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NEWS FROM THE FIRM

Giuseppe Mazzaglia appointed as Counsel
We are happy to announce the appointment of Giuseppe Mazzaglia as a new Milan-based Counsel of our firm effective from 1 January 2018. Before joining us in 2015, Giuseppe worked at eading international firms. As counsel, Giuseppe will continue assisting clients on dispute resolution in the areas of Commercial, Corporate, Banking and Finance.

Recent arrivals in Rome
The recent arrival of Arturo Santoro and Giulia Loi has strengthened the capabilities of the Rome office of our firm. Arturo has significant in-house experience at major corporates and focuses mainly on corporate and commercial law, including advice on corporate governance and commercial contracts. Arturo joins as an associate in the IP–Media–Technology department. Giulia joined our IP–Media–Technology department as a trainee in 2017.

Federica Paniz (Banking & Finance) and Francesca Barra (IP–Media–Technology) join the firm
The recent arrival of Federica Paniz and Francesca Barra has strengthened the capabilities of the IP–Media–Technology and Banking & Finance departments of the firm. Both Francesca and Federica have previously worked in leading commercial law firms. Federica has developed significant experience in the areas of acquisition finance, real estate finance, project finance and restructuring and joins our Banking & Finance department. Francesca focuses on intellectual property, information technology, unfair competition and consumer protection laws and joins the IP–Media–Technology department of our firm.

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ANTITRUST

Antitrust and new technologies: Margrethe Vestager announces focus on big data's competition implications

The European Commissioner for Competition, Margrethe Vestager, has reaffirmed the increasing interest of the EU Commission in potential competition implications arising from the collection and use by companies of so-called "big data", including enormous caches of customer records, industry statistics and other information. "*In some areas, these data are extremely valuable*", Ms Vestager said in an interview released at the beginning of January. "*They can foreclose the market - they can give the parties that have them immense business opportunities that are not available to others*". These statements follow the publication last June of a paper on the impact of algorithms in which the EU Commission urged antitrust enforcers to stand ready to investigate new algorithm-based forms of "tacit" collusion in the context of on-line price fixing, as well as the announcement of the creation of an independent expert panel to advise on competition issues related to the development of new technologies. For further information please click here.

CAPITAL MARKETS

CONSOB amends the Crowdfunding Regulation

Following the consultation procedure launched at the end of July 2017, the National commission for companies and the stock exchange ("CONSOB") amended the regulation issued pursuant to Resolution no. 18592 of 26 June 2013 on raising venture capital via on-line portals (the "Crowdfunding Regulation"). In addition to extending the existing range of companies included in the scope of crowdfunding resulting from primary legislation (i.e. no longer only innovative SMEs and start-ups but all SMEs), the main changes relate, *inter alia*, to (a) the mandatory contribution by portal managers to a compensation system for the protection of investors or, in the alternative, insurance cover for professional negligence and (b) underwriting obligations of qualified investors, which may be limited to 3% of the capital (rather than 5%), where the SME has produced certified accounts for the previous two financial years. These changes apply as from 3 January 2018. The amended text of the Crowdfunding Regulation is available here.

CONSOB adopts new regulation on non-financial information

On 18 January 2018, CONSOB adopted a regulation on non-financial information (the "Regulation"), implementing Legislative Decree No. 254 of 30 December 2016. The Regulation deals with the publication, verification and oversight of non-financial announcements. The Regulation sets out a specific regime for the publication and transmission to CONSOB of non-financial announcements, depending on whether the company preparing the announcement is a listed company or not. Non-financial announcements will be subject to verification by accountants on either a limited assurance or reasonable assurance basis, depending on the level of review involved. Companies may also choose to combine elements of both verification methods. Similarly to the regime for financial information documents, CONSOB will carry out verification on a sample basis, including as a result of specific indications from statutory auditors, accountants and other stakeholders.

