

## Auto Parts: Brazilian Antitrust Authority Recommends the Sanctioning of Car Industries for IP Misuse Of Registered Industrial Designs

Por Rafael Salomão Safe Romano Aguillar | [rafael.aguillar@kasznarleonardos.com](mailto:rafael.aguillar@kasznarleonardos.com),  
e Gabriel Leonardos | [gabriel.leonardos@kasznarleonardos.com](mailto:gabriel.leonardos@kasznarleonardos.com)

**T**he Superintendency of the Brazilian antitrust authority (Conselho Administrativo de Defesa Econômica – CADE) has recommended the sanctioning of three major automobile manufacturers for infringing the economic order on grounds of an alleged abuse of intellectual property rights.

CADE's Superintendency is the agency of the federal government in charge of analyzing acts of economic concentration, such as mergers and acquisitions, and the occurrence of infringements of the constitutional economic order. CADE, the national antitrust watchdog, is encharged with enforcing the constitutional economic principles, such as free enterprise, freedom of competition, social role of property, consumer protection and the restraining of abusive behavior.

In the present case, automobile manufacturers have been accused by a group of independent auto parts manufacturers of trying to prevent competition in the aftermarket of car parts replacement through the enforcement of registered industrial designs.

CADE's Superintendency has rejected the automobile industries' argument that restrictions on validly granted and in force design registrations other than those of the Industrial Property Act cannot be put in place on antitrust grounds. According to CADE, IP rights can be restricted if and whenever they unduly undermine free competition.

In view of the above, CADE understood that restrictions could be applied to the case, since the incentives on creation and innovation, which are the very motivation of IP Law, in the foremarket would not decrease because of the competition brought by independent auto parts manufacturers in the replacement aftermarket. On the other hand, whilst the incentives of the auto industry are not harmed by such competition in the aftermarket, the harms to consumers and to the competition itself in the auto parts market are considerable, since, according to CADE, the industrial design registrations give rise to temporary monopolies in the supply of car parts.

It is always worth remembering that the current Brazilian Antitrust Act, differently to its predecessor, expressly considers the possibility of abusive misuse of intellectual property rights as a hypothesis of infringement of the economic order. Case law on this matter is still being built by CADE and the courts.

The penalties in Brazil for the noncompliance with the antitrust legislation vary according to the gravity of the conduct. Among other, the law sets forth the following sanctions: prohibition to contract with the Public Administration for at least five years and penalties of 0.1% to 20% of the annual turnover of the infringer.

The case is still pending of judgment by CADE's administrative court, which shall analyze the Superintendency opinion and eventually condemn or absolve the car manufacturers.

Kasznar Leonardos follows up this important issue and is fully available to provide you further information. Please feel free to contact us, whether in written or by phone, directly to your usual contact within our office or to [Gabriel.Leonardos@kasznarleonardos.com](mailto:Gabriel.Leonardos@kasznarleonardos.com).