

**NEWS FROM THE FIRM**

**The firm with Rigoni di Asiago**

A team led by **Manfredi Leanza** (with **Federica Paniz**, **Mariachiara Creu** and **Riccardo Valgoi**) advised Rigoni di Asiago on a 50 million Euro financing round.

**Chambers ranking released**

Our firm has been confirmed as a "leading firm" in Italy in various practices in the recently released Chambers Guide 2019 and Europe Chambers Global Guide 2019.

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**CAPITAL MARKETS**

**Amendments to the Stock Exchange Rules and relevant Instructions**

On 4 March 2019, the amendments to the Stock Exchange Rules of Borsa Italiana S.p.A. enacted by Consob's **Resolution No. 20750** of 19 December 2018 came into force. Those amendments, mainly focused on the rules and relevant thresholds for the determination of an issuing company's free-float, provide for, *inter alia*: (a) the consolidation of the requirements concerning (i) free float and (ii) capitalisation of different classes of shares into a single provision; (b) the applicability of the threshold of 25% of the corporate shares also to companies submitting a request for admission to the MIV; and (c) the increase from 3% to 5% of the threshold for the calculation of holdings for the determination of the free-float thresholds. Furthermore, Consob took into consideration the significant increase, over the last few years, of the use of multiple-voting shares and other voting rights. The number of shares of the particular class for which the listing admission is requested (rather than the related voting rights) will be now considered as the main parameter for the purposes of calculating the holdings in a listed company, as well as for obtaining status as a STAR issuer. If the calculation of interest cannot be properly undertaken according to such criteria, it will be made on the basis of the information available on the relevant ownership structure.

**DATA PROTECTION**

**The EDPB issues its information note on personal data transfer to the UK in the event of a no-deal Brexit**

On 12 February 2019, the European Data Protection Board ("EDPB") – the independent European body which contributes to the consistent application of data protection rules throughout the European Union – issued its **information note** ("Note") on data transfers under the GDPR in the absence of an agreement between the UK and the European Economic Area ("EEA"). According to the EDPB, in the event of a no-deal Brexit, the UK will become a "third country" under the provisions of the GDPR and, consequently, the transfer of personal data from the EEA to the UK may be undertaken solely by means of the following instruments in force as of 30 March 2019: (a) Standard or ad hoc Data Protection Clauses; (b) Binding Corporate Rules; (c) Codes of Conduct and Certification Mechanisms; or, in the absence of the above-mentioned tools, by means of (d) specific Derogations. Furthermore, on the same day, the EDPB adopted its **guidelines** aimed at providing practical guidance on the procedures and rules involved in the submission, approval and publication of Codes of Conduct, at both national and EU levels, pursuant to Articles 40 and 41 of the GDPR.

**The EDPB issues its information note on personal data transfer to the UK in the event of a no-deal Brexit**

On 10 January 2019, the Italian Data Protection Authority (the "DPA") issued an **opinion** relating to the protection of the personal data of deceased persons under the GDPR and Article 2-terdecies of the Italian Data Protection Code. In particular, the DPA clarified that the deceased continue to have protection provided for under applicable data protection law, allowing for the continued exercise of the rights under Articles 15 to 22 GDPR by those who have a personal interest therein, or act to protect the person concerned, including as his or her agent or for family reasons deserving protection.

**FINANCE**

**The reform of the Italian Insolvency System**

On 27 February 2019, Parliament approved a **legislative proposal** (the "Legislative Proposal") delegating to the Government the adoption of certain amendments to the new Code on businesses in distress and insolvency (the "Code"), published in the Italian Official Journal on 14 February 2019 (see **Our Echo no. 38** of February 2019). According to article 1 of the Legislative Proposal, the procedure and the main criteria to be followed by the Government in adopting such amendments are those established by Law No. 155 of 19 October 2017, pursuant to which the Government approved the Code. The Government shall adopt the decrees amending the Code within two years of its entry into effect (i.e. by 14 August 2022).

