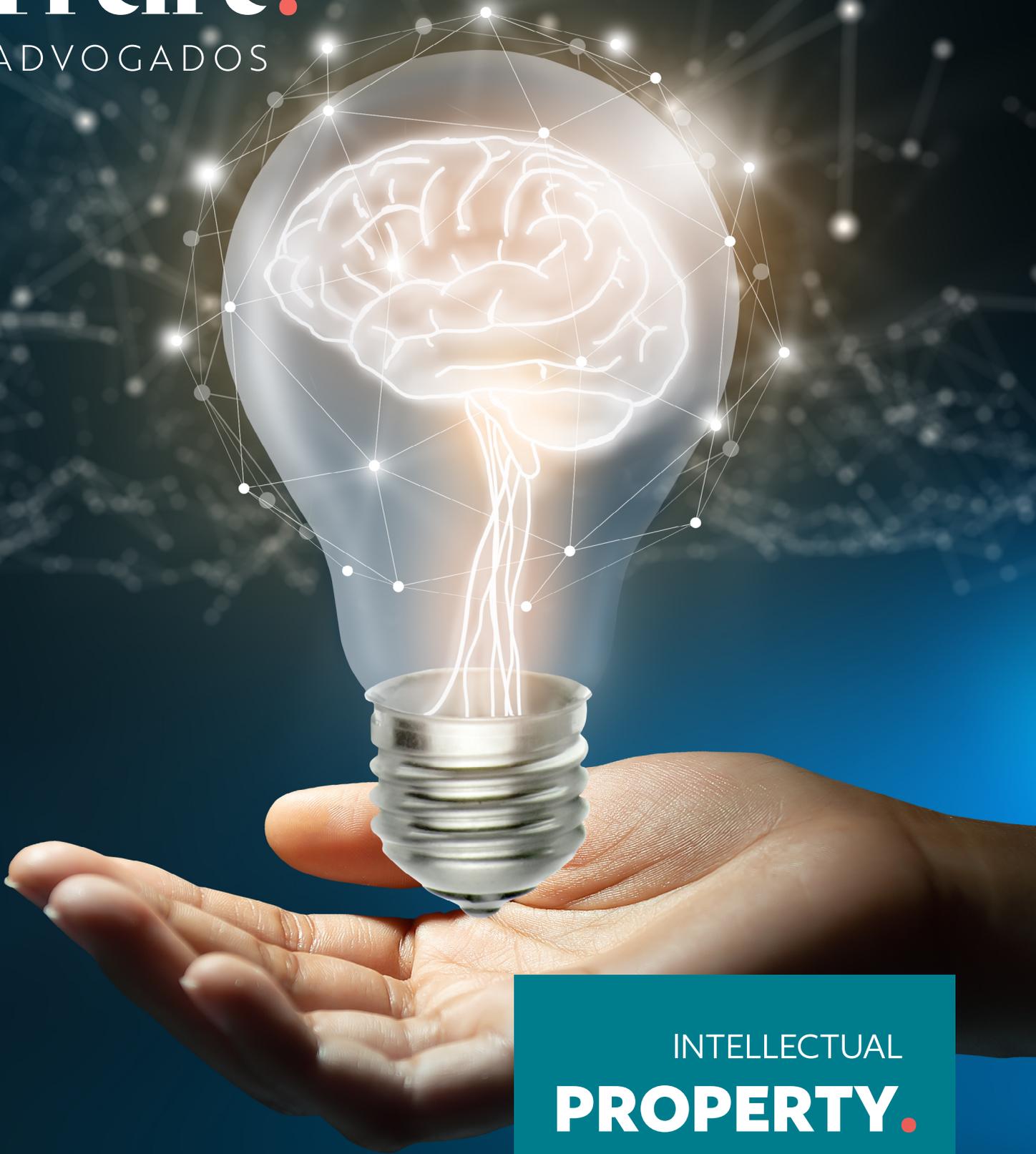


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01

Brazilian Context.

Brazilian Trademark and Patent Office issues important management statements

At the end of March, Brazilian Trademark and Patent Office (INPI) published two important documents involving its management:

- [2022 Management Report](#), which highlights the results achieved in view of the strategic objectives and priorities defined by the Institute;
- [2023-2026 Strategic Plan](#), which includes the Institute's portfolio of projects and goals for such period.

