

Acquired distinctiveness in the spotlight: Brazilian PTO's new rules and opportunities

The Brazilian Patent and Trademark Office (BRPTO) published in the Official Bulletin No. 2840 dated June 10, 2025, Ordinance No. 15/2025, which allows **the possibility of demonstrating acquired distinctiveness through use during trademark examination**.

This new procedure represents a **significant regulatory development**, filling a long-standing gap in the recognition of acquired distinctiveness before the BRPTO.

As part of an effort to update its practices and establish clearer procedures, the BRPTO engaged in an extensive dialogue with stakeholders on the matter of acquired distinctiveness, which culminated in the issuance of this regulation. During substantive examination, demonstrating acquired distinctiveness through use shows the inapplicability of the prohibitions of articles 122 and 124 of the Brazilian IP Law.

New rules in trademark registration with acquired distinctiveness

The request for examination of the acquisition of distinctiveness may only be requested on the following dates:

- Filing date of the trademark application;
- Within 60 (sixty) days of the publication date;
- Filing date of the appeal against the rejection of the application based on lack of inherent distinctiveness;
- Filing date of the response to the opposition based on lack of distinctiveness;
- Filing date of the response to the administrative nullity proceeding based on lack of inherent distinctiveness.

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The **documentation** to prove the acquired distinctiveness through use must demonstrate:

- That the mark subject to registration has been used significantly and continuously during the three years preceding the filing date, and;
- That a significant part of the relevant national consuming public of the goods or services in question recognize the sign as a mark uniquely associated with the applicant, capable of identifying and distinguishing the related goods or services from other identical or similar goods or services of different origin.

The Ordinance will come into force on **November 28, 2025.**

Trademark registration in Brazil

Need help registering a trademark in Brazil? At **UNGRIA**, we have a local team of IP experts that can help you with the entire process. Please do not hesitate to contact us.

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