

nº 8
12/2021



PROPRIEDADE NO ASSUNTO

Special edition ESG - Brazil



PERSPECTIVES
INNOVATIVE
ON PROPERTY
INTELLECTUAL

Di Blasi,
Parente &
Associados

 Instituto
Di Blasi,
Parente

Introduction

This edition of “Propriedade no Assunto” magazine is dedicated to the ESG theme, the acronym that has become increasingly frequent in business meetings, in consumer demands, in investment decision-making processes and in the media. It is an agenda that is in the DNA of Di Blasi, Parente & Associados firm and intrinsically linked to Innovation and Intellectual Property.

The special guest for the interview column is the professor and researcher in the Innovation and Competitiveness area at Fundação Dom Cabral Carlos Arruda. He talks about the main challenges to implement the ESG agenda in Brazil and around the world, including intellectual protection as a strategic advantage for companies.

In the six articles of this edition, you'll see how the ESG agenda can differentiate from several views about our patents, trademarks, legal and government relations areas. Our Patents team reveals how there was an expressive number of filings at INPI due to the ESG theme popularization in the country. Our Trademarks team illustrates how Coca-Cola and Samsung used the ESG agenda to differentiate themselves in the market by collaborating with a positive impact on society. Our Legal lawyers show how ESG agenda can be an ally in the fight against piracy, which generated an estimated loss of R\$ 288 billion to the country only last year, and a trend that can reach the country is: is it legal to fire or not hire external partners that are not in line with the ESG guidelines?

We also have an article about the participation of Di Blasi, Parente & Associados on the Make Climate Action Everyone's Business forum, organized by ICC (International Chamber of Commerce) with COP26, the United Nations Climate Change Conference, held in November 2021 in Glasgow, Scotland.

We hope that you take advantage of every word and example published in this edition to realize that being concerned about the environment, social balance and governance is good for businesses and a responsibility for all of us.

Enjoy it!

Ronaldo Gueraldi & Editorial Committee

summary



- 4** ESG: a matter of purpose
 - 9** ESG and its link to innovation and intellectual property
 - 12** Green economy: matching innovation and sustainability
 - 17** The importance of esg in the corporate world: in search of a better society through brands
 - 20** Piracy: a matter of ESG and the business strategies to fight against it
 - 24** ESG, innovation and intellectual property: why companies shall invest in this partnership
 - 26** Requirement of ESG practices and refusal to hire: precautions for a (very) near future
- 

ESG: A MATTER OF PURPOSE



Guest:

Carlos Arruda

Professor in the area of Innovation and Competitiveness and Executive Manager of the Innovation and Entrepreneurship Center at Fundação Dom Cabral.

ESG, the initials for environmental, social and corporate governance issues, is an agenda that is still being consolidated. It has been more spoken than practiced, but which is getting more and more space in Brazilian companies based on a leadership committed to this purpose. It is not just about complying with the law because of compliance, but it requires a strategic alignment that will require innovation, investment and structure.

This requirement does not come from nowhere. It is an answer to the very serious environmental accidents in the world since the 1980s. In the past it was called "corporate responsibility", then "sustainability" and now ESG. And it goes even further: ESG is a new behavior of the changing society that has a dismal track record behind it. The analysis is made by Carlos Arruda, professor of Innovation and Competitiveness at Dom Cabral Foundation, who guarantees that innovation is the engine of ESG and that is necessary investing in research and in the development area to generate speed of change.

For Arruda, Brazil is a benchmark regarding ESG and what we need is getting scale, as leaders are more aware of the importance of environmental, social and governance issues as a strategic factor of competitive advantage.

Have innovation teams in companies realized that the ESG agenda is a source of opportunity?

Innovation is an agenda for all companies. It is a strategic choice. Innovation is not mandatory, but without it, there will be difficult to stay in the market on a long-term basis. I get very uncomfortable when, during my researches, I realize that companies practice innovation looking in the rearview mirror, that is, initiatives that they should have done in the past but they didn't do and now they are trying to compensate somehow. This is the worst innovation, known as competitive loss innovation.

If we start from the idea that innovation is part of the strategy of all companies and that ESG is changing the companies' strategy, it is clear that ESG agenda has become relevant to the company's survival. However, ESG is not yet part of the focus of the innovation manager, which is still focused on the customer, enhances and new ways of adding value. This is critical. But if I include the environmental agenda, which is part of ESG, as a strategic factor, how am I going to innovate this? And, consequently, it generates internal and external pressures. There is a case we studied about fleet leasing that was the following: when the company asked for funds from a foreign investor, the answer was: "ok, as long as you reduce your CO2 emissions". So now the

company started having a challenge that it didn't have before: how do I reduce CO2 emissions in my business? The solution was to start supporting the use of electric cars, the use of ethanol... It started to adopt short-term changes, which is fuel substitution, and long-term changes, which are the development of new technologies, due to a foreign investor that came for the environmental agenda.

The subject studied in the academy determines its relevance in the modern management model. Is the ESG agenda already a line of academic research? What area would it fit in: leadership, strategy, innovation, organizational theory?

Not yet, it's still in pieces. The environmental issue already has a specificity with specialists, the social issue is more linked to the human resources department, and there is still no such training. There is a concern about agencies that support and at the same time evaluate. They are concerned about preparing people, so postgraduate programs are emerging in the sustainability/ESG professionals training. But over time, I believe that this cross-cutting formation will emerge, it incorporates the environmental, social and governance elements, that has its specificities.

In the professionals training, the ESG agenda is still on an additional agenda. Besides looking at finance and marketing issues, for example, it will look at ESG issues. We are still in a learning phase, we are conducting a project called "ESG motor Innovation", because innovation is the means, not an end. The company does not innovate only to innovate, it innovates to achieve some strategic goal. I want to preserve my company value on a

long-term basis, so I create a continuous cycle of innovation. I want to improve my company's margin, so I create a short-term innovation cycle to improve efficiency and productivity. I want to increase my sales with innovation, so I start creating new products and services with different innovations. Some of them are on a short-term basis, looking in the rearview mirror because my competitor did it and I didn't, so I need to go for it; many of them are on a medium-term basis, being customer-focused primarily; and some are long-term ones, which I'm going to create a new business or a new activity that didn't exist before.

What are the current challenges for the implementation of ESG agenda in Brazil and around the world?

In the environmental scope, the current challenge is reducing emissions and waste. ESG is to achieve some goal, so I'm going to reduce emissions to attract investors, place myself in the market as a company that has reduced environmental impact or I'm worried about the future of the planet, for example. Reducing emissions, in my opinion, is a more immediate and "easy" agenda to be controlled, because for each specific volume of CO2 emission it is possible to make some compensation or it is possible to change the energy source, it being wind or solar, for example. The other side, still on the environmental agenda, is waste, such as using recycled paper. If I work at a construction business, how do I generate less waste? So it's about analysing my business and knowing the environmental impact we have. More advanced companies, such as Natura, which was the first

company evaluated as a B Corp in Brazil, which are those committed to the environmental and social agenda in a strategic and legitimate way in their business, they are concerned about their impact on the Rain Forest. So, the company trains people who use raw materials in the Amazon to extract in a more sustainable way, trains their executives to make decisions thinking about the environmental and social impact they have. If the decision has any negative impact, it is postponed. It is about investing in training in your company and in the supply chain.

In a country like Brazil, the great social obstacle is diversity, such as gender, race, sexuality, etc. How can we have a reflection of society in the company and act consistently? Experts call it unconscious bias where this prejudice is embedded in the culture. If a white and a black person apply for a trainee position, the white one has a higher percentage of success. Some companies are adopting blind selections and dropping prerequisites, such as English proficiency, to equalize competitiveness. In a pandemic context, we are in a society that is impoverishing. Therefore, it is important to reflect on my contribution, as a company, to reduce inequality in society.

In the third letter of ESG, I would say that we still have a very large number of companies that do not have a consistent governance model, an organization with decision control, places where the decision is concentrated in the hands of one person and this needs to be advanced. I believe that the most urgent challenge is organizing the governance levels in companies.

Europe has a more advanced governance and social agenda, but it is still the critical factor in the world. The number of companies committed to this ESG agenda is still relatively small, I don't have an exact number, but I believe we are talking about 10% of companies worldwide. But there are companies engaged with isolated agendas, for example, in the US, Bill Gates talks about zero emissions, it's not CO2 compensation, it's really zero emissions.

