



INTELLECTUAL PROPERTY IN AGRIBUSINESS

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INITIAL CONSIDERATIONS: THE IMPORTANCE OF INTELLECTUAL PROPERTY FOR AGRIBUSINESS

In 2022, Agribusiness represented around 24.8% of the Brazilian GDP, thus reinforcing its essential character in the country's economy. At the same time, in recent decades, the entire agricultural chain has been developing new technologies applicable to the sector, increasing its productivity, and sometimes creating innovative products.

In general terms, the protection of any intellectual property is important for the appreciation and stimulation of new technologies, researchers, and innovative companies. This is also the case in the Agribusiness sector. These protections include the patenting of new production processes, the registration of trademarks and geographical indications to identify agricultural products and services, the registration of industrial designs for machines, and even the registration of computer programs (software) used by the sector. Additionally, there is the protection of so-called plants varieties – but their importance for Agribusiness is so great that we prepared a specific material on the subject.

Most intellectual property assets are regulated in Brazil by the Federal Law No. 9,279/1996 ("**Industrial Property Law**" or "**LPI**"), which deals with patents, industrial designs, trademarks, and geographical indications – the so-called industrial property. In turn, there is a specific law for software protection: Federal Law No. 9,609/1998 ("**Software Law**"). In Brazil, computer programs are protected as copyright.

Regarding industrial property assets, it is important to highlight that they are all protected only upon registration (or filing) with the National Institute of Industrial Property ("**INPI**"), and that the protection granted by the INPI covers only the national territory. If the owner wishes to protect their creations in other countries, it is necessary to make new registrations locally or, even, file requests for greater territorial coverage, such as the Patent Cooperation Treaty ("**PCT**") and the Madrid Protocol.

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TYPES OF INTELLECTUAL PROPERTY IN AGRIBUSINESS

A. Industrial Design

In Agribusiness, industrial design protection applies to esthetic or ornamental elements of products and equipment that can be industrially replicated, from food packaging to irrigation equipment, tractors, and other agricultural machinery. This is because the purpose of protecting this right is to ensure that the design or appearance of these products is exclusive and distinctive, preventing reproduction or imitation by competitors.

Industrial design protection is an important tool for organizations that seek to differentiate their products in the market, add value to their brand, and prevent unfair competition in the Agribusiness market.

The protection of an industrial design is an exclusive right granted to its owner (“holder”) for ten (10) years, renewable for three (3) successive periods of five (5) years each, counted from the date of registration, in accordance with the Industrial Property Law. During this period, the holder can prevent third parties from manufacturing, selling, importing, or using a product that violates its industrial design registered in Brazil.

Some examples of industrial design are:



Food packaging, such as egg cartons, juice bottles, fruit and vegetable bags, among others.



The design of irrigation equipment such as sprinklers, drip irrigation systems, irrigation hoses.



Agricultural machinery and parts, such as tractors, harvesters, seeders, and cultivators.



Packaging for fertilizers and pesticides, such as manure bags, herbicide bottles, and insecticide boxes.

B. Trademarks

Trademark protection in Agribusiness is important for distinguishing trademarks used in products or services in the sector. This includes trademarks for agricultural products, trademarks of organizations that produce or sell agricultural products, as well as trademarks of services related to Agribusiness, such as consultancy in the management of rural properties, for example.

Trademark protection occurs through the registration granted by the INPI, guaranteeing the trademark holder its exclusive right of use in the Brazilian territory, in relation to products or services of the class of activities in which it is registered, for a period of 10 years, from the date of granting. Trademark registration may be extended for successive periods of ten (10) years.

Trademark protection is an important tool to guarantee the identity and quality of agricultural products, as well as to protect the reputation and image of entities operating in the sector. Trademark protection in Agribusiness allows producers and organizations to maintain a competitive advantage in the market and preserve consumer confidence in the quality of their products and services.

Trademarks can be:

NOMINATIVE

the one formed by words, letters, and numbers.

