Abstract: legal requirement for establishing the required distinctiveness for the protection of tridimensional trademarks. Guidelines for adoption of strategic marketing measures to achieve effective and sufficient distinction enabling the designation of the product origin. Test Grids for evaluating distinctiveness and compliance with legal requirements for the protection of tridimensional trademarks.

Index: I. Introduction; II. Tridimensional trademark and trade dress; III – Registration as tridimensional trademark without distinctiveness verification; IV – The legal requirements for acquisition of distinctiveness; V – Criteria for acquisition of distinctiveness as an indicator of the product origin; VI – TRUE/FALSE Test grids proposal; VII. Acquisition of distinctiveness and protection. VIII. Conclusion; IX. Attachments; X. References

Introduction

The goal of this study is to analyze the adoption of marketing preparatory measures to promote in the market the associative assimilation of an object to a trademark, as a strategic target – when possible – that aims the acquisition of distinctiveness as a tridimensional trademark.

The presented guidelines take into account the legal requirements found in the opinion of jurists and court decisions for such acknowledgment and validity, according to the stricter criteria in Law, of the protection through tridimensional trademark.

We considered the purpose of providing alternative means to the companies – or cumulative – as well as regarding the protection of an object as an industrial design. That is, we took into consideration the possibility to protect a tridimensional object as:

(a) industrial design related to ornamental form

(b) cumulative, or alternatively, as a tridimensional trademark, in what the object is an indicator of product origin, in other words, existing as a trademark.

cumulative or alternatively, as a trade dress, in other words, bearing a set of features, including its size, shape, color, design, and texture, that enable the consumer to link the product to a specific origin.

II. Tridimensional trademark and trade dress

The same procedures – *mutatis mutandis* – are applicable to the establishing of trade dress, protected by the mechanisms pertaining to the regulation of unfair competition.

The tridimensional trademark is closely alike to the so called trade dress. In our juridical system, however, a tridimensional trademark is characterized as subject to exclusiveness right, that cuts and retains the tridimensional nature of what composes the significant aspect of its tridimensional essence.

The trade dress – which in our system has no exclusive protection, but solely by the ones of the unfair competition regulation - is not restricted to the above mentioned essence. On the contrary, it is made up by the totality of its significant elements and not just by the tridimensional essence^2^.

III. Tridimensional trademark register without distinctiveness verification

The following requirements to acquisition of tridimensional trademark are currently practiced by the Brazilian Patent Office (BR PTO). These requirements do not presume previous acquisition of distinctiveness.

1. Legal requirements to register tridimensional trademarks

The acquisition of a trademark as a tridimensional trademark presumes a double series of the positive and negative requirements:

[a]. the tridimensional article must be able to function as a trademark

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^2^ The North American court precedents defines the trade dress as the total image of a product, including features as size, shape, colors combinations, texture, fonts, as well as peculiar sales traits. Decision Two Pesos Vs Taco Cabana. MORO, Maitê Cecília Fabri. The tridimensional trademark, its protection and the visible conflicts with the granted protection with another intellectual property ruler institutions. PhD Thesis in Law presented at PUC/SP, 2005, p. 50. Trade dress can be understood not only as the trademark’s “clothes”, but as a whole that can be assimilated by the trade dress or significant gestalt, of the goods or services (SOARES, Tinoco. Trade dress and/or image ensemble. ABPI Magazine, no. 15, mar-apr. Of 1995, p. 22-23). It is the general aspect as the goods or services are presented to the consumer [2], creating the visual or sensorial aspect of the trademark image, i.e., of the branding.(OLAVO, Carlos. The protection of the “Trade dress” in the Portuguese Law and in the Community Law. ABPI Magazine, no. 82, mai-jun of 2006, p. 3) Celso Delmanto (DELMANTO, Celso, Unfair competition Crimes, ed. Bushatsky, 1975, pág.84 [1]) describes the phenomenon: “Many articles have a peculiar aspect (the French arrangement or the American get up), distinct from the other similar, being by the shape, color, enclosure, recipient, tag, name, sign, symbol, figure or other identification traits per se. By the repeated usage or by advertisement, such as individualizing appearance, gets “to brand” in the consumers those determined goods that they get used to acquire. These presentations are so valuable to the producer – in face of what they represent to the consumer – that generally only are changed, and after many studies, when there are sales decreasing.
[b]. if it is enabled to function as a trademark, it has to comply with the general requirements of all other trademarks.

