


## FROM INFORMALITY TO FORMALISM: THE BRAND AS A MEANS OF DRIVING SMALL BUSINESS

 <https://doi.org/10.56238/sevened2024.037-130>

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### ABSTRACT

Trademark registration has gained relevance, especially after the pandemic, being essential for small, medium, and large entrepreneurs to stand out in the market. Intellectual and Industrial Property are regulated by several laws, with a focus on the protection of innovations and trademarks.

**Keywords:** Intellectual Property. Trademark Registration.

## INTRODUCTION

Since the 60s, when the World Intellectual Property Organization (WIPO) was founded, until shortly before the COVID-19 pandemic, a disease caused by the new coronavirus (SARS-CoV-2), entrepreneurs, third parties interested in the area and other citizens have never heard so much about the importance of trademark registration as they do today.

People have been interested in the theme and, mainly, in giving a new look to their businesses, drawing the attention of consumers not only to the simple consumption of their products and services, but to the exchange of the most different experiences and transmission of credibility by the brands they propagate. Undoubtedly, they seek financial ascension in the market, not by chance seeking qualification, formalization and a more fierce marketing.

With the accelerated exchange of Information and Communication Technologies (ICTs), provided by the unbridled use of the internet, during and after the COVID-19 pandemic moment, there has been a growing number of suppliers in the most diverse social networks, which, most of the time, start their business without a physical establishment for sales purposes, but only virtual, in view of the low cost for the enterprise. Many of these, in other cases, due to the lack of affinity with ICTs, but also due to the low cost, for example, still resort to informal work on the streets, fairs, squares, etc.

In this context, the question arises: what do both have in common? Now, the need to advertise their businesses through an identity, because it seems quite evident the fact that those who do not show up do not sell.

Through this work we intend to demonstrate that trademark registration is important for everyone and not just for the great entrepreneur; that having a registered and well-used trademark is essential to stand out in the market; that the national legislation does not privilege some to the detriment of others, and the small, medium or large may be penalized for the improper use of the trademark of third parties; and also, that there are support networks that can be welcomed by small suppliers capable of giving the due and necessary support regarding the registration of their trademarks.

To this end, we divided the study into five sections, including this introduction. The second has brief considerations on Intellectual Property (IP) and Industrial Property; the third, with relevant information about Trademark Law (concepts, applicable rules, legal principles, etc.); the fourth, with a compilation of data on the formalization of companies for small entrepreneurs, the importance of trademark registration with the National Institute of

Industrial Property (INPI) and the consequences of misuse; and finally, the fifth section with the conclusion.

## INTELLECTUAL PROPERTY AND INDUSTRIAL PROPERTY

The World *Intellectual Property Organization* ( *WIPO*), which is part of the 16 agencies of the United Nations, was founded on July 14, 1967 in Stockholm, Sweden, and is now the world's leading regulatory forum for IP protection policies based in Geneva, Switzerland (WIPO, 1967). It is responsible for the administration of 26 international treaties on IP, including the Paris Convention of 1883 - CUP (for the Protection of Industrial Property) and the Madrid Protocol (relating to the international registration of trademarks) (WIPO, 2024).

IP is defined by the WIPO Convention, in its Article 2, item VIII, as the rights related to literary, artistic and scientific works; performers' performances and performers' performances, phonograms and radio broadcasts; inventions in all domains of human activity; scientific discoveries; industrial designs; industrial, commercial and service brands, as well as commercial firms and trade names; protection against unfair competition; and all other rights inherent to intellectual activity in the industrial, scientific, literary and artistic domains. For Barbosa (2020, p. 7), it is a chapter of Law that comprises the field of Industrial Property, Copyright, in addition to other rights over diversified intangible assets.

The Federal Constitution (CF/88) ensures protection of IP rights, raising them to the level of fundamental rights, listed in its Article 5. Item XXII, for example, guarantees copyright protection; and item XXIX guarantees inventors the temporary use of inventions and protection of industrial creations.

Industrial Property, in turn, is defined by the CUP, in its Article 1, § 2, as the set of rights that includes invention patents, utility models, industrial designs or models, factory or trade marks, service marks, trade name and indications of origin or designations of origin, as well as the repression of unfair competition.

At this point, Barbosa (2020, p. 8) recalls that the CUP highlights the fact that, although the qualification of "industrial" has been adopted, Industrial Property is not limited to industrial creations and trade per se, as it extends to agricultural and extractive industries, as well as to all manufactured or natural products, such as wines, cereals, leaf tobacco, fruits, animals, ores, mineral waters, beers, flowers and flours.

