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Applied Study on Visual Identity Configuration Allied to Intellectual Property Protection in Pernambuco: guidelines for designers

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***Abstract*—** *This article presents a proposal to combine the development of brands with the knowledge of the legal requirements for their protection, with a view to bringing this knowledge closer to designers so that they can develop brans that can be registered and legally protected. An almost nonexistent or very punctual practice has been the discussion of such content for designers in training. With the lack of knowledge of such requirements, it is very common for conceived brands to consolidate themselves in the market gaining intangible value, but that they can be prevented from legal protection by not meeting one or more of the requirements of legal protection. Despite being a knowledge coming from another area of knowledge, it is necessary to approach in a way to guide as to the requirements and inform the designer of the limitations so that the designer can develop more efficient visual identities, subject to protection. The research was applied, qualitative, exploratory with bibliographic and documentary procedures. A research protocol was defined based on Silva & Menezes (2011). As a result, the guidelines based on the Industrial Property Law are presented, highlighting 7 impediments to registration and guidance on the search for precedence to avoid collisions of brands and impediment of registration.*

I. DESIGN, VISUAL IDENTITY AND THE DEMAND FOR INTELLECTUAL PROTECTION

Given the rapid developments in technology development in recent decades, we face a challenge when dealing with the development of new products or services, because with the democratization of technology there is a much greater demand for both time and investment to produce innovative results in the face of equalization of the technological level achieved. It should be noted that most of the times manufacturers in the same segment have the same resources available to develop the products. In this perspective, design assumes a referential role, as it confers creative value compared to competitors, being able to contribute to innovation and being recognized as a competitive factor (PATROCÍNIO, 2013).

We can see design as a central factor in the innovative humanization of technologies and a crucial factor between cultural and economic exchange. Because design is recognized as an important factor by companies and organizations around the world not only for isolated product designs, but also for product systems, hardware, software, and service design. In this way, we are referring to a theme that is increasingly important: Corporate identity and corporate design (BÜRDEK, 2006).

And it is through the differentiation acquired using corporate design, reinforcing the corporate identity - essential to communicate values and forms of relationship and positioning - that companies can stand out in the market and be recognized by the public. This differentiation is important both for the development of services and products, as well as for identifying the companies that produce them, through the construction of brands.

For Strunck (2001), the brand represents a design (logo and/or symbol) that over time acquires a specific value due to the relationships made to it, whether real or virtual, and thus starts to have a specific value. Martins (2000) emphasizes that the brand makes the difference between a certain product and that of a competitor, it is the soul of the business, and it is with it that the consumer dreams and sighs. In this sense, the brand, also from a commercial point of view, is the company's identity and must translate the image that one wishes to convey to the consumer. (GOMES, 2005).

According to Cunha (2000), design and specifically graphic design from the development of visual identities has the power to deal with the image of a company or institution and produce results that add value to that company's brand, making it stronger and respected and therefore helping to consolidate it. Also, for the author, the graphic designer has skills and abilities to organize symbolic content that can be interpreted by the receiver of the visual message. Thus, it is understood that the brand has symbolic content, serving as a strategy of differentiation and competitiveness. (CUNHA, 2000)

It is in this context of innovation that the power of design to guarantee new means of intellectual development for countless fields, including brand development, is found, and in this way, it is emphasized that without adequate protection, there are clear threats to innovation and competitiveness. For Patrocínio (2013) Design Policies are principles established by the government to use design as a tool to drive industrial, economic, regional, and social development.

We have a long way to go to ensure the development of Design Policies more effectively in our country, there is an example of some initiatives such as the Guidelines for Good Design Services Practices, launched by ABNT, which despite superficially mentioning related issues to Intellectual Property - discussed in detail in the next topic - among other procedures that should be taken into account when contracting design services, do not delve into the issue of managing intellectual property rights over design (ABNT, 2017). This perspective can be changed by encouraging the engagement of registrations (brands and others) as an effective design management activity, especially in small and medium-sized companies that often do not usually engage in these practices.

