Pharmaceutical Trademark Examination and its Implications for Self-medication: Parameters and Examples in Brazil

Rachel de Paiva Bucasio, Elizabeth Ferreira da Silva, Iolanda M Fierro and Patrícia P Peralta†
Instituto Nacional da Propriedade Industrial – Praça Mauá, 07 – 10º andar – sala 1010, Centro – RJ, CEP: 20081-240 – Brazil

Received 14 January 2013, revised 1 July 2013

Self-medication, the use of drugs without any intervention by a physician or other qualified professional, is a very common practice in Brazil and poses a serious health risk, especially when the consumer is misled in the purchase of a particular pharmaceutical trademark. This work addresses the importance of considering the International Non-Proprietary Names, the Brazilian Nonproprietary Names (DCBs in Portuguese) and their prefixes, ‘stems’ and suffixes when examining a sign that will identify a drug as recommended by the World Health Organization. The paper presents a background on trademarks and some of their definitions, explains trademarks’ functions and registrability issues, as well as the need for creating a global system of nomenclature for pharmaceutical products. Moreover, this work shows the Brazilian approach and comments on the queries carried out in the trademark database of the Brazilian National Institute of Industrial Property (INPI in Portuguese). Finally suggestions are proposed to improve the examination of signs that will identify drugs, seeking safe use by consumers.

Keywords: Registered trademarks, drugs, INN, Brazilian Nonproprietary Names

The existence of an international nomenclature to designate active drug substances set forth by the World Health Organization (WHO) known as International Nonproprietary Name for pharmaceutical substances (INN) is fundamental to the safe prescription of drugs to patients and to the exchange of information among health professionals around the world. An INN identifies a drug by the name it is globally recognized and is a public domain sign, as discussed later in this article. WHO establishes that ‘each INN is a unique name that is globally recognized and is public property’. A nonproprietary name is also known as a generic name. For the purposes of this article ‘generic name’ and ‘generic sign’ will be used interchangeably.

According to WHO recommendations, in order to avoid misunderstanding, INNs cannot be used as drug trademarks, since this could jeopardize patients’ health. In principle, the same happens to stems derived from these INNs: in case they are used as part of trademarks, they should match the active drug substances the said trademarks aim at identifying. For example, trademarks having the suffix –caine should only be employed to identify local anesthetics.

National and international nomenclature committees work together so as to select a unique and globally acceptable name to identify each active substance of a pharmaceutical to be marketed. The WHO, together with the World Intellectual Property Organization (WIPO), encourages national offices to follow these recommendations when examining drug trademarks.

The rejection of trademarks composed of INNs is not enforced by any agreement, treaty or other legal device, and such procedure is merely in the form of recommendation. Currently, the examination of drug trademarks carried out by the Brazilian Trademark Office (INPI) does not take into consideration WHO guidelines. Nevertheless, such parameters could be standards to prevent the granting of public property signs as exclusive trademark rights. This would also avoid the existence of trademarks that could mislead consumers and endanger their health.

This article discusses trademarks, INNs and Brazilian Nonproprietary Names (BNNs or DCBs in Portuguese). The BNNs are extracted from a list based on the INNs adapted to the Brazilian experience by the National Health Surveillance Agency (ANVISA). The authors examine the result of some queries carried out in the INPI’s database and present suggestions so as to improve the examination of signs that will be used to identify drugs.

Trademarks: The Concept

Jerome McCarthy, after discussing the advantages a trademark offers its consumers and how it should be chosen, warns about the importance of establishing
the difference between ‘trademark name’, ‘trademark’ and ‘registered trademark’, since the use of each of these words has specific legal implications.2

The Brazilian Trademark Office (INPI), in its Resolution 051/97, defines trademark as ‘Any visually perceptive distinctive sign, which identifies and distinguishes products and services from others of different origin, and which also certifies their compliance with certain rules or technical specifications.’

Adopting a simpler concept and limiting it to products and services, Tinoco Soares3 affirms that a trademark is ‘[...] a sign through which a product or service is known and distinguished in the consumer market or among the users [...]’. According to Olavo4, a trademark is ‘a sign which individualizes products or services and which enables their differentiation from others similar or alike.’