In Brazil, the rights and obligations related to Industrial Property are regulated by the Industrial Property Law – LPI (Law No. 9,279, of May 14, 1996) and, according to its Article 2, it includes: granting of invention and utility model patents; granting of industrial design

registration; granting of trademark registration; repression of false geographical indications; and repression of unfair competition.

In any innovation-based economy, the IP system has strategic relevance. In the country, this role falls to the BPTO, the Ministry of Agriculture, Livestock and Supply (MAPA) and the Secretariat of Copyright and Intellectual Property (SDAPI) (BUAINAIN; SOUZA, 2019).

The BPTO, a federal agency created in 1970, is responsible for the improvement, dissemination and management of the Brazilian system for granting and guaranteeing IP rights to the industry. Currently, it is linked to the Ministry of Economy and aims to stimulate competitiveness and innovation, thus fostering the economic and technological development of Brazil (INPI, 2024). MAPA, on the other hand, operates in the area of protection and registration of plant varieties and SDAPI, linked to the Ministry of Citizenship, is the regulatory and supervisory body in the field of copyright protection (BUAINAIN; SOUZA, 2019).

Trademarks are inserted in the context of Industrial Property and serve to designate products and services, identifying their origin and distinguishing business activity from competitors, and can also be collective or certification, as will be seen in the following topic.

## OF BRANDS

Trademark Law is governed by CF/88, by the LPI, as well as by treaties and conventions to which Brazil is a signatory, such as the CUP, the Trade Agreement Related to Intellectual Property Rights (TRIPS) and the Madrid Protocol. It is also possible to mention the Trademark Manual (INPI, 2023) and the Collection of Decisions of the 2nd Administrative Instance (INPI, 2021), which are key pieces for understanding trademark registration procedures.

In general, it is understood that the legal function of trademarks is to distinguish a product or service from competitors. However, to the common consumer, they have taken on the role of informing extrinsic attributes, related to credibility. This means that the consumer tends to trust the information provided by the producer through his brand. In this context, these signs came to be considered fundamental to the processes of choice by the consumer public (BARBOSA; CAMPOS, 2019).

The Magna Carta, in item XXIX of Article 5, ensures protection to industrial creations and, consequently, to brands, in view of the social interest and the technological and economic development of the country.<sup>1</sup>

According to the LPI, a trademark is any distinctive sign, visually perceptible, not included in the prohibitions contained in Article 124, whose main functions are to identify the origin and distinguish products or services from others that are identical, similar or similar of different origin.

Brands have presented the most diverse definitions by the main authors of works in the area. It should be noted that they are very much in line with the provision given by Brazilian law. The classical scholar, João da Gama Cerqueira, defines them as "any distinctive sign optionally affixed to the products and articles of industries in general to identify and differentiate them from other identical or similar ones of different origin" (CERQUEIRA, 2012, p. 253). Denis Borges Barbosa understands that, "when designating a product, merchandise or service, the trademark traditionally serves to signal its origin and, in relation to other trademarks for competitive items, to indicate the difference" (BARBOSA, 2017, p. 5).

However, Barbosa (2017, p. 17) also highlights that, primarily, the purpose of the trademark is to protect the entrepreneur's investment; and then, to guarantee the consumer the ability to discern the good and the bad product.

Now, thinking of a name is not always easy, as it can positively or negatively impact the business. With the choice of the name and the completion of the trademark registration procedure, the entrepreneur will incite consumption and value his business activity, consequently standing out from other competitors.

At this point, it is important to emphasize that "registration of the company's name" is not to be confused with "registered trademark", as the former concerns the filing of the company's articles of incorporation and respective registration of corporate name and trade name with the State Board of Trade; while the second concerns the registration of the trademark sign with the INPI at the national level.

This means that having a National Registry of Legal Entities (CNPJ) and making use of a trade name does not necessarily guarantee the owner the protection of his trademark, which is only acquired after the granting of registration by the competent federal agency. In fact, it is not necessary to have a company to obtain the registration of a trademark, as this

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<sup>1</sup> **Article 5 (...) XXIX** – "the law shall ensure to the authors of industrial inventions a temporary privilege for their use, as well as protection of industrial creations, the ownership of trademarks, the names of companies and other distinctive signs, in view of the social interest and the technological and economic development of the country".

can also be requested by an individual, and one or the other must carry out a lawful activity related to the product or service that the sign aims to signal. On the subject, the Brazilian Micro and Small Business Support Service (SEBRAE) clarifies:

The corporate name is nothing more than the name by which the company will be recognized in its official means when there is issuance of invoices, financial transactions, relationship with suppliers, accounting and legal issues and participation in contracts and notices.

