

NEWS FROM THE FIRM

The Firm with Antares Vision in India

A team led by [Pierfrancesco Giustiniani](#) advised Antares Vision, a global provider of tracking systems for the pharmaceutical and food industries, on the negotiation of a joint venture agreement with the Indian company Jay Instruments & Systems PVT Ltd.

The Firm advises COIMA Logistic on Euro 40 million financing

A team led by [Manfredi Leanza](#) (with [Federica Paniz](#) and [Francesco Senesi](#)) advised COIMA Logistic on a Euro 40 million financing round.

Parliamentary seminar on the Digital Single Market and Cloud Services

On 17 September 2018, our partner [Fabrizio Sanna](#) spoke at a panel session organised by the Italian Parliament on [The Digital Single Market and Cloud Services](#). The paper presented by Fabrizio focused on the Cloud and Intellectual property.

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CAPITAL MARKETS

Crypto-currency as contribution to corporate capital increase

On 18 July 2018, the Court of Brescia issued a decree ([No. 7556/2018](#)) on the eligibility of crypto-currencies as assets to be conferred as contributions to the corporate capital of limited companies, pursuant to Article 2464 of the Italian Civil Code ("ICC"). In particular, the Court ruled that, although crypto-currencies are potentially eligible as contributions, an assessment needs to be made as to whether they truly represent an asset with suitable economic value according to Article 2464 of the ICC. For the purposes of that assessment, the following elements are to be considered: (a) the ability to subject the conferred crypto-currency to an enforcement procedure by the relevant company's creditors; and (b) the existence of a substantial market for such crypto-currencies. The latter, according to the Court, constitutes evidence as to the degree of liquidity of the relevant crypto-currencies and the ability to convert readily to cash.

DATA PROTECTION

EDPB on list of processing activities subject to DPIA

On 25 September 2018, the European Data Protection Board (EDPB) adopted its [opinion 12/2018](#) on the list of processing operations that, according to the Italian Data Protection Authority, will be subject to a Data Protection Impact Assessment (DPIA). According to Article 35.4 and 35.6 of the GDPR, each supervisory authority of the EU Member States must establish, publish and communicate to the EDPB a list of processing operations that are subject to a requirement for a DPIA. Moreover, the EDPB has also issued identical opinions on other guidelines issued by 21 other supervisory authorities of EU Member States.

Italian Data Protection Authority on facial recognition software

On 15 March 2018, the Italian Data Protection Authority [declared facial-recognition software lawful](#), following the request submitted by Aeroporti di Roma S.p.A. for a preliminary verification of the lawfulness of the installation of a system equipped with such software. According to the Authority, the processing of biometrical data obtained by the applicant with such facial-recognition software has to be considered lawful considering that: the processing has the sole purpose of improving passengers' safety and not their identification; the personal data are processed for the time necessary for their coding in a biometric template, and without any cross-referencing with other data identifying the passenger (such as name and surname).

LABOUR

Constitutional Court declares the dismissal allowance criteria in the "Jobs Act" to be unlawful

Based on a press release dated 26 September 2018 (the formal decision remains to be issued), the Constitutional Court declared as unlawful the predetermined increase of compensation (i.e. 2 months' salary for each year of service) provided for, in cases of unlawful dismissal, by Article 3.1 of Legislative Decree No. 23/2015 (the so-called "Jobs Act"). According to the Court, the provision for an increase in allowance connected only to the employee's length of service is contrary to the principle of equality and to the rights and protection of work set forth in Articles 4 and 35 of the Italian Constitution. In particular, the Court held that a purely arithmetical criterion (a) eliminates the discretionary power that previously allowed the Employment Tribunal to grant a different allowance for dissimilar cases; and (b) may give rise to discrimination where, in the event of redundancy, the employer is strongly incentivised to dismiss the "less costly" employees hired under the rules of the Jobs Act. Pending details of the decision and any amendment(s) that may be introduced by the Italian Government and/or Parliament, we can state that (a) the dismissal allowance in a case of the unlawful dismissal of a "Jobs Act" employee now ranges from a minimum of 6 up to 36 months' salary, regardless of the length of service of the dismissed employee, and (b) it is however likely that Employment Tribunals will revert to the previous calculation criteria for dismissal allowances set forth in the "Legge Fornero", which assigned the Court discretionary power to decide, on a case by case basis, dismissal allowances from a minimum of 12 up to a maximum of 24 months' salary, taking into account the duration of the employment relationship, but also the behaviour of the parties, the company size and other circumstances. For further information, please see [here](#).

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Italian Supreme Court on the right to use Audrey Hepburn's images

On 19 July 2018, the Italian Supreme Court issued its judgment in [case No. 19311/2018](#) (*Audrey Hepburn's heirs v. Arnoldo Mondadori Editore S.p.A.*), regarding the allegedly unauthorised use of the name and image of Audrey Hepburn in Mondadori's magazines. In its decision, the Italian Supreme Court stated that, by publishing magazines containing photographs of Audrey Hepburn to be sold with DVDs of films starring the actress, Mondadori was not violating the actress' right to use her name and image pursuant to Law No. 633 of 22 April 1941. In this case the commercial use of the images of Audrey Hepburn was solely aimed at promoting the sale of the films in which the actress appeared. Therefore, Mondadori did not need to obtain the consent of Audrey Hepburn's heirs, since it had already been authorised to use the name and image of the actress, by virtue of the licence agreement it entered into with the producer of the films featuring Audrey Hepburn (i.e. Paramount Home Entertainment).