Is ESG already a consolidated agenda or is it still involved in confusion of concepts? For example, many people confuse environmental with sustainability, volunteering with social, and transparency with governance.

ESG is not yet a consolidated agenda. It has got more fame and reputation than use. Many companies still confuse it, and that's the danger of having an agenda in speech rather than practice. There is much talk about companies doing what they do, but they should say what they do. The problem is when the opposite happens: saying what you don't do. It's greenwashing and we're very concerned about it. Society is demanding more sustainable attitudes; investors want to know and there's a group that puts it in their speech without practicing it.

Social in fact is not volunteering. In the past it was thought that it wasn't, but today it is part of the ESG agenda, but it is important to be proactive. There is a big difference between the ESG agenda and sustainability. Sustainability got stuck in two factors: compliance, which is complying with the law, and customer reaction. The customer could say "I will not buy your service until you prove to

me that your company doesn't do slave labor", for example. That's following market pressure. ESG is the opposite, the company says it will follow this pattern and will seek support and resources to make it happen. It is a proactive and not reactive attitude to compliance or to the market. By principle, we are seeing that this is ESG's great differential for sustainability. Sustainability tends to be reactive while ESG tends to be proactive. Proactivity in companies requires leadership. It is necessary to have someone in the company who assumes this role and decides to move into that direction. So ESG requires two factors: proactivity and the leader who seeks to position the company in a different way in the market.

There was talk of compliance and demand from society. Does it make sense to talk about legislation or evaluation criteria to measure the good practices of the ESG agenda?

Legislation is for things that impact society as a whole, for example, deforestation. What is common is legal. One day, talking to someone, I heard him/her say that his/her company goal is paying the same wage for men and women. I said: "this is not a goal, this is the law. If you are paying women less than men, you are breaking the law". Whatever protection is, the law makes sense. Whatever are business practices which they differ from one another, the system of indicators can be interesting. And there are a lot of them. When someone says that he/she is thinking about starting to adopt the ESG agenda, we recommend that he/she goes to the B3 website and see B3's evaluation indicators and do a self-assessment. Then, he/she takes the indicators that are evaluated, tested and evolving, they are not static, and does an analysis.

Why can't it be a law? Because that's where the company differentiates itself. It could have both: a regulatory framework for what could be of interest to society as a whole and indicators and certifications for separating companies.

An important point to reflect is that every technological advance helps those who have the technology, that is, it generates some type of competitive discrimination. Every technological advance is discriminatory, something inherent to the capitalist system, which increasingly induces companies to seek innovative solutions. Technological advances generate discrimination, at the same time generate reaction and competitors copy and feed a constant search for new ideas, new applications.

In your opinion, is ESG agenda a fad, a trend or a reality? Are you optimistic about the future of adopting this agenda?

It is a trend. It's here to stay and be part of the companies' strategy, that is, it will make a profit, it will reduce inequality, increase diversity, reduce environmental impacts. It doesn't make sense these days for a person to say "my company only makes a profit". You can't delegate these responsibilities to governments through tax collection, they can't handle it. All over the world, changes are planetary. ESG is an agenda that is here to stay, it is differentiating, generates competitive advantage, companies that adopt it will have more returns and more gains. Young people will soon be able to choose and ask themselves if they are going to work in a company that does not generate environmental impact or another that destroys the Amazon, for example. Young people

will start to be more selective in this process, and so will be the consumers. It will be an attraction and retention differential. It is here to stay and will change the way we manage. Today it is in a fashion movement. This fashion phase will pass and will remain as a competitive business model. In a very near future, we are going to start seeing training in ESG, postgraduate studies in management focused on ESG, and in this way we are going to consolidate this process of change in society.

In addition to the ESG agenda, we are seeing a technology change. Joining ESG with digital will have incredible changes enabling us to act more intelligently and responsibly. Some companies are starting to care about whether their customers and suppliers have an ESG agenda and wonder if they want to work, have a partnership, with a company that has some environmental, social or governance damage. It is the coherence beyond the speech, but in the relationship with the customer. If my customer is using my technological innovation to do some damage, I may assess whether I want to keep this business partnership. Until recently, as long as the company wanted to buy, I would sell. Now we see this incipient discussion in Brazil.

Innovation plays a relevant and driving role for the implementation of the ESG agenda. And when it comes to innovation, we must take intellectual property into account. How to balance and enhance this relationship? How are companies seeing the role of intellectual property in implementing the ESG agenda?

As these are relatively new topics and as ESG has gone hand in hand with technology and

innovation, many companies cannot innovate alone and have sought partnerships with other technology companies. And there is a great discussion about advances that have a big impact on society, such as waterless mining or waterless car washing: should I protect my intellectual property and be exclusive or make it public because it is good for all of humanity? It's a new discussion. Today, as I develop a solution, I have exclusivity to explore it or I can license it to anyone who wants to pay. On the other hand, if I develop something impactful, should I protect this innovation, even though humanity would benefit from this solution? This is an agenda that is still not well resolved. Some experts claim it equals medicine and public health. If you develop a vaccine for Covid, for example, you commercially explore this knowledge. Other experts say it is similar to AIDS medication in which patents have been broken. There is a discussion that does not have a direct answer.

First of all, I will need to develop more open innovations with companies and research centers on environmental and social topics because it is new for everyone. Then, if this knowledge is of global interest should I protect it with a patent? The current trend is rather to protect and commercially exploit how vaccine companies are acting. Commercially explore and leave the knowledge in the drawer stuck is forbidden.

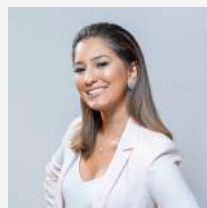
ESG AND ITS LINK TO INNOVATION AND INTELLECTUAL PROPERTY



author:

Cintia da Silva Lima

Chemical Engineer and Patent Specialist at Di Blasi, Parente & Associados



author:

Ana Paula D. C. Couto

Pharmacist and Patent Specialist at Di Blasi, Parente & Associados

Currently, we are in the “conscious capitalism” era, in which companies need to adapt themselves to a business model that protects the environment, promotes actions with a positive social impact and adopts ethical corporate conduct. This new era can be summarized in the rise of the logic of environmental, social and corporate governance (ESG) factors as indicative of the health of companies’ businesses.

ESG is the acronym for Environmental, Social and Governance, being a set of business practices related to sustainable development as a strategy for financial attraction and for structuring a culture of integrity and governance.

The term ESG first appeared in a 2005 report titled “Who Cares Wins” as a result of an initiative led by the United Nations (UN). At the time, financial institutions from nine different countries, including Brazil, got together to present guidelines and recommendations on how to include environmental, social and governance issues in business practices. The report’s conclusion showed that the inclusion of these factors in the financial market resulted in more sustainable markets with better results for society.

The word “Environmental” refers to environmental criteria regarding the proper use of natural resources, especially the non-renewable ones and the environment conservation for the future generations.

“Social” refers to social responsibility, that is, the interaction between the company and the people involved in the business, highlighting issues such as the guarantee of human rights, tolerance and equality, in order to provide greater social inclusion in the corporate environment, as well as avoiding exploitation and abusive business relationships.

The word “Governance” is related to governance, aiming at the implementation of measures through risk and compliance analysis, monitoring and review of the ESG policies. A company in compliance is one that strictly complies and observes the legislation to which it is subject and applies ethical principles in its decision-making, preserving both its integrity and its employee’s integrity.

Therefore, for a company to be considered ESG, it needs to adopt actions to protect natural resources, in addition to engaging socially and must also be integral in its corporate processes and invest in mechanisms to prevent corruption, harassment and discrimination.

ESG proposals adoptions is an international trend, since practices bring competitive advantages over the new market model, in which sustainable innovation, on a long-term basis, generates value for shareholders and demonstrates a significant potential for financial performance.

In addition, the demand for companies that adopt ESG practices grows in the digital transformation context, with the need for a strategic alignment that requires innovation and investment. In the past, investors had only profit as a priority. However, these investors are increasingly looking to companies for management that makes environmental, social and governance issues essential to their investment strategy. In May 2020, for example, Larry Fink, CEO of BlackRock which is the world's largest asset manager, published a letter setting out criteria and benchmarks for investments aimed at raising awareness about the importance of ESG practices. According to Larry Fink, investors are increasingly considering ESG issues and recognizing that climate risk is an investment risk.