ANCINE promotes copyright actions

Among the initiatives promoted by the Brazilian Film Agency (ANCINE), a public consultation was opened in February aiming to revise the Normative Instruction No. 95, which provides for the registration procedures of audiovisual advertising works. The goal of the proposal is to make the registration process more flexible. The registration of audiovisual works seeks to recognize their origin and authorize their commercial exploitation or public communication in Brazil.

In addition to the public consultation, ANCINE and the Brazilian Telecommunications Agency (ANATEL) executed in March a new Technical Cooperation Agreement to improve and intensify the agencies' efforts in their regulatory processes, especially when these processes involve audiovisual content, in view of the new forms of distribution and consumption of this type of content. The Agreement expands copyright protection measures, in line with the creation of ANCINE's Copyright Protection Coordination (CPA), which is specialized in copyright actions for audiovisual works.



02

Judicial Decisions.

Hermès wins trademark case over “MetaBirkin” NFTs in the U.S.

In early February, Manhattan federal court rendered a favorable decision for French luxury brand Hermès, which filed a lawsuit against the artist Mason Rothschild, creator of the so-called “MetaBirkins”. The “MetaBirkins” are a series of non-fungible tokens (NFTs) that refer to the design of Hermès’ famous Birkin bags.

Rothschild was penalized with a fine of USD 133,000.00 (one hundred and thirty-three thousand dollars) for trademark infringement and dilution, and cybersquatting.

The case is significantly important since it is one of the first Industrial Property judgments concerning the application of Trademark Law to NFTs, which are used as digital certificates of ownership, originality and exclusivity of an asset that exist on a blockchain.

STJ considers lawful the use of exaggerated expressions in Heinz ketchup advertisements

The Fourth Panel of the Brazilian Superior Court of Justice (STJ) has considered lawful the expressions used by the food company Heinz Brazil in association with the advertising of its products: “Heinz, the most consumed ketchup in the world” and “Heinz, the best in everything it does”.

Heinz originally filed the lawsuit when the Brazilian Council for Advertising Self-Regulation (CONAR), which was demanded by Unilever, ordered the suspension of the use of the advertising expressions by Heinz. According to the STJ’s decision, Heinz made use of a resource called “puffing”, an advertising exaggeration admitted by the Brazilian legal system.

In this context, the STJ understood that puffing does not mislead the consumer, particularly when no derogatory statements are made against competitors, being up to each individual the evaluation of the qualities of the product.



STJ confirms the registration of the trademark “ExtraBom” and dismisses the risk of confusion with the trademark “Extra”.

In a recent decision, STJ’s Fourth Panel decided that the trademarks “ExtraBom” and “Supermercados ExtraBom”, used by the company Unisuper Distribuidora S.A., do not cause any risk of confusion in relation to the trademark “Extra”, reason why they dismissed the nullity of these trademarks registrations.

Companhia Brasileira de Distribuição, which controls the supermarket chain Estra, has filed a lawsuit seeking the nullity of these trademarks registrations and, despite having its claim denied in the first instance, the Federal Regional Court of the Second Region (TRF2) upheld the action arguing that the addition of the term “bom” to the expression “ExtraBom” did not remove the similarity with the trademark “Extra”.

On the other hand, STJ reformulated TRF2’s decision as it understood that the suffix “bom”, the notoriety of the trademark “Extra” and the difference between the logos used in connection with each trademark, would be sufficient to distinguish the expressions “Extra” and “ExtraBom”, dismissing the possibility of confusion among consumers. Furthermore, STJ understood that the expression “Extra” is descriptive, evocative, and suggestive, reason why it should coexist with other similar expressions.

03 IP Abroad.

Intellectual works created with AI assistance have been protected in the U.S.

While in Brazil the registration of copyrights is not mandatory to assure its protection, in the United States such registration is required to enable the filing of copyright infringement lawsuits and is performed by the U.S. Copyright Office.

According to the U.S. Copyright Office, copyrights can only protect materials arising from human creativity, as non-humans are excluded from the definition of “author” under U.S. Copyright Law.

In line with this understanding, a graphic novel composed of human-authored texts combined with images generated by artificial intelligence was duly registered before the U.S. Copyright Office; however, the images of this novel were excluded from copyright protection.

In view of the increasing use of artificial intelligence in intellectual creations, the U.S. Copyright Office has also published a registration guide for works containing materials generated by artificial intelligence, in which it was established that the registrability analysis will be made on a case-by-case basis to verify whether the contributions of artificial intelligence are the result of mechanical reproduction rather than human creation by the author.

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