The trade name, on the other hand, is the one by which the market and customers will get to know the company in its essence, that is, it is its popular name. (...)

What many do not know is that the creation of the trade name and corporate name and its registration with the CNPJ do not protect the trademark, since trademark registration and company registration are very different processes. (...)

It is important, however, that the entrepreneur carries out both the registration of the company and the registration of the trademark, providing him with greater security and promoting the recognition of the business and the positioning that the market demands. This is because trademark registration facilitates its identification and memorization by the public, and is widely used for marketing purposes (SEBRAE, 2022).

As for the nature of the trademarks, it is possible to classify them as: product or service, certification and collective. Article 123 of the Brazilian IP Law defines, in its item I, a product or service trademark as one used to distinguish a product or service from an identical, similar or similar product, of different origin; in its item II, certification mark as the one used to attest to the conformity of a product or service with certain norms, standards or technical specifications, notably as to quality, nature, material used and methodology employed; and in its item III, collective trademark as that intended to identify and distinguish products or services from members of a given entity.

The BPTO's Trademark Manual (2023, p. 17), in turn, describes that the collective trademark has a different purpose from the product or service trademark, since its objective is to indicate to the consumer that the product or service comes from members of an entity representing the collectivity (association, cooperative, union, consortium, federation, confederation, among others), the real owner of the trademark, and its members may use it without the need for a license of use, respecting the provisions contained in the Regulation of Use (RU). And, in relation to the certification mark, it emphasizes that its objective is to inform the public that the product or service distinguished by the mark complies with specific technical norms or standards.

With regard to their form of presentation, trademarks are classified as: nominative or verbal (consisting only of words and combinations of letters and numerals, including acronyms and neologisms); figurative or emblematic (consisting of drawings, symbols, images, graphics and geometric shapes, which may include isolated letters and numerals);

mixed (consisting of nominative and figurative elements); three-dimensional (constituted by the distinctive plastic form itself, capable of individualizing the products and services to which it applies, and dissociated from technical effect); and position (formed by the application of a sign, in a strategic position, on a certain support, resulting in a distinctive set, which differentiates the product or service from other identical ones, and is not related to technical or functional effect) (INPI, 2023).

As a curiosity, the first Brazilian position mark was granted by the INPI to the company Osklen (Corporate Name: Terras de Aventura Industria de Artigos Esportivos S.A. / CNPJ: 35.943.604/0001-56), on 05/30/2023, through process no. 830621660, for the three eyelets positioned on the front of its famous sneakers.<sup>2</sup>

In some countries, the roar of a car's engine, the fragrance (odor) of a certain perfume, colors, flavors and textures are registered as trademarks, which does not occur in Brazil, notably due to the prohibition of national legislation, since the IPL makes it clear that "visually perceptible distinctive signs" are registrable as trademarks, which, from now on, it excludes what cannot be visualized, such as sounds and smells. The prohibition does not stop there, extending to 23 items of Article 124 of the same legal diploma, which include colors and their denominations, unless arranged or combined in a peculiar and distinctive way, as well as signs contrary to morals and good customs or that offend the honor or image of people or violate freedom of conscience, religious belief, worship, among others.

The BPTO, when analyzing a trademark application, evaluates the following criteria: lawfulness, distinctiveness, veracity and availability in relation to graphic, phonetic and ideological aspects; as well as conducting prior art searches, examining any oppositions, the Applicant's statement and other documents presented, and also proceeding with a market affinity search in order to avoid confusion for the consumer (INPI, 2023).

When we speak of lawfulness, it means that the trademark sign cannot go against morals and good customs; in distinctiveness, that all the circumstances capable of making the sign unique, different from the others when analyzed as a whole, are considered; in veracity, that the sign cannot be misleading as to its origin, origin, nature, purpose or usefulness of the products or services it aims to indicate; and in availability, that the sign must be free to be appropriated as a trademark, and cannot find an obstacle in another distinctive sign protected in any way.

