

NEWS FROM THE FIRM

Awards

At the IP/TMT Legal Community Award gala dinner held on 9 May, [Matteo Orsingher](#) received the Lawyer of the year award for the IP/TMT sector in Italy and the firm the award for best firm in Italy for design.

Advising Sonova and Reichold

A team led by partner [Domenico Colella](#) (with [Silvia Ciardiello](#), [Cesare De Falco](#), [Valentina Mauri](#), [Valerio Natale](#), [Benedetta Pontara](#), [Federico Roviglio](#), [Sabino Sernia](#) and [Manuela Villa](#)) assisted Sonova Holding on the takeover of the Italian business of AudioNova International. The firm also assisted Reichold group in the merger with Polynt to create one of the leading chemicals groups in the field of polymers and adhesives for industrial applications.

Representing [viaggiare.it](#) against [Ryanair.com](#)

A team led by partners [Marco Consonni](#) and [Fabrizio Sanna](#) with counsel [Ludovico Anselmi](#) assisted [viaggiare.it](#) in successful interlocutory proceedings against [Ryanair.it](#) in the long-running dispute over the screen-scraping of [Ryanair's](#) database.

Advising FILA group

A team led by partner [Manfredi Leanza](#) (with [Francesca Flego](#) and [Francesco Vitali](#)) assisted FILA group in the negotiation and completion of a loan facility used to fund the acquisition of the Canson group.

Events

The firm will host the following events: – 20 June 2016, 1 pm – 3 pm seminar on “Società innovative ed equity crowdfunding” dealing with innovative start-up and equity crowdfunding – 27 June 2016, 1 pm – 3 pm seminar on “Società quotate: obblighi di trasparenza e prospetto informativo. Il regimesanzionatorio” dealing with obligations of transparency and information of listed companies.

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CAPITAL MARKETS

Italian Supreme Court on market manipulation

A recent decision by the Italian Supreme Court (Corte di Cassazione no. 9644/16) has ruled on the false and misleading information referred to in Article 187-ter of Legislative Decree no. 58/1998 (the Financial Act) which regulates sanctions for the dissemination of false statements in relation to listed companies. The Italian Supreme Court ruled that the statement made by the representative of a consumer association on the mark to market of a primary bank's financial derivatives (notably that the mark to market was four times higher than those indicated by its director general) do not fall within the scope of Article 187-ter of the Financial Act. In particular, the Supreme Court held that the mark to market does not express a “real value”, that the statement of the association's chairman represents an approximate financial estimate and that such an estimate may not be considered as false information.

Consob approves the regulation on arbitrator for financial disputes

The National Commission for Companies and the Stock Exchange has approved the regulation of the new arbitrator for financial disputes (the AFC) in resolution no. 19602 of 4 May 2016 (the Regulation). Use of the AFC by financial intermediaries is mandatory and access is free for investors. The Regulation will govern disputes in relation to claims for up to of Euro 500,000 concerning violations of the disclosure, correctness and transparency obligation required for intermediaries in their relations with investors, as well as disputes concerning operators of the equity crowdfunding portals. The Regulation provides that decisions are to be reached by the board of arbitrators within 90 days. Those decisions are not binding for investors, who may seek redress before the normal courts. The adoption of the Regulation follows the public consultation held from 8 January to 8 February 2016. The text of the Regulation is available [here](#).

FINANCE

New measures in support of banks and entrepreneurs

Law decree [No 59/2016](#) (the “Decree”), in force as of 4 March 2016, introduces measures concerning enforcement proceedings and measures in favour of investors in banks which are in administrative compulsory liquidation. In particular, the Decree introduces the regulation of the “non-possessory pledge”, which enables the debtor to grant movable assets used in the business as security without losing the ability to use them in the business. The Decree also introduces the ability to secure obligations under any loan agreement and entrepreneurs by way of an assignment of real estate property.

COPYRIGHT

ECJ on fair remuneration claims

In its decision of 21 April 2016 (in [case C-572/14](#)), the Court of Justice of the European Union (the ECJ) stated that the Austrian courts have jurisdiction on claims for payment of fair remuneration due to the local copyright collecting society (under copyright law provisions) by sellers of musical devices within the national territory. Based on the provisions of the InfoSoc Directive ([No. 2001/29/EC](#)) and the Brussels I Regulation ([No. 44/2001](#)) the ECJ ruled that a fair compensation claim is a claim in “tort, delict or quasi-delict” that can be brought before the courts where the relevant harm took place (as per Section 5 of the Brussels I Regulation). On this basis, since Austria is the place where the unpaid fair remuneration is due and where the interests of the owners of copyright over the distributed music are harmed, Austrian courts have jurisdiction.