In this context, intellectual property is of paramount importance for the creation, management and protection of sustainable innovations within the controlled environment of companies and it is concluded that innovation is one of the engines of ESG, as this subject only becomes possible after an investment in research, innovation and development of new more sustainable technologies.

To determine how a company adheres to ESG principles, indicators are drawn up on which investors rely when they are looking for a company to invest. About this, a study recently published by InTraCoM GmbH investigated how companies' innovative behavior is influenced by ESG guidelines through the patents they file, assuming that the "Environmental" sustainability aspect would manifest itself mainly in patents, while "Social" and "Governance" aspects would be more difficult to technically represent.

In that study, patents worldwide were filtered according to ESG principles based on their international classification. As a result, it was

found that the filing number of claims linked to the ESG guidelines has already exceeded its peak compared to other inventions not linked to the ESG guidelines. Applications related to ESG continue to increase slightly, while applications not related to ESG guidelines have decreased over the past two years. Regarding the valuation of these patents, it has been observed that ESG patent values increase compared to non-ESG patent values at a significantly higher level. This analysis confirms that ESG guidelines appear to be an innovation booster.

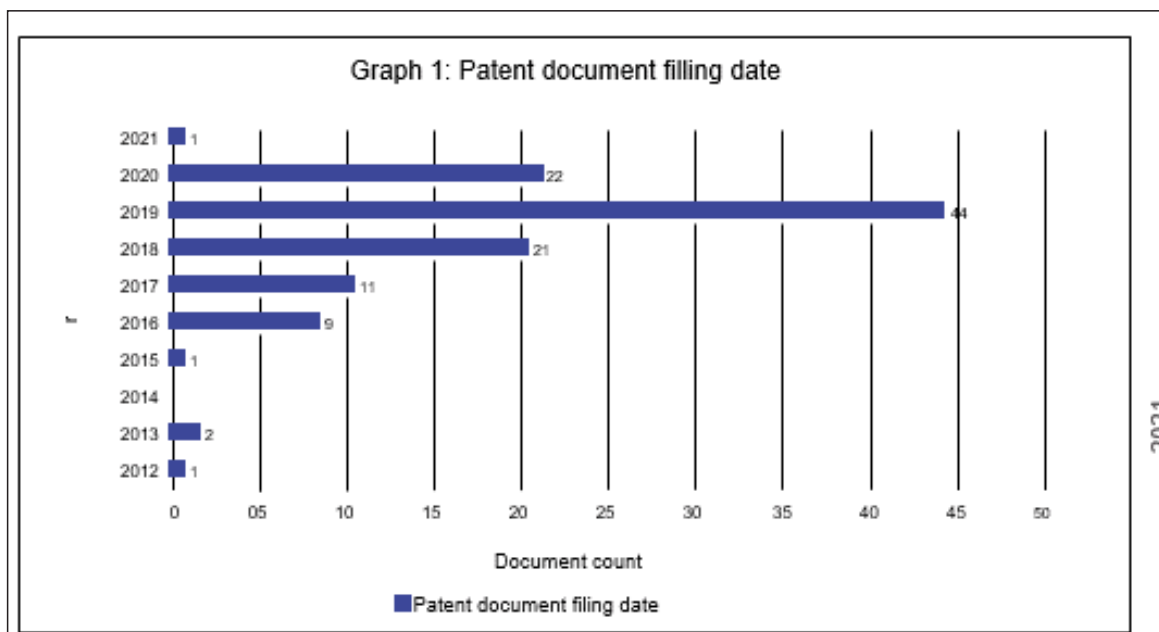
InTraCoM GmbH, in partnership with Technical University Cluj-Napoca, carried out another study authored by Zagos and Brad (2020) regarding the quantification of sustainable patents to increase ESG factors using bibliographic indicators for evaluating the patent portfolio. It was concluded in this second study that patents are clear indicators of the activities performed by a company and it is worth examining them more closely, mainly because the data are high availability, quality and well-structured rated. Patent metrics are better to enhance a company's ESG profile and, although patents only clarify a specific aspect of ESG, that is, R&D activities and their results, they are an important and easily accessible link for an ESG assessment of the companies. The study showed that using patent metrics to determine a patent portfolio quality provides insight into a company's sustainable technology development. Also, regarding sustainability and innovation, within the scope of intellectual property, we have several government incentives in this area. In this sense, looking for contributing to the reduction of global climate change and accelerating the examination of patent applications related to technologies aimed at the environment, the Brazilian PTO offers a modality of priority processing for the patents applications that claim the protection of green technologies (INPI Resolution 239/2019). Green

technologies are considered to be inventions directly applied to (i) alternative energies, (ii) transport, (iii) energy conservation, (iv) waste management and (v) agriculture.

According to statistical data made available by the Brazilian PTO between 2019 and 2021, 121 applications were requested for priority processing in this modality, in which, from the applications evaluated, more than 90% were admitted for meeting the requirements defined in INPI Resolution 239/2019. It is worth emphasizing that, on average, in less than a year (counted from the application acceptance in the priority process in the green technologies modality) the final decision is completed, which is an extremely short time when compared to the normal examination procedure by INPI, which normally takes from 8 to 10 years.

In addition, from the 112 applications accepted for priority processing in the green technologies modality from 2019 to 2021, all of them have already had their technical decision completed, with more than 60% of the requests with a favorable decision (granted), 21% were rejected or withdrawn, and 16% are appealing against the application rejection.

When analyzing the filing date of these applications, it appears that most were filed between 2016 and 2020, wherein 2019 and 2020 are the years with the highest number of filings of patent applications with matters related to green technology admitted in the process priority, as it can be seen in graph 1 below.



The significant number of filings in these years coincides with the beginning of the popularization of the ESG theme in Brazil. Although ESG concept has been around since 2005, the topic has become better known in this period, as in 2019 there was already a highlight for the term “Environmental” with more than 11 million published quotes referring to the topic, according to data from the study held by Pacto Global e Stilingue. Therefore, these data confirm that the companies’ innovative behavior may have been influenced by the ESG guidelines.

GREEN ECONOMY: MATCHING INNOVATION AND SUSTAINABILITY



author:

Gabriel Di Blasi

Founding partner at Di Blasi,
Parente & Associados



author:

Andrezza Gallas

Government Relations Analyst at
Di Blasi, Parente & Associados

Green Economy 'development' is considered a sustainable alternative to the current economic model and has been discussed for decades. However, in 2021 it got even more breath and visibility due to the post-pandemic, where environmental and social issues got importance in the economies recovery, which places agriculture as one of the protagonists in this process. This is good news for Brazil, as Brazilian agribusiness has been playing a key role in the country economic growth. In addition to making Brazil one of the world's leading exporters over the past few years, agribusiness GDP corresponded to 26.6% of Brazilian GDP in 2020, according to data from the Center for Advanced Studies in Applied Economics (CEPEA - Portuguese acronym for Centro de Estudos Avançados em Economia Aplicada) in partnership with the Brazilian Confederation of Agriculture and Livestock (CNA - Brazilian acronym for Confederação da Agricultura e Pecuária do Brasil).

However, the challenges are still great. One of these challenges is ensuring an increasingly sustainable, inclusive, productive, conscientious, technological and capable production. Under international pressure for effective actions for the environment, Brazilian government announced several environmental measures and affirmed

the country commitment to more sustainable economic development. In fact, the government has been working to improve business environment, approving important regulatory milestones for this new moment, such as the start-up and infrastructure regulatory milestones (cabotage, electricity, logistics, sanitation, natural gas and oil) to advance into that direction.

Naturally, agribusiness investors are concerned about their investments impact on society and the environment, hence the importance of keeping good relations, from the relationship between public authorities and the private sector, creating greater security legal, which is essential for attracting investments. It is true that Brazil has many characteristics that make it a great potential for the green economy, so it will be necessary that part of the governments act strongly in the agendas with the theme and, also, the change by private companies towards sustainable development.

2021/2022 Plano Safra and Brazilian government investments in the industry

To stimulate agribusiness in the country, in June, Brazilian Federal Government released the 2021/2022 Plano Safra, which has the definitions of farm loan and finance facility with incentives from the Federal Government for funding and in-

vestments in the industry. The current Plan had an increase of 6.3% compared to the previous one to encourage greener, more inclusive and prosperous production practices, while still being competitive.