In Brazilian Trademark Law, some principles are adopted, including Territoriality, Specialty, and Attributive System of Law (INPI, 2023).

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<sup>2</sup> Decision in the application for registration of trademark no. 830621660, published in the Industrial Property Gazette (RPI) no. 2731, of 05/09/2023.



According to the Principle of Territoriality, the exclusive use of the trademark takes place in the country where the registration was granted, with an exception only in the case of the well-known trademark (Article 126 of the IP Law), which has international territorial protection and is sufficiently known in its field of activity. That is, it has registration in another country, but not necessarily previous registration in Brazil.

The Principle of Specialty, on the other hand, ensures that the protection of the trademark falls on products and services corresponding to the applicant's activity, that is, whoever applies for trademark registration has to carry out an activity compatible with the goods and services for which the trademark aims to sign, with protection by class. The BPTO adopts the Nice International Classification of Goods and Services (NCL), which has a wide list of 45 classes, among which the first 34 are for products and the others for services. Like the Principle of Territoriality, the Principle of Specialty also has an exception, namely: the case of the highly renowned trademark (Article 125 of the IPL), which must be registered in Brazil and which has protection in all classes.

And the Principle of the Attributive System of Law (also called *first to file*) guarantees the ownership and exclusivity of the use of the trademark to the first person to deposit/register it. The only exception to this principle is the so-called Right of Precedence or Right of the Prior User (paragraph 1 of Article 129 of the Brazilian IP Law), which prioritizes the second applicant if he proves that he has been using the same trademark as the first for at least six (6) months before the filing (or priority claimed) and this first applicant has not.

The LPI stipulates in its Article 133 that the term of validity of the trademark is 10 years, counted from the date of issuance of the registration certificate (publication of the concession in the Industrial Property Journal - RPI), and may be extended for equal periods indefinitely.

However, it is important to stick to the provisions of Article 142 of the same law, that the right obtained with the registration of the trademark may be extinguished by expiration of the term of validity (non-renewal), by total or partial waiver, expiration (non-use of the trademark for a period equal to or greater than 5 years) or non-compliance with the provisions of Article 217 of the Brazilian IP<sup>3</sup> Law; as well as to the provisions of Article 165, the trademark may be nullified through the Administrative Nullity Proceeding - PAN (within 180 days, from the date of publication of the granting of the registration in the RPI) or

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<sup>3</sup> **Article 217** – "The person domiciled abroad shall appoint and maintain an attorney-in-fact duly qualified and domiciled in the country, with powers to represent him administratively and judicially, including to receive summonses".



through the Nullity Action (within 5 years, from the date of publication of the granting of the registration in the RPI).

Thus, the ideal is to say that the trademark has a term of validity of up to 10 years, as it can be extinguished or annulled before completing the ten-year cycle.

It should also be noted that it is possible to license the trademark, which is the mere permission to use it for a fixed period (in the case of IP, corresponding to the period of its protection), without transfer of ownership, upon payment of *royalties* (ROCHA; SILVA, 2022); as well as the assignment of the trademark, which is nothing more than its sale, transfer, definitively, of its ownership (FREY; TONHOLO; QUINTELLA, 2019).

## FORMALITIES FOR BUSINESS DEVELOPMENT

One of the characteristics of the Brazilian labor market, as well as of many developing countries, is the informality of a considerable part of the jobs, which constitutes a source of income inequality. Many workers do not have access to social protection mechanisms linked to formalization, minimum wage, the right to retirement, paid leave, etc. (IMBIMBO, 2022).

The informal business is commonly seen as one that has its productive activities outside the law. Some parameters are taken into account when defining informality: absence of declaration to the State of the activity performed; the way production is organized (small-scale productivity and simple technological process); the lack of employment relationships between those who work in informal organizations and a strong bond between their members and their families (MIRANDA et al, 2011).

The population employed in these activities has reduced access to government protection mechanisms, lower job security and greater volatility in income, requiring greater attention from the authorities, who should expand public policies in order to reduce the social vulnerability of the group, which usually has a greater participation of younger and older workers, among women and those with a lower level of education.

On the other hand, there is another group associated with informality, with a higher level of education or education, who often begin to undertake in their own homes, with a broader business vision, and who end up seeking to formalize themselves at a given moment.

Unquestionably, informality is present in two worlds: in that of those lacking information (due to illiteracy or lack of support from third parties) or public policies that cover this specific group; and in the case of those who, despite the higher level of education and

access to information, start their businesses in an amateur way in order to obtain an immediate income and only then start the formalization process.