It is noteworthy that with the expansion of the means of information and dissemination, it is much easier to have access to the visualization of project details, for Costa (2008) projects accessible to the public have chances of being 100% copied or pirated, so it is necessary to take the necessary measures to safeguard the rights, as if this does not occur there is nothing that can prevent the future industrial or commercial exploitation of projects without registration of intellectual property.

This demonstrates the importance of a closer look by the professional to the issue inherent in their performance, emphasizing that in addition to the creative and innovative proposal that provides input to emerging technological issues and of importance for the designer's performance, the importance of the legal apparatus in the daily exercise of the profession.

Based on this scenario, the purpose of this research was to propose guidelines for designers regarding the development of brands from the knowledge of the requirements for their legal protection. Therefore, this article briefly addresses intellectual property, legal provisions, and definition of a brand in accordance with the legal provisions.

II. INTELLECTUAL PROTECTION AND TRADEMARK REGISTRATION

Scope Of Intellectual Protection

Intellectual property has great relevance for relationships in the globalized world by encouraging innovative practices and regulating the protection of inventive activities and other legal relationships derived from human intellectual ingenuity. Its prediction in the legal systems of the National States is recent, despite the dimension and capillarity of this theme, and has origins during the thirteenth century.

In the region of Bordeaux, France, in 1236, the iconic Intellectual propert protection inaugural event took place, when the local monarch granted exclusive privileges for

the use of weaving and dyeing wool materials (FURTADO, 1996) to a producer in the respective area. As for Trademarks of industry and commerce, one of the most common types of intellectual activity, it is possible to indicate that their protection became publicly known in 1445 (STRENGER, 2004), when it was agreed that blanket weavers should have their own sign when identifying their products. In the period, the scope of the marks was, therefore, to distinguish the goods according to who produced them and, according to Schechter (1999), to grant the holder of the right the monopoly of the distinctive signs.

This theme continued to receive the attention of European governments, however, especially with the advent of the Industrial Revolution, which occurred in the 17th century, inventive and commercial activities were intensified, accelerating the globalization process and the need for a more collective standardization of the intellectual property, which occurred incisively, in fact, in the Paris Convention of 1883 and, later, with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of 1994 (GRAU-KUNTZ, 2015). These agreements aimed not only at protecting the monopoly of their nationals' businesses, but at creating an environment of fair competition in the market.

Brazil, a member of both treaties, enacted its main normative instruments on intellectual property in the late 1990s, the current Laws 9.279/96 and 9.610/98 on industrial property (LPI) and copyright, respectively. The Federal Constitution of 1998 itself made it clear that intellectual property is a basic pillar in the Brazilian legal system, including provided for in Art. 5, XXIX, as a fundamental guarantee, thus being a matter of high relevance to society.

Types of Intellectual Property Protection

Following the definition of the World Intellectual Property Organization (WIPO), this matter can be understood as the sum of rights, strongly influenced by international norms, in which there is the protection of intangible assets, which may or may not have a commercial purpose. The doctrine, in the voice of Barbosa (2017), complements by stating that it is the conception of the intellect, the economic exploration of aesthetics, an investment in images or in technical solutions for services and products. For didactic purposes, it is pertinent to classify the significant part of Intellectual Property in two major fields of study: Copyright and Industrial Property.

Author's rights are those that protect the authorship of literary, artistic, or scientific works that, taken by creations of the human spirit, are expressed by any physical or virtual means, in accordance with Article 7 of Law 9,610/98. Thus, the design of logos, the illustration of characters, as well as the expression of any other illustrations or engravings present in the identification of a product or service, can be considered works covered by copyright. It is important to confirm that, in the wake of the provision and doctrine, exemplified by the thoughts of Bittar (2015), the legal protection of copyright is inherent in its externalization, regardless of registration in official bodies.

Industrial property, in parallel, is perceived by the set of rules and principles capable of legally protecting the intangible assets of a business (RAMOS; GUTERRES, 2016). The protection of these assets has a strong economic and competition bias, to grant the company a monopoly over its intangible properties. According to the provisions of Law 9,279/96, patents capable of protecting the inventive act of a product are examples of industrial property; industrial designs, responsible for the protection of aesthetics, ornament, a product, or ornamental pattern applied to it; and the brands.

