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Protecting the persona: personality rights take center stage

As challenges like deepfakes and AI-generated likeness continue to grow globally, Ranjan Narula, Swati Dalal, and Vanshika Oberoi of RNA, Technology and IP Attorneys, discuss the evolution of personality rights in India as courts increasingly recognize the need for legal protections against the unauthorized commercial exploitation of individual identity.

The Year in Review

Page 7

2025



DotBrand: the compelling event of 2026

Page 29



Eurasian trademark application: prospects

Page 50



Bad faith, non-use & evidence at INPI: what overseas counsel should expect in 2026

Igor Simões of Simões IP Law Firm offers a practical, integrated perspective on what overseas counsel can expect in 2026 as the INPI imposes stricter regulations on evidence for bad faith claims and non-use cancellations.

As foreign filings and enforcement in Brazil accelerate, Brazil's National Institute of Industrial Property (INPI) has tightened evidentiary expectations for oppositions, cancellation for non-use (*caducidade*), and administrative nullity. The Superior Court of Justice (STJ) has, in parallel, reinforced a tougher line on opportunistic behavior and clarified that non-use cancellation has prospective (*ex nunc*) effects.

Why 2026 matters

Brazil is a top-five destination for trademark filings in Latin America and a strategic market for cross-border portfolios in the life sciences, medical



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devices, chemicals/materials, software/ICT, and consumer goods sectors. Between the 2022-2025 INPI updates and recent STJ decisions, practitioners now face a more evidence-centric environment: it is not enough to be "right" on the law; you must arrive with contemporaneous, Brazilian-market-linked proof.

The practical result is a regime that rewards counsel who plan ahead: dossiers that are dated, consistent, and explicitly tied to commerce in Brazil tend to prevail over rhetorical submissions, however well-argued they may be.

Bad faith at INPI: what you must prove (and when)

Allegations under Article 124(XXIII) must be raised in a timely opposition or administrative nullity petition and accompanied by proof that the applicant "evidently knew" the prior mark.

INPI will not infer knowledge from similarity/overlap alone. The Manual expects concrete indicia, e.g., correspondence regarding brand matters; contracts involving the marked goods/services; simultaneous participation in sector events or tenders; prior cease-and-desist interactions; or other documents linking the applicant to awareness of the prior sign.

Foreign rightsholders must observe further discipline when raising bad faith. If the allegation is based on Article 124(XXIII), the opponent is expected to present proof that they have a Brazilian application for the same mark within 60 days of lodging the opposition or the nullity petition. The filing requirement is formal, but its effects are practical: it forces overseas counsel

Résumé

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A chemical engineer and lawyer with over 25 years of trademark and IP experience, he advises multinationals and scale-ups on trademark strategy, non-use and bad-faith disputes, licensing, and brand enforcement in Brazil, with a focus on life sciences, medical devices, chemicals/materials, and software/ICT. Igor represents clients before INPI and federal courts, including the Superior Court of Justice, and collaborates with international counsel on Madrid Protocol designations and cross-border litigation.

to coordinate early with local teams to ensure that standing is unassailable and that all co-owners are properly reflected in the filing. Reciprocity under the Paris Union simplifies matters for most international portfolios; however, failures in timing or co-ownership can be fatal.

The distinction between bad faith and fame-based protection also deserves emphasis. Brazil offers routes for well-known marks under Article 126 and for high renown under Article 125, but Article 124(XXIII) is not a fame test. The question is not whether the earlier sign is famous, but whether the applicant's behavior evidences knowledge. This inquiry may be satisfied in decidedly ordinary fact patterns involving negotiations, supply chains, or distribution talks. That pragmatic stance aligns with the STJ's broader discomfort with opportunism. In 2023, the Court condemned a scheme in which a party sought cancellation for non-use against a prior registration and then moved to register the same sign for itself, a maneuver the Court viewed as paradigmatically unfair. The ruling has become a staple citation in administrative arguments whenever the evidentiary mosaic smells of "cancel-then-re-file."