It happens that businesses only begin to prosper, in fact, when the entrepreneur decides to challenge his own mind, nourishing it with information and, mainly, seeking support from those who can offer it: the public power (e.g., administrative and/or legal sectors of the executive or judicial bodies); private companies that provide services of public interest focused on social assistance, consulting, professional training, etc., such as the parastatals of the "S System" (e.g., National Service of Industrial Learning – SENAI, Social Service of Commerce – SESC, Social Service of Industry – SESI, National Service of Learning of Commerce – SENAC, SEBRAE); or private professionals specialized in the most varied areas that involve entrepreneurship.

For the second group of entrepreneurs, the formalization of their businesses seems to be a closer reality, given the framework of information they have access to, as well as a better financial condition to bear some investment costs, which, however small, will exist.

In the case of small businesses, companies can be registered according to three main frameworks: Individual Microentrepreneur (MEI), Microenterprise (ME) or Small Business (EPP).

**The first** is the basic form of incorporation of a company; it cannot have partners; it can have a maximum of one employee and the annual revenue is up to R\$ 81,000.00 (eighty-one thousand reais). The second may have a single owner or a partnership with two or more partners, with annual gross revenue less than or equal to R\$ 360,000.00 (three hundred and sixty thousand reais). And the third, as well as the second, can have one or more owners, but its revenue can vary from R\$ 360,000.00 (three hundred and sixty thousand reais) to R\$ 4,800,000.00 (four million and eight hundred thousand reais) per year (SEBRAE, 2023).

CF/88, through its Articles 170 and 179, ensures differentiated legal treatment to MEs and EPPs, with the aim of simplifying, eliminating or reducing their administrative, tax, social security and credit obligations, in order to stimulate the competitiveness and economic development of the country, in view of the generation of jobs, income distribution, social inclusion, reduction of informality, etc.

Other legislation also deals with the subject, such as the General Law, known as the National Statute of Micro and Small Enterprises, created by Complementary Law (LC) No. 123 of 2006 and modified by LC No. 128 of 2008 to include the figure of the MEI in its context. (OTTO; VIEIRA, 2020).

The advantages of formalizing as a MEI are: the professional will have no cost with its opening and closing, will acquire a CNPJ, will issue invoices, will have social security benefits and the right to bank credits with lower interest rates, will be able to hire an employee and participate in bidding processes. The disadvantages of remaining in informality include the lack of credibility in the market, lack of social security support, high bank interest rates and the risk of inspections and confiscation of assets (GILBERTO; SAINTS; FREITAS, 2020).

In addition to the entrepreneur observing his business as a company, he should not forget to protect his IP assets, especially his trademark, which, it should be noted, can be owned by an individual or legal entity and, in the words of IP specialist Daniel Chalhub, be valued at millionaire figures:

The brand of an institution, company or person is an asset that can be valued in millionaire figures, representing not only its reputation and its identification with other institutions, but also being essential to present to the public its proposal and the values of that particular company or person. Due to the social and historical importance of the brand, it is essential to protect and manage it with the utmost care. (CHALHUB, 2020, p. 142)

In Brazil, the trademark application is made with the BPTO, exclusively on the internet, through the e-Marcas system, available on its portal. However, the procedure is not as simple as many think, as it requires in-depth specific technical knowledge or the help of specialists in the area, either through consulting, in order to enable the holder to perform it himself, or assistance as an attorney-in-fact, proceeding with all acts.

In research carried out by Neves (2023, p.71), "In 2022, about 25.40% of total trademark registration filings took place without an attorney-in-fact; of these, only 7.32% were successful". For him, the data suggest evidence of encouragement to the entrepreneur to file the trademark registration application without the constitution of an attorney-in-fact, even without the minimum of technical knowledge on the matter.

It is of paramount importance that a prior feasibility opinion is carried out, through a professional specialized in the area, to verify whether the trademark sign is registered or not, and, mainly, to know if it is registrable, in view, respectively, of the possible administrative and judicial negative repercussions, as well as the numerous specificities of Trademark Law. If it is not possible to hire a specialist, it is recommended that the entrepreneur seek help from SEBRAE for guidance on the procedures, in addition to the INPI itself, where the trademark registration application is made, because on its website the most diverse manuals and tutorials are available, which must be studied in depth to, Thus,

slightly reduce the chances of failure when filing the application for registration of a given trademark.