**ANTITRUST**

**Reform of antitrust law and enforcement powers of national competition authorities**

On 14 January 2019, **Directive (EU) No. 2019/1 of 11 December 2018** to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (the "ECN+ Directive") was published in the EU Official Journal. As stated in its recitals, the ECN+ Directive is aimed at ensuring that national competition authorities (NCAs) "have the guarantees of independence, resources, and enforcement and fining powers necessary to apply Articles 101 and 102 TFEU effectively...". Given the finding that many NCAs are without effective powers and tools to prove breaches of Articles 101 and 102 TFEU, the ECN+ Directive requests EU Member States to grant NCAs a (minimum) set of instruments to uniformly apply EU antitrust laws. In particular, the main innovation brought by the ECN+ Directive, as far as the Italian legal framework is concerned, relates to (a) the investigative powers of NCAs, as the ECN+ Directive grants NCAs the power to inspect any premises which may be relevant to proof of an infringement of Article 101 or Article 102 TFEU (including the homes of directors, managers, and other members of staff), and (b) the leniency programmes which the ECN+ Directive regulates with the aim of providing simplified and common substantial and formal rules. Member States will have two years to implement the ECN+ Directive.

**COPYRIGHT**

**Facebook found liable for copyright infringement**

On 15 February 2019, the Court of Rome issued its judgment (No. 3512/2019) ordering Facebook to pay damages to the Italian broadcaster Reti Televisive Italiane SpA (RTI) for defamation and for hosting third-party links to unlicensed content. The dispute arose from a claim by RTI and a singer against the online platform on the basis of a Facebook profile containing very disparaging remarks in relation to the singer and RTI and unauthorised links to YouTube pages posting videos subject to exclusive copyright of RTI. In the context of the copyright infringement claim, the Court of Rome stated that posting links to third-party websites containing copyright material without the rightholder's consent amounts to an act of "communication to the public" pursuant to **Directive (EC) No. 2001/29 of 22 May 2001**, given that it is directed to a "new public" (meaning a public other than that authorised by the copyright holder). On that basis, the relevant copyright exploitation requires the prior consent of the rightholder in order to be lawful. The Court further clarified that, in the case at issue, Facebook could not benefit from the exemption of liability provided by **Directive (EC) No. 2000/31 of 8 June 2000**, given that Facebook did not remove the infringing content after being notified of its unlawful nature by RTI.

**LABOUR**

**Monitoring devices and changes in the ownership of the employer**

**Circular No. 1181 of 2 February 2019**, issued by the Italian National Labour Inspectorate ("INL"), provided clarifications of the interpretation of legislation regarding the impact of changes in the ownership structure of a company (merger, transfer of undertaking, etc.) on the authorisations issued by INL for the installation of monitoring devices at the workplace. INL specified that, if the relevant extraordinary transaction relates to an employer whose premises are already equipped with duly authorised monitoring devices, a new authorisation request need only be made – pursuant to Article 4 of **Law No. 300/1970** – in the event of a change in the conditions on the basis of which the installation and/or the working methods were applied within the company. Otherwise, the new owner must, in any case, notify the Local Labour Office of the references to the original authorisation and provide a declaration attesting to the absence of the aforementioned changes.

**PATENT**

**Double patenting referred to the Enlarged Board of Appeal**

On 7 February 2019, in the context of **case T-0318/14**, the EPO Technical Board of Appeal referred to the EPO Enlarged Board of Appeal a number of questions relating to the possible refusal – and relevant conditions – in the event of "double patenting" (i.e. if the patent claims the same subject matter as a European patent granted to the same applicant which does not form part of the state of the art pursuant to **Article 54(2-3) EPC**).

**German decision on ratification of Unified Patent Court Agreement expected in 2019**

On 20 February 2019, the Federal Constitutional Court of Germany published the **list of major cases** in which it intends to reach a decision during the current year. The list includes the complaint claiming the unconstitutional nature of the legislation ratifying the Unified Patent Court Agreement ("UPCA"). The German ratification is the final step for the entry into force of the UPCA and the related application of the regulation on the European patent with unitary effect.

**INDUSTRIES**

**ADVERTISING**

**Court of Cassation on the right of publicity**

On 3 January 2019, the Italian Court of Cassation issued its judgment (No. 1875/2019) ordering a publishing company to pay damages to a celebrity for posting photos of his image without obtaining his prior consent, in violation of articles 96 and 97 of **Italian Copyright Law**. According to the Court, a celebrity has the exclusive right to control and protect himself from the unauthorised commercial exploitation of his image and identity. Therefore, in the event of the unauthorised use of his image for economic purposes, the celebrity is entitled to economic damages for the prejudice suffered for the lack of the potential economic exploitation of his portrait, in connection with the advertising of the same goods and services (and/or of goods and services of the same nature). The Court further specified that such economic prejudice may also occur if the celebrity had expressly denied his consent to the economic exploitation of his image (thus potentially giving up any possible profit deriving therefrom), since such denial does not represent a waiver to his exclusive right to take (economic) advantage of his portrait. In this case, damages may be calculated based on the "reasonable amount of royalty" the publisher would have paid to obtain a license from the famous person for the use of his/her image.