After the acquisition of distinctiveness as a trademark, the following negative requirements shall be observed:

1.1 **Non necessary and non-associated technical effect aspect**

The tridimensional and distinctive element should not be understood as a required shape, common or generic and neither associated to a technical functional effect.

Law 9.279/96, article 124, XXI, denies protection to the required shape, common or generic of the product or its packaging, and also denies it to the shape which cannot be dissociated from the technical effect.

The technical effect question raises an old demand already applied to trademarks, i.e., that of being the distinction element and not the one relating to its functionality.

When the essential features of the tridimensional article are uniquely attributable to the intended technical result achievement, such article will not be registered as trademark, even if the shape can include non-essentials and distinct features.

Therefore, we can reach the conclusion that a tridimensional trademark, subject to protection in Brazil, has its sign established by:

- [a] a tridimensional shape
- [b] sufficient distinctiveness capacity
- [c] not being a third party industrial design
- [d] being dissociable from its technical function

It is advisable, however, to call the attention that the restriction to register a trademark, for which the functionality is intrinsic and inseparable from the article’s shape, is

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3 Besides the distinguishability and the non-functionality, Maitê Moro (Op. Cit. p. 43-44) understands, relating to the shape, that the tridimensional trademark of the shape should be stable. Maitê says that a non-stable shape hardly will be protected as trademark, for its mutability damages the acknowledgement of the sign by the public. Despite that, in an isolated case, completes the author, it is not granted to exclude the possibility of a variable shape to be effectively recognized by one of the possible shapes that it can take. In this case, the shape that should be protected is that of goods presented for sale.

4 As an example, the American Supreme Court decision on Qualitex, 54 U.S. at 170:

"[i]n general terms, a product feature is functional, and cannot serve as a trademark, if it is essential to the use or purpose of the article or if it affects the cost or quality of the article (...) It is the province of patent law, not trademark law, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time, after which competitors are free to use the innovation."

5 Koninklijke Philips Electronics NV v. Remington Products Australia Pty. Paragraph 37. If they are attributable solely to the achieving of the intended technical result, it will not be registrable as a trade mark and it will make no difference that the shape may include non-essential features which are not so attributable ..."

an absolute restriction, regardless of the signal distinctiveness capacity. Therefore, neither the secondary meaning should be able to override the issue of the functionality related to the distinctive shape.

1.2 Absolute distinguishability not related to the ornamental effect

The requirement of absolute distinguishability is imposed upon the tridimensional trademark, which is very close to the one pertaining to the originality in industrial design. Nonetheless, the distinguishability does not exert on the ornamental effect (as applied to the designs), but on its role as indicator of the product origin.

In the first place, an absolute distinguishability must exist: the intended symbol for a trademark must be identified and highlighted in a level to become effectively detached from what is and must remain under public domain.

Regarding general packaging, the distinctive feature must be the result of its original and new shape, be by the ensemble and/or by the accessories. However once the packaging is characterized by its shape, it becomes necessary that its use be new related to its introduction in the market.

1.3 Relative distinguishability – non similarity relate to third parties trademarks

In the second place, there must exist a relative distinguishability, meaning that there is the novelty on the trademark compared to the already existing trademarks:

the trademark has to distinguish itself from other signs already belonging to the third parties; more precisely, it is the requirement that the symbol can be owned by the holder, without infringement of third parties right.

