

**NEWS FROM THE FIRM**

**The firm assisted Toshiba in the disposal of Mangiarotti S.p.A.**

A team led by **Pierfrancesco Giustiniani** and **Manfredi Leanza** (with **Elisa Cappellini**) advised Toshiba on the disposal of 70% of the equity of Mangiarotti S.p.A. (a primary player in the manufacture of heavy components for the Oil&Gas and the nuclear industry).

**8th CAM Annual Conference**

Firm partner **Matteo Orsingher** moderated the **8th CAM Annual Conference on "Arbitrating Intellectual Property Disputes"** organised by the Milan Chamber of Arbitration and held in Milan on 24 November.

**Awards**

At the TopLegal Award gala dinner held on 20 November, Matteo Orsingher received the Lawyer of the year award for the patent litigation sector in Italy.

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**AGCOM Barrier "Regulation" enacted**

On 19 October 2017, the Italian Communication Regulation Authority (the "AGCOM") approved **Regulation n. 396/17/CONS** (the "Regulation") implementing **Legislative Decree No. 35/2017** of 15 March 2017 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. AGCOM approved the Regulation following a public consultation among stakeholders in order to: (i) adopt a definition of "user" coherent with that provided under art. 3(k) of the **Directive 2014/26/UE** of 26 February 2014 (the "Directive"); (ii) define the concept of effective establishment in Italy of a collective management society or of an independent management entity by taking into account a broader scope of EU law and case law; (iii) ensure an adequate level of publicity, through its website, of new entities entering the market; and (iv) define "enterprises" for the purpose of the relevant legislation as including independent management entities only. AGCOM has not provided an alternative dispute resolution system as the Italian Parliament did not implement art. 34 of Directive 2014/26. Upon approval of the Regulation, the Authority established a Working Technical Group to provide for the adoption of rules implementing Legislative Decree No. 35/2017. For more information please click [here](#).

**DATA PROTECTION**

**Whistle blowing legislation enacted**

On 15 November 2017, the Italian Parliament enacted a **law on whistle-blowing**. The new legislation has the purpose of protecting employees who make good faith complaints. These employees cannot be subject to penalties, demotion, dismissal, transfer or any other measure which has a negative effect on their working conditions. Moreover, the identity of the whistle-blower must be protected. Any retaliatory or discriminatory measure adopted as a consequence of whistleblowing is considered null and void, unless the employer demonstrates that the relevant measures are based on grounds not related to the complaint.

**Italian Government to align Italian Data Protection Law to the GDPR**

On 6 November 2017, **Law No. 163 of 25 October 2017** (the so-called "Enabling Law") was published in the Italian Official Gazette to enter into force on 21 November 2017. The Enabling Law, among other European legislation that the Italian Government is called upon to implement, includes the **GDPR**. The Italian Government is notably requested to repeal the provisions of the current **Italian Data Protection Code** which are inconsistent with the GDPR; amend and coordinate the Italian Data Protection Code's provisions with those of the GDPR which are not directly applicable; provide the possibility for the Italian Data Protection Authority to take the implementing measures provided by the GDPR; and establish the relevant criminal and administrative sanctions for breach in line with those provided for in the GDPR.

**LABOUR**

**One-off termination contribution for collective dismissal doubled**

As from 1 January 2018, all employers are subject to the regulations concerning the extraordinary wage supplementation fund (CIGS) will have to pay the Italian Social Security Fund an increased one-off contribution in case of collective dismissal. The draft of the 2018 Budget Law provides for the increase of the relevant amount from 489,95 € to 979,90 € for each year of seniority of the dismissed employee (up to a maximum of three years). Therefore, the maximum amount (to be paid upon the termination of the employment) would be to 2.940 €.

**PATENT**

**Public consultation on SCP and patent research exemptions launched**

On 12 October 2017, the European Commission launched a **public consultation** ending on 4 January 2018, aimed at collecting inputs from citizens, authorities and stakeholders to evaluate a possible adjustment of certain aspects concerning patent and supplementary protection certificate (SPC) protection, which may include the creation of a unitary SPC title, updating the scope of EU patent research exemptions, and the introduction of an SPC manufacturing waiver.

**UNFAIR COMMERCIAL PRACTICES**

**Consumer protection authority fines bank for euro 15 Million on the sale of diamonds for investment purposes**

On 20 September 2017, the Italian Competition Authority (the "Authority") issued two decisions (**No. 10677** and **No. 10678**) closing proceedings against certain diamond traders and financial institutions, concerning the manner in which the sale of certain diamonds for investment purpose were presented to Italian consumers. The Authority held that the advertising materials published on the relevant websites of the diamond traders and made available through the banking channels would mislead the customers on (i) the price of the diamonds and the method of calculation; (ii) trends in the diamond market and the profitability of the proposed investment in diamonds in comparison with inflation and other investments; (iii) the certainty of a swift and profitable divestments; and (iv) the qualification of the diamond traders as European leaders in the relevant market. These partial and misleading representations substantially prejudiced the consumers' ability to make an appropriate choice and amounted to an unfair commercial practice. Total fines of Euro 15,000,000 were imposed.

