BRAZIL: Possible Application for Positional Marks

The Brazilian National Institute of Industrial Property (INPI) has assigned a new study group to regulate the process for obtaining protection for position marks. Position marks are nontraditional marks that aim to protect a mark placed or affixed at a specific position in a product.

Applications for position marks must usually meet different formalities, including the need to specify in the description that the mark is in fact a position mark and to represent the mark in solid lines. Broken lines would be used for indicating the position of the mark on the product and would be excluded from protection.

However, INPI has determined that 3D marks could occasionally be protected as position marks and thus has suspended examination of some applications for 3D marks until it concludes the new study. Notwithstanding, it is important to point out that the scope of protection of 3D marks is completely different from the protection afforded position marks worldwide.

3D marks protect the distinctive elements affixed to a product that actually and relevantly comprise the shape of the product, provided that such elements are not necessary or imposed by the nature of the product or technical conditions.

If INPI concludes that position marks can and should be protected in Brazil, the applicants of the now suspended applications for 3D marks would probably be required to convert and adapt them to position marks.

There is no estimate as to when the INPI study on viability of protection of position marks in Brazil will be concluded, but it is highly advisable to closely monitor any developments of this study group.

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