1.4 What is protected by the exclusivity

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7 Ibidem p. 166
8 As João da Gama Cerqueira says, “to serve as trademark there must be presented the distinctiveness characters resulting of their original and new shape, of its sum aspects or accessories elements. When the enclosure is characterize its shape it is become necessary that its new usage, at least on the industry that it is applied”. Industrial Property Treaty. Tomo II, V. II., Rio de Janeiro. Forense, 1946, p. 445.
9 In the doctrine we saw that some authors argue that there would be a higher requirement of distinctiveness for the tridimensional trademarks than for others, which would be expressed through the phrase by which to deny protection to as “required, common or usual product or packaging ”. For example, SANDRI & RIZZO. I Nuovi Marchi. Forme, Colore, odori, suoni e altro. s.1 IPSOA, 2002, p. 42, Bento de Faria. Trademarks. Rio de Janeiro: Ribeiro dos Santos, 206., p. 158-150; Mathely. Le droit français des signes distinctifs, p. 105. apud FABBRI, Maitê Cecilia Moro. Tridimensional trademarks. Sao Paulo: Saraiva., 2009, p. 156. Contrary to this understanding is Maitê Moro who understands that the standard of distinctiveness of tridimensional trademark should be the same standard used for the common trademark, as a tridimensional trademark with the simple shape can as well be distinctive or acquired distinctiveness.
The subject of the protection of the register of a tridimensional trademark is [1] the shape of the article or [2] the shape of its packaging.

IV. Requirements for the acquisition of distinctiveness

The international court precedents and opinion of jurists show that, contrary to the current BR PTO practice that, before acknowledging a tridimensional article as possible to be registered as trademark, such article has incorporated before the consumer market an indicator product origin.

As comparable requirement – not just to the tridimensional segment, but also of the whole object, including non-tridimensional trademarks, etc. – the trade dress protection applies and there is a prognostic that the current BR PTO practices be subjected to judicial scrutiny. Therefore, it is strongly advised that the strategies related to the public image construction of an article as an indicator of origin adopt the criteria detailed below.

V. Criteria to acquire distinctiveness as an indicator of origin

We should stress that the distinctiveness is aimed in what relates to the tridimensional shape of an article, therefore, it must be or should be broadly disclosed as an indicator of product origin, considering that the protection depends on the following requirements:

1. Long and continuous period of use as an indicator of product origin

Thus, the first requirement to marketing strategy should consider the need of having been used in the market for a long period of time under the function of *indicator of product origin*.

Every trademark should have the capacity of distinction and ability to fix in the public mind the association between the perception of the article and the article itself, i.e., the distinctiveness should be sufficiently detached of what already is under public domain.

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13 According to the decision: Grupo Gigante SA De CV v. Dallo & Co., Inc., 391 F.3d 1088, 73 U.S.P.Q.2d 1258 (2004). Determining secondary meaning requires an analysis of at least 7 factors: 1 – direct consumer testimony; 2 - survey evidence; 3 - exclusivity, manner, and length of use of a mark; 4 - amount and manner of advertising; 5 - amount of sales and number of customers; 6 - established place in the market; and 7 - proof of intentional copying by the defendant.
Furthermore, when adopting marketing strategies to the establishment of a tridimensional article as an indicator of product origin, if this characterization happens in the public perception, then the phenomenon of acquisition of distinctiveness has taken place.

The acquisition of distinctiveness, when sufficiently high, surpass, for instance, the foreseen restriction to what is considered generic or common (that prohibits the register of any trademark, whether tridimensional or not).

Thus, expressions like *Computer Shop, Polvillo Antisséptico, A Casa do Pão de Queijo*\(^{14}\) and others that are common sense, may become acknowledged as susceptible to exclusive use as a trademark, as they have become indicator of a product origin by consumers and even by competitors.

Such phenomenon grants to the sign a secondary meaning that attaches to the common use element and withdraws it from the public domain\(^{15}\).

Therefore, the marketing strategy should be coordinated aiming to cause this phenomenon, when related to an article that has features, if not preponderant, that can be considered ordinary.

As an example of this phenomenon, we present the following advertisement, which contributes to the establishment of the distinctiveness of an article as a trademark.

**Image fidelity of an article**

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\(^{14}\) These expressions are related to notorious trademarks in Brazil and are literally translated as “Sprinkles Antiseptic” and “Cheese Balls House”.

\(^{15}\) BARBOSA, Denis Borges in Nota sobre a Metodologia de Confrontação de Marcas. A Propriedade Intelectual no Século XXI, Rio de Janeiro: Lumen Juris, 2009, pg. 70
**Product Image**

In the examples above, the Coca-Cola bottle kept its shape with the same main features from its inaugurating shape in 1915. The article per se, including the article's shape permanence, shown before as utilitarian, became an indicator of product origin.

