

NEWS FROM THE FIRM

Advising CR Cesena bank on a capital increase

A team led by partner **Pierfrancesco Giustiniani** (with **Elisa Cappellini** and **Martina Monico**) assisted CR Cesena in the negotiation and completion of its capital increase.

Recent publications

Ludovico Anselmi, TMFT Enterprises LLC - Break Media v. Reti Televisive Italiane S.p.A. (RTI), [2016] E-Commerce Law Reports 3, 12

Domenico Colella appointed Fellow of the American Bar Foundation

Domenico Colella has been appointed a fellow of the American Bar Foundation of the American Bar Association.

Events

On 27 June 2016 (from 1 pm to 3 pm) the firm hosted a seminar on "Società quotate: obblighi di trasparenza e prospetto informativo. Il regime sanzionatorio", dealing with the obligations of listed companies in relation to transparency.

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ANTITRUST

Investigation opened on the market for intermediation services related to performers' rights

On 13 April 2016, the Italian Competition Authority (the AGCM) initiated an investigation for breach of Article 102 TFUE against NUOVOIMAIE, the collecting society which previously had the exclusive right to manage and provide intermediation services in relation to the royalties payable to performers and artists. Certain competitors of NUOVOIMAIE (Itsright and Artisti 7607) complained to the ICA that the incumbent was obstructing their activities since the liberalisation of the market in 2012. More specifically, the AGCM alleges that NUOVOIMAIE has exploited its privileged position as a former monopolist by implementing discriminatory strategies to the detriment of the authors affiliated with competitors, such as prioritising reimbursements of certain pre-liberalisation royalties to its affiliates, refusing competitors access to its general database and entering into bilateral agreements with foreign collecting societies (see [here](#)).

COPYRIGHT

The CJEU on communication to the public of a copyrighted work

In its **judgement of 31 May 2016** (case C-117/15), the CJEU ruled on the interpretation of the term "communication to the public" (already debated in several CJEU judgements, e.g. **13 March 2014**, C-466/12 – Svensson; **15 March 2012**, C-135/10 – SCF). The case was pending between GEMA (the German Copyright Collecting Society) and Reha Training (a German rehabilitation centre). The Court held that Reha Training was communicating certain copyright-protected works to the public on TV sets installed in its premises. In particular, the CJEU found that a communication to an "audience" requires a communication: (1) to an indeterminate number of potential recipients; and (2) to a "new audience" (meaning an audience that had not been considered by the copyright owner when it first authorised the communication of the protected works and that could not have viewed the latter without the intervention of a third party). Additionally, the "profit-making nature" of the communication should also be taken into due account. According to the Court, all these requirements were met in the case at issue.

SIAE's monopoly challenged by Italian antitrust authority

In its **recommendation to the Italian Prime Minister** on 1 June 2016, AGCM (the Italian antitrust authority) stated that the monopoly on copyright collection enjoyed by SIAE (under section 180 of the Italian copyright law) is in contrast with the provisions of Directive 2014/26/EU (on collective management of copyright and related rights). AGCM highlighted that the directive provides that copyright owners should be free to entrust the management of their copyrights to any authority they wish "irrespective of the Member State of nationality, residence or establishment of the collective management organisation" (recital 19 of the directive). All other major European countries, AGCM added, are now in line with this regime. The Italian government will now have to implement Directive 2014/26 by issuing a specific law. According to AGCM this may be a good opportunity to remove SIAE's monopoly. SIAE responded with a **note dated June 6 2016**, stating that it will abide by Parliament's decision, although from its perspective the monopoly regime is not in contrast with Directive 2014/26.

FINANCE

New tax authority guidelines on taxation on pledges

In an internal note dated 16 May 2016 (the **Note**), the Revenue Agency's Regional Direction Office for the region of Lazio (the **DR Lazio**) has clarified its position on the controversial issue of the applicable basis for calculation of registration tax on a pledge over the corporate capital of a limited liability company (the Italian Srl). The relevant Italian legislation (article 43, paragraph 1, letter f) of Presidential Decree no. 131 of 26 April 1986 provides, for registration tax purposes, that "the taxable basis shall be constituted: [...] f) with regard to deeds creating in rem security (*garanzie reali*) or personal guarantees (*garanzie personali*), on the basis of the secured amount; if the assets subject to the pledge consist of cash or securities (*titoli*), on the basis of, respectively, the cash amount and the value of the securities, in each case if lower than the guaranteed amount". In the past, certain Offices of the Revenue Agency have considered the quotas in the capital of an Srl as falling within the meaning of "securities" for these purposes. The practical consequence of such an approach was that a pledge over the corporate capital of an Srl was taxed on the basis of the (nominal) value of the quotas. While the Note has not been formally published, it seems that the DR Lazio applied a restrictive interpretation of "securities" by excluding quotas of an Srl. As a consequence, the DR Lazio used the secured amount as the appropriate taxable basis for the calculation of the relevant registration tax. It is worth noting that Regional Direction Offices are not formally bound to follow the position taken by other Regional Direction Offices of the Revenue Agency.

CAPITAL MARKETS

Arbitration Regulation for financial disputes – follow-up

On 3 June 2016, the Financial Disputes Arbitrator Rules (FDA), published by the Italian Companies and Stock Exchange Commission (**Consob**) with Resolution no. 19602 of 4 May 2016 (the **Regulation**), came into force (see [Our Echo January 2016](#)). The Regulation requires intermediaries to join the FDA within two months from the date of the Regulation through the association they joined; for intermediaries that do not belong to trade associations, Consob must be notified of membership directly.