The highlight was the fixed-income green bonds, which are used to raise funds for implementation or refinancing of projects and assets that have positive characteristics from an environmental or climate perspective, and brought great prominence to Brazil in this market. It happens because, according to data from the Climate Bonds Initiative (CBI), the country is the largest market for green bonds in Latin America, being part of 42% of issuances in the last five years. This is a scenario of great opportunities for organizations that can link their objectives and goals to the socio-environmental performance of their activities.

The bonds issuance is an alternative to enable initiatives and technologies that have positive social and environmental impacts. According to the Ministry of Agriculture and Food Supplies (Mapa - Portuguese acronym for Ministério da Agricultura, Pecuária e Abastecimento), this new financing alternative for Brazilian agribusiness generated R\$ 8.1 billion in the Brazilian economy between 2019 and 2021, through the promotion of sustainable practices and technologies.

In addition, the Brazilian government has been adopting measures to make the business environment less bureaucratic and more attractive, such as the definition of global criteria for agriculture and livestock and the preparation of an investment plan for sustainable agriculture with the CBI, and the enactment of Law No.

13.896/20 (Agro Law), which improves the regulatory environment for granting credit to businesses focused on livestock and agriculture. These solutions aim to expand this market and attract foreign investors.

In a post-pandemic scenario where – on a medium-term basis – it is advisable to rethink everything, economic recovery must more than ever go hand in hand with the environmental one. This is the moment for sustainable reconstruction. Brazilian agribusiness has already come a long way and the country, as one of the greatest agricultural powers in the world, can take the leadership.

Climate change is everyone's business

In this scenario with an apparent trade off, in which the sustainable economic recovery of agriculture seems to require irreversible environmental damage, Di Blasi, Parente & Associados firm held the “Amazon: Zero Harm” panel on Make Climate Action Everyone’s Business forum, organized by ICC (International Chamber of Commerce) at COP26, the United Nations Climate Change Conference, held in November 2021 in Glasgow, Scotland. The event involved representatives from the private and academic industries in a debate on how to seek zero harm for the Amazon area. The debate included Denise Hills, Natura’s Sustainability director, Unilever’s Sustainability director, Suelma Rosa, B3’s Sustainability director, Cesar Sanches, and the political scientist and founder of the CLP (Public Leadership Center - Centro de Liderança Pública), Luiz Felipe D’Avila. Despite the demands on government leaders, it was evident that

sustainability has become a priority for business and civil society wants to take responsibility for effectively changing this agenda. Gabriel Di Blasi, panel moderator, presented data that revealed the issue urgency in the Brazilian government context, such as the 51% increase in deforestation between 2019 and 2020, which corresponds to 8,381 square kilometers only in the last 11 months. The number of laws presented in the national congress that seek to protect the Amazon area has grown since 2019, but still far from the record 81 projects presented in 2008, when the world experienced the economic crisis that culminated in the bankruptcy of Lehman Brothers. In 2019, 26 bills were presented focusing on Amazon protection, in 2020 there were 35 and so far in 2021, 17.

One of the obstacles to the convergence of political efforts in Brazil is the plurality of political parties (33 currently) and antagonism in political views. Leftist parties, in general, focus their political banner on protecting indigenous peoples and defending the minorities rights. Center politicians, in turn, seek proposals for economic sustainability and mechanisms for environmental protection. The right parties is oriented towards the economic use of the Legal Amazon, privatizations and concessions in the Amazon area and a reduction in the State role.

Brazilian government has been harshly criticized by international public opinion for the successive records of burning in the country and the pressure increased with the election of American President Joe Biden, who took on a campaign to reduce deforestation. In this context, Brazil took its largest delegation for a United Nations climate change

event and it is the second largest delegation at COP-26, only behind the American one.

In the very first days of the event in Glasgow, despite being under critical spotlight, Brazilian government adhered to two relevant agreements: (1) reduce methane gas emissions by 30% until 2030 (with 2020 parameters) and (2) zero deforestation until 2030.

Brazil emitted 20.2 million tons of methane in 2020 and the country was against the agreement because it would directly affect the national cattle herd: 72% of Brazilian methane emission comes from agriculture, 16% from waste and 9% from change in the land use. The country emits 14.5 million tons of methane gas in agriculture, 97% of which is a consequence of enteric fermentation (belching and flatulence of the herd). To achieve this goal, it will be necessary to adopt basically two strategies: reduce the herd and/or invest in the industry improvement.

Gabriel Di Blasi, panel moderator, believes that innovation is the fundamental point and the solution to these impasses that Brazil is facing today and that the agro sector is developing, in partnership with startups, technologies for the control, monitoring and tracking of cattle in the pastures, including the methane emission into the atmosphere. He also stated that although there are no conclusive technological solutions to reduce the methane emission from the herd, there is already a plan by the largest national animal protein producers to reduce the management of the herd slaughter, as well as the development of food supplements for significant decrease in methane production,

which will substantially reduce the level of this emission into the atmosphere.

Unilever's Sustainability director, Suelma Rosa defended innovation as the engine of this necessary change in environmental protection and defended a change in strategy in companies which the sustainability plan is not separated from the business plans. For her, the nature-based solution goes beyond reducing the climate impact, it being necessary to integrate an ecological and sustainable mindset throughout the entire production chain. Suelma stated that small businessmen and entrepreneurs in the Amazon area must receive some kind of fund or financing to survive and that the solution lies in what she called bio-innovation. For her, the country is already a power in biotechnology, it just needs to increase the scale. And she concluded by saying that for a long time there was the impression that environmental sustainability and prosperity were going in opposite directions, which is not true. It is currently possible to preserve nature, plant trees and still make money.

Natura's Sustainability director, Denise Hills, believes that environmental sustainability is no longer a matter of commitment, but of action. She added that when it comes to reducing polluting gas emissions and climate solutions, Amazon is a fundamental issue. Denise mentioned examples of Natura as a sustainable business model in Amazon and defended collective actions to solve the environmental problem and mentioned an empirical observation: the number of CEOs in Glasgow would be an indication of business and civil society involvement in the proposals of ecological agenda defense.

The political scientist Luiz Felipe D'Ávila believes that the political vision of what he called the "anti-capitalist left" and the "exploratory right" is outdated. He defends the use of statistical data for the public policy discussion and mentions the example of using local government rankings based on ESG agenda indexes to deserve federal and even international public resources. D'Ávila believes that it is necessary to attract investment to boost the economy and, consequently, save Amazon. Luiz Felipe argued that Brazil is the only country in the world capable of neutralizing carbon just by planting trees and that COP-26 demonstrated that the country is more mature as a society to preserve the Amazon, due to the participation of governors and mayors in the event, in addition to private industries representatives.

B3's Sustainability director, Cesar Sanches, defended the adoption of the criteria of the ESG agenda as a relevant strategy to integrate environmental concerns into the companies decision-making process. For him, the challenge lies at the intersection of how to contribute to society and be economically viable on a long-term basis, and he mentioned a phrase by the Nobel Prize in Economics winner and former World Bank president Joseph Stiglitz: "technological education is the basis for a developed nation". In addition to defending innovation as a basis for sustainability, Sanches highlighted the participation of the financial industry in shares in Glasgow, such as the initiative of a Brazilian investors group that claimed for more pragmatic measures, such as the regulation of Paris agreement.

In the document, the group called “Investors for the Climate”, which brings together 18 Brazilian companies, calls for the strengthening of public policies to mitigate the effects of climate change, from the reduction of greenhouse gas emissions, environmental inspection, reduction of deforestation rate, encourage sustainable and low-carbon private investment, among other measures. The document signatories have around R\$873 billion under management – a demonstration that economy and sustainability can go hand in hand and that facing the climate crisis is a major challenge for the financial and business area.

Gabriel Di Blasi, founding partner of Di Blasi, Parente & Associados and panel moderator, believes that there is no shortage of resources to fight deforestation and to develop better sustainability practices for economic recovery. The main point would be managing these resources so that they can be effectively used for these agendas with the planning of economically viable actions.

After two hours of debates and data presentation and suggestions on how the private area can play a more important role in protecting Amazon, the speakers agreed that there is no time to wait for government actions and that there is a need for more engagement from civil society. It was almost an echo of the demonstration held at COP-26 by young Swedish activist Greta Thunberg and NGOs against “greenwashing”, where carbon offsetting by planting trees is not enough to save the planet’s climate.