**Bottle’s Image in advertisement, strengthening its association as an indicator of product origin**

Photo By Michael Jiroch

**Bottle’s Image gifts**

**Products Image as a stamp of other products**
Besides the strategic measures to the establishment of distinctiveness of an article as a tridimensional trademark, all of the defensive measures should be adopted as strategies as well, in order to avoid any tolerance that can characterize such an article as of necessary use (market code).

As an example of tolerance, we present the following articles, which packing has become market code:

2. Factual creation of significant goodwill

To show that the product represents a considerable part of company’s revenue.\(^{16}\)

It is necessary that the company has on its accounting records the numbers corresponding to the revenue originated by the product, in which relevant investments have been made in order to reach this significant revenue.

Below, we transcribe part of an article published by Denis Barbosa and Ana Beatriz Nunes Barbosa\(^ {17}\) to better explain the importance of considering the goodwill as an acquired asset:

> “Intangibles will include the rights which have as objects the intangible assets destined at the maintenance of the company or the rights exercised with this purpose, including the goodwill acquired (article 179,VI, of the Law of Corporations, amended by Law 11.638, dated 2007), and these assets shall be evaluated by the cost of their acquisition being deducted the balance from the amortization (article 183, VII, Law 6.404 as amended).”

\(^{16}\) “…if sales have grown from $11 million in 2002 to more than $21 million in 2005; declarations and e-mails showed that competitors and consumers recognize STEELBUILDING.COM as a reference to Applicant; it has 50,000 to 100,000 visitors per month at its website” In re Steelbuilding.com, Inc., Op Cit.

\(^{17}\) BARBOSA, Denis Borges and BARBOSA, Ana Beatriz Nunes in Da Conferência de Bens Intangíveis à luz da Lei 11.638/07. A Propriedade Intelectual no Século XXI, Rio de Janeiro: Lumen Juris, 2009, p. 615
Also, it should be noted that these assets will be subject to amortization when of the loss of the capital used in the acquisition of industrial property rights or commercial rights, and any others when a limited term is in place, or whose object is the use of assets for a determined period of time or limited by a contract (article 183, §2º. B) of Law 6.404, amended by Law 11.638). Such rights will be amortized in ratio with their term, by the linear method.”

3. Acceptance by competitors

As mentioned above, the trademark value is built through a communication effect. Such an effect could also result as the unmistakable acknowledgment by the competitors of its clear distinctiveness.

In the Polvilho Antiséptico Granado\textsuperscript{18} case, the multinational Johnson & Johnson gave up using the expression “polvilho antisséptico” for recognizing that it became a part of the equity of Casa Granado.

Also in the Steelbuilding.com, Inc. case, it has been evidenced by statements and e-mails, that its competitors recognized its generic name as an indicator of product origin\textsuperscript{19}.

4. Investments in acquisition of distinctiveness

It must be evidenced that the trademark’s holder has continuously endeavored and invested to create – in the public perception – the possibility to associate an article as its indicator of product origin\textsuperscript{20}.

Market research can serve as unmistakable evidence of acquisition of distinctiveness of an article as trademark. However the investment should be subjected to confirmation.

5. Advertisement concentrating on significant aspects

Every advertisement intended to fix the object as an indicator of origin, must avoid to emphasize the article’s utilitarian aspects. Likewise, the advertising setting must avoid

\textsuperscript{18} Civil appeal 102.635 – TFR/RJ – 5\textsuperscript{a} class – rapporteur Min. Pedro Acioli published in the official magazine of 17/10/1985, pg. 18.379

\textsuperscript{19} In re Steelbuilding.com, Inc., Serial Nos. 76280389 and 76280390 (December 12, 2007) ”Applicant has advertised or been featured in trade magazines; declarations and e-mails showed that competitors and consumers recognize STEELBUILDING.COM as a reference to Applicant;

\textsuperscript{20} In re Steelbuilding.com, Inc., Serial Nos. 76280389 and 76280390 (December 12, 2007 The Board was persuaded that STEELBUILDING.COM has acquired distinctiveness. advertising expenditures rose form $673,000 to nearly $1 million; visitor traffic to the steelbuilding.com website is greater than that of any competitor; Applicant has advertised or been featured in trade magazines;
presenting to the public the ornamental appearance of the article, focusing on the aspect of indicator of origin. In other words, one who sees the bottle twisting and bending knows that it is Coca-Cola and who blindfolded touches it, is able to do the same association with the tridimensional trademark.

