

NEWS FROM THE FIRM

Orsingher Ortu advises Finproject on the structuring of an LBO for the acquisition of Padanaplast from Solvay

A team led by **Manfredi Leanza** (consisting of Olympia Foà and **Francesco Senesi**) assisted Finproject on the structuring of a multi-tranches LBO financing made available by BNP Paribas and a pool of banks to finance the purchase price for the acquisition of Padanaplast from Solvay and the general corporate purposes of the Finproject Group of companies.

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CAPITAL MARKETS

Amendments to Borsa Italiana market rules

In its resolution no. 20003 dated 17 May 2017, the National Commission for Companies and the Stock Exchange approved certain amendments to the rules (the "Borsa Rules") of the markets managed and organized by Borsa Italiana S.p.A. ("Borsa Italiana"). The amendments to the Borsa Rules (and the related instructions) will enter into force on 3 July 2017 and concern, inter alia: (a) the STAR segment; (b) the requirements for admission; (c) exclusion from trading upon request; (d) the MOT market for green and/or social bonds; and (e) the content of price-sensitive press releases. As for the STAR segment, in order to increase the distinctive nature of the segment, the deadline provided by Borsa Rules for publishing half-year reports has been shortened from 90 days to 75 days from half-year end, from the current 90 provided by Borsa Rules (applicable from January 2018). With reference to the amendments sub (d) above, Borsa Italiana has introduced specific transparency requirements with reference to bonds whose proceeds are used to finance projects with specific benefit/impacts of an environmental nature ("green bonds") and/or concerning the pursuit of solidarity and social utility principles ("social bonds"). With reference to the amendments sub (e) above, these mainly concern the minimum content of press releases regarding the approval of economic and financial data and transactions with related parties. For more information please see [here](#).

ADVERTISING

Prohibition of advertising in dental care matters contrary to EU laws

On 4 May 2017, the EU Court of Justice (CJEU) issued its judgment in **Case C-339/15** (Openbaar Ministerie v. Luc Vanderborght) holding that national legislation imposing an absolute prohibition of advertising in dental care matters is in violation of EU law for two reasons. Firstly, with regard to advertising by electronic means, any absolute prohibition would be contrary to EU Directive 2000/31/CE on electronic commerce. Secondly, an absolute prohibition would also be contrary to article 56 of the TFUE on the freedom to provide services. Therefore, Member States may place limits on the way dental care matters are advertised, but may not prohibit them in absolute terms.

COPYRIGHT

ECJ decision on "Pirate Bay" case issued

On 14 June 2017, the EU Court of Justice (CJEU) issued its judgment in **Case C-610/15** (Stichting Brein v. Ziggo BV and XS4ALL Internet BV) dealing with the well known "Pirate Bay" file sharing platform. The CJEU held that the concept of 'communication to the public', within the meaning of Article 3.1 of Directive 2001/29/EC of 22 May 2001 (on the harmonisation of certain aspects of copyright and related rights in the information society), must be interpreted as covering the making available and management on the internet of a sharing platform (such as the platform which was the subject of the proceedings) which allows users to locate protected works and to share them in the context of a peer-to-peer network by means of indexation of metadata and the provision of a search engine.

Consultation on copyright opened

The EU Commission has opened a consultation concerning Directive (EU) No. 96/9 of 15 May 2014 (on the legal protection of databases). The consultation will remain open until 30 August and is aimed at evaluating the application and impact of the Directive. For more information please see [here](#).

DOMAIN NAMES

Consultation on .eu domain opened

The EU Commission has opened a consultation for the evaluation and revision of the domain regulations for the .eu top-level domain in order to assess whether the legal framework concerning the country code top-level domain for the EU still serves its purpose. The consultation will remain open until 4 July. For more information please see [here](#).

LABOUR

New rules for occasional performance

On 15 June 2017, the upper chamber of the Italian parliament passed a bill which establishes (a) a special agreement for the occasional performance of work that may be used by small companies with less than 5 employees; and (b) the so-called "Family Booklet" (Libretto Famiglia) which can be used by private individuals to pay for certain services, e.g. minor residential works, home care or teaching services. The occasional performance of work covered by the bill is subject to an overall maximum remuneration of EUR 5,000 per year and is limited to no more than 280 hours. If those limits are exceeded, the agreement would be converted into an open-ended employment agreement. For more information please see [here](#).