DESIGN

ECJ judgment on the 'repair' clause in community designs

On 20 December 2017, the EU Court of Justice ("ECJ") issued its judgment in joint cases C-397/16 and C-435/16 (case *Pneusgarda S.r.l. v. Audi AG* (C-397/16), and *Acacia S.r.l. and Rolando D'Amato v. Dr. Ing. h.c. F. Porsche AG* (C-435/16)) concerning the 'repair' clause set forth by Art. 110(1) of Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs. The 'repair' clause excludes Community design protection in the case of a design which forms a component part of a complex product used for the purpose of the repair of that complex product, so as to restore its original appearance. The ECJ held that the 'repair' clause: (a) does not make the exclusion from protection subject to the condition that the protected design be dependent upon the appearance of the complex product, and (b) makes the exclusion of protection subject to the condition that the replacement part must have an identical visual appearance to that of the part which was originally incorporated into the complex product when it was placed on the market. Furthermore, the ECJ stated that, in order to rely on the 'repair' clause, the manufacturer or seller of a component part of a complex product is under a duty of diligence as regards compliance by downstream users with the conditions laid down in that provision.

PATENTS

Italy ratifies Protocol on Privileges and Immunities of the Unified Patent Court

Pursuant to Law No. 201 of 4 December 2017, Italy ratified the Protocol on Privileges and Immunities of the Unified Patent Court ("UPC"), which provides the UPC, its judges, registrars and employees with the necessary privileges and immunities for the functioning of the UPC. This was the final step for Italy to join the UPC system, which will enter into force upon ratification by UK and Germany (with ratification in Germany currently stayed pending proceedings before the German Constitutional Court concerning the possible unconstitutional nature of the legislation ratifying the UPCA, as mentioned in Our Echo of June 2017.

EPO publishes study on patents and the 4th Industrial Revolution

On 11 December 2017, the European Patent Office ("EPO") published on its website the report "*Patents and the Fourth Industrial Revolution: the inventions behind digital transformation*", which confirms growth in technologies related to the Fourth Industrial Revolution ("4IR"). The report indicates that the number of European patent applications related to smart connected objects grew by 54% in the last three years, and identifies over 48,000 patent applications filed as of the end of 2016 relating to three technology sectors relevant for 4IR: (a) core technologies in the ICT field that make it possible to create connected objects; (b) enabling technologies that complement core technologies, such as artificial intelligence and user interfaces; and (c) application domains of those technologies, such as vehicles, businesses and homes.

DATA PROTECTION

The Italian Supreme Court on sensitive data

On 27 December 2017, the Italian Supreme Court ("ISC") issued a judgment (No. 30981) clarifying the measures to be adopted when processing sensitive data in accordance with Article 22 of Legislative Decree No. 196 of 2003 ("Privacy Code"). In particular, the ISC stated that sensitive data that may reveal the state of a person's health may be processed only by procedures such as data encryption or identification codes which allow identification of the relevant person exclusively in case of necessity. The ISC also stressed that neither public nor private entities are exempt from complying with the above-mentioned procedures when acting in the public interest or when performing a contractual obligation.

FINANCE

MiFID II comes into effect on 3 January 2018

Directive (EU) No. 2014/65 of 15 May 2014 ("MiFID II") was published in the Official Journal of the European Union on 12 June 2014. It came into effect on 3 January 2018. MiFID II aims to provide additional protection for non-professional investors. More specifically, it sets out specific mechanisms regarding "product governance" and "product intervention". The provisions on product governance include (a) the obligation for the investment firm "producing" financial instruments to specify an identified target market of potential investors for those financial instruments and (b) the obligation for the firm offering or recommending financial instruments to clients to verify whether each of those clients falls within the target market of potential investors identified for the relevant financial instrument. On product intervention, MiFID II empowers the relevant national authorities to prevent or limit the marketing or sale of financial instruments and structured deposits whether those instruments or deposits negatively impact on the investor protection or poses a threat to the orderly functioning and integrity and stability of the financial system, as more specifically indicated in Regulation (EU) No. 600/2014 of 15 May 2014, with the aim of protecting investors in the event that the precautions provided for by MiFID II are not sufficient, or when the investment firm has not developed or applied an effective product approval process. Italy implemented MiFID II by Legislative Decree No. 129 of 3 August 2017 which came into effect on 26 August 2017.