6 - TRUE/FALSE Test grids proposal

Summarizing the above parameters, two test grids are presented for [1] index verification that can indicate the article’s gain of distinctiveness as the product brand and [2] to attend the requirements for the protection of tridimensional trademarks.

[1] Grid – distinctiveness gain

<table>
<thead>
<tr>
<th>INDEXES</th>
<th>TRUE</th>
<th>FALSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associative index (article singularization as an indicator of product origin relating to the relevant market, whether by time of use, continuous use or impact advertising).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Associative recognition Index of the indicator of product origin (brand research and assessment of “Top of Mind” degree).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Territoriality Index (presence throughout the national territory)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Symbolic efficiency Index (acquisition of distinctiveness and effective separation from the common domain).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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21 The above grids test were mentioned in the first degree’s sentence of the Federal Court in Rio de Janeiro, in the case Nadir Figueiredo Ind. e Com S / A x BR PTO – Brazilian Patent Office no. 0801231-11.2010.4.02.5101 (2010.51.01.801231-3). Published in the Federal Court electronic journal of 2nd Region on 03/MAY/2012 p. 410.
VII – Acquisition of distinctiveness and Protection

Considering that the purpose of this study is to subsidize marketing strategies in order to reach an acknowledgment of an article distinctiveness, relating to a trademark signed product, including an intended protection to a tridimensional trademark, we present below relevant examples that were granted or not by the Patent and Trademark Brazilian Office.

At the same time, we present the sum of parameters that were collected from administrative decisions that demonstrated the validation prospective and the tridimensional trademark recognition.

Therefore, it can be concluded that:

[a] Adoption of marketing measures that not only promote an article distinctiveness and its strong association to the already signed product by a given trademark, as well as one that legitimate its tridimensional shape protection.

[b] Opinion of jurists and judicial decision parameters, mostly foreign, which recognize the tridimensional trademark validity.
[c] Comparable exercises, focused not only on the significant tridimensionality, but also on the product holistic expression and its underlined circumstances to the protection acquisition as a trade dress as well.

VIII. Conclusion

The marketing strategy for the establishment of an efficient potential distinctiveness to the signs – and we refer here exclusively to signs for the function of trademark – can result in fame attribution phenomenon over them or its generification\(^{22}\) when in excess.

This distinctiveness potential has no rule that can foresee or determine it; it is a phenomenon that is born out of the consumer psychological perspective in relation to a product and its trademark. That is to say, there is an inseparable associative assimilation of a trademark-product or product-trademark by the manifestation result of a more sensorial and holistic on behalf of the consumer. This is stimulated by the juxtaposition, on the packaging of its colors, sayings and contents and even the product shape per se.

It is possible, for instance, that the product association of the same genre can be easily done in a single article, for the later had stimulated during a period of time its identity fixation in the consumers mind, who recognized it as a reference to the product or because it had been a pioneering article in the market.

It is noticeable as well, that the distinctiveness efficiency has been seen in an immediately recognized form, in any situation, without a literal trademark reading as in the case of starch (Maizena), M (McDonald’s) packing and of soft drinks as Coca-Cola, Guaraná, etc. It can be said that all these forms of recognition and association addressed instantaneously to a unique product in the consumer’s mind and it is what makes it efficiently distinct.

However, when dealing with the building of distinctiveness strategies, it is necessary to take into account what the specific law covers, and then to adopt measures on the strategy that favor and allow to validate the most appropriate protection on behalf of the company’s interests, since they can be submitted to the interests.

The 9.279/96 law foresees the protection of inventions designs and signs, that is, patents, industrial designs and of trademarks. Being the later of the tridimensional type, that has been a demanded option, for not only it is characterized by the trademark shape in three dimensions, but also because it attaches such a shape in a dissociable manner to the article, that is desired to be distinguished as a trademark, for which, once recognized by the BR PTO, will have a ten year renewable validity.

