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# IP at Trade Fairs in Brazil



Brazil holds hundreds of trade fairs each year. Some of the most relevant sectors for EU SMEs are machinery, pharmaceuticals, healthcare, renewable energy, construction, food and beverages.

Trade fairs are an excellent opportunity for European SMEs to reach new customers and potential partners, strengthen the company's image, analyse the local market and display their products and services. By providing an ideal environment for networking activities, trade fairs also constitute a real platform for accessing new markets and boosting the internationalisation process of small and medium businesses.

However, these commercial events can also involve exposure to certain risks, such as counterfeiting and piracy of new products or the potential loss of the novelty of your inventions. In this sense, bear in mind that displaying products at trade fairs constitutes 'publication', which may jeopardise a potential patent or design application in Brazil.

Concerning Intellectual Property Rights (IPRs), an adequate protection and enforcement strategy is the key to minimising potential risks. Therefore, if you are planning to attend a trade fair in Brazil and you want to avoid infringements and the costs that might be necessary to take actions against these, we recommend that you consider the following recommendations.

# INTELLECTUAL PROPERTY

## 1. Best practices

### 1) Identify your specific interests

Before attending these events, make sure you are properly prepared. Firstly, establish the purpose of attending the fair. Your strategy may vary depending on your objectives: launching a new product in the market, maintaining your presence for another year or checking competing products.

### 2) Identify your assets

Evaluate the potential IPRs available in your business and adopt a strategy in line with the purpose of attending the trade fair. For instance, your trade name may be registered as a trade mark in Brazil, although it has been rejected in France. Without an IPR study you cannot be certain of this.

### 3) Protect your IPRs in Brazil

Once your IPRs have been duly identified, protect them in the best possible way.

### 4) Specialised legal aid

It is advisable to resort to local legal aid centres specialised in IP matters to protect and enforce your IPRs, since most IPRs are territorial.

## Importance of IP registrations at trade fairs

If a product has not been patented, it may still be exhibited at a trade fair. Nevertheless, the part of the product to be patented should not be shown to prevent it from being copied (reverse engineering) or rejected/invalidated when applying for a patent in the future (failure to comply with the novelty requirement). In the latter case, there is a twelve-month grace period (see Glossary) to apply for the patent.

Also, if the product is pending a patent decision by the Brazilian Intellectual Property Office (INPI), the applicant must keep in mind that, differently from trade marks and designs, patent applications are not enforceable in Brazil. Therefore, you must evaluate the risks of advertising patent pending products.

Furthermore, because Brazil faces a particular patent backlog problem, there is a considerable chance that patents already granted in Europe are not yet granted in Brazil. In addition, as previously mentioned, patent applications cannot be enforced in Brazil. Therefore, you are strongly advised to advertise the product with clear indications that it is patent pending.

Identification and proper registration of IP assets, such as trade marks, patents, and industrial designs should be performed as quickly as possible. Establishing protocols in relation to IP is highly recommended in day-to-day business operations for SMEs, as adopting this practice creates a noticeable efficiency when assessing whether and where to file for the protection of one's IPR. Accordingly, when preparing for trade fairs and/or exhibitions, it is advisable to notify visitors and organisers of rightful IP ownership, using either the © or the ™ symbols.

© discloses ownership of copyrighted material (combined with the year of creation/publication and the author's name), protecting brochures, websites, software, pictures, music, etc. ™ is a statement regarding the application of a trade mark. Finally, ® indicates a properly registered trade mark. Finally, 'patent pending' or 'patented/patent No.' implies respectively the application and the registration of a patent.



## 2. Measures to avoid or reduce potential IP infringements

### A. Prior to the fair

#### 1) Prepare the necessary documents

Both before and during the fair, it is advisable to have the following documents:

- IPR certificates;
- documentation supporting the validity and enforceability of the IPRs (such as renewals);
- documents certifying the identity of the IPR owner;
- accreditation of representatives acting on behalf of the trade mark holder.

#### TIPS and WATCH OUTS

In addition to the original certificates and titles, make sure that you bring properly translated copies.

If the foreign company's credentials are not in Portuguese or have been issued abroad, they must be notarised and 'consularised' (the public notary attests the authenticity of the signature; authentication of the document by the Brazilian consul of the country where the contract was signed is also required). A sworn translation in Portuguese is also mandatory (officially recognised by the Brazilian Chambers of Commerce).