TRADEMARKS

Parallel trademarks: the CJEU's judgment in the "Schweppes" case

On 20 December 2017, the EU Court of Justice ("ECJ") issued its judgment in case C-291/16 (case Schweppes SA v. Red Paralela SL and others, in which it held that a trademark owner may not oppose the import of products manufactured in another member state bearing the same trademark, in circumstances where the relevant trademark has been [validly] assigned to a third party. The relevant facts were that Schweppes International (owner of the "Schweppes" trademark in Spain and other EU countries) sued the Spanish importer of "Schweppes" branded bottles for trademark infringement (on the basis of its importing into Spain "Schweppes" branded bottles) manufactured in the UK by the Coca-Cola Company (assignee of the relevant trademark in the UK). The ECJ ruled that, while the essential function of a trade mark is to guarantee the origin of the branded product, this does not prevent the importation of identical goods bearing the same mark originating in another Member State (where that mark is now owned by a third party) where: (a) the original proprietor has compromised or distorted that function by himself, or (b) there exist economic links between the two parties (considering that they coordinate their commercial policies). According to the Court, both elements were present in this case, since Schweppes International, among others, promoted the image of a global "Schweppes" trademark (e.g. by managing a website that provided a link to the UK site managed by Coca-Cola) and pacifically co-existed with Coca-Cola in the UK territory.

INDUSTRIES

E-COMMERCE

ECJ judgment holds Uber should be regulated as a taxi company

On 20 December 2017, the EU Court of Justice ("ECJ") issued its preliminary ruling in case C-434/15 (*Asociación Profesional Elite Taxi v. Uber Systems Spain SL*) in which it held that the service provided by Uber should be classified as "a service in the field of transport" rather than "an information society service". The ECJ held that Uber's service, which consists of connecting non-professional drivers using their own vehicles by smartphone application with customers for urban journeys, is more than an intermediation service and forms an integral part of an overall service, the main component of which is a transport service. On that basis, Uber does not fall within the scope of (a) the e-commerce directive (Directive (EC) 2000/31 of 8 June 2000 on certain legal aspects of information society services in the internal Market), in particular electronic commerce); nor of the (b) Internal Market Service Directive (Directive (EC) 2006/123 of 12 December 2006 on services in the internal market). Member States are therefore free to regulate the conditions on which the relevant service is provided.

MEDIA

Dimensions of the Italian communication system (SIC) released

On 19 December 2017, the Italian communications authority ("AGCOM") enacted Resolution No. 505/17/CONS ("Resolution") on the economic dimensions of the Italian Integrated Communication System ("SIC") for 2016. AGCOM evaluates the dimension of the SIC every year and verifies whether any operator has accrued a market share larger than 20%. That verification is mainly based on the data provided directly by the operators through the Economic System Information ("IES"). The Resolution concludes that: (i) the overall value of the SIC for 2016 is equal to 17.6 billion Euro (representing growth of 3.3% with respect to 2015); (ii) the primary SIC sector remains broadcasting (51%), with an increasing influence of online publication and advertising (12%); and (iii) the main shares are held by 21st Century Fox, Fininvest and Rai, Cairo/Rcs, Google, Gedi and Facebook, but no operator has exceeded the 20% limit set by the Law. For further information see here.

New rules on minor rating of theatrical works

On 12 January 2018, Legislative Decree No. 203 of 7 December 2017 on "Reform of legislative provisions regarding the protection of minors in the film and audio-visual sector" (the "Legislative Decree") entered into force. The Legislative Decree was enacted pursuant to Article 33 of Law No. 220 of 14 November 2016 (the so-called "*legge cinema*", see Our Echo November 2016) and sets out the obligations of the producer, distributor or those entitled to classify a film in one of the following categories: (a) suitable for all viewers; (b) not suitable for children under 6 years of age; (c) not suitable for children under 14 years of age; and (d) not suitable for children under 18 years of age. Following that classification, the film is to be sent, at least 20 days before its first release, to an ad hoc Commission, with an explanation of the grounds for the relevant classification. That Commission will review the film and opine on the classification is appropriate or not. Similar rules are envisioned for advertising shown in cinemas.

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