Non-use at INPI: procedure, burdens, and the proof that works

The statute is straightforward: five years after grant (not after filing), anyone with a legitimate interest may request cancellation if the mark has not been used in Brazil or if use has been interrupted for five consecutive years, absent legitimate reasons. What is less obvious to newcomers is the degree of specificity that INPI now expects of proof. The INPI examines the five-year period preceding the petition, and once notified, the registrant bears the burden of demonstrating effective use or justifying non-use within 60 days. The Manual elaborates what "effective use" means in a way that matters on the ground.

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What counts as "effective use"

- Exports can qualify when there is an effective export of branded goods;
- For owners domiciled abroad (goods/services delivered from abroad), proof of importation/internalization into Brazil is key;
- Web evidence must include the actual image of the mark on the good/service and reliable dating; a capture timestamp alone is insufficient;
- For figurative/mixed/3D marks, show the registered form as used; color claims must match; black-and-white registrations tolerate color variation if the distinctive character is unchanged;
- Co-ownership: use by any co-owner suffices;
- Partial non-use: INPI cancels only for items not covered by proven use;
- Regulatory timelines – especially ANVISA approvals for pharma/devices – can justify non-use within the quinquennium when properly evidenced.

What does not work as "effective use"

- Internal artwork/package mockups without circulation;
- Generic corporate filings (tax, labor, municipal) unrelated to the mark's role as a source identifier;



- Uses that alter the sign's distinctive character.

Courts' temperature: recent signals from the STJ

The sanction attached to cancellation for non-use has been stabilized by the STJ's view that cancellation operates prospectively. Treating cancellation for non-use as *ex nunc* means that the effect of a successful petition is to cut off rights going forward rather than to retroactively erase the legal past. The difference is not academic. It affects damages models in infringement disputes, informs commercial negotiations when legacy licenses are involved, and calibrates risk assessments in due diligence.

Counsel must accordingly separate the analysis into two temporal compartments: the chain of acts taken while the registration was in force, and the horizon after a cancellation decision. The second is a "clean slate" for the market; the first still requires careful review, but is not automatically unwound merely because cancellation for non-use later occurs.

Evidence standards compared: bad faith vs. prior user

A recurring source of confusion among overseas teams is the relationship between bad faith and the precedence of a prior user of good faith under Article 129 §1. The latter provision is an exception to the registration-based system and is interpreted narrowly by INPI. To prevail, the claimant must demonstrate continuous use in Brazil for at least six months before the other party's filing or priority date and must not have sought registration during that period. The evidentiary profile bears resemblance to a revocation for non-use defense – dated invoices, shipping documents, catalogs, and advertising – but the temporal focus sits squarely before the junior filing. In practice, Article 129 §1 is deployed where the business facts are strong and the equities clear; otherwise, counsel will usually center their administrative strategy on bad faith under Article 124(XXIII), which targets knowledge rather than precedence as such.

Two additional judicial signposts round out the practitioner's map. First, the STJ has continued to treat confusing similarity as a sufficient reason to annul a registration when the likelihood of confusion or undue association is palpable. A 2024 case in the furniture sector is illustrative. While not framed as a bad-faith holding, the decision affirmed a familiar proposition: when overall commercial impression and visual-phonetic proximity point toward confusion, adding a house mark or a generic modifier rarely salvages coexistence. For administrative litigants, this means that an opposition record should anticipate review

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standards by developing both the marketplace context and the reasons why an association would be likely to operate within Brazilian channels of trade. Second, and returning to the earlier point, the 2023 condemnation of cancel-then-re-file behavior has had an outsized practical impact. Parties now come prepared to demonstrate how the applicant encountered the brand – through negotiations, tenders, supplier relationships, or trade shows – rather than assuming that proximity in the marketplace will carry the inference of knowledge.