**TRAVELS**

**The ICA fines Ryanair and Wizz Air for their new hand luggage policies**

On 20 February 2019, the Italian Competition Authority ("ICA") concluded proceedings PS/11237 and PS/11238 which were commenced in September and October 2018 against the two airlines Ryanair and Wizz Air (see **Our Echo of November/December 2018**), and issued them with fines of 3 million and 1 million Euros respectively, for unfair commercial practice according to Sections 20 and 21 paragraph 1.b and 1.d, and 22 of the Italian Consumer Code. The ICA's investigation showed that the hand luggage policies introduced by the two airlines misled consumers as they provide, in a non-transparent manner, for an increase in the ticket price, by requiring consumers to pay an extra charge for carrying on "larger cabin baggage", which is conversely considered as an essential and foreseeable element that must always be allowed without incurring any additional cost. According to the ICA, both new policies deceive consumers on the real price to be paid at the end of the booking process – which is almost always higher than the price of the basic service initially presented to the consumer – and alter the comparison with the prices of other airlines that include carry-on luggage in their fares. The two airlines now have a 60-day term to inform the ICA about the measures taken to comply with the decisions. For further information please see ICA decisions **No. 27558** and **27559**.

**MEDIA**

**Court of Milan orders ISPs to block and disable access to illegal IPTV**

On 30 January 2019, the Court of Milan issued its judgment requesting mere conduit ISPs (i.e. the main Italian Telecommunication companies) to disable access to the illegal IPTV "No Freeze IPTV" which was airing (via live-streaming) football matches of the Italian Premier League without any authorisation. Illegal IPTVs are systems that exploit the technology based on IPTV (which is the delivery of television content over Internet Protocol networks) to allow users to illegally watch the channels and the programme schedules of pay TV services (such as Sky and Mediaset Premium), paying a very low-cost monthly subscription to the illegal IPTV. In its decision, the Court ordered the mere conduit ISPs to block and disable access to the illegal IPTV and its relevant IP addresses within 4 days from the issuance of the order, imposing a penalty for each day of delay.

**FOOD**

**New rules on food labelling for "Made in Italy" protection**

Article 3-bis of **Italian Law Decree No. 135 of 14 December 2018** entitled "Urgent provisions on support and simplification for businesses and public administration" (known as the "Decreto Semplificazioni") ("Simplification Decree") was converted into law on 11 February 2019 and introduced (inter alia) new food labelling requirements to protect consumers and enable them to make informed choices, in particular the obligation to specify on the product label the country of origin of all raw materials contained in relevant foodstuffs (making it possible to know the geographical origin of e.g. the fruits used in juices and jams, bread, ham, dried fruit, processed meat products, rabbit meat and canned vegetables). However, the list of the foodstuffs and the procedures for indicating the relevant geographical origin will be determined by the enactment of specific ministerial decrees to be issued by the relevant local authorities.

**FASHION**

**EU General Court decision on Chiara Ferragni trademark**

On 8 February 2019, the General Court (GC) of the EU issued its judgment in case T-647/17 (*Serendipity S.r.l. v. EUIPO*) in relation to the EUIPO's refusal to register (in classes 18 and 25) the figurative trademark application "CHIARA FERRAGNI" filed by Serendipity S.r.l. and formed by a verbal element next to a blue eye with long black lashes (the "Application"). The EUIPO (and the Board of Appeal following Serendipity's appeal) upheld the opposition filed by a Dutch company on the basis of its word trademark registration (in classes 18 and 25) "CHIARA" (the "Prior Trademark") against the Application on the basis that it considered the word "CHIARA" the most distinctive part of the Application and, therefore, confusingly similar to the Prior Trademark. The GC ruled that the Application is appropriate for registration since its figurative elements are as distinctive as the word "CHIARA", and hence the differences between the signs from a visual perspective are sufficient to exclude any likelihood of confusion for the public.

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