Assonime's answer on publication of periodic financial information

The Association of Italian joint stock companies (Assonime) has responded to the public consultation launched by Consob concerning publication of periodic financial information (see [Our Echo April 2016](#)). Legislative Decree no. 25/2016 abolished the obligation to publish quarterly financial statements, granting Consob the right to establish certain additional obligations relating to the disclosure of periodic financial information. In line with its position as already expressed in its Paper no. 12 of 2016, Assonime expects the opportunity to ensure the maximum flexibility with regard to the issuer's decision on whether or not to publish additional periodic financial information, and recommends that issuers define a periodic financial information management policy internally on a voluntary basis.

EU LAW

A new EU Regulation cuts costs and formalities

On 9 June 2016 the European Parliament approved a new **Regulation** (amending Regulation no. 1024/2012) in respect of the free movement of European citizens and businesses, aimed at simplifying the acceptance of certain public documents in the European Union (the Regulation). European citizens are currently required to prove the authenticity of public documents (such as birth certificates). According to the Regulation, public documents issued in an EU country will be deemed as authentic in any other EU Member State, without requiring a certification by way of an "apostille". The Regulation required EU Member States to cooperate in order to adopt a multilingual standard form (to be attached to each public document) aimed at avoiding the need for translation. The Regulation is to be implemented by each EU Member State within two and a half years from publication in the EU Official Gazette.

LABOUR

The Italian Supreme Court in its judgment no. 11868 of 9 June 2016 stated that the dismissal of staff in public employment is not governed by Law no. 92 of 2012 (the "Fomero Reform"), but by Article 18 of Law no. 300 of 1970 (the "Workers Statute"), which provided for the possibility of reinstating the employee in any case of unfair dismissal. The Fomero Reform amended Article 18 of the Workers Statute, reducing the grounds of reinstatement for unfairly dismissed employees, and the recent Jobs Act Reform limited them further (almost always providing for cash compensation). According to the above-mentioned judgment, none of these changes apply to employment in the public sector, because of the specific interests involved in public employment relationships.

TRADEMARK

The "fair use" of a surname already registered as a trademark

In its decision no. 10826 of 25 May 2016, the Italian Supreme court added another chapter to the long dispute regarding the use of the name of the late Italian stylist and designer Elio Fiorucci. Fiorucci founded the company Fiorucci S.p.A. and then left it, also selling the related trademarks (which contained the surname "Fiorucci" and were registered, inter alia, for clothing and accessories). He started a new fashion business and registered the trademark "Love Therapy By Elio Fiorucci" and other similar trademarks containing the Fiorucci surname. A dispute arose with the purchasers of the "Fiorucci" trademarks, who claimed that the new trademarks were in breach of their rights and fair competition rules. The first and second instance judgments, in favour of the designer, were overturned by the Supreme Court. First of all, the Court reasserted the long-standing principle that use in business of a surname already registered as a trademark must be fair and, in particular, only for descriptive purposes, meaning only in the case of a real need to describe the activities, products or services offered by that person. According to the Court, the use of the Fiorucci surname in the "Love therapy" trademarks did not meet the above requirements, since it was mainly aimed at linking the branded products with the well known Italian stylist's name.

INDUSTRIES

E-COMMERCE

New e-commerce package unveiled

On 25 May 2016, the European Commission proposed a package of measures to allow consumers and companies to buy and sell products and services online more easily across the EU. The new e-commerce package is composed of (i) a legislative proposal to address unjustified geoblocking and other forms of discrimination on the grounds of nationality, residence or establishment, (ii) a legislative proposal on cross-border parcel delivery services to increase the transparency of prices and improve regulatory oversight and (iii) a legislative proposal to strengthen enforcement of consumers' rights and guidance to clarify, inter alia, what qualifies as an unfair commercial practice in digital commerce. Detailed information on the new e-commerce package is available [here](#).

MEDIA

Italian Court overturns decision fining TV post-production companies

On 6 June 2016, the Regional Administrative Court of Lazio (TAR) issued a set of judgments annulling the decisions of the Italian Competition Authority (the AGCM) and requiring twenty post-production TV services companies and their associations to pay fines for violating the prohibition on anticompetitive agreements (Article 101 TFUE), consisting of the exchange of commercially strategic information about their bids to the Italian State-owned TV (RAI). According to the TAR, the information exchanged (such as the "floor" price established by RAI and the quotations submitted by each company in past tenders) were neither "strategic" nor "secret" and, moreover, the AGCM did not provide sufficient evidence of an anticompetitive object or effect in connection with the information exchange (the judgments are available [here](#)).

TECHNOLOGY

EU Commission releases Digital Progress Report

On 20 May 2016, the EU Commission published **Europe's Digital Progress Report 2016** (the **Report**), outlining the progress made by the European Union and its Member States in the field of digitalisation. In particular, the Report analyses the status of EU political initiatives led by EU Institutions in the wider context of the Digital Single Market strategy, with country-specific policy insights. In addition, the Report provides a specific insight chapters on (i) connectivity, (ii) human capital, (iii) use of Internet, (iv) integration of digital technology, (v) digital public services and (vi) research and development.

Authored by Ludovico Anselmi, Domenico Colella, Sacha D'Ecclesiis, Alessandro De Palma, Francesca Flego, Manfredi Leanza, Enzo Marasà, Valerio Natale, Francesco Nisi, Fabrizio Sanna, Gaia Sansone, Marina Sartor, Manuela Villa and Francesco Vitali.

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