2026 playbook: practical moves for overseas counsel

So, what should overseas counsel actually do in 2026? The answer is deceptively simple: institutionalize evidence. For every material mark, maintain a Brazil-specific dossier that is refreshed quarterly. Include invoices and shipping papers for goods, service orders, and statements of work for services, price lists, and catalogs with the sign as used, and a curated set of marketing placements and media plans. When web pages are part of the strategy, capture the sign on the product or service – not merely a textual mention – and pair the image with independent data that can be authenticated. For portfolios anchored outside Brazil, add import and internalization documents to preempt the argument that commercialization never crossed the border. For figurative or mixed marks, preserve specimens that reflect the registered form and pay attention to color claims and three-dimensional contours; do not assume that a "modernized" logo will be treated as immaterial if it changes distinctive character. The cost of this discipline is modest compared to the leverage it creates in both administrative and judicial settings.

On the bad-faith front, evidence-readiness takes a slightly different shape. The most persuasive administrative narratives do not emerge in the heat of opposition; they are cultivated in the ordinary course of business. Whenever teams enter into distribution talks, supplier arrangements, or engage in technical exchanges under an NDA, they should retain the emails and attachments that mention product families and brand architecture. Participation in tenders, requests for proposals, and industry events also leaves documentary traces in lists, minutes, and presentation decks. Those materials, which may seem innocuous today, could become the exhibits that transform a mere allegation of bad faith into a compelling demonstration of knowledge tomorrow. If an Article 124(XXIII) strategy is plausible, foreign counsel should always coordinate an early Brazilian filing to satisfy the 60-day deposit requirement – often a tripwire for otherwise meritorious cases.

For challengers contemplating revocation for non-use, precision in timing is everything. Count five years from the grant and then look backward from the petition date to define the investigative window. If the registrant is abroad and the product or service is delivered from outside Brazil, press the internationalization point; foreign invoices and global marketing without a Brazilian link do little work. Where use exists but is narrow, ask for partial cancellation and consolidate your position with market data that maps the gap between the registration's breadth and the actual channels of trade. Conversely, owners facing a non-use cancellation request should resist the temptation to flood the record with undifferentiated paperwork. INPI looks for relevance and proximity: the sign, as registered, must be placed on the goods or tied to the services in a way that reveals real commercialization in Brazil, and must be dated within the five-year window. Internal artwork and corporate filings that never reached consumers are, by design, poor proxies for use as a trademark.

Life sciences portfolios should treat regulatory pathways as a distinct evidentiary stream rather than an afterthought. ANVISA timelines, correspondence, and audits form a legitimate-reasons narrative that can neutralize revocation for non-use while preserving brand strategy ahead of launch. The same structural lesson applies in other regulated contexts, even when the agencies differ: permissions and compliance milestones are part of the trademark story, not an external appendix. The STJ's acceptance of such timelines as legitimate reasons reflects a functional view of commerce that overseas counsel will recognize from analogous jurisdictions, but it still requires housekeeping: if the record is incomplete or undated, the argument will struggle.

In editorial terms, the present landscape does not rewrite Brazil's fundamentals so much as it clarifies expectations. Bad faith is about knowledge; non-use is about Brazil; precedence is exceptional. Courts remain comfortable protecting the marketplace against confusion and are sceptical of tactics that appear to game procedure. INPI, for its part, has become more explicit about what it wants to see and how it will parse submissions. None of this should alarm sophisticated portfolios. It should, however, encourage a shift from reactive to proactive behavior: quarterly audits, coordinated local filings when raising concerns about bad faith, and early integration of regulatory teams into trademark planning.

Conclusion

The outlook for 2026 is therefore pragmatic. If your clients file in Brazil – and more of them will

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– win by planning the evidence you will eventually need. Bad-faith theories mature from ordinary commercial interactions that must be documented; non-use defenses are only as good as your ability to show real commerce in Brazil, in the right form, at the right time. Courts will continue to police confusion and opportunism, but the first and best forum remains the administrative record you build at INPI. Getting it right is less about legal theatrics and more about quiet, consistent, documentary hygiene. In 2026, that discipline is the difference between winning and wondering.

Sources

- Brazilian Industrial Property Law – Law No. 9,279/1996 (selected provisions on registration, bad-faith filings, and non-use cancellation).
- INPI – Trademark Examination Manual (latest consolidated version).
- Superior Court of Justice (STJ) – press releases and judgments cited in the article concerning bad faith and evidentiary standards.
- INPI Resolutions and RPI notices referenced in the text.

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