Intellectual Property assumes a leading role in the demand presented on the panel, in particular, and at COP-26, in general. It could initially be

a tool to combat greenwashing, being able to identify companies that use improperly names, indications, brands, technologies, among others, that do not belong to it, but use it aiming at induce the consumer that its product or service complies

with the ESG agenda, for example. Another feature is protecting the development of green technologies that nowadays have a very great appeal with the charges seen at the UN conference. Thus, to remain competitive, companies need to be aware that the only way to continue in this dispute is to change the direction of their business towards technologies or services that add sustainability value. Today, it is no longer conceivable to manufacture products whose raw material is derived from products that are not biodegradable. Our environment is saturated with these products and we need technologies that may clean the planet in a short period of time.

The consensus of the speakers is that it is time for these commitments to get off the ground and become practical actions. It is not enough leaving the initiative for change in the hands of government officials, it is necessary for civil society and companies to assume a fundamental role in transforming this scenario of “fairy tale”. This paradigm shift involves the conventional productive industry, which brings a significant increase in carbon emissions into the atmosphere, and also common citizens, as we have a huge responsibility in the contribution of pollutant emissions not only to the atmosphere, but also to our forests and oceans. After all, as the forum’s name suggests, the idea is to make climate action everyone’s business.

THE IMPORTANCE OF ESG IN THE CORPORATE WORLD: IN SEARCH OF A BETTER SOCIETY THROUGH BRANDS



author:

Paulo Parente Marques Mendes

Founding partner at Di Blasi,
Parente & Associados



author:

Amanda Aguiar Massa

Lawyer at Di Blasi, Parente &
Associados

It is well known that, in recent years, environmental, social, ethical and political discussions have taken on significant proportions in our country. One needs only to look to the near past to conclude that, as never before in our history, relevant agendas have been getting more and more highlights, such as: the environment preservation and sustainable development; equal rights; equity; diversity and inclusion and the search for better working conditions and quality of life.

One crucial factor directly linked to this phenomenon is, by far, the expansion of innovations linked to the growing use and influence of social media. In an increasingly globalized and technological world, online communication has become essential in society, enabling the fast creation and dissemination of the most varied types of content. In fact, the intense flow of information allows the expression and relationship of individuals from different sociocultural niches, personalities and preferences, which is why debates about sustainability, equity, inclusion, diversity and the protection of individual and collective rights are inevitable and increasingly urgent.

In the environmental subject, the impacts linked to the mismanagement of natural resources by lar-

ge and small companies reveal the need to adopt environmentally responsible attitudes, capable of bringing benefits not only to the environment but also to the organizations themselves, who obtain an improvement of its public image, reputation and reliability by consumers who are increasingly aware and engaged.

In this scenario, the adoption of ESG practices is getting more strength in the business world. The concept encompasses environmental, social and corporate governance responsibility, representing the awareness of companies that seek to reduce the negative impacts of their operations on the environment, in addition to adopting the best and most appropriate administrative practices.

In summary, the “E” (Environmental) is linked to the preservation of the environment through measures such as the sustainable use of natural resources, adoption of clean energy sources, reduction of pollutant emissions and deforestation rates.

“S” (Social) encompasses the adoption of policies for a better relationship between the company and all entities that are part of its universe, including the employees’ well-being, customer satisfaction, respect for diversity and human rights, in addi-



tion to the company's good relationship with the community and its inhabitants.

"G" (Governance), in turn, represents the corporate governance guidelines and involves issues such as the relationship with the government, executive compensation, the existence of reporting channels and other mechanisms to prevent corruption, harassment and other ways of exclusion or discrimination.

It is important to note that ESG is not a new concept: the acronym was used for the first time in the early 2000s, in the "Who Cares Wins " report, an initiative from the United Nations (UN). Since then, ESG has got prominence in a society that increasingly values conscientious businesses, committed to respecting the environment and preserving the health and well-being of the people, which

represents a true paradigm shift in current production and consumption models.

Certainly, in today's reality, it is no longer viable for profit-making to be the sole goal of companies. Profit-only companies are doomed to fail! It is also necessary to consider the several impacts involved in the operations, in line with the desires of a generation that has been prioritizing the consumption of more transparent, responsible brands that are connected with their personal values.

In this sense, it has recently been two years since the Business Roundtable (association of the biggest Corporations in the United States) released, in August 2019, a public manifesto signed by hundreds of CEOs of great American companies, reaffirming their commitment to their stakeholders and collective well-being. According to the group,

far beyond making a profit for entrepreneurs, companies are true agents of social transformation, whose purpose is generating value for all interested parties.

In this flow, another important factor to note is that large investors have been carefully considering the social, environmental and governance practices of companies before investing their capital and, above all, their trust in them. In this sense, there are several companies that seek to associate their brands with social and sustainability ideals, so recommended today.

The Coca Cola Company, beverage giant, is a great example of this trend: in 2020, it was ranked as the most sustainable beverage company in the world in the Dow Jones Sustainability 2020 Index. The company's fundamental purpose is to create a sustainable business, capable of contributing to a better future.

Since the beginning of covid-19 pandemic, the company has invested more than R\$ 55 million in initiatives for disease prevention and food safety for populations. In the social sphere, through Coca-Cola Brazil Institute, it leads one of the largest employability programs in the country, aimed at developing low-income communities through the productive inclusion of young people. Its lines of action include training, connection with the labor market and ecosystem promotion.

Another example is Samsung, a South Korean multinational in the technology field. The company has developed and implemented specific regional action plans to promote the use of renewable energy, including the purchase of the Renewable Energy Certificate (REC) and Power Purchase Agreements (PPA) in each of its operating areas around the world. Samsung is also looking to reduce greenhouse gas emissions throughout the life-cycle of the TV device through the use of recycled plastics, among other practices.

The understanding of ESG is very important regarding the strength of a brand today, directly influencing its image and reputation with investors and the consumer public. Transparency and truth in the brands dissemination (their purposes, mission and values), through publicity and advertisements, either through traditional media or through influencers on social media, for the consumer, are determining factors for the connection and loyalty between these two protagonists so that we can have a fairer, more balanced and sustainable society. Thus, it is essential that companies devote special attention and planning to this issue, whose importance only tends to increase over time, especially when considering the values, positions and preferences of current and future generations.

PIRACY: A MATTER OF ESG AND THE BUSINESS STRATEGIES TO FIGHT AGAINST IT



author:

Eriça Tomimaru

Lawyer specialized in Intellectual Property and Unfair Competition



author:

Jéssica Yukari Hayashi Silva

Lawyer specialized in Intellectual Property and Unfair Competition

The concern about the way society has developed and about the impacts that this accelerated advance may cause in the future are being one of the main issues in the world government and administration councils of public and private companies, such as the 26th United Nations Climate Change Conference (COP-26), resulting in mobilizations by different entities (governments, states, companies, investors, universities etc.) to seek adequate solutions for the society development.

In the companies' case, precisely to highlight this commitment to sustainable development, much is said and applied to the acronym ESG (Environmental, Social and Corporate Governance) used to indicate the sustainability and social impact level of a company, whether public or private. In this sense, due to the relevance of the topic, this ESG "seal" has been seen as a demonstration of the companies' commitment, adding value to the business by exposing how much the institution cares about its impact on society's progress.

It is precisely as a result of the ESG impact on a company value to society that institutions have been rethinking the environmental, social and governance factors that may impact their brands, being the issue of piracy of their products one of them.

It shall be noted that product counterfeiting is inversely opposed to the three pillars of ESG, taking into account that: (i) it incurs in the production of goods that they often shall be discarded because they are not safe for the consumer, since they did not undergo inspections or approvals from specialized regulatory agencies, even generating a higher production of solid waste; (ii) it directly affects the consumer/society which purchases products that, in addition to infringing the intellectual property of third parties, are potentially harmful to their safety and health, as well as harming the regular work hiring when the company starts to lose market to piracy; and (iii) it represents considerable economic losses for companies and expenses for public management, whether in border control or even in the reduction of tax collection, harming the economy and a possible better direction of private and public spendings.