At this point, it is important to highlight another terminology employed in this article: ‘sign’. Before its granting, any mark filed at the INPI is a sign, because it is not yet a registered trademark. Such understanding is in accordance with Law 9.279/96 (Industrial Property Law, IPL) which specifies that a mark is ‘any distinctive sign’. However, as this analysis refers to pharmaceutical trademarks, the article will focus only on signs filed at the INPI for registration as trademarks for pharmaceuticals.

The Registration of Exclusive Rights

The right to a trademark is granted by the registration of a sign that is in principle distinctive and available, and duly issued by the responsible agency. The registration of industrial property rights in general and specifically of trademarks is carried out by the INPI, as established by the IPL. In Brazil, due to the attributive characteristic of trademark rights, a registration is highly relevant to define who has the priority of ownership.

There are three principles which rule the trademark registration process: the territorial principle, i.e. the trademark is protected only within the boundaries of the country where it has been granted; the attributive principle, that is any trademark must have its registration issued by the responsible agency in order to be protected; and the specialty principle, i.e. the trademark is protected only in the market segment in which its owner is engaged.

The IPL in its Article 122 establishes that ‘any visually perceptive distinctive sign, when not prohibited under law, is susceptible of registration as a mark’. Such prohibitions may be based on relative or absolute grounds. Therefore, the legislator has chosen not to give examples or rules of what could be considered a trademark, but rather offered a general concept which left out certain types of signs that may be registrable in other countries, such as sound, smell and taste signs.

Pharmaceutical Trademarks, Descriptive and Deceptive Signs

The main purpose of a trademark is to distinguish products and services for the consumer. According to Ascensão5, in Portugal, the distinctive function is the only feature legally protected. In Brazil, some juridical experts understand that the distinctive function along with the origin source function, are both protected. Although this question remains controversial, it is not the aim of this article. For instance, the aim of a pharmaceutical trademark is to aid in the identification of the product the consumer needs by differentiating it from the other trademarks on the market.

Before understanding some of the particularities of pharmaceutical trademarks, it is important to point out that, among the absolute and relative grounds for the refusal of a trademark, two of them are fundamental when examining a drug mark: deceptive signs and descriptive signs (generic, necessary, common, usual or qualitative signs). These two types of signs are the most relevant for this article in view of the possibility of combining common stems (INNs and BNNs) and pharmaceutical terminologies in the formation of trademarks. On one hand, this may lead to the creation of deceptive trademarks, that is, trademarks that have a specific purpose but contain stickers that indicate other therapeutic goals. In Brazil, despite the ‘truthfulness principle’ as a requirement for protection of trademarks6, it is not possible to determine whether a trademark would be deceptive or not, since the initial claims as pharmaceuticals may not accompanied by a specific therapeutic class. On the other hand, public domain signs may be wrongly granted as exclusive right trademarks.

In the examination of pharmaceutical trademarks, it would be necessary to accurately investigate the composition of the sign applied for as a trademark in order to assure that it is not a reproduction of a descriptive, public domain sign.

Barbosa7 indicates that the ‘signs are aligned in a distinctiveness continuum, ranging from a fanciful name to the impossible degree of total lack of independence between the sign and its object’. This total lack of independence is contained in the item VI
of Article 124 of IPL, which establishes generic, necessary and common signs as non-registrable signs.

Gonçalves\(^8\) explains that ‘Generic sign is [...] the word sign that in its own and original meaning exclusively designates the name of the kind of products or services it aims to identify [...]’. The author also observes that even when misspelled, the trademark which refers to a generic sign cannot be granted as an exclusive right to a single owner. The need to keep certain signs free from exclusive ownership is essential for business, otherwise it would not be possible for a trader to inform a consumer about line of product or service he/she is engaged in, if signs like shoes (to identify shoes), telecommunications (for telecommunication services), etc., belonged exclusively to a single owner.