The improper use of a certain trademark by third parties may cause its owner property and moral damages (these are considered by doctrine and jurisprudence as in *re ipsa* or presumed damages, as they derive directly from the evidence that demonstrates the counterfeiting and dispense with the proof of actual damage); as a result, the victim may appeal to the judiciary to obtain compensation in accordance with Articles 207<sup>4</sup>, 208<sup>5</sup> and 209<sup>6</sup> of the IP Law (NEVES, 2023, p. 90).

From this context, it can be inferred that every entrepreneur in Brazil, from small to large, has an obligation to know that he can be penalized for the improper use of a trademark, because the national legislation does not benefit some to the detriment of others because they are beginners in the market or are unaware of the law.

On the other hand, the responsible use of a certain trademark, resulting from the property obtained with the registration, guarantees its owner exclusivity of use, adds value to its products and services, generating credibility and prominence in the market, as well as enabling the generation of revenue through its licensing, which has been "reinforcing the balance sheet of companies, increasing the value of shares or being used as collateral for loans or financing" (BUAINAIN *et al.*; 2019, p. 76).

Having highlighted the possibilities of formalization of companies and the importance of trademark registration for all entrepreneurs, including those who are unable to afford the cost of specialized technical advice, then seeking support networks, one more benefit for small businesses must be considered: the BPTO also grants a special discount of up to 60% on fees and services for trademark and patent registrations for individuals (who do not hold equity interest in a company in the field to which the item to be registered belongs), MEI, ME, EPP and other specific groups (INPI, 2022).

Therefore, it is clear that the opportunities to leverage the business are arranged in the most diverse ways, requiring their owners only more awareness, organization and willpower to take advantage of them.

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<sup>4</sup> Article 207 - Regardless of the criminal action, the injured party may file the civil actions it deems appropriate in accordance with the Code of Civil Procedure.

<sup>5</sup> Article 208 - The indemnity shall be determined by the benefits that the injured party would have received if the violation had not occurred.

<sup>6</sup> Article 209 - The injured party shall have the right to have losses and damages in compensation for losses caused by acts of violation of industrial property rights and acts of unfair competition not provided for in this Law, tending to damage the reputation or business of others, to create confusion between commercial, industrial establishments or service providers. or between products and services put on the market.

## CONCLUSION

According to the study carried out, we found that many Brazilian workers still do not have access to social protection mechanisms linked to formalization, minimum wage, the right to retirement, paid leave, etc. (IMBIMBO, 2022) and that they end up resorting to the informal market as a means of subsistence.

Despite this, it was found that in Brazil there are support networks that can help beginner entrepreneurs to leverage their businesses, as well as legislation favorable to this group, being more difficult to occur with the totally laymen, who are unable to take the first step, because they do not know who to turn to and what measures to take, which must be fought through public policies aimed at the dissemination of the most varied rights and aids.

Of great value is the observation made by Sebrae (2022), regarding the importance of "that the entrepreneur carries out both the registration of the company and the registration of the trademark, providing greater security and promoting the recognition of the business and the positioning that the market demands. This is because the registration of the trademark facilitates its identification and memorization by the public".

Brands, in general, are IP assets that are extremely relevant to market perception, since it is through the signal that identifies the company, its products and services, that consumers glimpse the credibility, prominence and fame of the business.

In this area, small entrepreneurs who do not have the financial conditions to hire a technical assistance specialized in trademark registration, can turn to SEBRAE and INPI, which provide a generous framework of information and study materials on the subject, in order to assist them in the registration of their trademarks, in addition to the former, generally, providing support through professionals regarding the procedure for filing the application for registration with the INPI, and this agency, in turn, offers a discount of up to 60% on the fees and services of such registrations for some individuals, MEI, ME, EPP and other specific groups (INPI, 2022).

However, it is worth remembering that the procedures have to be carried out in a very responsible way, and the brand must be studied even before being disclosed in the market. Or rather, studied and registered, since the small, medium or large entrepreneur can be penalized for the improper use of the trademark of third parties, and only the value of the damage caused is discussed in court, since the damage itself is presumed.

That said, there is no doubt that the brand is a means that can boost small business, allowing the entrepreneur to earn value with the investment in the medium or long term, including through licensing or assignment of the brand, when it is well worked, adding value to the products and services offered and gaining public data.

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