

Guide to trademark registration in Brazil

FACTSHEET

IMPORTANT ISSUES



01

Trademark basics in Brazil

Trademark basics in Brazil

Non-registrable trademarks

Registration procedure

Related links and additional information

Glossary

A | What is a trademark?

A trademark is a distinctive sign, visually perceptible, capable of identifying and distinguishing similar products or services from different origin. In Brazil, trademark registration is governed by the Ley de Propiedad Industrial (Intellectual Property Law). INPI is the organization responsible for dealing with trademark applications. It should be mentioned that trademarks protected by INPI registration are only valid in Brazil.

TIPS AND WATCH-OUTS

Trademark protection starts on the date on which the trademark is granted.

B | What types of signs can be registered as trademarks in Brazil?

Trademarks composed of letters, words, names, images, symbols, colors, graphic forms or their combinations can be registered.

TYPES OF TRADEMARK

According to its scope of protection	According to its object of protection	According to its graphical representation
<ul style="list-style-type: none">- Product trademarks- Services trademarks	<ul style="list-style-type: none">- Trademark- Collective Trademark- Certification Trademark	<ul style="list-style-type: none">- Word mark- Figurative- Combined- Three-dimensional

TIPS AND WATCH-OUTS

Please note that non-traditional trademarks, such as, smell, sound, movement, holograms and gestures are not subject to registration in Brazil. However, they are not completely unprotected in Brazil, as they can be defended through Unfair Competition legislation.

C | How long does brazilian trademark protection last?

A Brazilian trademark gives protection for 10 years from the date on which the trademark is granted. This can be renewed indefinitely for 10-years periods.

D | How long does it take to register a trademark?

It generally takes between 24 to 36 months to register a trademark (from filing the application to the final decision), provided there is no opposition. In the event of opposition, the process may take several years.

TIPS AND WATCH-OUTS

Unlike Europe, in Brazil INPI also analyses the relative grounds of refusal ex-officio. So, whilst in Europe to file an opposition you must be the owner of a previously registered/applied for trademark, in Brazil, third-party rights are opposed ex officio by the national trademark office to avoid granting a trademark that is likely to be confused with another previous sign.

E | Is it possible to register the same trademark for different products and services?

Yes, but not in the same application. The Brazilian trademark registration system is a single-class system; therefore if the products (or services) fall within the same class, one trademark registration will suffice. Otherwise, a trademark application must be filed for each class involved in the protection.

Example: If your company wants to register the trademark “Fliper” for haircare products in hair salons (class 2) and hair-growth shampoo (class 5), two separate applications must be filed, one for each class.

You can check the WIPO International Classification of Goods and Services for the Purposes of the Registration of Trademarks under the Nice Agreement to see if they are registered in the same class.

F | How much does a trademark cost?

A trademark in Brazil costs around €390 if the application is filed on paper (in person or by post) or €336 if the application is filed online. This includes the application fee and the registration certificate fee for the first 10 years.

The renewal cost is around €336. In addition to this, the fees charged by the IP agent or specialized lawyer and any additional costs if there is an opposition (variable amount) should be taken into consideration.

TIPS AND WATCH-OUTS

To register a trademark for products or services that are not specifically defined in the WIPO list, you may include your own products/services' drafting. This alternative is only available for online applications and costs around €127.

However, individuals, small and medium-sized enterprises (SMEs), educational and research organizations and non-profit and public organizations may be entitled to a 60% discount on general rates.

For a list of fees, see the official [INPI](#) table (in Portuguese) or contact the Mercosur IPR SME Helpdesk. Our experts will be delighted to help you in any of the five languages available from our [Helpline](#).