In the Brazilian case (keeping in mind that there are similar terminologies but no similar effects) the INPI, on regulating the matter brought up by the IPL, has conceptualized the generic sign as ‘[...] the term or word expression or its graphical representation that (without being of necessary nature in relation to the product or service, or indicative of nature, nationality, weight, value, quality and time of production or service provision) designates the category, the type or the sort to which a determined product or service belongs, it not being possible to individualize it, under penalty of being contrary to the rights of competitors.’

A ‘descriptive sign’, as Gonçalves\(^8\) explains, is a sign in Portuguese or in a foreign language which exclusively and directly describes the production, quality, quantity, purpose, value or other feature of the product or service. This definition is similar to the one in Brazilian IPL, which states that a descriptive sign is the one that is related to or designates a characteristic of the product or service with respect to its nature, nationality, weight, value, quality and moment of production or of rendering of a service.

Then there are the ‘necessary signs’. According to the Brazilian legal doctrine, the said signs are the ones which are essential and in Portuguese, at the same time exclusive for naming a specific product. A sign is considered to be necessary mainly when there is no other name that can be possibly used to designate a certain object. In this sense the INPI’s Examination Guidelines describe a ‘necessary sign’ as ‘word or word expression or a design element which is indispensable for designating or representing a product, a good, a service or their inputs’.

A ‘common sign’ is the common name employed by the members of a certain society, whereas ‘usual’ would be the terminology created by ordinary people to identify a certain object. The Examination Guideline makes no distinction between what is common or usual, as it reads: ‘word, word expression or a design element that, although it does not correspond to the name or to the representation, by which the product or service was originally identified, has been established by current use for this purpose, and thus integrated into commercial language’.

With regard to deceptive signs, the prohibition related thereto is stated in item X of Article 124 of the Brazilian IPL. This item sets forth that a sign which suggests a false indication of source, origin, nature, quality or purpose of a certain good or service cannot be registered as a trademark. According to a study on the IPL\(^9\) carried out by the Instituto Dannemann Siemsen de Estudos Jurídicos e Técnicos (IDS), ‘Any sign may be deceitful whether it is a word, prefix, suffix, stem, symbol or icon. [...] Trademarks constitute a true separate language. They create a sign system that communicates to the consumer information on the goods and services they are related to’.

Still according to this study\(^9\), the registration or even the use of a deceptive sign affects the consumer, once it often advertises a quality that the good or service does not have. There may be health damages involved if a wrongly granted sign becomes a pharmaceutical trademark; such a trademark may indicate an active substance that is not part of the medicine, since the said medicine may be intended to treat a health problem different from the one the pharmaceutical terminology applied to the trademark suggests.

As it will be shown later there are registrations of pharmaceutical trademarks granted by the INPI which seem to indicate a specific therapeutic purpose but actually claim a different function. By considering the BNNs, one aims to enable the trademark examiner to assess whether a certain sign is capable of misleading the public consumer thus, avoiding, the registration of deceptive signs.

**The Registrability of Signs as Pharmaceutical Trademarks**

The Industrial Property Code of 1971 (IPC, 1971) provided for the use of a generic trademark together with a specific one in its Article 61. This type of trademark identified the source of a series of goods or products which, in turn, were distinguished by specific trademarks. Besides, the Code ruled that a generic trademark could only be used when accompanied by a specific sign.
Under the 1971 Code, the generic trademark, according to Gusmão, designated a whole series of products manufactured by a company, and said products were identified by a specific trademark. Still, according to the author, the pharmaceutical trademark should be used together with the generic trademark, which was the laboratory trademark. The Code itself stated such obligation in its Article 80: ‘there may be registered as trademarks similar names which aim at distinguishing pharmaceutical or veterinary goods with same therapeutic purposes, provided that there is no possibility of error, doubt or confusion to the public consumer’ (IPC, 1971). The rationale behind this possibility of registration of trademarks composed of similar names for the same therapeutic purposes is that if the consumer made a mistake, he/she would still buy the right medicine to treat the same disease. Article 81 of the same Code reads that a pharmaceutical or veterinary product trademark could only be used together with the generic trademark. The Code, therefore, aimed at clarifying to the consumer, the source of the pharmaceutical good.