As a result of the piracy impact on the strategy of the practices set adopted within a business organization that needs to reconcile its interests with government and regulatory agencies, in Brazil, two entities stood out for their efforts to reduce illegal piracy market: the National Council for Combating Piracy and Crimes against Intellectual Property (CNCP/SENACON - Portuguese acronym for Conselho Nacional de Combate à Pirataria e aos Delitos contra a Propriedade Intelectual) and

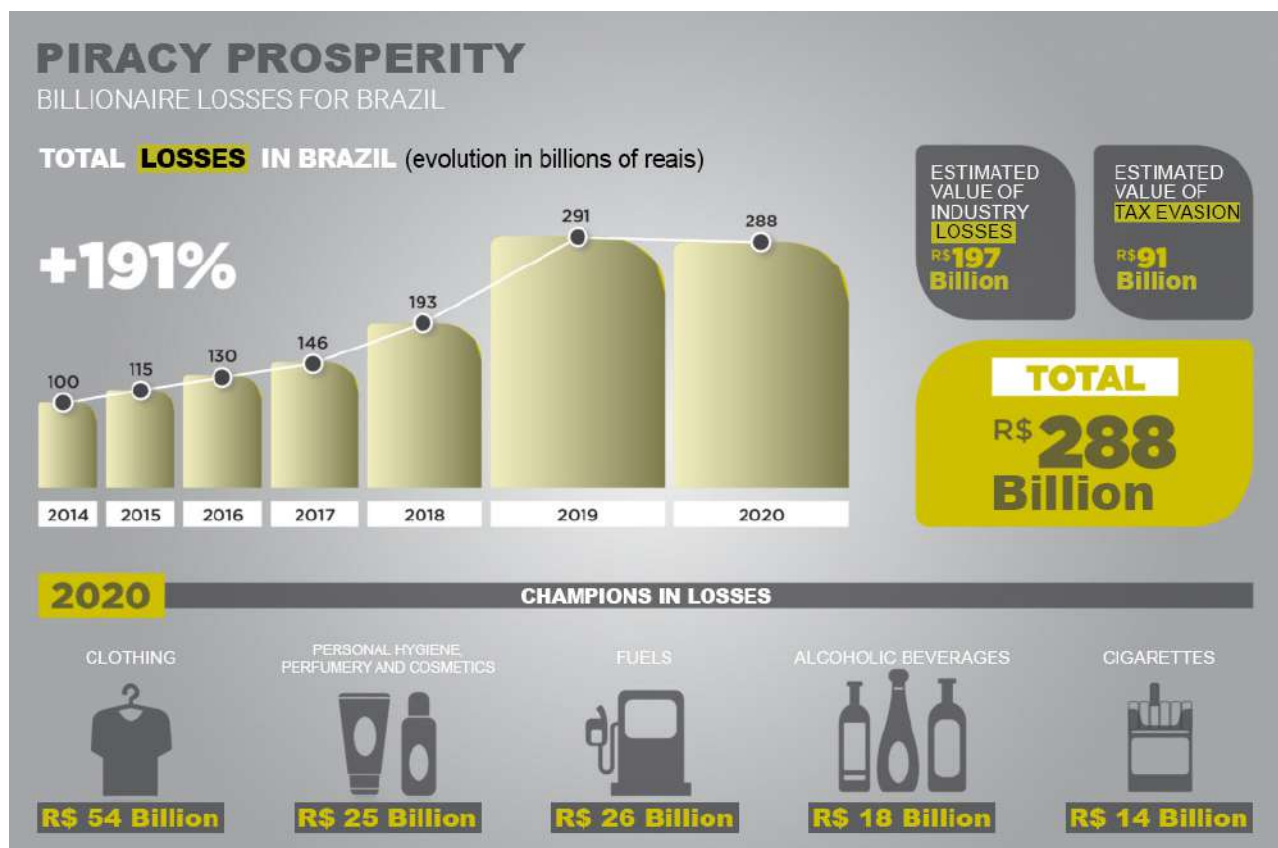
the National Forum against Piracy and Illegality (FNCP - Portuguese acronym for Fórum Nacional Contra a Pirataria e a Ilegalidade).

In this way, CNCP reports demonstrate this concern and government investment in drawing up guidelines with several private actors for the formulation and proposal of a national plan to fight against piracy, the resulting tax evasion and crimes against intellectual property.

According to the statements made by FNCP, it was found that piracy generated R\$ 288 billion

of losses for the country in 2020 (considering the losses of the productive sectors and tax collection), noting that the money that is not paid in taxes could return to society through investments in education, security and road construction, for example, as well as indicated that the consequences of illegality in Brazil go beyond the loss of taxes, as they also affect the generation of jobs.

mentioned, the numbers, compiled by FNCP, translate the economic impact of piracy on a series of productive sectors:



According to the Customs valuation released by Brazilian Federal Revenue, the seizure of illegal goods in ports, airports and border points has grown systematically over the last ten years, more than doubling their values, jumping from an annual amount of approximately R\$ 1.27 billion in 2010 to R\$ 3.03 billion in 2020. What stands out is the diversity of counterfeit products, including toxic products, medicines and sensitive products such as weapons and ammunition, which may be harmful, in addition to items that infringe copyright, and food inappropriate for consumption, among other products condemned for not meeting the standards of sanitary surveillance or agricultural defense.

Even legal products, but imported fraudulently or that enter the country clandestinely, impact on the fair and sustainable development desired by government initiatives and the desired ESG “seals” by companies. It happens because they harm those who work correctly, take away formal jobs as well as reduce taxes that are no longer paid to public safes, which shall be converted into services provision for society.

To inhibit this harmful practice and considering the damage caused by the counterfeit products sale, strategies are being adopted by companies that are increasingly seeking to align themselves with the ESG pillars. Companies are investing in the adoption of several measures to combat these infractions, such as border measures, filing lawsuits and other alternatives such as the inser-

tion of authenticity seals and even certifications in NFTs, as well as denunciation programs for platforms and social media.

The appropriate measures shall be chosen taking into account the limitations of each alternatives, as well as being strategically designed for the greatest effectiveness in each case, and can be adopted together or separately. Below we show some of these measures in details.

• **Border measurements**

Border measures adoption is considered one of the most advantageous and effective, due to the possibility of apprehending a large number of products at a single moment. In this case, the trademark owner performance, normally performed through hiring of specialized firms, is important not only to identify whether the product is illegal, but also to take the appropriate measures to prevent its nationalization and subsequent commercialization in the national territory.

• **Complaint on digital marketing platforms and social media**

It is important to point out that, considering that counterfeit products are often sold on marketplaces, many digital/electronic platforms have created programs to report and protect products that infringe property rights of third parties. Here we can mention the “Brand Protection Program” of Mercado Livre (BPP), designed to

reduce the chances and occurrences of consumers acquiring non-original products that infringe third-party rights.

Mercado Livre's BPP program is a system for notifying and removing advertisements on the platform that contain violations of third-party Intellectual Property Rights, facilitating measures adoption against counterfeit products sale. After the complaint, the ad can be paused and the reported seller will receive a communication indicating the deadline to contact the company through the program and demonstrate that their ad does not violate any rights. If the program supports the complaint made, the product announcement is removed from the platform and the reported seller may be penalized by the platform. These penalties can include impact on his/he reputation, restrictions on his/her account, suspension, temporary or permanent disqualification.

As here it is necessary to act against each advertisement individually, to help identifying the ad of potentially counterfeit or parallel import products, today it is possible to find platforms dedicated to identify these intellectual property infringements on online sales websites by analyzing ads for suspicious products bearing the company's brand, such as Pulpou.

Also, in case of infringement of a third party's intellectual property on social media, it is possible to resort to the social media's reporting channels

and request the post or the profile exclusion, depending on the severity and repeated practice.

• Extrajudicial notice

It involves sending a letter, amicably requesting that the third party adopts certain measures to stop the infringement. To make this measure feasible, it is necessary to identify an address (physical and/or electronic) to contact the notified party.

Although it is important for rights holders to adopt measures directly against the sale of the counterfeit product or against the infringer, due to the impact of this practice, it is essential to have ongoing dialogues between public and private entities to seek other joint solutions in the fight against piracy and, consequently, a more sustainable development of commercial relations in a country, whether for awareness programs, or for the elaboration of broader cooperation projects or, even, a legislative evolution on the subject. However, to be in line with the pillars under ESG, companies cannot rely solely on government action, but shall draw up effective strategies to combat piracy in a collective way. In this way, in addition to the actions being able to reach a greater number of people, it will be more effective and less costly.