If you suspect that an infringement is taking or may take place, bring also the documents attesting:

- the existence of infringing products or services
- the infringer's identity
- any further relevant information.

Make sure that your legal adviser (lawyer/agent) can access the exhibition centre; many trade fairs are not open to the public (professionals only).

#### 2) Carefully examine the terms of the contract and the website of the organiser

Even though organisers themselves seldom supply such documents, it is highly advisable to submit a Memorandum of Understanding (MoU) and/or a Non-disclosure Agreement (NDA) regarding sensitive pieces of intelligence and information shared between organisers and participants, establishing safety measures, as indicated below.

The website of the trade fairs usually states the policy established by the organiser of the event in the case of a possible IP infringement. In this regard, the following aspects are frequently detailed:

- the measures to be taken in the event of an infringement complaint;
- the right to expel offenders from the exhibition;
- the applicable sanctions if the infringement is confirmed, both for the current edition and for following editions;
- the liability of the organiser.

#### TIPS and WATCH OUTS

EXPOMAFE's Exhibitor's Manual states that 'infringers will have their products removed from the exhibition without being entitled to indemnity rights, and they will be subject to the consequent legal costs and penalties, even after the opening date'.

In practice, organisers rarely intervene before an official judgment is rendered.

However, they do collaborate when a police operation takes place.

Source: [www.expomafe.com.br](http://www.expomafe.com.br)





### 3) Contact the organiser

- Introduce yourself: this may be beneficial to you in the case of a potential dispute with another exhibitor.
- Verify whether they have their own Complaints Centre, although they are not very common in Brazil. If there is one of these centres, it is advisable to introduce yourself, submit the aforementioned documents and notify them regarding potential infringements.
- Be acquainted with the trade fair's IP Office – if it exists. In case of an emergency regarding infringement, not only will the IPR holder be familiar with the location, but will be known to the authorities before any potential issue arises.

#### TIPS and WATCH OUTS

The Global Association of the Exhibition Industry (UFI) has developed some useful recommendations for event organisers. Check whether the event you are planning to attend follows these recommendations and verify what tools you have to fight potential IP infringements. These suggestions include that the organisers:

1. Provide specific information on IP to the participants before or during the registration process.
2. Clearly designate or identify a person responsible for IP matters.
3. Provide contact information of:
  - customs authorities
  - IPR associations
  - lawyers who could represent the participants in the case of disputes concerning IP.
4. Provide an IP consultation and complaints centre.
5. Make available arbitration and/or mediation services for IP cases, including interpreters in the case of disputes where foreign exhibitors are involved.

Source: [www.ufi.org](http://www.ufi.org)

### 4) Contact the local authorities

Before attending a trade fair, apart from the IP registration, do not forget to register (if applicable) relevant IP licences with the designated administrative bodies, such as the Brazilian Intellectual Property Office (INPI) and the National Library (Biblioteca Nacional).

If you suspect that another exhibitor (counterfeit or pirated product) from abroad will infringe your rights, you should file a complaint before the customs authorities. This guarantees that they will be alert to suspicious consignments, and therefore able to investigate, take samples and destroy illegal material. Nonetheless, before notifying customs authorities, check whether import regulations may affect your situation (see Glossary).

#### TIPS and WATCH OUTS

Unfortunately, Brazil does not provide for a customs electronic registration system, unlike most European countries. Therefore, it is helpful to submit a hard copy of all the relevant documents in advance.

### 5) Look up the other exhibitors

Among other options, small companies can investigate other exhibitors in a simple way, such as visiting their websites to see if there are possible infringements, checking if they have a history of infringements or, if necessary, using the help of a specialised professional.

#### TIPS and WATCH OUTS

Capture screenshots of the website that contain the relevant information:

- pictures of infringing products
- contact information and identification of the owner of the website
- items that prove the infringement.

It is better to do this before a Brazilian public notary.

## 6) Develop a strategy in case of infringement

Preferably with the assistance of the IP professional who will represent you in the case of legal actions.

The type of actions you should consider:

- preventive actions: for example, if you know or have reason to believe that another exhibitor will present products that infringe your IPRs, send a cease and desist letter (C&D) to avoid said infringement;
- reactive actions: for example gather sufficient evidence for a potential legal action or organise a police operation together with the local authorities.