**CAPITAL MARKETS**

**Borsa Italiana amends the AIM Regulation**

In notice n. 20406 dated 3 November 2017 (the "Notice"), Borsa Italiana S.p.A. ("Borsa Italiana") communicated amendments to the AIM Italia/ Alternative Capital Market (the "Regulation"), which will enter into force on 3 January 2018. The main amendments include the following: (a) institutional offer: the minimum float requirement is considered satisfied once shares are subscribed at least 5 institutional investors; (b) production and publication of research: the specialist is required to produce and publish equity research reports on the Borsa Italiana website twice a year, at the time of the approval of half-year and year-end financial statements. (N.B. this duty only applies to issuers admitted to trading after 3 January 2018); (c) pre-admission announcements: the issuer is required to include, in the pre-admission announcement the indicative price range within which the final price of the financial instruments will be set or the final price, as soon as available; (d) SPACs: criteria are introduced to guarantee that promoters of special purpose acquisition companies (SPACs) have relevant experience and professional skills; (e) regulatory adaptations: following the finalization of the legal framework concerning market abuse, with the adoption of guidelines on the management of insider information by CONSOB, some provisions contained in the Regulation, which could have led to overlaps, have been abrogated. The text of the Notice with the relevant amendments to the Regulation is available [here](#).

**Guidelines on Inside Information and Investment Recommendation adopted**

On 13 October 2017, the National commission for companies and the stock exchange ("CONSOB") issued guidelines concerning the "management of insider information" (the "Guidelines") and the "investment recommendations" (the "Guidelines on Investment"), following the open consultation which began **last April**. CONSOB adopted these detailed indications, which may facilitate the full and correct implementation of the **Regulation (EC) No. 596/2014** of 3 July 2016 (on market abuse). The Guidelines on Inside Information clarify the conduct required while dealing with information management and drafting the insider list. CONSOB clarified that the Guidelines on Inside Information represent "a possible model for the issuer, partly based on mandatory provisions and partly on CONSOB's directions". CONSOB also clarified that those guidelines are not prescriptive and, failure to apply them, will not automatically result in an infringement. These appears to be no deadline for compliance, as the operative directions do not contain such an obligation. The scope of the Guidelines on Inside Information is limited to issuers of traded financial instruments; they do not apply to issuers of widely distributed financial instruments. They deal with the correct presentation of investment recommendations, communication to the public of specific interests and conflicts of interest, as well as the conditions under which CONSOB may require the publication of investment recommendations. The text of the Guideline on Inside Information, the Guidelines on Investment and the relevant illustrative report is available [here](#).

**TRADEMARK**

**Trademark infringement claims not to be dismissed on a not yet upheld invalidity counterclaim**

On 19 October 2017, the EU Court of Justice (CJEU) issued its judgment in case **C-425/16** (Hansruedi Raimund v. Michaela Aigner) which involved the owner of the EU word mark "Baucherlwärmer" (used for a herbal mixture to be added to alcohol) suing the user of the name "Baucherlwärmer" for trademark infringement on the basis of the use of that name for a similar product. The defendant raised a counterclaim, alleging that the trademark was invalid having been applied for in bad faith. The infringement claim was dismissed at first instance. Following a referral by the Austrian Supreme Court, the CJEU clarified the relationship between trademark infringement and invalidity claims as follows: (a) an action for infringement brought before an EU trade mark court may not be dismissed on the basis of an absolute ground for invalidity without that court having upheld the counterclaim for a declaration of invalidity brought by the defendant in the infringement action; and (b) an EU trademark court is not precluded from dismissing an action for infringement even though the decision on the counterclaim has not become final.

**INDUSTRIES**

**E-COMMERCE**

**Towards new EU rules for platform-to-business relations**

**Italian Competition Authority on the Ryanair's massive cancellation of flights**

On 27 October 2017, the European Commission (the "Commission") published the so called **Inception Impact Assessment on Fairness in platform-to-business (P2B) relations**. Building on the fact-finding exercise on business-to-business (B2B) practices of May 2016, the Commission found that the increased reliance on online platforms has led to businesses in the digital economy becoming dependent on those platforms which may create significant damage for businesses, especially for smaller businesses. In particular, the initiative, which constitutes a core part of the Digital Single Market Strategy, identifies six potentially harmful P2B trading practices that may have direct negative effects on a large number of business users, while indirectly harming consumers and innovation. The document request feedback based on which, the Commission may decide to take further action, including the adoption of soft law or legislative instruments.

On 25 October 2017, at the conclusion of investigative proceedings started against Ryanair, the Italian Competition Authority (the "Authority") held that the conduct of the carrier following its cancellation of a significant number of flights in the period 10 September 2017 to 2 October 2017 had prevented passengers from properly exercising their right to receive economic compensation pursuant to articles 5 and 7 of **Regulation 2004/261/EC** of 11 February 2004 (establishing common rules on compensation and assistance to passengers in the event of refused boarding and cancellation or long delay of flights). In particular, according to the Authority, both the information provided by Ryanair on the right to compensation and the manner in which such information was provided to passengers, were incomplete and misleading and made it extremely difficult for consumers to be fully aware of the rights and economic benefits granted by Regulation 2004/261/EC in the case of cancellations of flights. For more information please see [here](#).

**AUTOMOTIVE**

**Italian Competition Authority fines car manufacturers for promotional price**

On 11 October 2017, the Italian Competition Authority (the "Authority") fined two major car manufacturers (decisions No. **10849** and **10850**) for unfair commercial practices under Sections 20, 21 and 22 of the Italian Consumer Code. According to the Authority, the unfair commercial practices involved the misleading representation of promotional price in advertising materials, which did not state clearly that the promotion was exclusively reserved to customer entering into a loan agreement. Indeed, the price identified in the advertising material does neither amount to the final higher purchase price of the car, nor represent the final higher value to be paid following the subscription by the consumer of a mandatory loan.

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