MIXED

a trademark that combines image and word(s).

FIGURATIVE

the one consisting only of a drawing or image.

THREE-DIMENSIONAL

the one in which only the shape of a product is capable of distinguishing it from other similar products.

In the agricultural sector, the use of collective and certification marks is still quite relevant:

The **collective mark** identifies products or services made by members of a given collective entity (association, cooperative, union, among others). Only such an entity can request this registration and it can establish conditions and prohibitions of use for its associates through a regulation of use. In Agribusiness, it is common for agricultural cooperatives to register collective marks, in order to distinguish their products from other producers.

The **certification mark** is the one that indicates that the products or services are certified by the holder of the trademark as to their origin, manufacturing method, quality, and other characteristics. The certification mark may only be used in accordance with the standards defined in the process. An important example from the agricultural sector is the certification for “organic products”.

C. Geographical Indications

Despite also serving to identify products and services, Geographical Indications differ from trademarks, including collective and certification marks. The registration of Geographical Indication granted by the INPI is only granted to products or services from a certain location. They are products that have a unique quality due to natural resources, such as soil, vegetation, climate, and production process.

There are two types of Geographical Indications: the **Indication of Origin and the Denomination of Origin**. The first indication is the geographical name of the country, city, region, or locality in its territory, which has become known as a center for the extraction, production, or manufacture of a certain product or the provision of a certain service. The Denomination of Origin designates a product or service whose qualities or characteristics derive exclusively or essentially from the geographical environment, including natural and human factors.

Although Geographical Indications are registered with the INPI, the *Ministério da Agricultura, Pecuária e Abastecimento* - "**MAPA**" is one of the instances for promoting activities and actions for Geographical Indication of agricultural products. MAPA has its own budget to encourage the valorization of agricultural products through the use of distinctive signs.

Notable examples of Geographical Indications in Brazil are "Vale dos Vinhedos", referring to wines and sparkling wines, registered as an Indication of Origin, and "Erva Mate do Planalto Norte Catarinense", registered as a Denomination of Origin.

Geographical Indications, unlike other industrial property assets, are in force for an indefinite period, as long as there are products or services recognized for their particular characteristics.

D. Patents

Patents are a temporary and official ownership title, granted in Brazil by the INPI, so that the holder obtains the exclusive right to exploit a product, production process or improvement considered new, inventive and that has industrial application. Innovative machinery and equipment, new agricultural production processes, and even fertilizers and pesticides, can be protected by patents (or utility models, which have a lower inventive load).

The patentable invention must have novelty, industrial use, and inventive activity. For legal purposes, an invention is considered “new” when it is not included in the state of the art (consisting of everything made accessible to the public before the filing date of the patent application in Brazil or abroad). The “inventive activity” occurs whenever, for a person skilled in the art, the invention does not result in an evident or obvious way from the state of the art. Finally, an invention that can be used or produced in any type of industry is considered susceptible of “industrial application”.

Patents granted by the INPI are valid for a period of twenty (20) years, counted from the date of filing, while utility models are valid for fifteen (15) years, also counted from their filing. Thus, the holders of these rights can recover the investment of time and money they invested in research and development, with the possibility of generating income with their application itself, in addition to the sale or licensing to third parties.

In Brazil, the wait for patents to be granted is long (the so-called “backlog”). To reverse the situation and stimulate innovation, the INPI created several programs that accelerate the registration of a patent in the country. In agriculture, the most outstanding program is “Patentes Verdes” (“Green Patents”). This is a title issued by the INPI for technological inventions and innovations created with the aim of meeting alternative energies, transportation, conservation, waste management, and agriculture. It is a way to encourage the creation, development, and implementation of creative and innovative actions for the preservation of the environment. The *Patente Verde* program is fundamental for the development of more sustainable production models, which seek to ensure the reduction or elimination of the environmental impacts of organizations.

Here are some examples of patents in Agribusiness:



Patent on a new organic fertilizer developed to improve soil fertility and increase plant productivity.