To the plastic form - the design itself – it has a protection via industrial design registry, which has a 25 year maximum validity.

\(^{22}\) Generification = conversion into public domain of the brand that becomes a functional description or characteristic of a product. (i.e. Lycra, Xerox, Cellophane, Gilette among others)
How to set apart what is to be protected as an industrial design or as a tridimensional trademark?

The protection will apply, via industrial design, to the “ornamental plastic form of an object, or to the ornamental assemble of lines and colors that can be associated to a product, providing a new and original visual result and its external configuration, that can serve as industrial manufacture model”.

For the tridimensional trademark, as it has been mentioned above, the protection regarding the three dimensional shape is characterized by the presentation of sufficient distinctiveness, but the protection will cover this feature as long as there is no other functional aspects to it.

In other words, besides the distinctiveness requirements and in the case of industrial design novelty and originality, the function is the most important factor which will differentiate the essence of the protection and, therefore, its validity.

Thus, it can be concluded that the marketing strategy component must consider the approach to underline the existing - or to be acquired - distinctiveness, and the ornamental or technical functionality of the article for which protection is intended under the Law 9.279/96.
SOME EXAMPLES OF TRIDIMENSIONAL TRADEMARKS EXAMINED BY THE BR PTO

TRIDIMENSIONAL TRADEMARK

- **TCHAIKOVSKI**
  - Application #: 820099414
  - Class: NCL 35:10
  - Owner: BELVEDERE
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

- **RUSSAR VODKA**
  - Application #: 822354578
  - Class: NCL(7) 33
  - Owner: PRZEDSIĘBIORSTWO PRZEMYSŁU SPIRYSYLOWE GO POLMOS
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

- **PALACE VODKA**
  - Application #: 823327523
  - Class: NCL(7) 33
  - Owner: PRZEDSIĘBiorstwo POLMOS BIALYSTOK S.A. P
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

REFUSAL BY THE BR PTO:

- **PO A**
  - Application #: 822495929
  - Class: NCL(7) 33
  - Owner: LUBUSKA WYTWÓRNI WÓDEK GATUNKOWYCH POLMOS W ZIELONEJ GÓRZIE SPÓŁKA AKCYJNA
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

- **PAN TADEUSZ**
  - Application #: 822510677
  - Class: NCL(7) 33
  - Owner: LUBUSKA WYTWÓRNI WÓDEK GATUNKOWYCH POLMOS W ZIELONEJ GÓRZIE SPÓŁKA AKCYJNA
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

- **RON DEL NAVEGANTE**
  - Application #: 822651491
  - Class: NCL(7) 33
  - Owner: ADMINISTRACION NAC. DE COMB. ALCOHOL Y PORTLAND (A.N.C.A.P)
  - Status: Refusal by understanding be a generic, vulgar, linked with technical effect.
SOME EXAMPLES OF TRIDIMENSIONAL TRADEMARKS EXAMINED BY THE BR PTO

POMMERY
N° do Application: 82758562
Owner: POMMERY S.A.
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

PURA HBR
N° do Application: 82672090
Owner: HBR COMÉRCIO, IMPORTAÇÃO E EXPORTAÇÃO LTDA
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

VINHOS CAMPO LARGO
N° do Application: 82573045
Mark n°: 73820410000109
Owner: VINICOLA CAMPO LARGO S/A
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

SHAAZ
N° do Application: 827506600
Owner: PERNOD RICARD
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

N° do Application: 824305205
Owner: GILBERTS & C.A., S.A.
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

N° do Application: 824289358
Owner: GIOVANNI BOSCA TOSSTI I.V.I. S.P.A.
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.

