

NEWS FROM THE FIRM

**The Firm in landmark anti-doping proceedings**

Our partner [Marco Consonni](#) assisted WADA before the court of Bolzano in a landmark anti-doping case. The case had significant [media coverage](#) and concluded with the court upholding WADA's claims.

**The Firm fellow of the Italy-Spain Chamber of Commerce**

The firm has been appointed an honorary fellow of the Italy-Spain Chamber of Commerce.

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**ANTITRUST**

**The Italian Competition Authority accepts NUOVOIMAIE commitments on neighbouring rights**

On 22 March 2017, the Italian Competition Authority (the "Authority") accepted commitments offered by the collecting society NUOVOIMAIE in proceedings for alleged abuse of the dominant position of NUOVOIMAIE in the market for the management and protection of neighbouring rights. The investigation started following complaints from several competitors, alleging that NUOVOIMAIE was conducting an extensive foreclosure strategy by way of: (a) acts of discrimination against non-members of NUOVOIMAIE; (b) exclusionary conduct in signing and implementing agreements with foreign collecting societies; (c) exclusionary conduct in signing and implementing agreements with major national users. For more information please see [here](#).

**CAPITAL MARKETS**

**Market abuse: approval of the amendments to Consob regulations to conform to new European rules**

On 6 April 2017, the National Commission for Companies and the Stock Exchange ("Consob") approved certain amendments to Consob Regulation no. 11971/1999 (the "Issuers Regulation"), Consob Regulation no. 16191/2007 (the "Markets Regulation") and Consob Regulation No. 17221/2010 (the "Related-party Transaction Regulation") in order to conform to the second level national regulation to the new European market abuse regulation, in force since 3 July 2016 to [Regulation \(EC\) No. 596/2014](#) of the European Parliament and of the Council on 3 July 2016 and the relevant attachments. These amendments aim to align domestic and Community regulations. In particular, the threshold that triggers a disclosure obligation for transactions carried out by executives and relevant shareholders of issuers (so-called internal dealing) has been increased from Euro 5,000 to Euro 20,000.

**Market abuse: Operational Guides consultation started**

The significant number of requests for clarification on the application of Regulation (EC) No. 596/2014 has led Consob to issue draft Operational Guides for discussion with stakeholders. The [first Operational Guide](#) covers the management of privileged information and the drawing up of insider lists. The [second Operational Guide](#) deals with the fair presentation of investment recommendations and the disclosure of conflict of interest, as well as the description of the cases under which Consob may ask for clarification of investment recommendations made to the public. The consultation period on the Operational Guides, which will be adopted in the form of Notices (*Comunicazioni Consob*), ends on 6 June 2017. See [here](#) for the explanatory report on the outcomes of the consultation on regulatory changes, including the observations by participants and the relevant resolution.

**DATA PROTECTION**

**Italian Data Protection Authority sanctions money transfer companies**

On 2 February 2017, the Italian Data Protection Authority ("DPA") sanctioned five companies that operate in the sector of money transfers for an aggregate amount of Euro 11 million (Decisions no. 39/2017, 40/2017, 41/2017, 47/2017 and 48/2017). According to the DPA, the relevant companies adopted a practice of separating individual money transfers into multiple remittances for amounts below the threshold provided by applicable money laundering rules and made the transfers in the name of individuals who were deceased or unaware of the transactions in their name, with the result that the transactions were made without any consent or other legitimate legal basis for their processing. For further information please click [here](#).

