

NEWS FROM THE FIRM

**Valentina Mauri joins the firm**

The recent arrival of Valentina Mauri has strengthened the IP capability of the firm. Valentina graduated in law from the Catholic University of Milan in 2010 and has developed a significant experience in IP litigation and transactional support at primary Italian Law Firms.

**Advising on the financing made available to Finproject**

A team led by partner Manfredi Leanza assisted Finproject Industries in relation to the negotiation and perfection of a medium term loan facility made available by a Ubi Banca and Banca dell'Adriatico (Intesa Sanpaolo Group). The loan facility will be used by Finproject Industries to support the growth of the Group and its international strengthening

**Best TMT firm in 2015**

In the Toplegal Industry Award the firm was ranked among the best Italian TMT firms for the year 2015.

**Recent publications**

**Banking Newsletter 2: Law Decree 14 February 2016, n. 18.**

A brief comment on the new rules on direct lending by European and Italian Alternative Investment Funds.

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**DATA PROTECTION**

**New framework for transatlantic data flows to replace Safe Harbour**

On 2 February 2016, the European Commission announced the so-called "Privacy Shield" agreement (replacing EC Decision no. 2000/250/EC, the "Safe Harbour Framework", **ruled invalid by the European Court of Justice**) between the US and the EU. The Privacy Shield is subject to approval by the European Commission. The new agreement includes (a) stronger obligations on companies processing the personal data of European citizens; (b) clear safeguards and transparency obligations on US government access to personal data in order to avoid indiscriminate mass surveillance; (c) an annual joint review on national security access to be conducted by the European Commission and the US Department of Commerce; (d) effective protection of European citizens' rights with several rights of redress, including free-of-charge alternative dispute resolution tool; (e) deadlines for companies to reply to complaints; (f) the creation of an Ombudsperson for complaints in case of access by national intelligence authorities. The Article 29 Working Party stated that transfer mechanisms such as Standard Contractual Clauses and Binding Corporate Rules can still be used for personal data transfers to the US while the Privacy Shield is in the process of being approved. For further information see the [EU Commission announcement](#) and the [Article 29 Working Party statement](#).

**ANTITRUST**

**AGCM opens a Phase II investigation into Mondadori/RCS Libri merger**

On 21 January 2016, the Italian Competition Authority (AGCM) opened a Phase II investigation into the acquisition of RCS Libri by Mondadori, the publishing company of the Mediaset media group. A Phase II investigation is opened when a transaction may constitute or reinforce a dominant position in one or more affected markets (and thus requires in-depth analysis). In the decision to open the investigation, the AGCM alleges that the parties are the two largest players in a group of five major competitors who, together, representing 60% of the overall sector; all of which are vertically integrated integration along the supply chain. Other players are medium-small and not vertically integrated. In this context, the transaction may harm competition in the offering of editorial products to readers and limit opportunities for authors as well as their ability to negotiate commercial terms. Reportedly, the parties have reached an agreement with the AGCM based on the divestment of the Marisilia and Bompiani brands, which would reduce the combined market shares of the parties by 3%.

**FINANCE**

**"Bail In": the potential bank recovery resolution?**

European Directive 2014/59/EU (known as the Banking Recovery and Resolution Directive or BRRD), came into force on 1 January 2015. The BRRD introduced the "bail-in" process, pursuant to which Member States governments will no longer be able to directly intervene in case of bank bankruptcy. The "bail-in" tool provides for preventive measures and crisis management actions, but if they are not effective, the process will lead to the relevant bank's recapitalisation, guided and controlled by the relevant authorities (i.e. ECB and Bank of Italy). Recovery of the bank will firstly affect the share capital of the shareholders and then the owners of other financial instruments issued by the bank, following an order based on investment risk. The European Banking Authority (EBA) has approved guidelines clarifying the factor to be taken into account in relevant authorities' choice between cancellation and severe dilution of existing shares (or other instruments of ownership) when applying the bail-in tool or the write-down or conversion of capital instruments.

**LABOUR**

**Tax relief for productivity in Budget law 2016**

The Budget Law for 2016 provides for the reintroduction of tax relief on so-called "productivity bonuses" provided for in collective labour bargaining agreements at company level. The tax relief – which can be used only for employees with an annual income of less than EUR 50,000.01 – provides for the application of a discounted 10% rate up to a maximum annual gross amount of EUR 2,000. This amount may be increased to up to EUR 2,500 gross for companies that involve employees in the management of work organisation. An upcoming decree will provide further details on this matter.

**CAPITAL MARKETS**

**Right to compensation for failure to launch a takeover bid**

The Supreme Court, in its judgment no. 2665 dated 10 February 2016, and in line with previous case law, stated that ownership of shares of a listed company representing more than 30% of its share capital creates an obligation (rather than just a duty) for a relevant shareholder (or shareholders) to launch a takeover bid (the "Takeover") on the remaining share capital, pursuant to Article 106 of Legislative Decree no. 58/1998 (the Finance Act). If this obligation is breached, the application of the sanctions provided by Article 110 of the TUF (i.e. "sterilisation" of voting rights and disposal of shares which exceed beyond the Takeover threshold) are not sufficient to protect the interest of the shareholders who could have profited from the Takeover. In particular, the Court ruled that the obligation to launch a Takeover is contractual and than consequently, shareholders that would have benefited from the Takeover have the right to compensation for financial damages pursuant to Article 1218 of the Italian Civil Code, the measure of those is damages the loss of the possibility of divestment and the failure to receive an increased price from the sale of their shares, as provided by Article 106 of the Finance Act.

