

E-book

INTELLECTUAL PROPERTY OF BETTING OPERATORS (BETS)

 campos
thomaz
advogados

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As we presented in another article, the regulation of Bets was complemented by ordinances from the Ministry of Finance, with the aim of legalizing, taxing and inspecting this growing market in the country, which until then had operated in a rather irregular manner.

The new regulations have important implications for various areas of law, including intellectual property rights.

Hence, we would like to point out four initial concerns that should be considered by betting operators.

Firstly, it is essential to register the trademark under which the operation will take place.

As is well known, the trademark is one of the main industrial property institutes, which aims to differentiate players in the market, helping to indicate the origin and quality of the product or service.

This differentiation is important precisely to avoid consumer confusion about the origin or provenance of services - which could be beneficial to a third-party intending on hitching a free-ride on the good reputation of its competitors' brands, earned through hard work and high investment.

And, during the registration process, it is important to remember the specificities of trademark law, such as the anteriority of third-party trademarks, the requirements for registrability, the evocativeness or descriptiveness of the terms chosen, among others. In this sense, it is important to remember that the term "bets" may appear in the trademark set, but it will not be appropriable by a single owner.

Secondly, the same comments made above also apply to domain names. In other words, it is important that betting operators are also protected in relation to their domains, by registering websites containing their trademarks to guarantee distinctiveness and greater protection. In addition, it is essential to monitor the practice of cybersquatting or typosquatting by third parties who try to impersonate the original sites.

In fact, if it is true that there is a rush to register a trademark with the INPI, the same can be said to the registration of a Brazilian domain. Not least because article 3, paragraph 2, of Ordinance SPA/MF No. 1.475/24 establishes that any and all authorized betting operators must explore the activity exclusively on a Brazilian internet domain, with the extension “bet.br”, requiring registration with Registro.br.

Thirdly, and as a consequence of the trademark registration, once the protection of their brands is guaranteed, many betting operators can invest large sums of money in advertising their brands and signing sponsorship contracts with major soccer teams to gain greater visibility. We have prepared specific material on advertising ([click here](#)).

However, sponsorship contracts can only be considered valid if the contracting betting operators have their activity regularly authorized. This means that if the betting operator is not authorized to operate in the Brazilian market, advertising the sponsorship and the betting operator’s brand (i.e. the contractual obligation itself) could be considered irregular.

This has some practical consequences: soccer clubs sponsored by unauthorized betting operators will have to stop advertising their sponsorship, otherwise they too will be in breach of the law.

In this scenario, it is important to check whether the contract provides for a contractual solution to the situation. If not, it would be possible to negotiate the termination of the contract (with possible proportional reimbursement of the sponsorship amount) or a suspension until the companies obtain a license to operate in Brazil.

Fourthly, and finally, it is important to remember that intellectual property rights related to bets are not limited to trademarks. They also include protection of the software (in the case of computer programs) or the user interface (in the case of applications or websites).

On this subject, it is important to consider that visual elements of applications and websites can be protected by trade dress or repression of unfair competition. In any case, it is also worth remembering that there are some elements essential to the game itself, which cannot be appropriated by a single player.

These are some of the main intellectual property rights concerns relating to the sports betting market. To find out more or ask any questions, please contact us!