**EU Court of Justice rules on the right to be forgotten in relation to information on publicly available databases**

On 9 March 2017, the EU Court of Justice (ECJ) issued its judgment in Case [C-398/15](#) (Camera di Commercio di Legge v. Salvatore Manni) ruling that the right to be forgotten is not applicable in relation to information contained in publicly available databases such as companies registers. Specifically, this case involved an Italian entrepreneur who claimed to have suffered damage on the basis that certain records, published by the relevant Italian Chamber of Commerce, showed that he was a director of a company that went bankrupt in 1992. The case (submitted to the ECJ for a preliminary ruling by the Italian Supreme Court) sought to clarify whether [Directive \(EC\) No. 1995/46](#) of 24 October 1995 (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) would apply to personal data relating to individuals that are held on companies registers. The ECJ ruled that the companies register has the function of ensuring legal certainty in the interest of third parties and it is impossible to predetermine the exact point in time at which information in the companies register becomes unnecessary. For further information please click [here](#).

**ADVERTISING**

**Italian Budget Law: innovative start-ups and equity crowdfunding**

On 30 March 2017, the EU Court of Justice (ECJ) issued its judgment in case [C-146/16](#) (Verband Sozialer Wettbewerb eV / DHL Paket GmbH), holding that when an e-commerce platform is advertised in printed media, the fact that the advertisement does not refer to the identity or the geographical address of the trader is not be regarded per se as an infringement of [Directive \(EC\) No. 2005/29](#) of the European Parliament and of the Council of 11 May 2005 (unfair b2c commercial practices). Even though such an advertisement is an "invitation to purchase" (pursuant to article 2(i) of the directive) and therefore should in principle contain information relating to the trader (pursuant to article 7.4(b) of the directive), there may be practical reasons for limitations of space or time. In these cases, there is no violation of European law, provided that the trader's identity and geographical address are displayed on the e-commerce website.

**LABOUR**

**Voucher to remunerate accessory works abolished**

Law Decree No. 25/2017 of 17 March 2017 (published in the Official Journal of 17 March) repealed articles 48-50 of Legislative Decree No. 23/2015 of 4 March 2015 on accessory work, effectively abolishing the "vouchers" used to remunerate it. Law Decree No. 25/2017 provides for a transitional period (ending on 31 December 2017) during which vouchers bought before 17 March 2017 may still be used pursuant to Legislative Decree no. 23/2015. In addition, the decree restored joint liability of the client, the contractor and any subcontractors under a service agreement for the social contributions due to the subcontractors' workers.

**TRADEMARK**

**Reputation may not always cure trademarks' weakness**

On 7 December 2016, the Italian Supreme Court issued its judgment No. 25168/2016, confirming a prior judgment of the Court of Appeal of Milan which rejected an infringement claim brought by Clinique Laboratories LLC (part of the Estee Lauder Group and owner of the "CLINIQUE" trademarks) against the Italian company Beauty Full S.r.l. (user of several signs incorporating the term "clinique", e.g. "DERMACLINIQUE" and "DERMACLINIQUE BEAUTY FARM"). In brief, the "CLINIQUE" trademark (registered for products and services in Classes 3, 42 and 44 of the Nice classification, including cosmetics and hygiene products) is a weak trademark, since it essentially corresponds to Italian words identified with healthcare (e.g. the noun "clinica" and the corresponding adjective "clinico"). The reputation acquired through use of the term is not sufficient to overcome this inherent weakness of the trademark's significance. As a weak trademark, "CLINIQUE" may be considered as not being infringed by subsequent signs including those with minor variations, provided that those signs do not result in confusion on the part of consumers.

**PATENT**

**Milan Court rules on interaction between national proceedings and pending oppositions before the EPO**

On 23 January 2017, the Court of Milan issued its judgment No. 803/2017, holding that national courts are not necessarily bound to stay patent infringement and/or revocation proceedings on the basis that an opposition is pending before the European Patent Office ("EPO") in relation to the same patent. In this case, national courts may use their discretion as to whether or not to stay the proceedings, based on the specific circumstances of the case, i.e. if the opposition before EPO is prima facie grounded, and its result may be of relevance with regard to the claims raised within the national proceedings. A different regime applies if the patent has not yet been granted - article 120 of the Italian Industrial Code provides that the national courts may not issuing a decision on a relevant claim until the EPO granting procedure has concluded.