DESIGN

New edition of EUIPO Guidelines on Community designs available

On 1 October 2018, the EUIPO published the [new Guidelines for the Examination of Applications for Registered Community Designs](#) which, *inter alia*, simplified the examination procedure for Community Design applications claiming priority, by excluding the examination by the EUIPO of compliance of the priority claimed with the substantive requirements set forth in Article 41 of [Regulation \(EC\) No. 6/2002](#) of 12 December 2001 on Community designs (including i.a. that the priority application is the first application for the design).

FINANCE

Italian Supreme Court on the subordination of shareholders' loans

On 20 June 2018, the Italian Supreme Court issued its judgment ([No. 16291/2018](#)) on the subordination of shareholders' loans to payments in favour of other creditors, pursuant to the provisions of [Article 2467 of the Italian Civil Code](#). The Supreme Court confirmed that, even if Article 2467 of the Italian Civil Code expressly refers only to quota-holders' loans, the underlying rationale of the provision is to prevent the thin capitalisation of all "closed" companies (i.e. companies that do not resort to capital markets and which usually have a limited number of shareholders and limited circulation of shares). On that basis, Article 2467 may be applicable to both quota-holders and shareholders seeking to limit their enterprise risk by providing funds in the form of financing rather than capital contributions. On this basis, the Supreme Court stated that Article 2467 of the Italian Civil Code is applicable also to shareholders' loans, by analogy, where the financing shareholder is aware of the thin capitalisation of the joint stock company (*società per azioni*) to a similar extent as a quota-holder would be so aware in a limited liability company (*società a responsabilità limitata*). In particular, the position of quota-holders and shareholders will be considered identical in circumstances where the quota-holders or shareholders have knowledge of the company being financed with debt in circumstances in which its thin capitalisation would require a capital contribution, on the basis that the indebtedness of the company is excessive in relation to its net assets. Furthermore, the Supreme Court also clarified that if a quota-holder/shareholder is also a director of the borrowing company, such knowledge may be conclusively presumed.

TRADEMARKS

ECJ on the proof of acquired distinctiveness of EU trademarks

On 6 September 2018, the EU Court of Justice (ECJ) issued its decision in [case C-547/17](#) (*Basic net v. EUIPO*), ruling (in line with the ["KitKat" judgment](#)) on how the acquired distinctiveness of a EUTM should be proved. Basic Net filed an EUTM application (in classes 18, 25 and 26) for a figurative trademark formed by three adjacent vertical coloured stripes (one yellow, one orange and one black). The application was rejected by EUIPO and (following the applicant's appeals) by the Board of Appeal and the General Court. The refusal was justified on the basis that the trademark lacked distinctive character (as per Article 7.1(b) of [EUTM Regulation No. 207/2009](#)) and the applicant failed to prove any acquired distinctiveness (as per Article 7.3). Acquired distinctiveness had previously been proved in only 4 member States (France, Italy, Netherlands and the United Kingdom), which were not deemed to form a substantial part of the EU territory. The General Court's decision has now been confirmed by the Court of Justice.

PATENTS

UK Government releases its guidance on patent protection in the event of a no-deal Brexit

On 24 September 2018, the UK Government published its [technical notice](#) (the "Technical Notice") on how certain aspects of UK patent protection will be treated in the event that no Brexit deal is agreed prior to the UK's exit from the EU on 29 March 2019. With regard to Supplementary Protection Certificates for plant products and medicinal products (the "SPCs"), which are regulated and derived from EU legislation, the UK Government assured that the EU Withdrawal Act 2018 will retain the relevant SPC EU legislation in UK law so the regime will continue its normal functioning throughout the withdrawal process. The Technical Notice also deals with the unitary patent and the unified patent court, outlining the scenarios in connection with the possible entry into effect of the system.

INDUSTRIES

TRAVEL

ECJ on reimbursements in the event of flight cancellation

On 12 September 2018, the EU Court of Justice (ECJ) issued its judgment in [case C-601/17](#) (*Dirk Harms and Others v. Vueling Airlines SA*), ruling on a dispute concerning the quantification of the ticket refund in the case of a flight cancellation pursuant to Art. 8(1)(a) of [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council dated 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of being denied boarding, cancellation or significant delay of flights. The proceedings involved the Harms family (the "Passengers") and the airline company Vueling Airlines which, after having cancelled the relevant flight, agreed to reimburse the price paid by the Passengers on the website of the intermediary Opodo but refused to pay the amount collected as commission by the intermediary, on the basis that this amount was not part of the ticket price and should thus not be reimbursed. According to the ECJ, the ticket price to be taken into consideration for the purposes of determining the reimbursement owed by the airline company to a passenger includes the difference between the amount paid by that passenger and the amount received by the airline company, which corresponds to a commission collected by a person acting as an intermediary between those two parties, unless that commission was imposed without the knowledge of the airline company.

TECHNOLOGY

Italy joins European Partnership on Blockchain

On 27 September 2018, the Italian Government signed the European Blockchain Partnership, thus becoming the 27th European signatory country. The European Blockchain Partnership will support the exchange of experience and expertise in technical and regulatory fields as well as the launch of EU-wide blockchain applications across the Digital Single Market for the benefit of the public and private sectors. For further information, please see [here](#).

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