

NEWS FROM THE FIRM

The firm wins for Ferrari in the copyright protection of 250GTO car model

A team led by [Matteo Orsingher](#) and [Fabrizio Sanna](#) (including [Valentina Mauri](#) and [Yara Toriello](#)) assisted the luxury car manufacturer Ferrari in the interlocutory proceedings before the court of Bologna which held (for the first time in Italy) that the shape of a car model, and notably of the 250GTO, can be protected by copyright in Italy.

The firms in the consumer protection authority proceedings on online influencer

A team led by [Fabrizio Sanna](#) including [Yara Toriello](#) assisted the fashion group Aeffe in the proceedings before the Italian Consumer Protection Authority on online influencer which has been closed with the acceptance of the improvements offered by the parties involved.

Alessandro De Palma Labour Lawyer of the year

At the Le Fonti Awards gala dinner held on 10 June, [Alessandro De Palma](#) received the award for best labour lawyer of the year.

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DATA PROTECTION

Italian DPA issues guidelines on data breach

On 30 April 2019, the Italian Data Protection Authority (the "DPA") issued its Opinion [No. 9116509](#) which contains its guidelines on the information to be provided to a data subject in case of a data breach. The opinion was issued in the context of a data breach in relation to an email service provider, which led to fraudulent access to the email accounts of more than one and a half million users. The company was required to provide its users with a second notification - since the first was considered inadequate to protect their rights - recommending that they change their login credentials. The DPA clarified that the information provided to data subjects must give clear and accurate advice on how to avoid the unlawful use of their personal data. This may be achieved by describing the nature of the breach and its potential effects and by clearly explaining to the data subject how to avoid further risks.

FINANCE

Italian Supreme Court on the subordination of quotaholders' loans durante societate

On 15 May 2019, the Italian Supreme Court issued its judgment ([No. 12994/2019](#)) on the applicability of Article 2467 of the Italian Civil Code on companies operating in business continuity. The Supreme Court clarified that the rule regarding the subordination of the shareholders' and quotaholders' loan shall apply not only in the case of a voluntary liquidation procedure or an insolvency procedure but also in respect of the reimbursements of the loan *durante societate*. The judgment established a specific parameter (identified in the financial and equity situation of the company, pursuant to paragraph 2 of Article 2467), for the circumstances in which the directors of the company cannot authorise reimbursements or payments to lending shareholders/quotaholders. Specifically, the Supreme Court stated that companies are required to refuse repayment of quotaholders' loans if the company was in a situation of economic/financial crisis at the time of the request for reimbursement and at time the loan was granted. The assessment of the economic/financial crisis is the responsibility of the Board of Directors, who should have in place an adequate organisational, administrative and accounting structure to identify financial/economic crises in a timely manner and adequately support their actions.

PATENTS

Italian Supreme Court ruling on relationship between patent invalidity and infringement proceedings simultaneously pending

On 4 April 2019, the Italian Supreme Court issued a judgment ([No. 9500/19](#)) which held that when patent invalidity and patent infringement proceedings are pending simultaneously before different courts, the court dealing with the infringement proceedings must stay its proceedings until the completion of the proceedings in relation to the invalidity of the relevant patent(s) pursuant to [Article 295 of the Italian Code of Civil Procedure](#).

TRADEMARKS

The ECJ on the "NEYMAR" trademark

On 14 May 2019, the General Court (GC) of the European Union issued its judgment in [Case T-795/17](#) ([Carlos Moreira v. EUIPO and Neymar Da Silva Santos Júnior](#)) ruling that the EU trademark "NEYMAR" (corresponding to the name of a famous Brazilian football player) registered by a third party for articles of clothing, footwear and headgear, is invalid. In particular, the General Court held that the applicant was acting in bad faith in filing the trademark application since the football player was already well-known in Europe at the relevant time. As a result, the EU Court concluded that the applicant's clear intention was to illegitimately profit from the footballer's fame.

Italian Supreme Court ruling on joinder of parties in patent revocation proceedings

On 28 February 2019, the Italian Supreme Court issued a judgment ([No. 5963/19](#)) overturning the decision of the Court of Appeal of Brescia and held that the "mere" inventor of a patent who has not (and has never been) indicated in the registry as a patent holder shall not be included among the parties that must be summoned to patent invalidity proceedings pursuant to [Article 122.4](#) of the Italian Intellectual Property Code.

LABOUR

Italian Supreme Court on (material) fact grounding a dismissal

On 8 May 2019, the Italian Supreme Court issued a judgment ([No. 12174/2019](#)) dealing with the much-debated question of the (material) fact justifying a disciplinary dismissal. The Court recalled the relevant legal provisions (i.e. [Article 18](#) of Law No. 300/1970 of 20 May 1970 and [Article 3](#) of Legislative Decree No. 23/2015 of 4 March 2015), and decided to uphold the opinion that gives the same weight to the occurrence and relevance of a fact for a dismissal, i.e. the judgment rejects the thesis that restricts the remedy of reinstatement to cases where the material conduct of the employee has not actually occurred.