Fundamental characteristics of brands

According to the definition present in Art. 122 of the Industrial Property Law, marks are the visually perceptible distinctive signs, not provided for in the legal prohibitions, found mostly in the same Law. the protection for sounds and odors, as opposed to alien legislation, such as the North American one. It is interesting to note that the concept of brand can be equally appreciated by other areas of knowledge, which, each in its own way, reveal ideas that are complementary to the one intended by the legal norm, eg Kotler (2004), who, for marketing, makes evident the need for the sign to be distinctive in order to distinguish it from the competition.

Perhaps the most basic and unique characteristic of brands is their distinctiveness (SCHMIDT, 2013), as this quality is intrinsic to their own reason for existence, namely, differentiating services and products from one another. A brand must be composed of elements which, by its visual, phonetic, and marketing set, indicate it as unique in the market and do not make it be confused with others in the senses of the consumer public. The brand also loses its purest meaning if it is constituted by a set of common, generic, and descriptive elements, since it is not possible to establish a monopoly on signs already diluted to the products and services themselves (BEEBE, 2005).

In parallel, Article 129 of the LPI prescribes that the ownership of the trademark obeys the attributive principle, that is, it is only valid upon registration valid in Brazil. Applications for registration of national and international trademarks are evaluated by the INPI, the federal agency

responsible for dealing with the application of the matter throughout the country. The same provision also manifests the principle of territoriality of trademarks by limiting the owner's property rights over these signs only to the national territory once the registration is satisfied.

Finally, the validity of the registration of trademarks, unlike patents and industrial designs, for example, is unlimitedly extendable for a period of ten years, provided that the sign continues to exercise its respective distinctive function in the market, in accordance with Art. 133 of the LPI.

Moral and economic advantages of trademark registration

Owning the registration of a trademark guarantees its owner rights capable of enabling him to obtain advantages in the market. By holding the monopoly of a sign, the trademark fulfills the common function of industrial property, namely, to prevent the improper use of its assets by a third party, and this is particularly important because, unlike patents and industrial designs, trademarks rarely have value after obtaining the registration, taking, in some cases, many years to do so.

The value of a brand is an asset that is difficult to measure, however, it is known that excellence in the quality of the product and service, as well as the company's reputation regarding its business and outstanding advertising produce positive effects over time, indicating Saint- Gal (1959) that the public prefers branded articles, as they represent security of origin and origin.

This feeling is only possible if the public can correctly identify the product and service the company that sells it against the competition because, in the event of confusion, the consumer may receive a negative opinion about a similar brand and this effect will have repercussions on the original sign. Therefore, a distinct brand has a social, public function, by individualizing the origin of a product or service to the consumer (SCHMIDT, 2013).

The holder of the trademark registration has the clear right to use the trademark, however, the power to license or assign this asset to third parties, as appropriate, is also granted. This right, provided for by Arts. 134 and 139, respectively, allow the holder to promote franchise agreements, for example, the brand so that other companies have certain rights under certain conditions to make use of the brand or any of its distinctive elements. Such contracts may also be entered into with competitors in areas whose holder does not have, for economic, logistical or any other similar reasons, activity.

The monopoly of use of the brand is ensured by the Arts. 189 and 190, which impute a crime to anyone who reproduces it, registers a trademark, or imitates it, in whole or in part, inducing confusion to the public, as well as anyone who commercially circulates a product with an imitated or reproduced trademark, in whole or in part.

III. MATERIAL AND METHODS

This research is defined as applied, as it proposes “knowledge aimed at solving specific problems” (SILVA & MENEZES, 2011, p.20). As for the approach, it is a qualitative research, as it does not need statistical or quantifiable data to weave the analyzes and interpretations. It is still exploratory research.

The technical procedures used were bibliographic and documental research.

IV. GUIDELINES FOR DESIGNERS

With the contemporary work panorama, the traditional commercial success mentality of societies, namely, the industrial production and the trade of the largest possible quantities of goods, was transformed to adapt to new demands. Limited by the stabilization of consumption, the industry invested primarily in quality and innovation rather than the quantity of its products, stimulating, according to De Masi (2001), intellectual knowledge and creativity. Products and businesses never seen before having emerged in the market and, with them, the need to individualize them through strong competition and, often, already consolidated markets. On this track, creative professionals stand out, like designers, capable of providing vital tools to create and consolidate remarkable images of products and services to their consumers.

