



Landlords in Trouble? Brazilian Superior Court of Justice Expands Liability for Counterfeiting - Implications for IP Protection

Montaury Pimenta, Machado & Vieira de Mello

Brazil | March 7 2025

The Brazilian Superior Court of Justice (STJ) reaffirmed its position in previous cases that property owners who knowingly lease spaces for the sale of counterfeit products can be held civilly liable for damages resulting from this practice, further solidifying the legal recourse available to companies harmed by counterfeiting in their efforts to combat this illicit activity in Brazil.

The ruling in *Nike & Alpargatas v. Galeria Pagé Owners* – REsp 2096010/SP reinforces the fight [YF1] [DF2] against counterfeiting in Brazil, solidifying the understanding that landlords cannot escape liability by ignoring counterfeiting activities on their properties.

Case Background

Nike and Alpargatas filed a lawsuit against stores located in Galeria Pagé, one of São Paulo's most notorious commercial centers for selling counterfeit goods.

Throughout the proceedings, it was found that the owners of Galeria Pagé had full knowledge and facilitated the practice of illegal acts within their property, indirectly profiting from them. As a result, the judge decided to include the property owners as defendants in the lawsuit.

The STJ ruling reaffirmed its understanding and confirmed the decision handed down by the São Paulo Court of Appeals, recognizing the joint liability between store owners and property owners in the counterfeiting[YF3] [DF4] scheme. The court determined that the omission in relation to the flagrant illicit practices carried out on the premises constitutes fraud and unfair competition.

In summary, the STJ's ruling was based on three core principles:

1. **Landlords' Duty to Supervise** - The court emphasized that **commercial property must actively monitor rented units**, especially when there is a history of counterfeit sales at the location.
2. **Financial Benefit and Joint Liability** - The ruling confirmed that landlords **financially benefited** from illicit activities by maintaining profitable lease agreements while overlooking violations committed by tenants.
3. **Social Function of Contracts and Collective Interest** - The decision also highlighted that renting spaces for the sale of counterfeit goods **harms not only the affected brands but also the market, consumers, and tax authorities**, reinforcing the necessity of enforcing the social function of real estate contracts.

Impact on landlords and IP owners

For landlords and property managers, the STJ ruling reinforces key legal precedents regarding the liability of commercial property owners, establishing that:

- **Deliberate omission** regarding counterfeiting **can lead to liability for unfair competition**;

- Maintaining leases in areas with a history of counterfeiting may result in **severe legal consequences**;

In addition to the restrictive lease clauses, landlords must take effective preventive measures, such as carrying out periodic inspections and terminating leases in cases of infringement, thus avoiding joint and several civil liability.

For IP owners, on the other hand, this is yet another judicial precedent recognizing the liability of property owners who facilitate or fail to act against the sale for counterfeit products. This strengthens strategies to combat counterfeiting in Brazil by holding landlords accountable for providing space for such illegal activities, even if they are not directly selling these products.

The STJ's ruling in *Nike & Alpargatas v. Galeria Pagé Owners* strengthens and consolidates the growing judicial recognition in Brazil that property owners who knowingly facilitate or fail to act against the sale of counterfeit goods can be held civilly liable. The decision builds upon prior case law and strengthens the responsibility of commercial property owners to take proactive measures against illicit activities on their premises. This ruling also broadens legal recourse for IP owners, further advancing Brazil's efforts to combat unfair competition and safeguard legitimate businesses from the detrimental effects of counterfeiting.[YF5] [DF6]

Montaury Pimenta, Machado & Vieira de Mello - Yuri Fancher Machado and David Fernando Rodrigues

Montaury Pimenta, Machado & Vieira de Mello is a Leading Brazilian Intellectual Property (IP) law firm, distinguished for its work in complex IP Litigation, IP Prosecution, and Enforcement. Click here to learn more about the firm <https://www.montaury.com.br/en/>

Powered by
LEXOLOGY.