

BRAZIL: BPTO Temporarily Waives the Verification of Legitimate Interest in Non-Use Cancellation Actions

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Luiza Duarte

Murta Goyanes Advogados
Rio de Janeiro, Brazil
Right of Publicity Committee

Verifier



Andre Provedel

Trench Rossi Watanabe
Rio De Janeiro, Brazil
Unreal Campaign Committee

The Brazilian Patent and Trademark Office (BPTO) has announced a temporary procedural measure affecting a date-specific set of non-use cancellation actions for trademarks in Brazil. Effective from January 27, 2026, Ordinance 48/2026 amended the existing trademark procedural framework to waive the requirement to verify legitimate interest in certain non-use cancellation requests.

Under Brazil's Industrial Property Law (No. 9,279/1996), a trademark registration may be canceled if the mark has not been used in Brazil for five consecutive years after grant or if use has been interrupted for more than five consecutive years. Traditionally, an applicant had to produce evidence to support an administrative non-use cancellation action and to demonstrate a legitimate interest in seeking cancellation. The BPTO verified that requirement as part of the admissibility review.

Under the new temporary rule, the BPTO will not examine the existence of legitimate interest in non-use cancellation actions filed between August 1, 2023, and September 30, 2024, provided that the owner of the challenged mark did not file a response in the proceeding. In these specific cases, the cancellation request may proceed without the formal verification of the petitioner's interest.

The measure amends the existing trademark procedural framework and aims to streamline the examination of pending non-use cancellation cases within the defined timeframe. The waiver is limited in scope and does not eliminate the legitimate interest requirement for actions filed outside the

specified period. Nor does it alter the substantive burden on the trademark owner to prove effective use when responding to a non-use cancellation action.

From a practical standpoint, this temporary waiver may facilitate the resolution of certain uncontested non-use cancellations and could accelerate the clearing of unused marks from the register. Practitioners should review affected cases to assess whether the measure may influence ongoing or pending strategies.

This development reflects the BPTO's continued efforts to improve procedural efficiency within Brazilian trademark administration.

Although every effort has been made to verify the accuracy of this article, readers are urged to check independently on matters of specific concern or interest. Law & Practice updates are published without comment from INTA, except where it has taken an official position.

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