INDUSTRIES

**AUTOMOTIVE**

**Vespa a valid 3D trademark in Italy**

On 6 April 2017, the Court of Turin issued its judgment No. 1900/2017, a leading precedent in Italy on the validity of 3D trademarks and the copyright protection of industrial design. The proceedings were brought against the well-known Italian company Piaggio & C. S.p.A. by two Chinese companies that challenged one of Piaggio's 3D marks for the well-known "Vespa" scooter. Their claim was brought after Italian authorities seized a number of scooters owned by those companies (at Piaggio's request), on the assumption that the scooters had misappropriated the Vespa's style and shape. In its decision the Court of Turin held that the 3D mark owned by Piaggio covering the shape of its famous "Vespa" scooter is valid and enforceable. The Court of Turin went on to hold that the Vespa scooter is to be included among in the limited number of industrial design objects that also merit copyright protection under Italian law.

**MEDIA**

**Decreases implementing certain provisions of the framework law for audiovisual works leaked**

The draft decrees implementing tax credit provisions set forth in Legislative Decree no. 2287 of 2016 (the framework law on incentives for the cinema, audio-visual and entertainment sector) became public on 6 April 2017 (see [Our Echo November 2016](#)). Independent producers of cinematographic works would be able to claim a tax credit worth 30% of the relevant eligible costs (up to Euro 6,000,000) of relevant films. Independent producers of TV fiction would be able to claim a tax credit of between 15% and 30% of the eligible costs (up to Euro 6,000,000) of relevant audiovisual products, depending on the share of rights retained by independent producers and the involvement of foreign partners. Distributors would be able to claim a tax credit of between 15% and 40% of distribution costs (up to Euro 300,000) for relevant products. Producers of video-games would be able to claim a tax credit worth 25% (up to Euro 500,000) of costs sustained for the production of new video games. Each of the tax benefits outlined above would be subject to compliance with specific nationality and cultural tests. The benefits would be applicable during specific windows, i.e. 1 February to 30 April, 1 June to 30 September, and 1 November to 30 December. The benefit will be granted on a first-come first-served basis until the tax credit budget is used. Consultations with representatives of the industries involved are taking place.

**E-COMMERCE**

**Italian court bans Uber over unfair competition**

On 7 April 2017, the Court of Rome issued judgment in proceedings No. 76465/2017 R.G., which upholding a complaint filed by taxi unions and ordering Uber – the well-known ride-hailing group – to cease providing its various mobile applications on Italian territory (along with their promotion and advertising), on the grounds that it facilitates unfair competition against traditional taxis. The Court ordered that, if Uber fails to comply with the court order, it would face a fine of Euro 10,000 for day of non-compliance. Uber has appealed the order and the ruling has been suspended pending the appeal. For more information please see [here](#).

**The main Italian ticket e-provider fined for insufficient anti-touting measures**

On 5 April 2017, the Italian Competition Authority (the "Authority") issued its decision in the investigation of Ticketone S.p.A., the major Italian e-commerce channel for ticketing. The tickets sold by this Ticketone for major events appeared to be sold-out after a very short time period and were then available on other websites at prices higher than those officially set on the primary market. The Authority found that while Ticketone was contractually bound to adopt anti-touting measures, it did not take appropriate steps to limit multiple purchases or set up a system of controls in order to cancel multiple purchases. According to the Authority, such omissions constitute an infringement of article 20(2) of the Italian Consumer Protection Code, and the company was fined one million euros. For more information please see [here](#).

**TECHNOLOGY**

**Patent Box and software**

On 9 March 2017, the Italian Revenue Agency (Agenzia delle Entrate) issued its Resolution No. 28/E stating that the deploying, updating, personalising and customising copyrighted software (as defined in Agency Circular No. 11/E of 7 April 2016) is considered a research and development activity for the purposes of the preferential "Patent Box" tax treatment (established by Law No. 190 of 23 December 2014). Consequently, the licensor may apply that preferential tax treatment to relevant royalties.

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