



# In order to leave the list of IP Rights offending countries, Brazil intensifies operations against piracy

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*Survey reveals that in 2021 losses caused by the commerce of counterfeit products exceeded R\$ 336 billion reais Specialist in the repression of infractions and in the fight against piracy sees the need for more intellectual property enforcement and anti-piracy operations*

With the aim of getting off the “Watch List” – the list that assesses countries on their adequacy and effectiveness in protecting their intellectual property (IP) rights of U.S. business partners – Brazil has started to intensify its anti-piracy operations.

In the 2022 report, Brazil remained on the Watch List. The report emphasized that the United States has long-term concerns regarding the Brazilian intellectual property (IP) inspection system, even though the country made significant progress in 2021.

Among advances and points of progress, Brazil was ranked as one of the twenty business partners on the Watch List that deserves bilateral attention in order to resolve underlying IP issues, alongside Algeria, Barbados, Bolivia, Canada, Colombia, Dominican Republic, Ecuador, Egypt, Guatemala, Mexico, Pakistan, Paraguay, Peru, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uzbekistan, and Vietnam.

The Special Report 301 is an annual review of the state of global IP protection and enforcement. The USTR conducts this review according to section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, and by the Uruguay Round Agreements Act. The Watch List is part of the United States Trade Representative (USTR) Special 301 Report, which details findings related to more than 100 business partners in the country.

## **Intensifying Operations in Brazil**

“Brazil’s flexibility in protecting intellectual property assets, and the low effectiveness of enforcement actions against infringements of this nature may discourage businesses that hold these rights to invest in Brazil, as well as ultimately allow countries that today are business partners, such as the U.S., creator of the list, to impose sanctions in order to force them to somehow better protect these rights”, says David Fernando Rodrigues, lawyer at Montauray Pimenta, Machado & Vieira de Mello.

According to data from the survey present by the National Forum Against Piracy and Illegality, in 2021, the economic loss resulting from the trade of counterfeit products exceeded R\$ 336 billion reais. Of this total, R\$ 95 billion refer to taxes which were not collected by the State.

The trade of counterfeit products is a major problem for counterfeit trademark owners, and the immediate way to solve this matter is to take these products off the market. Seizures of these products may occur in various situations, from when they are moving into the country, with inspection operations carried out by port and border authorities, to commercial establishments, in which circumstances these goods are being offered to consumers.

As can be assumed, everything becomes harder when the products pass through borders and land borders, and reach sales points and distribution centers, because repression actions in these places are always high risk, less effective, and expensive.

To minimize these difficulties, it is not uncommon for piracy victim businesses, owners of the original brands, to join efforts in seeking the support of the responsible authorities. These joint initiatives maximize the work of the authorities, lower the operational costs suffered by the businesses, and make a greater impact, because they take millions of counterfeit products off the market at once, of various sorts and brands.

“It was a recognition of the gravity and the dimension of the losses caused by piracy that led victim businesses and law firms that represent them to join efforts to fight the problem, which resulted in the first joint operations in major distribution centers of counterfeit products”, explains David Fernando Rodrigues, lawyer at Montaury Pimenta, Machado & Vieira de Mello, which represents some of these brands and supports initiatives such as these.

The office connects brand owners and authorities responsible for inspections, working in order to have as many operations as possible within the scope and attributions of these authorities. The obstacles in this, however, are related to logistical and cost issues.

“The biggest difficulty is that these operations involve very high costs related to hiring specialized professionals, helpers for the seizure of the products, storage and transportation of the goods, meals for the teams involved, among other expenses, which, although shared among the businesses involved, end up limiting the number of actions and putting the victims in a dilemma: the consequent loss to piracy is immeasurable, but tackling the problem also demands considerable investment”, says David Fernando.

**Montaury Pimenta, Machado & Vieira de Mello** - David Fernando Rodrigues

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