02 Non-registrable trademarks

Trademark basics in Brazil

Non-registrable trademarks

Registration procedure

Related links and additional information

Glossary

The Brazilian Industrial Property Law, in its Article 124, lists the absolute and relative legal grounds of refusal of a trademark. The main prohibitions are as follows:

- + Reproduction or imitation of a prior registered trademark (even partially), to identify goods or services that are identical or similar and may cause confusion or association;
- + Signs used as a means of advertising;
- + Signs contrary to moral and good customary standards or which offend the honor and the image of people;
- + Names, acronyms, flags, emblems, monuments, medals or symbols of states, nations, regions, governmental entities or international organizations;
- + Reproduction or imitation of distinctive element(s) of a third party's trade name that may cause confusion or association between them;
- + Colors and their names, except when arranged or combined in a distinctive manner;
- + Signs that induce a false idea of origin, nature, quality or utility of the good or service;
- + Signs, which reproduce or imitate a Geographical Indication. (e.g.: Champagne, Cognac, Bordeaux etc.);
- + Patronyms, name and image from a third party, unless accompanied by consent.

03

Registration procedure

Trademark basics in Brazil

Non-registrable trademarks

Registration procedure

Related links and additional information

Glossary

A | Which documents should I annex to my trademark application?

- + Trademark registration application form
- + Payment receipt
- + Digital image of the trademark (if any)
- + Power of attorney (if any)
- + Documents in support of a priority claim (if any)
- + Characteristics of the product or service subject to certification and control measures (certification mark)
- + Regulation on use (collective mark)

B | Should I appoint an Intellectual Property Agent or another representative?

Foreign applicants must designate a qualified representative who must be resident in Brazil and who must have administrative and judicial power of attorney, including powers to receive notifications (Section 217 Intellectual Property Act). This person may be either an IP agent, a specialized lawyer (traditionally) or any Brazilian citizen (since June 2014).

C | Where should I file my trademark application?

The competent organization is the National Intellectual Property Institute (Instituto Nacional de Propriedade Industrial (INPI)), whose address is Rua São Bento, 01 – Centro, Rio de Janeiro – RJ, 20090-010, Brazil. There are three alternatives:

By Internet

Steps to follow for online trademark registration:

- + Register in the E-INPI system in the applicant's own name (client) or on behalf of another party (Advogado/Procurador sem habilitação especial).
- + See the guide to fees and issue the corresponding tax payment form or GRU (Federal Tax Liability Payment Form or Guia de Recolhimento da União)
- + Pay the tax
- + Access the E-Marcas platform and submit the trademark registration application form, attaching the necessary files

You can track the process using the Push-INPI System, whereby the applicant can receive the main information about the process by e-mail.

In person

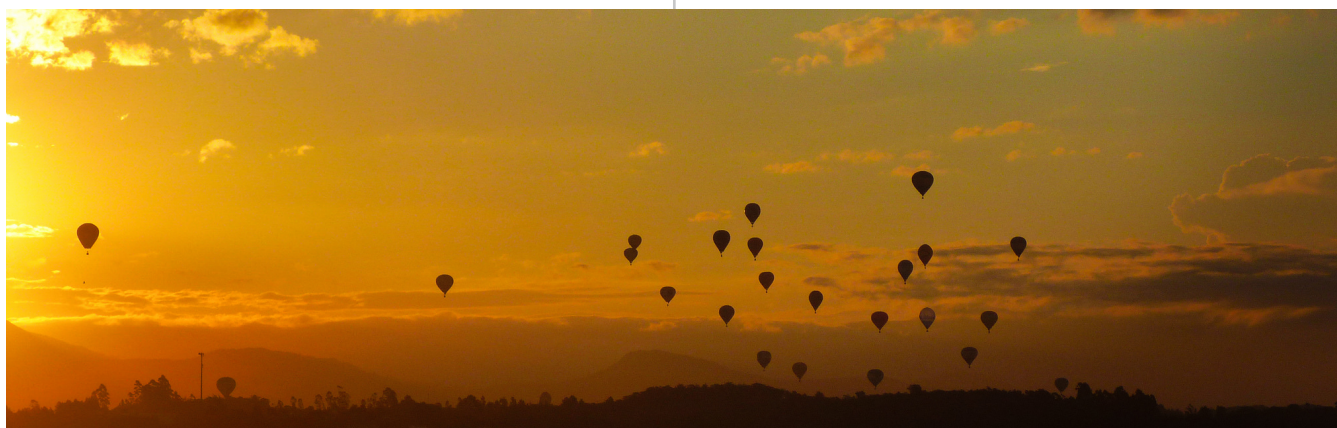
Using the form in paper format, which is available to print on the INPI website. This must be personally delivered to the headquarters of the organisation in Rio de Janeiro or to any of INPI's branches in other Brazilian states.