ESG, INNOVATION AND INTELLECTUAL PROPERTY: WHY COMPANIES SHALL INVEST IN THIS PARTNERSHIP



author:

Gabriel Di Blasi

Founding partner at Di Blasi,
Parente & Associados



author:

Ana Beatriz Lage

Lawyer at Di Blasi, Parente &
Associados

Without a doubt one of the trending topics now is the ESG agenda. However, this is nothing new for companies that are attentive when it comes to sustainability. The ESG term has arisen in 2004 in a publication by the Global Compact in partnership with the World Bank. Since then, other agendas have taken over this sector, such as the Sustainable Development Goals (SDG) of the United Nations (UN).

Recently, ESG acronym has once again taken over the institutional projects of great companies, being the topic of debates and getting even more space among supporters of a more sustainable relationship between companies and the planet.

But what is ESG? The acronym means Environmental, Social and Governance and in Portuguese it is translated as ASG – Ambiental, Social e Governança. It is, therefore, a business behavior that encompasses these three pillars, aiming to make its own internal environment and its surroundings a better place, which does not focus exclusively at the company's profit. For this reason, we emphasize that ESG goes beyond a certificate: it is a long-term process, which flows into companies' positions, ways of acting and

communicating. Increasingly, the performance, reputation and profit of these institutions will be measured using ESG parameters.

In this search to adapt at the standards required for a company to become ESG, there is a great ally, which shall always be seen as a long-term investment: the innovation. Since consumers are getting a new consumption pattern, called conscious capitalism, and demanding actions that have concerns that go far beyond the company itself, it is necessary to think outside the box to achieve these goals.

How can companies, therefore, use innovation to adhere to ESG standards? After changing the internal mindset and organizational culture, well-defined metrics and established goals, the best way to enable companies to achieve these goals is through innovation, which creates the possibility of new products and services. Investment in Research & Development (R&D) through correct analysis of impacts in the social and environmental spheres can generate excellent products causing less and less negative impact on the planet.



In this scenario, seeking to keep up with these changes, several companies are creating internal programs, aiming at encouraging innovation and focusing on training their employees to develop new ideas. The so-called intrapreneurship opens business horizons so that innovation takes place within the company itself, through the creativity of its own employees.

And how does intellectual property impact this entire process of innovation and adaptation to ESG parameters? It is important that companies do not think of innovation as an end in itself. It is necessary to go further. Protecting its intangible assets is as important as creating them.

Intellectual property (IP) breaks down into two major contexts. One of them is intra-entrepreneurship, that is, within the controlled environment of companies, with employees collaborating in the development of sustainable practices, where management and protection would be easier. The other is the open innovation or co-creation environment, where diversity of thought is predominant. We have in its partnerships between companies, corporations, startups, academies, people from all over the world working on platforms simultaneously, seeking efficiency, low cost, and agility.

REQUIREMENT OF ESG PRACTICES AND REFUSAL TO HIRE: PRECAUTIONS FOR A (VERY) NEAR FUTURE



author:

Felipe Oquendo

Lawyer at Di Blasi, Parente & Associados

With COP26, ESG agenda is present in the news and the national and international public debate. However, it is not new and has been the subject of more sectorial panels and discussions since at least the beginning of 2021. After the first signs of control or, at least, of attenuation of the new coronavirus pandemic, the world has been focusing on ESG values, including its adoption by multinational companies.

Several points of ESG intersect with enacted law, especially in Brazil, where environmental and social issues are heavily regulated. Nevertheless, the great appeal of ESG agenda is the adoption of measures that go beyond mere legal requirements, which permeate the companies' values, mission and goals and result in internal rules, training and the so-called "corporate culture". If ESG could be reduced to an idea, it would be for the company or institution to be proactively ahead of the enacted laws and attuned to the demands of society or even, perhaps, transformed into an agent of social change.

This process of structural and organizational change has its own challenges, which we won't address here. Our interest is to verify the

potential impacts and undesired consequences of the requirement for an ESG guidance by the company's commercial partners.

This is an issue because it is not enough for the company to adopt measures to raise awareness about ESG guidelines internally, if it enters into partnerships with third parties that are not aligned with these values, even if their practices are not properly illegal. In addition to internal consistency, the company's own reputation, which is central to this topic, leads to this type of demand. Part of this effort, therefore, is the requirement, made in the process of hiring and extending contracts with external partners, to align with ESG guidelines beyond what is merely required by the law.

Although a common practice in the market, care must be taken regarding such requirements, so that the zeal for advancing the ESG agenda and protecting the business reputation does not devolve into an illegal refusal to hire.

The refusal to hire, as the name implies, is the refusal to supply products or services or, even, to associate with a third party in a typically industrial or business contract. Nobody ignores, of course, that freedom of initiative, in its contractual

aspect, is a rule in our legal system. Therefore, the overwhelming majority of refusals to hire are not legally relevant facts, as they only translate into a mere exercise of contractual rights and freedom.

Some special circumstances, however, may bring limitations to this freedom to refuse the contract or the contract extension, in particular, for the purposes of this article, the competition defense rules in Federal Act no. 12,529/2011, in particular in article 36, paragraph 3, items XI and XII of the aforementioned act.

The first special circumstance to be verified is the following: the refusal to hire took place “within the normal payment conditions for commercial usages and customs”, according to the wording of the article. If the payment terms (including price) and commercial regulations proposed by a party are out of the normal or usually accepted, the refusal to hire would be justified. In other words, it is necessary that the refusal cannot be attributed to common elements of business and that are part of normal economic rationality.

Undoubtedly, the requirement to comply with certain levels or targets related to the ESG agenda goes beyond the normal conditions of commerce and business, as they do not comply - at least not intrinsically - to the usual commercial rationality. On the other hand, article 36 requires that the conduct investigated and eventually punished be appropriate to achieve certain anti-competitive objectives or effects, even if merely potentially, such as:

I - limiting, distorting or in any way harming free competition or free enterprise;

II - dominating the relevant market for goods or services;

III - arbitrarily increasing profits; and

IV - abusively exercising a dominant position.

Thus, in the scope of this article, it would be necessary that the refusal to hire or the imposition of contractual conditions based on ESG values and guidelines have as a driving force or effect such anti-competitive goals.

It does not mean that, in any case or investigation, the company's intention to achieve such objects or effects must be proven beyond any doubt. Here, the purpose of analysis is to find an objective relationship of cause and effect, of adequacy between conducts and results, as long as they obey an anti-competitive rationality - in other words, as long as they aim at eliminating direct competitors or agents in the vertical chain (downstream or upstream, it doesn't matter), aiming, for example, at favoring agents of the same economic group or other partners. This would be the case, for example, of an excluding conduct that is preparatory to the verticalization of a business activity, which uses requirements aligned with the ESG agenda as a mere occasion for abusive practices under a veneer of socio-environmental concern.

The Brazilian Institute of Competition, Consumption and International Trade Studies – IBRAC - records that, in practice, the refusal to hire is closely related to the dominant position combined with a relationship of absolute dependence and/or essential facilities, that is, elements under the domain of a single company or group of companies that must be accessible to its competitors, under penalty of elimination of the competition itself:

“The competition problem usually arises in markets with natural monopolies, essential inputs or other peculiarities, where dominance stems from structural reasons and/or where there is a clear situation of dependence on the product/service offered by the dominant agent. In these cases, the conduct can be characterized as anti-competitive when practiced outside normal trading conditions or when it results in an unjustified interruption in the supply of goods or services, making agents dependent on those products/services unable to compete effectively.” (IBRAC, 2020, p. 30).

It shall be verified, moreover:

“The competition problem usually arises in markets with natural monopolies, essential inputs or other peculiarities, where dominance stems from structural reasons and/or where there is a clear situation of dependence on the product/service offered by the dominant agent. In these cases, the conduct can be characterized as anti-competitive when practiced outside normal trading conditions or when it results in an unjustified interruption of goods or services supply, making agents dependent on those products/services unable to compete effectively.” (IBRAC, 2020, p. 30).

Therefore, companies that are in a dominant position and, in particular, those that have dominion over essential facilities or which others

absolutely depend on shall exercise extra caution when planning and implementing ESG policy requirements by vertical chain business partners or competitors which are claiming access to essential facilities, if they are not willing to expose themselves, at the very least, to legal prosecution or administrative procedures and, possibly, to preliminary inquiries and inquiries regarding the refusal to hire and the imposition of abnormal contractual conditions from the point of view of commercial usages and customs. The same is applicable to agents who enjoy a dominant position and who are planning or implementing the vertical integration of their businesses, since the refusal to hire may be interpreted as a preventive action to exclude future competitors.