Thus, the designer's job can be the conception and elaboration of the brand of the client's business, bringing together both marketing and aesthetic elements and those intrinsic to the profile of the company or entrepreneur. Chalhub, Cid and Campos (2019) defend the strategic prudence of developing distinct brands, since they are the communication channel between the company and the public, transmitting ideas and values. While such communication is effective, the brand is more relevant and profitable.

The designer professional must be aware, however, that the conception and presentation of a brand to its client cannot take place only through creative ways, so that the observation of the intended sign is essential to be included in the legal provisions notably present in the list of Art. 124 of Law 9,279/96, the Industrial Property Law (LPI).

Among some of the items in this device, it is possible to highlight that the designer does not elaborate a brand

containing coats of arms, flags, public monuments, national or foreign, and other signs considered official (I); expressions or signs capable of offending morals, good customs or other feelings worthy of respect and veneration (III); a sign of a vulgar, descriptive, necessary character, except when covered in a sufficiently distinctive way (VI); expression used only for advertising purposes (VII); Sign responsible for inducing the consumer to falsely indicate the origin, quality or usefulness of a product or service (X); Signs protected by copyright law, except with the owner's consent (XVII); And signs that reproduce or imitate other previously registered trademarks for similar products or services (XIX).

Except for item XIX, it is fully possible for designers to conceive brands potentially capable of obtaining registration, since most of the restrictions pointed out by Article 124 do not depend or depend very little on the analysis of the contemporary market scenario, it being sufficient to have basic references from known every day.

However, the responsible professional should not limit themselves to inert knowledge of their activity, to make good use of caution and research the previous existence of conflicting marks to avoid further financial and professional losses. Thus, it is crucial that designers carry out the prior search for the trademark application based on their work not to be rejected by the incidence of Art.124, XIX, of the LPI.

As trademarks comply with the attributive principle, they can only be protected through proper registration with the National Institute of Industrial Property (INPI), which attends to requests in person and virtually. It is also on the INPI website where all valid and active processes in Brazil are found, constituting an excellent public and free database for those interested.

When faced with the database, the competence of knowing how to search for other brands should be necessary, as the INPI provides a series of resources to facilitate the user to find potential conflicts. This moment is crucial, but it is unusual to be performed by designers, both in the sense of being able to delimit their searches in the system, as well as knowing what could be considered a conflict trademark.

There are two basic principles for determining trademark conflict. The first values the similarity, not of every detail of the sign, but of the set of the most expressive elements of the brand (BARBOSA, 2010). The second, in parallel, determines the presence of conflict between brands according to the perception of the common consumer when examining them, similarly taking into account the circumstances, nature and environment in which it is usually consumed (CERQUEIRA, 1956).

Such concepts, pointing out the expressiveness of the brand's elements and observing the consumption habits regarding the respective product and service, are quite nebulous and of significant weight in the decision of the INPI judge, corroborating the designer's difficulty in having guaranteed success in their requests, it is sometimes convenient and recommendable to hire specialists, such as lawyers and industrial property agents.

For greater security, the creative professional can carry out background research in places other than the official government database. It is possible on a provisional basis, however, precarious, to look for conflicts in diverse and highly popular environments, such as social networks and online search engines, as many companies do not register their brands and, despite potentially being vulnerable by exposure, they publicize their products and services, facilitating the subsequent search, however, at the INPI.

V. FINAL CONSIDERATIONS

This study aimed to provide guidance for designers on intellectual property protection, specifically on the brand intellectual asset. This need was perceived by the absence of such knowledge both in training and by some market professionals. Although it is extremely important to know so as not to incur errors from the point of view of preventing the registration of the trademark, in practice, such knowledge has been neglected, although dissemination actions by the INPI, OAB, and other bodies are recurrent trying to bring these together. knowledge.

It is necessary to broaden the discussion, bring training closer, as well as promote design policies for innovation allied to the protection of intellectual property.

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