### B. During the trade fair

#### 1) Communicate with the other exhibitors in order to find potential infringements

Many of them do not openly offer their infringing products or services, only to customers that they trust.

#### 2) Be accompanied by a notary who can bear witness to the infringement

#### 3) Make others aware that your products are protected by IPR and that you have an active enforcement policy

- Include warnings on your stand and website
- Distribute information brochures
- Indicate that your IPRs are protected. Use the corresponding symbols (i.e. © or ™) to highlight this.

### In the case of infringement.

- **Gather as much information on the infringers as possible:** business cards, brochures, presentations, etc.
- **Take pictures of the infringing products, if possible.**

The infringer may try to avoid it, or the organisation may have a policy prohibiting photographs. In this case, contact the organisation to obtain authorisation.

### TIPS and WATCH OUTS

Most organisers make recordings for promotional purposes. These recordings may be useful as a means of evidence in the case of legal actions.

#### - File a complaint before the organiser

If there is a specialised centre or person responsible for this purpose, file your complaint providing all the information that you can, preferably in writing.

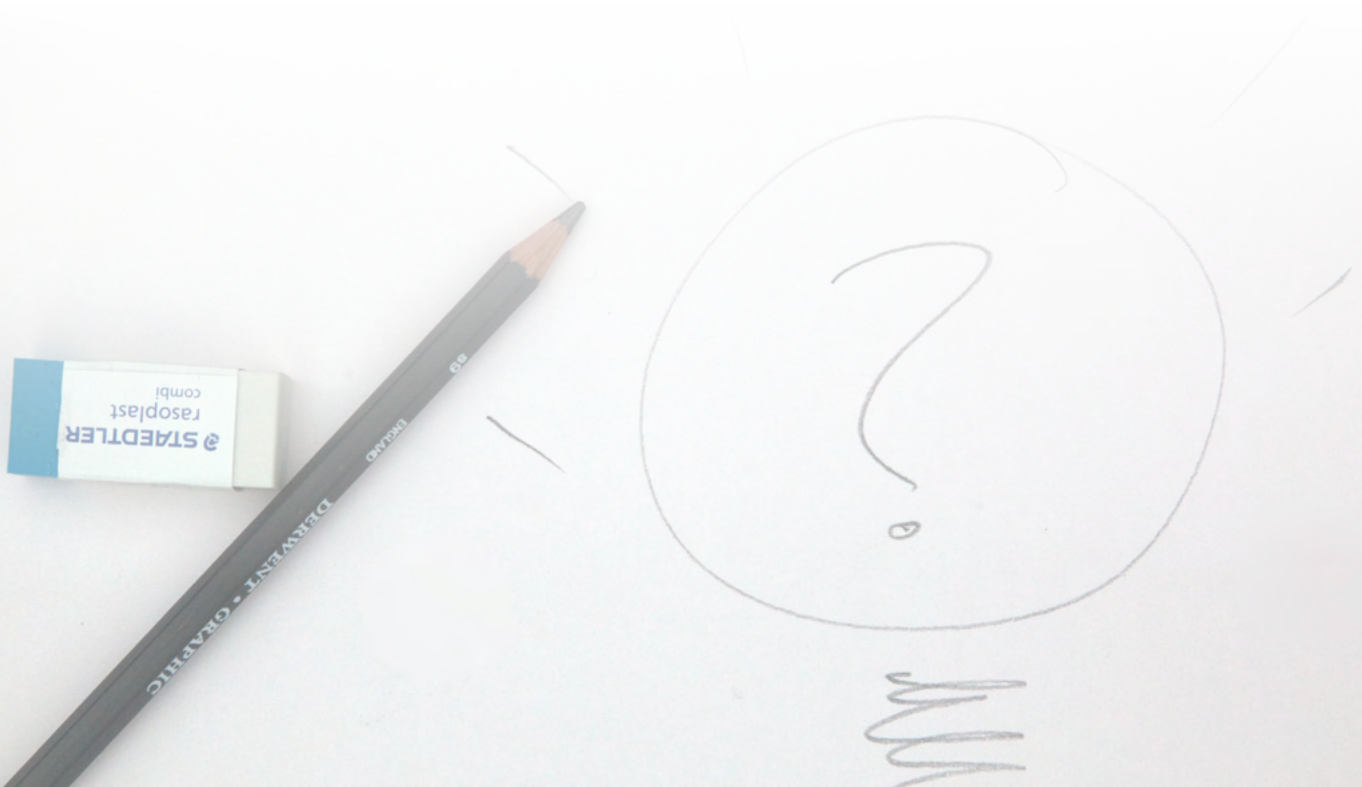
The assistance of a lawyer can be very helpful, especially if the centre or person responsible for handling complaints is not familiar with such matters.