The current IPL has excluded the generic trademark, retaining only good, service, certification and collective trademarks. Therefore, it is no longer necessary to use the laboratory trademark (generic trademark as understood in the IPC/1971) together with the specific good or service trademark. In this paper, we deal only with trademarks of goods, that is, ‘the ones used to distinguish goods or services from others which are identical, similar or akin, but from a different source’. However, it is important to mention that the generic trademark attested the origin of a pharmaceutical product and provided more complete information to the consumer and third parties in case of pharmaceuticals. The lack of generic (laboratory) trademark enhances the importance of the pharmaceutical trademark, as it is now the only source of information to the consumer, and as such, it should be examined in a more meticulous way.

According to Gusmão, it is important to observe that in order to be registered, a pharmaceutical trademark should also comply with a specific law other than the Industrial Property Code. Previously, a pharmaceutical trademark required to be in accordance with the Code and with this specific law: ‘the registration will only be issued upon submittal of an office action response receipt as per specific pharmaceutical law’ (IPC, 1971). This feature too was excluded from the current IPL.

It is worth noticing that the sign to be protected as a pharmaceutical trademark has specificities in its composition that should be taken into consideration. A more comprehensive knowledge of nonproprietary names in the pharmaceutical industry is crucial to avoid the issuance of unfair exclusive rights or the confusion of the public consumer.

**INNs, BNNs and Pharmaceutical Trademarks**

The most important criterion to be considered when naming a drug is to avoid confusion in relation to its active substances and its purpose. Therefore, generic names are coined in order to render easy identification of the chemical substance contained in the drug. As a result, there is a need to ensure that a single substance does not have different generic names in different countries.

In 1948, the United Kingdom developed a nomenclature system called British Approved Names (BANs), which aimed at creating generic names by which complex chemical compounds present in pharmaceuticals could be easily identified. The BANs are also employed as the official name for medicines in many countries, mainly British Commonwealth members, and such names are approved upon request of the inventor or manufacturer of the chemical substance. Other countries, such as the United States, France, Italy and Japan have developed similar systems.

Given the existence of different national nomenclature systems, the Nomenclature Program of the WHO was developed and formally established in 1953 with the publication of the first list of International Nonproprietary Name for Pharmaceutical Substances (INNs). WHO coordinates the activities of the national nomenclature committees in order to standardize drug names. In Brazil, the ANVISA is responsible for the translation of the INN lists published by WHO.

The goal of the INN system is to identify drugs with a unique, characteristic and globally available name for each one of them. A clear identification helps to ensure safe prescription and access of these medicines to patients. A new INN is published in the WHO Chronicle and transmitted to all Member States, to the national committees and to other relevant organizations in order to prevent these INNs from becoming exclusive right properties, such as, for instance, trademark registrations.
As INNs are unique names they must be distinct and not susceptible to confusion with other names in common use. WHO has granted INNs the status of public property to be used as common information by all and meant to be an essential feature for maintaining communication within the health system. Therefore, an INN can be used by all pharmaceutical manufacturers also for business purposes of providing information to potential consumers of the medicines. As such, no one is entitled to have exclusive rights over an INN or part thereof by means of industrial property protection. Whenever a new terminology becomes an INN, it falls into the necessary, essential information category in its segment and is no longer available for exclusive right ownership.

An INN consists of two parts: a randomly chosen fancy name and a stem. The stem corresponds to a pharmacological category which identifies the drug properties. Therefore, INNs that are pharmacologically related but containing different chemical substances, share a common stem. Table 1 shows some examples of stems and their corresponding pharmacological categories.

In general, stems are employed as suffixes, but sometimes they can be used as prefixes, as seen in Table 2. The stems are the most important part of the INNs, as main function of the medicine is conveyed by these stems.

INNs are translated into Portuguese by ANVISA and are known as Brazilian Nonproprietary Names (BNNs, DCBs in Portuguese). The importance of having an official drug nomenclature was acknowledged in Brazil during the early 1970s. However, only in January 1981 the Brazilian Ministry of Health published the first official list of generic names, which became compulsory in the application for new pharmaceuticals (Ordinance SNVS 8/1981).

