one to two years for the Court of Appeal to issue its decision.

Aside from the professional fees, the applicant would have to pay the court's official fees to initiate the lawsuit, which are calculated at the beginning of the lawsuit. If the applicant is a foreign company without real property in Brazil, then it may also be ordered to pay judicial bonds of sufficient value to pay the opposing party's counsel costs and fees in relation to the actions filed (Article 83, Brazilian Code of Civil Procedure).

Additional Filings to Perfect the Registration

There are no other filings that an applicant must make to perfect or finalize a trademark registration in Brazil.

Trademark Registration

Registration Certificate

The INPI only issues trademark certificates electronically, through the [INPI's database](#). The trademark owner or their representative must access the website to obtain a copy of the certificate.

Proper Trademark Use

Brazilian law does not require the use of symbols to indicate that a mark is filed or registered with the INPI. The best practice is to start using the mark as soon as possible after filing to avoid a forfeiture action in the future (see [Non-Use Cancellation Actions](#)).

Maintenance of the Trademark Registration

Trademark Term

Trademark registrations are valid for ten years from the date of grant. They can be renewed for ten-year periods. There is no limit to the number of renewals.

Trademark Renewal

To renew a trademark registration in Brazil, the registrant must pay the renewal fees during the last year of the registration's

validity. The registrant can also renew the trademark during a grace period of six months after the registration expiration date.

The fees for renewing a trademark electronically before its expiration are BRL 1065, and during the six-month renewal grace period are BRL 1610.

No proof of use or other documents are needed for the renewal.

Other Trademark Maintenance

A trademark registrant is not required to establish use of the mark after the registration is granted.

However, beginning five years after the grant date, the registration is vulnerable to non-use cancellation actions. If a non-use cancellation action is filed against a mark, the owner must show the use of the mark in Brazil for the previous five years (see [Non-Use Cancellation Actions](#)).

Assignment

Trademark owners should keep their information up to date in the INPI's database. Owners should record any change of address or name.

A trademark assignment is not completed until the INPI has finished processing the request to record the assignment. Until the assignment is completed, the trademark application and registration remain the property of the former owner.

A trademark owner can request that the INPI record a trademark assignment at any time, but the best practice is to do so as soon as possible. If the INPI grants a trademark application or renews a registration before the assignment is recorded, the INPI issues the trademark certificate on behalf of the former owner.

All of an owner's identical or similar registered or applied-for marks in respect of identical or similar goods or services must be included in a single assignment. If the owner does not do so, the INPI can cancel the non-included registrations or deny the non-included applications. (Article 135, IP Law.)

The fees for trademark assignments are:

- BRL180 for the transfer of one trademark.
- BRL85 for each additional trademark transferred between the same assignors and assignees (whether the transfer is effected by the same written assignment, or by separate assignments).

The assignee must submit:

- The deed of assignment, signed by the assignors, assignees, and two witnesses.
- A power of attorney, signed by one of the assignee's representatives.
- An affidavit of activities stating the company's activities, which must be compatible with the covered goods or services of the assigned trademarks.

Documents that are not in Portuguese must be translated. A simple (that is, not officially certified) translation is sufficient.

Other Ways to Protect Trademarks in Brazil

Brazil also recognizes the categories of well-known and famous marks, which enjoy special protection and enforceability. The IP Law sets out specific conditions for each category.

Well-Known Marks

Well-known marks are an exception to Brazil's first-to-file rule, consistent with Article 6bis of the Paris Convention (see *Priority and Use*). The owner of a well-known mark can oppose a new trademark application filed at INPI, even if the well-known mark is not yet registered in Brazil (and therefore the filing date of the new trademark application predates the well-known mark's filing date). The owner of the well-known mark can defend its mark by filing an application to register the mark with the INPI and providing proof of the mark's well-known status, either in Brazil or a foreign country. (Article 126, IP Law.)

Also, the INPI examiner can reject an application for a trademark that is identical or similar to a well-known mark, even if the owner of the well-known mark has not filed an opposition (Article 126(2), IP Law).

Apart from the special treatment discussed above, well-known marks are otherwise treated like other registered trademarks. They are valid for ten years and enforceable only in connection with identical and similar goods or services.

Famous Marks

A trademark owner can request that an existing Brazilian trademark registration be recognized as a famous mark by filing a request at the INPI. Treatment as a famous mark gives the mark special protection in all fields (Article 125, IP Code). In support of the request, the trademark owner must show extensive evidence confirming:

- The recognition of the mark by a large portion of the general public.
- The quality, reputation, and prestige that the public associates with the mark and the products or services marked by it.
- The degree of distinctiveness and exclusivity of the mark.

(Article 65, *Ordinance INPI/PR No. 8 of 17 January 2022*.)

The owner also must conduct a market survey within Brazil to prove that a large portion of the population recognizes the mark (Article 66, *Ordinance INPI/PR No. 8 of 17 January 2022*).

The recognition of a famous mark is valid for ten years. A famous mark is enforceable against any similar trademark, regardless of the goods or services that it covers (Article 63, *Ordinance INPI/PR No. 8 of 17 January 2022*).

The fee for requesting recognition of an existing registered trademark as a famous mark is BRL37,575 (see *INPI: Table of Fees for Services Offered by INPI*).

The INPI website lists trademarks currently recognized as famous (see *INPI: Famous Marks in Brazil*).

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