



DOING BUSINESS IN BRAZIL



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BACKGROUND

Brazil is a **Civil Code** country, where formalities and the letter of the Law are far more important than the parties' intentions or any equitable principles.

For any company intending to do business in Brazil they must firstly move to protect their trademarks or expose themselves to the risk that third parties may start using their mark, or even acquire rights over it.

FOUR MAIN STRATEGIES FOR ENTERING THE BRAZILIAN MARKET:

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- 1. Export products identified by the company's trademarks directly to Brazil.**
 - Pros – Quickest way to enter Brazilian market.**
 - Cons – Lack of control**

FOUR MAIN STRATEGIES FOR ENTERING THE BRAZILIAN MARKET

2. **Open a wholly owned subsidiary authorized to use their trademarks.**
 - **Pros – Total control and local knowledge.**
 - **Cons – Cost and delay**

FOUR MAIN STRATEGIES FOR ENTERING THE BRAZILIAN MARKET

3. Form a joint venture with a Brazilian company.

- Pros – Most advantageous local knowledge is the right partner is chosen**
- Cons – Delay and possible loss of control**

FOUR MAIN STRATEGIES FOR ENTERING THE BRAZILIAN MARKET

4. License use of the marks to an unrelated third party.

- Pros – Most cost effective
method of entry**
- Cons – Risk of licensee
defaulting on contract**

FOUR MAIN STRATEGIES FOR ENTERING THE BRAZILIAN MARKET

- 5. Franchise agreement with local Brazilian companies, if suitable business model.**
- Pros – Possibility of receiving money upfront, some control through contractual stipulations.**
 - Cons – Risk of franchisee defaulting on contract, need to offer local support/training.**

PROTECTION OF TRADEMARKS IN BRAZIL

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Brazil is a first to file country with an exception of six months prior use in good faith in Brazil, giving right of precedence priority before the PTO.

PROTECTION OF TRADEMARKS IN BRAZIL

No need for intent to use. Companies may file applications their trademarks without use or the intention to use, and the subsequent registrations would only become vulnerable to non-use cancellation five years after grant (often 8-9 years after original application filed).

PROTECTION OF TRADEMARKS IN BRAZIL

Trademark search should be conducted before filing in Brazil to avoid wasting time and money on applications which will ultimately be rejected by the PTO, either due to prior marks or absolute grounds.

PROTECTION OF TRADEMARKS IN BRAZIL

The Brazilian PTO have a very strict interpretation of what is generic or **descriptive**, and often reject trademarks made up of words which make sense in English, even if they are not actually descriptive of goods/services they identify.

PROTECTION OF TRADEMARKS IN BRAZIL

Advertising slogans are not register able and the PTO has a strict interpretation of what is a slogan. Again, if it makes sense in English, it may be considered a slogan, although proof that it is used to identify products or services could help reverse the PTO's decision on appeal.

PROTECTION OF TRADEMARKS IN BRAZIL

Classification is extremely important in Brazil with the National Classification system running in parallel with three editions of the Nice International Classification. Also, the Brazilian PTO sometimes has a slightly different interpretation of the suitable class for some goods and services.

PROTECTION OF TRADEMARKS IN BRAZIL

Trademark rights accrue on registration in Brazil, not filing. It is currently taking the PTO at least three years to grant registrations, from the original filing date of the application, and preferably use should not be made until the corresponding registration is granted.

PROTECTION OF TRADEMARKS IN BRAZIL

Once the registration is granted the owner has five years to start use before it becomes vulnerable to cancellation on the grounds of non-use.

Use must be made in the exact form it is registered, which is particularly important for composite mark.

PROTECTION OF TRADEMARKS IN BRAZIL

If one company infringes the trademark rights of another, a court action before the state court may be initiated requesting:

a) The search and seizure of goods bearing the infringing trademark;

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**b) The prohibition of sale,
subject to a daily fine;**

PROTECTION OF TRADEMARKS IN BRAZIL

c) Request for damages, which may based on:

- I. the benefits that the injured party would have gained had the infringement not occurred; or**
- II. the benefits that were gained by the infringer of the right; or**
- III. the remuneration that the infringer would have paid to the holder of the infringed right for the grant of a license which would have enabled lawful use of the asset.**

DOMAIN NAMES IN BRAZIL .br

Foreign companies may register domain names in Brazil at NIC.br either directly, or through a Brazilian subsidiary or agent / distributor / attorney / licensee etc.

DOMAIN NAMES IN BRAZIL .br

In order to register a domain directly a foreign company must submit the following documents (notarized and legalized):

- 1) Power of Attorney granting a Brazilian attorney all necessary powers in relation to the domain;**
- 2) a Declaration of Business Activity, with full details of the company;**
- 3) a Declaration of obligation, indicating that the company will incorporate a Brazilian subsidiary within 12 months.**

Resolution of Domain Name Disputes

NIC.br recently adopted the Uniform Dispute Resolution Policy (SACI-Adm).

DOMAIN NAMES IN BRAZIL .br

However, it may be cheaper to use traditional methods to resolve conflicts such as the sending of Cease and Desist letters, and even litigation.

THANK YOU.



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