<table>
<thead>
<tr>
<th>INN stem</th>
<th>Pharmacological category</th>
</tr>
</thead>
<tbody>
<tr>
<td>-gli</td>
<td>Antihyperglycaemicals</td>
</tr>
<tr>
<td>-grel</td>
<td>Platelet aggregation inhibitors</td>
</tr>
<tr>
<td>-azepam</td>
<td>Diazepam derivatives</td>
</tr>
<tr>
<td>-aldrate</td>
<td>Antacids</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INN</th>
<th>Fancy term</th>
<th>Stem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clopidogrel</td>
<td>clopido</td>
<td>-grel</td>
</tr>
<tr>
<td>Ramipril</td>
<td>rami</td>
<td>-pril</td>
</tr>
<tr>
<td>Lisinopril</td>
<td>lisino</td>
<td>-pril</td>
</tr>
<tr>
<td>Glimiperide</td>
<td>mepiride</td>
<td>gli-</td>
</tr>
<tr>
<td>Gliclazide</td>
<td>clazide</td>
<td>gli-</td>
</tr>
<tr>
<td>Escitalopram</td>
<td>es-(radical)-opram</td>
<td>cital-</td>
</tr>
</tbody>
</table>

Source: http://mednet.who.int, ref. 8, p. 8

Ordinance 01/83 has updated the list, and ensured compliance with official nomenclature and its use in all official documents. With Ordinance no 971 issued by the Ministry of Health on 10 August 1993, the Brazilian Nonproprietary Names list was published. It is regularly updated by the Subcommittee of Brazilian Nonproprietary Names and is available at the ANVISA website. The list currently in force was published in November, 2006 in RDC 211/2006 text, and has been subsequently updated by several ANVISA resolutions. This list comprises around 9,300 generic denominations, and is an official document of public property employed in drug registration files, public bids, pharmaceutical compounding, input tracking, medical prescriptions, legislation and in all types of scientific work or research.

The commercial success of a medicine depends not only on its therapeutic efficacy, but also on its popularity promoted by several marketing strategies, such as, for instance, trading it under a trademark in order to build customer loyalty. Thus, drugs that have the same generic name may be traded under different trademarks. For example, Tylenol®, Panadol®, Crocin® and Calpol® are trademarks for the generic name drug paracetamol.

The main criteria for choosing a pharmaceutical trademark are the following:

- The name must be different, easy to pronounce and to remember
- The name may indicate how the drug works, its therapeutic purpose or the part of the body for which it will be used

One seeks to correlate a drug with its therapeutic purpose because trademarks can be seen as pieces of information to the consumer as well as to the doctor who prescribes them, with an aim avoid confusion or mistakes on the part of the consumer. Besides, this use of the therapeutic purpose together with the easy-remembrance factor helps the consumer’s decision-making process and saves time. Moreover, it supports the idea that the protection of a trademark is proportional to the cost-benefit it offers to the society.

A trademark becomes the distinctive element which educates the consumer about the commercial source of products and, unlike INNs and BNNs, it can be exclusively appropriated by its owner. That is, whereas common denominations indicate information that renders products equal (apart from their therapeutic purposes), trademarks aim at differentiating one product of another, regardless of whether they have

<table>
<thead>
<tr>
<th>Table 1 — Stems and pharmacological categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>INN stem</td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>-gli</td>
</tr>
<tr>
<td>-grel</td>
</tr>
<tr>
<td>-azepam</td>
</tr>
<tr>
<td>-aldrate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 2 — The use of stems in INNs</th>
</tr>
</thead>
<tbody>
<tr>
<td>INN</td>
</tr>
<tr>
<td>------------</td>
</tr>
<tr>
<td>Clopidogrel</td>
</tr>
<tr>
<td>Ramipril</td>
</tr>
<tr>
<td>Lisinopril</td>
</tr>
<tr>
<td>Glimiperide</td>
</tr>
<tr>
<td>Gliclazide</td>
</tr>
<tr>
<td>Escitalopram</td>
</tr>
</tbody>
</table>

Source: http://mednet.who.int, ref. 8, p. 8
identical therapeutic purposes or not. Pharmaceutical trademarks identify the product and match it to their manufacturing laboratory. A trademark is a proprietary right which seeks to be distinct from competitors, rather than being a nomenclature available for the use of any competitor, thereby making competitor’s products indistinguishable in the market.