Patent on an irrigation technology that uses small drippers to deliver water directly to plant roots, resulting in greater efficiency in the use of water and nutrients.



Patent on a new harvesting process to harvest crops more accurately and efficiently and/or control the pest population more accurately and efficiently.

E. Software

In Brazil, software protection is governed by Software Law, which characterizes it as a “work” and, therefore, protected by copyright, not by the LPI.

Unlike industrial property assets, the protection of computer programs does not depend on registration. In addition, it has an international character, as it covers all signatory countries of the Berne Convention (currently around 170).

However, for reasons of legal certainty, the owner of the software can register it with the INPI. In any case, the protection of the rights relating to the computer program is ensured for a period of fifty (50) years, counting from January 1 of the year following its publication or, in the absence thereof, its creation.

With the automation of the agricultural sector, computer programs directly influence productivity increase processes, genetic improvement practices, development of agricultural pesticides and feeds, in addition to resulting in greater sustainability in agricultural production. Examples of software used in the agricultural sector are:



Systems that allow the management of plantations, monitoring plant growth, identifying pests and diseases, managing the application of fertilizers and pesticides, among other activities related to plant cultivation;



Software that allows monitoring the harvest, recording data on productivity, identifying areas of low productivity, and providing insights for improvements in production;



Programs that allow input stock control, recording the number of seeds, fertilizers, and pesticides available, and alerting when it is necessary to make new purchases;



Software that allows climate monitoring, recording data on temperature, humidity, and precipitation, and providing important information for decision-making in crop management; and



Software that allows the management of herds, recording data on the health of the animals, the production of milk or meat, food, and other important aspects for the management of the animals.

There are basically two types of computer programs: proprietary software and free software. Free software is, as a rule, a system with open source code, in which anyone is free to use it, make changes or improve it. In turn, proprietary software, which normally has a closed source code (precisely not to be modified), is licensed exclusively by the developer who created it.

In any sector, including Agribusiness, it is essential that entrepreneurs are aware of the software used in their activities. It is imperative to keep all commercial licenses up to date with regard to third-party proprietary computer programs, as well as make sure that: (i) any and all independent creations do not affect the rights of third parties; and (ii) there is authorization to carry out new developments in pre-existing systems, when applicable.

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HOW TO PROTECT INTELLECTUAL PROPERTY RIGHTS IN AGRIBUSINESS?

As mentioned earlier, Intellectual Property rights must be protected in Agribusiness to ensure that creators and holders of these rights are rewarded and encouraged to invest in technological innovations.

In Brazil, the protection of the rights mentioned in this booklet is carried out through registration with the INPI (even with regard to software, which in principle does not need registration to be protected – when the holder deems necessary, they can be registered with the INPI).

Before registering, holders must take some precautions, such as carrying out a previous search on the INPI database to verify if a similar previous registration already exists. Then, it is necessary to prepare the documentation, fill in the application forms, pay the fees, and apply for registration online.

If intellectual property rights are violated, it is possible to protect them through legal measures, including civil or criminal liability.

The protection of intellectual property rights in Agribusiness requires a set of measures and strategies that include legal registration and constant monitoring to prevent the violation of these rights.

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FINAL CONSIDERATIONS

In addition to protecting the individual rights of farmers and inventors, Intellectual Property protection is beneficial to the Brazilian economy, encouraging research and development of new technologies, seeds, pesticides, and other inputs used in agricultural production.

Thus, it is crucial to seek legal advice specialized in Intellectual Property in Agribusiness to ensure adequate protection of intellectual property rights arising from agricultural and livestock production in Brazil. With the support of qualified professionals, holders of these rights can ensure the exclusivity of their intellectual property and protect themselves against possible violations by third parties, contributing to the innovation, competitiveness, and growth of Brazilian Agribusiness.

The team of Campos Thomaz & Meirelles Advogados is prepared to assist its clients in obtaining and defending any intellectual property assets and is always up to date with legislative news and available to offer advice on the subject.

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