DATA PROTECTION

ECJ Advocate General: Dynamic IP addresses can be personal data

On 12 May 2016, the Advocate General of the Court of Justice of the European Union (“ECJ”) issued an [opinion](#) recognising that dynamic IP addresses are personal data under the Privacy Directive ([Directive 95/46/EC](#)). In particular, the Advocate General argued that a dynamic IP address has to be considered personal data whenever an Internet access provider retains other information which, linked to the IP address, can reasonably allow a re-identification of the user. The final decision on the status of IP addresses as personal data is expected in the near future.

LABOUR

Welfare System and 2016 Stability Law

The Italian budget law for 2016 allows companies to grant employees certain welfare benefits assisted by tax benefits. In particular, if a “productivity bonus” (up to a maximum amount of Euro 2,000) is related to increases in efficiency and productivity, it will be subject to lower income tax (rate 10%). If such a bonus (again up to Euro 2,000) is granted in welfare benefits, it will be completely tax-free. In addition, if the relevant welfare benefits (related, for example, to social and health assistance, elderly care, worship, teaching and education) are not linked to company efficiency and productivity, they are not considered as remuneration.

PATENTS

The Italian government has ratified the agreement on the unified patent court

In its meeting of 29 April 2016, the Council of Ministers approved the agreement on the unified patent court (executed in Brussels on 19 February 2013). The agreement remains subject to ratification by the Italian Parliament.

INDUSTRIES

E-COMMERCE

Facebook to communicate information on fake accounts to data subjects

The Italian Data Protection Authority (“DPA”) has ordered Facebook to provide an Italian user all information contained in a fake account under his name (Decision no. 56/2016, the “Decision”). In particular, the DPA ordered Facebook (a) to provide to the user with information posted on the fake account within 30 days from receipt of the Decision; (b) not to carry out any further processing of the such information; and (c) to retain any relevant information pending requests from any relevant judicial authority. For further information please refer to [DPA Decision no. 56/2016](#).

Court of Rome overturns previous case law on ISPs liability

On 27 April 2016, the Court of Rome, in its decision no. 8437/2016 (the Decision), held that website [break.com](#) audiovisual content produced by R.T.I. Reti Televisive Italiane S.p.A. (Mediaset) without consent. The Decision is in contrast with another recent judgement of the Court of Appeal of Milano ([Decision no. 29/2015](#)), which affirmed that there is no monitoring obligation for hosting providers under Directive 2000/31/EC (eCommerce Directive), but only a general obligation of removal if a notice from the rights' holder is submitted. Notwithstanding this case law, the Court of Rome stated that the liability exemption provided by the eCommerce Directive can not be applied to [break.com](#) because of its role as an “active” hosting provider that organises the users' content. In particular, the Court of Rome stated as crucial the fact that [break.com](#) organises users' content with an in-house “editorial team”.

TELECOMMUNICATIONS

European Commission prohibits the Hutchison/Telefonica UK deal

On 11 May 2016, the European Commission announced its decision to block the proposed acquisition of Telefónica UK's “O2” by Hutchison (the owner of the mobile operator “Three”) on the grounds that UK mobile customers would have less choice and pay higher prices as a result of the takeover which would also harm innovation in the field. This decision is significant for the Italian mobile market since it may have an impact on the on-going investigation of the Commission into the proposed merger between Three and Wind, which would create a competitive situation on the Italian market which would be similar – albeit with significant differences – to that which would have resulted from the blocked deal (see [here](#)).

MEDIA

New AVMSD project released

On 25 May 2016, the EU Commission released its proposal for an updated Audiovisual Media Services Directive (AVMSD), amending Directive 2010/13/EU. The new AVMSD is intended to create a fairer environment for all entrepreneurs and promote the European cinema industry. In particular, the EU Commission proposes that: (a) on-demand platforms must protect minors from violent content (e.g. through the introduction of age verification and parental control systems); (b) on-demand providers must include at least 20% of European content in their catalogues, as European TV broadcasters already do and (c) on-demand providers will have greater flexibility to use product placement, [while keeping viewers informed]. The proposal, one of initiatives under the Digital Single Market strategy, has been forwarded to the European Parliament and to the Council in accordance with the ordinary legislative procedure. The Commission did not give any estimated period for its approval. The full text of the proposed Directive is [here](#).

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