INDUSTRIES

FOOD

False designation of origin of agricultural products: first criminal enforcement in Italy

On 8 May 2019, the Court of Asti issued a judgment ([No. 387/2019](#)) applying, for the first time, Article 517-quarter of the Italian Criminal Code (which deals with the "counterfeiting of geographical indications or designations of origin of food products"). The Court sentenced the legal representative of an agricultural company to 6 months imprisonment (and a fine of 6,000 Euro) for labelling its wine bottles as "Barolo", even though the wine-making process in question took place outside the territory specified by the regulations governing the production and marketing of Barolo wine.

Italian Supreme Court on the registration of "Aceto balsamico di Modena" trademarks

On 14 May 2019, the Italian Supreme Court issued a judgment ([No. 12848/2019](#)) ruling that the collective trademarks "Aceto balsamico di Modena" and "Condimenti all'Aceto balsamico di Modena" filed for registration in Class 30 of the Nice Classification by the "Consortium for the protection of the balsamic vinegar of Modena" cannot be granted. The Court argued that the goods in respect of which registration was sought are not included in Class 30 of the Nice Classification, nor may they be added to it.

MEDIA

Agcom adopts a Regulation on "hate speech" in information and entertainment transmissions

On 23 May 2019, the Italian Communication Authority ("Agcom") adopted a [Regulation](#) concerning the respect of human dignity and the principle of non-discrimination against "hate speech". The purpose of the Regulation is to provide principles and provisions to be observed by audiovisual media services providers which are subject to the Italian law relating to information and entertainment programmes, to ensure compliance with the principles of human dignity and non-discrimination set forth by the [Italian Audio-Visual Media Service Code](#). The Regulation prohibits the use of content, images or expression (including via the Internet, social media or other online platforms) capable of inciting hatred against a specific group of people, also by means of stereotypes on grounds of race, sex, religion, nationality, gender identity, sexual orientation, disability as well as [on personal grounds] ("hate speech").

Agcom adopts a Regulation concerning age rating classification for "audiovisual works for the web and videogames"

Following a public consultation, Agcom has recently adopted a [Regulation](#) on the classification of the "audiovisual works for the web and videogames", the purpose of which is to define a specific rating system for audiovisual works transmitted to the public "via electronic communication networks or services" by audiovisual media services providers. Pursuant to the Regulation, the notion of "audiovisual media services providers" refers to providers of audiovisual media services (linear or non-linear) made available on electronic communication networks other than coaxial, satellite and terrestrial cable, such as the Internet, whereas the notion of "audiovisual works for the web", includes audiovisual works primarily intended to be transmitted on electronic communication networks or services. The Regulation sets forth a specific age rating classification for "audiovisual works for the web" and provides that the works must be accompanied by an on-screen pictogram during the entire broadcast, as follows: (a) works for everybody (accompanied by a green circular pictogram), (b) works not suitable for minors under the age of 6 (accompanied by an orange circular pictogram including the number "6"), (c) works not suitable for minors under the age of 12 (accompanied by an orange circular pictograms with the number "12"), (d) works not suitable for minors under the age of 15 (accompanied by an orange circular pictogram including the number "15"), and (e) works not suitable for minors under the age of 18, and works not suitable for minors under the age of 18 having restricted airing (accompanied by a red circular pictograms with the number "18"). For the purpose of the classification, media service providers must consider whether the relevant "audiovisual works for the web" contain elements of discrimination, incitement to hatred, drugs, dangerous and easily emulated behavior, vulgar language, nudity, sex, threats, or violence. Audiovisual media services providers which do not comply with these provisions may be subject to sanction by Agcom, with fines ranging in amount from Euro 25,000 to Euro 350,000 and, in the most serious cases, with the temporary suspension of the relevant broadcaster. In the context of the Regulation, Agcom has instituted a technical discussion table (attended by sector operators), in order to adopt specific guidelines aimed at defining the works which are within the scope of the Regulation and the relevant technical measures for the protection of minors to be implemented accordingly.

TECHNOLOGY

New ENISA high-level recommendations on Industry 4.0 cybersecurity challenges

On 20 May 2019, the European Union Agency for Network and Information Security – the independent European centre of network and information security expertise which contributes to the proper functioning of the internal market ("ENISA") – issued its [Recommendations](#) on cybersecurity challenges in Industry 4.0 (the "Recommendations"). According to the Recommendations, the enhancement of cybersecurity in the Industry 4.0 arena is primarily linked to the promotion of cross-functional knowledge among Information Technology and Operational Technology experts and top management. Symmetrically, regulators should set economic and administrative incentives and establish a legal environment which allows companies to plan long-term strategies. The Recommendations also suggest (a) addressing liability issues with specific Industry 4.0 cybersecurity requirements as part of service level agreements and contracts during procurement; (b) making arrangements to identify errors and risks at every step of the supply chain to ensure cybersecurity, and (c) constantly monitoring interoperability and reliability of Industry 4.0 systems, also by following secure software development lifecycles.

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