FINANCE

Report "FinTech credit: Market structure, business models and financial stability implications" published

On 22 May 2017, a working group established by the Committee on the Global Financial System ("CGFS") and the Financial Stability Board ("FSB") published the report "FinTech credit: Market structure, business models and financial stability implications" (the "Report"). The Report focuses specifically on FinTech-enabled credit provision, with "FinTech" broadly defined as technologically enabled financial innovation, where "Fintech credit" encompasses all credit activity facilitated by electronic platforms matching borrowers directly with lenders. Those electronic platforms may facilitate a range of credit obligations, including secured and unsecured lending, and non-loan debt funding such as invoice financing. In addition, some electronic platforms go beyond a P2P matching business model by using their own balance sheet for lending activities. The study aims to help policymakers understand the functioning of Fintech credit markets. The Report is available on the website of the BIS (www.bis.org) and the FSB (www.fsb.org).

TRADEMARKS

Another judgment of the Italian Supreme Court on the "Fiorucci" case

On 24 May 2017, the Italian Supreme Court issued its judgment (No. 12295/2017) in the long dispute between the former and the current owners of the well-known "Fiorucci" trademarks. In 1990, the Italian fashion company Fiorucci S.p.A., managed by the well known stylist Elio Fiorucci (who passed away in 2015), assigned all the intellectual property rights in the "Fiorucci" trademarks and related products to companies Edwin Co. Ltd. and Edwin International (Europe) GmbH. Following the assignment, Mr. Fiorucci began to use (and then registered) certain trademarks including his name, such as "First choice by Elio Fiorucci" and "Love Therapy by Elio Fiorucci". The assignees ("Edwin") of the Fiorucci trademarks considered this conduct in breach of their IP rights and sued Fiorucci. After the first instance judgment (in favour of Edwin) and the second instance judgment (in favour of Fiorucci), the case was brought before the Supreme Court. The Court repealed the second instance judgment (which held that there was no likelihood of confusion between the relevant trademarks). According to the Supreme Court, the mere absence of the likelihood of confusion was not sufficient to rule out Fiorucci's liability: the second instance judges should have investigated whether, even though Fiorucci's trademarks could not be confused with original Fiorucci trademarks, Fiorucci had sought to unlawfully benefit from the goodwill in those marks and was therefore in breach of fair business practices. The Court of Appeal of Milan will now have to hand down a judgment in line with the principles set forth by the Supreme Court.

PATENTS

Entry into force of the UPC delayed by UK elections and German Constitutional Court

The UK Parliament was **dissolved** on 26 April ahead of the UK general elections held on 8 June. This occurred prior to Parliament's ratification of the Agreement on the Unified Patent Court (UPCA) which was expected to take place in May. The new Parliament has now resumed the UPCA ratification procedure, but it is not clear whether the process will be completed before the summer recess (from 20 July to 5 September). In addition, the German Constitutional Court asked the President of the Republic to provisionally delay the signing of German legislation ratifying the UPCA in light of pending proceedings concerning the possible unconstitutional nature of that legislation. The UPC preparatory committee **announced** that the target date for the entry into operation of the UPC, envisaged for **December 2017**, will not now be met.

INDUSTRIES

E-COMMERCE

EU Commission publishes final report on e-commerce sector inquiry

On 10 May 2017, the EU Commission published its **final report** on the competition sector inquiry into e-commerce which was launched in May 2015 and which aimed to identify possible competition concerns in European e-commerce markets. The results from the inquiry will allow the Commission to target EU antitrust enforcement actions in European e-commerce markets, including by opening further antitrust investigations (in addition to the **three separate investigations** launched in February 2017 into holiday accommodation, PC video games distribution and consumer electronics pricing practices). The report also showed the following market trends: (a) a large proportion of manufacturers have decided over the last 10 years to sell their products directly to consumers through their own online retail shops, thereby competing increasingly with their distributors; (b) the increased use of selective distribution systems allows manufacturers to better control their distribution networks, particularly in terms of the quality of distribution, but also in relation to price; and (c) the increased use of contractual restrictions to control product distribution. The Commission clarified that some of these practices can be justified (e.g. in terms of improving the quality of product distribution), while others may unjustifiably prevent online consumers from benefiting from a wider choice of products and lower prices.

FOOD

The term "milk" not to designate purely plant-based products

On 14 June 2017, the EU Court of Justice (CJEU) issued its judgment in **Case C-422/16** (Verband Sozialer Wettbewerb eV v. TofuTown.com GmbH), in which it ruled that, under article 78.2 and Annex VII Part III to **Regulation No. 1308 of 17 December 2013** (on the common organisation of the markets in agricultural products), the term "milk" and designations for milk products included in Regulation (EC) No. 2013/1308 may not be used in marketing or advertising to designate purely plant-based products. These designations cannot be legally used even if they are followed by clarifying or descriptive terms indicating plant origin; the only exception is for the products referred to in the **Decision by EU Commission No. 791 dated 20 December 2010**.

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