In general, it is recommended to bear in mind the reasonableness and proportionality in the requirement for the adoption of ESG policies by business partners, taking into account, for example, the essentiality of the product or service provided, the size of the contracting party or claimant and, in any case, any necessary adjustments between the policy adopted internally by the dominant agent and the demands made to third parties outside the business organization.

In any case, only under concrete circumstances may the adoption of certain requirements and clauses be assessed for their anti-competitive risks.

Bibliographic References

BRASIL. Lei n. 12.529, de 30 de novembro de 2011. Estrutura o Sistema Brasileiro de Defesa da Concorrência; dispõe sobre a prevenção e repressão às infrações contra a ordem econômica ... Planalto. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm . Acesso em: 16 nov. 2021.

BRASIL. Lei n. 13.986, 7 de abril de 2020. Institui o Fundo Garantidor Solidário (FGS); dispõe sobre o patrimônio rural em afetação, a Cédula Imobiliária Rural (CIR), a escrituração de títulos de crédito e a concessão de subvenção econômica para empresas cerealistas Planalto. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L13986.htm. Acesso em: 11 nov. 2021.

BRASIL. Resolução INPI n. 239, de 04 de junho de 2019. Disciplina o trâmite prioritário de processos de patentes no âmbito da DIR-PA. INPI. Disponível em: <https://www.gov.br/inpi/pt-br/backup/centrais-de-conteudo/legislacao>. Acesso em: 22 out. 2021.

CENTRO DE ESTUDOS AVANÇADOS EM ECONOMIA APLICADA. PIB do agronegócio avança no trimestre e acumula alta de 9,81% no primeiro semestre de 2021. Disponível em: [https://www.cepea.esalq.usp.br/upload/kceditor/files/Cepea_PIB_CNA_1semestre_21\(2\).pdf](https://www.cepea.esalq.usp.br/upload/kceditor/files/Cepea_PIB_CNA_1semestre_21(2).pdf). Acesso em: 1 nov. 2021.

COCA-COLA BRASIL: sustentabilidade. [2020]. Disponível em: <https://www.cocacolabrazil.com.br/sustentabilidade>. Acesso em: 01 nov. 2021.

____. Instituto Coca-Cola Brasil: 22 anos com a missão de gerar impacto em larga escala. 2020. Disponível em: <https://www.cocacolabrazil.com.br/institutococacolabrazil>. Acesso em: 01 nov. 2021.

COP26: investidores brasileiros pedem ação do governo contra crise climática: Declaração assinada por 18 grupos de investidores será lançada em Glasgow. Poder 360. 3 nov. 2021. Disponível em: <https://www.poder360.com.br/meio-ambiente/cop26-investidores-brasileiros-pedem-acao-do-governo-contracrise-climatica/> . Acesso em: 11 nov. 2021.

Daniela Chiaretti. Brasil aderiu a compromisso sobre metano na COP26 por pressão dos EUA. O Globo, Mundo, 02 nov. 2021. Disponível em: <https://oglobo.globo.com/mundo/brasil-aderiu-compromisso-sobre-metano-na-cop26-por-pressao-dos-eua-25261535> . Acesso em: 11 nov. 2021.

FINK, Laurence D. Uma mudança estrutural nas finanças. 2021. Disponível em: <https://www.blackrock.com/br/larry-fink-ceo-letter> . Acesso em: 22 out. 2021.

GARTENBERG, Claudine; SERAFEIM, George. 181 top ceos have realized companies need a purpose beyond profit. Harvard Business Review, 20 ago. 2019. Disponível em: <https://hbr.org/2019/08/181-top-ceos-have-realized-companies-need-a-purpose-beyond-profit>. Acesso em: 11 nov. 2021.

InTraCoM Group. Environmental, Social and Governance (ESG): what patents reveal about it. Disponível em: <https://www.intra->

comgroup.com/single-post/2019/06/28/environmental-social-and-governance-esg-what-patents-reveal-about-it, Acesso em: 22 de out. 2021.

INSTITUTO BRASILEIRO DE ESTUDOS DE CONCORRÊNCIA, CONSUMO E COMÉRCIO INTERNACIONAL. Guia de Condutas Unilaterais. São Paulo: IBRAC, nov. 2020. 44p. Disponível em: https://ibrac.org.br/UPLOADS/Eventos/497/IBRAC_-_Guia_de_Condutas_Unilaterais.pdf . Acesso em: 16 nov. 2021.

INSTITUTO NACIONAL DA PROPRIEDADE INTELECTUAL. Patentes verdes. Disponível em: https://www.gov.br/inpi/pt-br/servicos/patentes/tramite-prioritario/projetos-piloto/Patentes_verdes . Acesso em: 01 nov. 2021

Mercado brasileiro de títulos verdes bate a marca dos 9 bilhões de dólares. Climate Bonds Iniciative. 2021. Disponível em: <https://www.climatebonds.net/resources/press-releases/2021/06/mercado-brasileiro-de-t%C3%ADtulos-verdes-bate-marca-dos-9-bil%C3%B5es-de> . Acesso em: 1 nov. 2021.

MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO. Um plano safra mais verde. MAPA, 20 jun. 2021. Disponível em: <https://www.gov.br/agricultura/pt-br/assuntos/politica-agricola/plano-safra/2021-2022/um-plano-safra-mais-verde>. Acesso em: 1 nov. 2021.

O contrabando rouba o futuro dos brasileiros: a escalada do contrabando. Contrabando Não, Economia, 2021. Disponível em: <https://contrabandonao.com.br/a-escalada-do-contrabando/>. Acesso em: 1 nov. 2021.

PACTO GLOBAL. ESG: Entenda o significado da sigla ESG (Ambiental, Social e Governança) e saiba como inserir esses princípios no dia a dia de sua empresa. Disponível em: <https://www.pactoglobal.org.br/pg/esg>. Acesso em: 1 nov. 2021.

SAMSUNG Newsroom Brasil. Práticas sustentáveis: esforços ecológicos da Samsung para um amanhã melhor. 26 mar. 2021. Disponível em: <https://news.samsung.com/br/praticas-sustentaveis-esforcos-ecologicos-da-samsung-para-um-amanha-melhor>. Acesso em: 01 nov. 2021

STILINGUE. A evolução do ESG no Brasil. 2021. Disponível em: <https://conteudos.stilingue.com.br/estudo-a-evolucao-do-esg-no-brasil>. Acesso em: 27 out. 2021.

THE GLOBAL COMPACT; SWISS FEDERAL DEPARTMENT; UNITED NATIONS OF FOREIGN AFFAIRS INTERNATIONAL FINANCE CORPORATION. Who Cares Wins: connecting financial markets to a changing world. Berne: dec. 2004. Disponível em: https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FFinancial_market-s%2Fwho_cares_who_wins.pdf. Acesso em: 22 out. 2021.

ZAGOS, Andreas; BRAD, Stelian. Quantifying sustainable patents for enhancing esg factors using bibliometric indicators from patent portfolio valuation. InTraCoM Group: studies &White papers. 2020. Disponível em: http://media.intracomgroup.de/TFC2020_ESG-ENHANCEMENT.pdf. Acesso em: 27 out. 2021.

Magazine Coordination

Ronaldo Guimarães Gueraldi

Editorial Committee

Alexandre Prado

Ana Lage

Andrezza Gallas

Carla Maia

Diana Marcondes de Paula

Érica Ferreira de Souza

Felipe Barros Oquendo

Lourdes Maria dos Santos

Pedro Campos

Special Guest

Carlos Arruda

Authors

Amanda Aguiar Massa

Ana Beatriz Lage

Ana Paula D.C. Couto

Andrezza Gallas

Cintia da Silva Lima

Eriça Tomimaru

Felipe Oquendo

Gabriel Di Blasi

Jéssica Yukari Hayashi Silva

Paulo Parente Marques Mendes

Marketing

Carla Maia

Cayo Santos

Cristiane Vianna

Felipe Lyra

Raquel Muniz

Vinícius de Andrade

Rio de Janeiro, Brazil

Av. Presidente Wilson, 231

13° floor

CEP 20030-905

Tel.: +55 (21) 3981-0080

São Paulo, Brazil

Alameda Santos, 455

14° floor - rooms 1409 e 1410

Cerqueira César - CEP 01419-000

Tel.: +55 (11) 3090-0210

DIBLASIPARENTE.COM.BR

**Di Blasi,
Parente &
Associados**