**Deregistration of resigning statutory auditors from the Companies' Register**

Article 2400 of the Italian Civil Code provides that directors must file the appointment and the termination of office of statutory auditors in the relevant Companies' Register within 30 days from the event. Since the registration procedure is an ordinary administrative procedure pursuant to Law no. 241/1990, the Ministry of Economic Development decided, as stated in its Circular no. 3687/C dated 9 February 2016, that, failure to comply with the relevant failing requirements will result in, (i) the sanctions provided for in Article 2630 of the Civil Code and (ii) the commencement of the automatic registration process as stated in following notification of the termination of office.

**COPYRIGHT**

**The Milan IP court confirms that learning methods are not protectable under copyright law**

In its decision of 24 January 2015, the IP specialized bench of the court of Milan confirmed that teaching methods (including lexicon used to describe them to the general public) do not enjoy copyright protection under Italian law. Such a limitation, as clarified by the court, stems from the general principle pursuant to which copyright protection does not apply to technical and scientific discoveries that, given the appropriate requirements, can only benefit from patent protection. However, literary works detailing such teaching methods may indeed be protected under copyright law.

INDUSTRIES

**E-COMMERCE**

**Breach of EU Competition Law by online booking platforms**

On 21 January 2016, the Court of Justice of the European Union (CJEU) issued its ruling on case C-74/14 concerning the compatibility with EU Competition Law of restrictions on discounts applied by online booking platforms. The ruling was requested by the Lithuanian Supreme Administrative Court based on a proceeding before the Lithuanian Competition Council (LCC). The case involved the administrator of an online booking platform who informed its active sellers (i.e. travel agencies) of the introduction of a 3% "cap" on any discounts. An automatic reduction for discounts greater than 3% was also introduced. Since no travel agency objected to the cap, the LCC assumed that the agencies agreed to a common and predetermined conduct aimed at influencing the relevant market. Even if there was no evidence that the agencies had decided to deliberately comply with the platform administrator's notice, the CJEU stated that an infringement of EU Competition Law may occur also when there is passive involvement in an anti-competitive practice. For further information please [click here](#).

**Council of State on new app-based transport services (UberPOP)**

On 23 December 2015, the Council of State delivered the Opinion no. 757/2015, concerning new app-based transport services such as UberPOP, to the Office of the Prime Minister. The aforesaid opinion was drafted in response to a request from the Ministry of Interior Affairs. In particular, the opinion dealt with the applicability of the Law on unscheduled public transport services (Law no. 21/1992) to such services. According to the Council of State, the provision of such services must be considered as valid from a contractual standpoint pursuant to the provisions of the Italian Civil Code although these services are atypical and not strictly comparable to unscheduled public transport services. Therefore, a new legislation shall be approved in order to specifically regulate the aforesaid services as they do not fall within the scope of the existing legal framework. The Italian Competition Authority came to the same conclusion in its opinion of 29 September 2015 in response to the same request from the Ministry of Interior Affairs. The Council of State also noted that a preliminary ruling to the Court of Justice of the European Union (CJEU) on Uber services has been requested by a Spanish judge in July 2015. The CJEU ruling is expected in September 2016. For further information please [click here](#).

**EBay entitled to suspend accounts connected to already suspended accounts**

In a judgment issued on 14 January 14 2016, the Court of Appeal of Naples ruled that EBay is entitled to suspend accounts that are somehow "linked" to accounts that have already been suspended, even if they are registered under a different owner. In 2005 EBay had suspended a user's account after detecting a connection with another account that had previously been taken down. The court acknowledged that the claimant had adhered to EBay's "users agreement", under which EBay is entitled to suspend (either temporarily or permanently) the accounts of users who breach the applicable rules of conduct.

Following suspension of an account, its owner is not entitled to register new accounts either personally or through third parties since, otherwise, EBay's legitimate restrictions would simply be bypassed. The court added that EBay is entitled to suspend accounts registered in the name of owners of suspended accounts as well as those that, although apparently owned by a different person, are in some way linked to a suspended account (in the case at issue the physical address, telephone number and IP number).

**MEDIA**

**Consultation on geoblocking results published**

The European Commission (EC) has published the first results of public consultation on geo-blocking and online platforms. The aim of the consultation on geo-blocking was to gather evidence and opinions on the restrictions faced by consumers and businesses when accessing or providing information and shopping or selling across borders in the EU. This public consultation ran from 24 September 2015 to 28 December 2015 for 12 weeks in all 23 EU languages. The results will feed into the Commission's legislative proposal to end unjustified geo-blocking which is scheduled for mid-2016. More than 90% of consumer respondents agreed or strongly agreed that consumers and businesses should be able to purchase and access services everywhere in the EU. They also strongly agreed that geo-blocking and other geographically based restrictions create significant obstacles to the single market. On the other hand, companies stressed respect for contractual freedom. And many of them are strongly opposed to requiring traders to sell and deliver goods outside of the areas where they would normally do business. For further information on the consultation on geo-blocking see [here](#).

**FASHION**

**The Florence IP court upholds lawsuit for Chanel trademark counterfeiting**

In its judgment of 26 January 2016, the IP bench of the Court of Florence upheld a trademark counterfeiting and unfair competition claim brought by the well-known fashion company Chanel against a local perfume retailer. The defendant was selling alongside original Chanel products (for which it was an authorised dealer), certain third-party manufactured hair accessories bearing a sign similar to the world-renowned Chanel logo (formed by two crossed "C"s). The defendant maintained that there was no likelihood of confusion because of certain graphic differences between the logos, as well as the lower prices of its accessories (as compared to original Chanel products). The court rejected those defensive arguments and, based on the similarities between the two signs, it decided that a likelihood of confusion did exist, both pre-sale (in respect of potential purchasers of the accessories) and post-sale (in respect of third parties seeing the accessories worn by other people).

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