This kind of procedure implies an exchange of submissions that leads to ordinary judicial proceedings without further measures, unless the infringement is very clear.

#### - Letter of formal notice

Once all the necessary information to bring legal actions is gathered, a formal notice or a cease and desist letter (C&D) may be sent.

It is a common tool to deter infringements and, although it is not a formal requisite to file a lawsuit, it is well regarded by Brazilian judges in the case of a legal dispute (it proves that you tried to solve the problem amicably).



The addressee is warned that:

- there is evidence of IPR infringement;
- the infringement must be stopped, by destroying the material, removing references, etc.;
- there is a specific deadline;
- failing to comply with the foregoing shall lead to legal action.

#### - **Civil claims against IPR infringement**

Because of the average duration of this type of event (3 days) and because of how slow and complex the Brazilian legal system is, it is advisable to prepare all the necessary documentation as soon as possible.

If the legal requirements are met, and if the judge deems it necessary, a preliminary injunction consisting of the immediate cessation of the infringement may be adopted.

#### - **Criminal claims against the commercialisation of counterfeit or pirated products**

In this case, a police intervention would take place at the exhibition centre. This intervention is intended to:

1. Prevent the continuation of infringements.
2. Seize the material as evidence of the alleged infringement.

Nonetheless, it is important for procedures to be conducted well in advance.

### 3. Glossary

**Enforcement:** set of actions that can be taken against IP infringements, such as legal actions or administrative remedies to stop unauthorised copying or use and obtain relevant damages for the infringing act.

**Grace period:** The grace period is a period of time before the date of filing a patent/utility model/design in which public disclosure of an invention (under certain conditions) is allowed without affecting the validity of a subsequent patent/utility model/design application, provided that a complete application is filed within 6 or 12 months of the disclosure.

**Import regulations:** A set of legal rules that regulate the entry of imported goods and services in the country. It includes general regulations (general import policy, licensing, contingencies, goods subject to customs fees, prohibited or suspended imports) and specific regulations (technical standards, packaging, labelling, trade marks and patents).





#### 4. Related links and additional information

Further information about IPR in Brazil is available on the Latin America IP SME Helpdesk website:  
<http://www.latinamerica-ipr-helpdesk.eu/>

Official website of the Global Association of the Exhibition Industry:  
[www.uffi.org](http://www.uffi.org)

Brazilian calendar of exhibitions and fairs:  
[www.expofeiras.gov.br](http://www.expofeiras.gov.br)

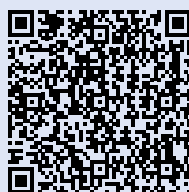
Official website of the Brazilian National Institute of Industrial Property:  
[www.inpi.gov.br](http://www.inpi.gov.br)

Official website of the National Library Foundation:  
<https://www.bn.gov.br/en>



## IP at Trade Fairs in Brazil

Download Guide



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**IP CONTENT** State-of-the-art publications (factsheets, learning modules, videos, IP glossary, info graphics, case studies and newsletters) on the protection and enforcement of IPR in Latin America – specifically addressing IP matters from the SME business needs point of view.

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**IP DIAGNOSTIC TOOLKIT** Toolkit for self-evaluation of the IP-status of the user in terms of IP knowledge and management.

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<sup>1</sup>The language offer will depend on the specific service and experts' availability.

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This factsheet has been designed using resources from Unsplash.

Luxembourg: Publications Office of the European Union, 2021

Print ISBN 978-92-9460-160-5 doi:10.2826/05983 EA-02-20-592-EN-C  
PDF ISBN 978-92-9460-159-9 doi:10.2826/123988 EA-02-20-592-EN-N