Companies have different strategies for choosing the names of their pharmaceutical trademarks. Said names often derive from parts of common denominations or from words that help identify the therapeutic action, the name of the manufacturer, drug administration, dosage and scheme. Sometimes they are atypical names, such as Xanax®, Prozac® or Viagra®. There may be other techniques like using a part of an already successful brand like ‘Penagra’ and ‘Kamagra’ from the original brand ‘Viagra’. Sometimes, companies may follow INN nomenclature like ‘Trizivir’ grom INN abacivir or ‘Zestril’ from lisinopril, etc.  

It is important to point out that when a new INN/BNN is to be created, the existence of a trademark that already uses part of the stem of this new INN/BNN may threaten the creation of such denominations; the owner of the trademark may oppose the new INN/BNN in view of his/her property right.

The Expert Committee on the Use of Essential Drugs observed that instead of marketing their products under generic names, many companies apply for a trademark registration derived from an INN or from a common stem. Resolution 46.19 of World Health Assembly urges Member States to develop policies related to the use of INNs and their protection. INNs may be legitimately used for marketing purposes; however their use as exclusive property must be discouraged. Even though the term ‘discourage’ does not indicate a prohibition on the use of INNs as trademarks, it allows some degree of flexibility for each country to establish means of regulating the use of INNs, including the exclusion of common denominations as trademarks. In Brazil, an INN may be refused as a trademark based on the legal provisions of Article 124 of IPL.

As mentioned earlier, however, such prohibition is not ruled by any agreement, treaty or any other legal provision, whether international or otherwise; such refusal is a mere recommendation. Perhaps that is the reason why the INPI’s examination for the registration of pharmaceutical trademarks is not obliged to take into consideration orientation and other parameters suggested by the WHO.

Methodology

Trademark examination was carried out for each sign seeking registration filed with the Office. A trademark examiner uses the IPL, the examination guideline and other manuals, proceedings and classifications available. The examination aims at ascertaining whether the requested sign is capable of being a registered trademark according to IPL provisions.

Initially, a spreadsheet with all pharmaceutical trademarks filed until 30 June 2009, with dead and alive entries, belonging to the pharmaceutical classification was obtained from the INPI’s Computer and Technology Coordination Center (CGMI in Portuguese). The spreadsheet comprised specifically the following data: application/registration number, filing date, trademark, owner, file status, issuance date and class (pharmaceuticals). Of these, only those applications/registrations in force were selected. Then data was filtered by filing date (from 14 May 1997 onwards, the date on which the IPL took effect) and by file status (registrations without any kind of appeal filed). A total of 18,236 granted trademarks were compiled.

Using this as base data, the medicines most commonly used for self-medication was selected; such a subset was expected to be illustrative for a group of medicines that are more likely to lead to consumer error. The list of medicines used in this paper was obtained from Arrais et al. In this article, the authors indicate that the therapeutic categories mostly employed for self-medication in Brazil are (sorted in descending order): analgesic drugs, nasal decongestants, anti-inflammatory and anti-rheumatic drugs, antimicrobials and chemotherapy drugs, vitamins, antispasmodic drugs, antacid/antiulcerative/ antiflatulent drugs, sexual hormones, antihistaminic drugs for systemic use, cough and cold preparations, muscle relaxants, anti-diarrhea/anti-infection drugs and anti-asthma drugs.

Accordingly, 112 stems in the Brazilian Nonproprietary Names list were identified. They are listed in Portuguese in Table 3.