By post

The paper format can also be submitted by ordinary post.

PHASES OF THE REGISTRATION PROCESS

- + Formal analysis. When INPI receives the documentation, it checks for formal errors (incorrect data, non-payment of the tax, missing documents, etc.) If any anomalies are detected, an announcement is published in the Official Intellectual Property Gazette (Revista da Propriedade Industrial (RPI)), so that these can be corrected within five days of publication.
- + Publication in the Official Intellectual Property Gazette: After it has been checked and there are no formal mistakes (or they have been corrected) an announcement is published in the RPI so that third parties can oppose the application.
- + Opposition phase: After publication, there is a 60-days period during which third parties whose rights are affected may file oppositions with INPI. If an opposition is filed, the applicant will be notified and will be given 60 days to reply.
- + In-depth examination: If there is no opposition or if the application is successful, INPI will analyze whether it complies with the registration require-



Hot air Balloon Festival, Brazil | by Douglas Scortegagna | Photography under Creative Commons License | CC BY 2.0

ments which includes analyzing the grounds for refusal.

- + Registration: If INPI decides to grant the application, the fee for the first ten years' registration and the registration certificate must be paid. The applicant has sixty (60) days from the date on which the granting of the trademark is published to pay the fee. After such period has expired it is still possible to pay the fee during the subsequent 30 days (but with a supplement). Finally, the trademark is registered and the corresponding legal title is issued.

TIPS AND WATCH-OUTS

It is recommended you conduct a Preliminary Search Report before filing a trademark application. It is highly advisable to have it carried out by specialized professionals but you can consult the INPI databases yourself.

The applicable law in the country allows the transfer of the application and registration of a trademark by means of a contract. This represents another way of acquiring trademarks in the country. Likewise, licenses for use of the trademark may also be granted.

TIPS AND WATCH-OUTS

Both licenses for use and transfer of the application or the registration of the trademark must be registered with INPI to allow for possible opposition by third parties.

04

Related links and additional information

Trademark basics in Brazil
Non-registrable trademarks
Registration procedure
Related links and additional information
Glossary



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INPI: www.inpi.gov.br

E-mark system user manual (in Portuguese): www.inpi.gov.br/images/docs/manual_do_usuario_e-marcas_-_versao_2_2_final_0.pdf

Tabla de tasas INPI: www.inpi.gov.br/images/docs/marcas_2.pdf

Electronic Journal of Intellectual Property (Revista da Propriedade Industrial): revistas.inpi.gov.br/rpi

INPI trademark database: www.inpi.gov.br/portal/artigo/busca-marcas

05

Glossary

Trademark basics in Brazil
Non-registrable trademarks
Registration procedure
Related links and additional information
Glossary

The following is a list of terms that may be useful to better understand this document:

Collective mark: used to identify the products or services of members of a specific entity.

Certification mark: used to show that a product or service complies with certain standards or technical specifications, particularly those regarding quality, type, material and methodology used.

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Mercosur IPR SME Helpdesk

Manage your Intellectual Property in Argentina, Brazil, Chile, Paraguay, Uruguay and Venezuela

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Newsletter: Keep track of the latest new son IP in the MERCCO-SUR and Chile, relevant to your business.

Multi-lingual Webportal: Browse our multilingual web portal for a broad range of information and training materials on IPR in MERCOSUR and Chile in English, Spanish, Portuguese, French and German.

Training: Attend our trainings (online and on-site) and learn more about the key aspects of IPR protection and enforcement issues for doing business in MERCOSUR and Chile.

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