N° do Application: 825794846
Owner: CHATAM INTERNATIONAL INCORPORATED
Class: NCL (8) 33
Status: Refusal by understanding be a generic, vulgar, linked with technical effect.
SOME EXAMPLES OF TRIDIMENSIONAL TRADEMARKS EXAMINED BY THE BR PTO

<table>
<thead>
<tr>
<th>TRIDIMENSIONAL TRADEMARK</th>
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<tr>
<td>[Image of trademark]</td>
<td>MONTURA</td>
</tr>
<tr>
<td>Application n°: 821176056</td>
<td>Class: NCL (8) 32</td>
</tr>
<tr>
<td>Class: NCL (8) 32</td>
<td>Owner: SOCIETE DES PRODUITS NESTLE S/A</td>
</tr>
<tr>
<td>Status: Granted</td>
<td>Owner: BELVEDERE</td>
</tr>
<tr>
<td></td>
<td>Status: Granted</td>
</tr>
</tbody>
</table>

| MONTURA                  | [Image of trademark]  |
| Class: NCL (7) 21        | Application n°: 822507749 |
| Owner: BELVEDERE         | Class: NCL (7) 33       |
| Status: Granted          | Owner: BOMBA ENERGIA GETRANKEN VERTRIEBS GMBH |
|                         | Status: Granted        |

| [Image of trademark]     | N° do Application: 824085086 |
| Class: NCL (7) 33        | Owner: BOMBA ENERGIA GETRANKEN VERTRIEBS GMBH |
| Status: Granted          | Class: NCL (7) 33 |
|                         | Status: Granted       |

| COCA-COLA               | [Image of trademark]  |
| Class: NCL (8) 32       | Application n°: 827783582 |
| Owner: THE COCA-COLA COMPANY | Class: NCL (8) 32 |
| Status: Granted         | Status: Granted       |

| MARTELL                  | [Image of trademark]  |
| Class: NCL (8) 33        | Application n°: 827899280 |
| Owner: MARTELL & CO      | Class: NCL (8) 33       |
| Status: Granted          | Status: Granted        |
SOME EXAMPLES OF TRIDIMENSIONAL TRADEMARKS EXAMINED BY THE BR PTO

N° do Application: 820963712
Owner: KRAFT FOODS SCHWEIZ HOLDING GMBH (CH)
Class: NCL (8) 30
Status: Granted

N° do Application: 822138484
Owner: UNILEVER N.V. (NL)
Class: NCL (7) 30
Status: Granted

N° do Application: 819865613
Owner: LENG D'OR, S.A. (ES)
Class: 32, 10
Status: Granted

N° do Application: 82737922
Owner: FERRERO S.P.A. (IT)
Class: NCL (8) 30
Status: Granted

N° do Application: 820646626
Owner: ARLA FOODS AMBA (DK)
Class: 31, 10
Status: Granted

N° do Application: 827377547
Owner: CHOCOLATERIE GUYLIAN N.V. (BE)
Class: NCL (8) 30
Status: Granted

N° do Application: 819865613
Owner: LENG D'OR, S.A. (ES)
Class: 32, 10
Status: Granted

N° do Application: 828824134
Owner: VOLKSWAGEN AKTIENGESELLSCHAFT (DE)
Class: NCL (8) 30
Status: Granted
X. References


BARBOSA, Denis e BARBOSA, Ana Beatriz Nunes in Da Conferência de Bens Intangíveis ao Capital das Sociedades Anônimas à luz da Lei 11.638/07. A Propriedade Intelectual no Século XXI, Rio de Janeiro: Lumen Juris, 2009

FARIA, Bento de. Marcas de Fábrica. Rio de Janeiro

BRASIL. Lei 9279/96, de 14 de maio de 1996. Regula direito e obrigações relativos à propriedade industrial.


DELMANTO, Celso, Crimes de Concorrência Desleal”, ed. Bushatsky, 1975

DENIS BORGES BARBOSA ADVOGADOS, Acervo de pesquisa


INSTITUTO NACIONAL DA PROPRIEDADE INDUSTRIAL, base da dados disponível em www.inpi.gov.br

MORO, Maitê Cecília Fabri.. A Marca tridimensional, sua proteção e os aparentes conflitos com a proteção outorgada com outros institutos da propriedade intelectual. Tese de Doutorado em Direito defendida pela PUC/SP

__________________________., Marcas tridimensionais. São Paulo: Saraiva., 2009


SANDRI & RIZZO. I Nuovi Marchi. Forme, Colore, odori, suoni e altro. s.l IPSOA, 2002