As mentioned earlier, however, such prohibition is not ruled by any agreement, treaty or any other legal provision, whether international or otherwise; such refusal is a mere recommendation. Perhaps that is the reason why the INPI’s examination for the registration of pharmaceutical trademarks is not obliged to take into consideration orientation and other parameters suggested by the WHO.
Results

According to Revista da Associação Médica Brasileira (Brazilian Medical Association Magazine)\textsuperscript{15}, ‘self-medication is a widely spread habit not only in Brazil [...] the majority of the pharmaceuticals the population consumes is sold without prescription’. Self-medication is used to relieve all kinds of symptoms, the most typical ones, such as those caused by common viruses. In Brazil, at least 35 per cent of the medicines are accessible for self-medication.\textsuperscript{16}

The major complaints discussed in Nielsen’s research\textsuperscript{17} on how consumers worldwide treat their diseases, were related to ‘headaches, colds, sleep disorders and backaches’. The study revealed that consumers are loyal and habitual buyers of over-the-counter (OTC) drugs that relieve pains. Still according to the same research, the three factors that influence consumers’ attitudes when they become ill are: strong ‘loyalty’ to ‘tested and approved products’ trademarks (i.e., drugs that consumers have already taken); ‘trust in medical professionals’; and ‘strong culture of using homemade medicines’.\textsuperscript{17} Nearly half of such consumers (42 per cent) turned to their habitual medicines, already ‘tested and approved’ during illnesses, and one out of three admitted seeing a doctor or going to a drugstore seeking a recommendation for an OTC drug.

Taking into consideration the risks posed by self-medication corroborated by studies like those above, the results in this research were based only on trademarked pharmaceutical products that can be bought by consumers without a prescription. With a view to restricting the study to examination of pharmaceutical trademarks, only the searches with the most relevant results were included. Therefore, searches by prefix, stem or suffix with irrelevant results, e.g., not within the timespan selected (14 May 1997 to 30 June 2009), were left out. Searches (in Portuguese) by stems -adol-, -nab-, -sal-, -mer-, -quin-, -calci-, -retn-, -gest-, -ace, -aco, -dox, -icam and -ur, were also considered irrelevant because the results revealed pharmaceutical trademarks in which the stems, prefixes and suffixes did not clearly characterize their therapeutic purposes.

As can be seen from the Table 4, several search results showed that the specification of pharmaceutical trademarks was very broad as, for instance, ‘medication for human use’ or indicated several therapeutic purposes, such as ‘muscle relaxant, analgesic, antipyretic and anticonvulsant’. This prevents the trademark examiner from verifying if the trademark is really applied to a specific therapeutic purpose, as recommended by WHO. A more precise specification would be extremely important for carrying out a more efficient examination.

Another point to highlight is the issuance of deceptive trademark registrations which could mislead the consumer, i.e., trademarks that infringe item X of Article 124 of IPL. For example, the trademarks Deprozol® and Thyrozol®, in view of
their suffix -rozol, should only represent antimicrobial and chemotherapy drugs, rather than anthelmintic drugs and drugs indicated for treating thyroid problems, respectively. Another example is the trademark Faulblastina® that, due to its suffix – astina, should designate antihistaminic drugs instead of the antineoplastic drug that it actually is.

Another interesting fact that came to light is the infringement of item VI of Article 124 of IPL, viz., the granting of the sign betazol in the trademark Betazol Cort®. This sign is a Brazilian Nonproprietary Name, therefore it should not be granted as an exclusive right.

In Table 4, a compilation of the research results is presented. The occurrence of broad specifications or specifications that comprise a great array of therapeutic uses is the biggest problem in the examination of pharmaceutical trademarks, as it represents 40 per cent of the 164 analysed trademarks.

A broad specification does not let the examiner verify whether the sign applied for as a trademark falls into the prohibitions set forth in item X of Article 124 of IPL; probably leading to the grant of deceptive trademarks. On the other hand, granted trademarks that infringe items VI and X of IPL amount to 25 per cent of the total of trademarks analysed.

**Conclusion**

In Brazil, although there is an ANVISA regulation concerning the trading and advertising of medicines that can be bought over the counter, there is no regulation or orientation for the people who use them. The data analysed in this study suggest that the non-compliance with WHO orientation regarding pharmaceutical trademark examination procedures may have severe consequences on public health, either with drugs that mislead the consumer or with the registration of signs which are public property.
Thus, according to the results of this research, it is indispensable for the improvement of trademark examination, to strictly adhere to the BNNs and stem lists made available by ANVISA during the examination, which would decrease the granting of deceptive and public property signs as exclusive trademark right, in accordance with the Brazilian Industrial Property Law provisions.

References