

NEWS FROM THE FIRM

Cesare De Falco e Pietro Masi appointed counsel

Cesare joined the firm in 2015 and is a member of our employment law team. Cesare advises national and international clients on all aspects of employment and labour law and has significant experience of advising on a range of matters from relationships with top managers to significant reorganisations.

Pietro joined the firm in 2018 and is a member of our Corporate M&A group. His practice is focused on corporate and commercial matters, with a specific focus on mergers & acquisitions and joint venture transactions. He also has significant experience of contentious proceedings (both litigation and arbitration) in relation to disputes involving contracts, corporate law and bankruptcy.

The Firm advises a group of investors on the acquisition of the asset management company (SGR) Koinos Capital

A team led by **Mario Ortu** and **Federico Bonetti** (including **Francesca Flego**, **Pietro Masi**, **Enrica Di Cagno** and **Andrea Serafini**) advised a group of investors on the acquisition of the asset management company (SGR) Koinos Capital.

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DATA PROTECTION

European Data Protection Board on Codes of Conduct

On 4 June 2019, the European Data Protection Board issued its Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies under Regulation 2016/679 (the "Guidelines"), with the aim of encouraging and supporting compliance with Articles 40 and 41 of the GDPR (which deal with Codes of Conduct). According to the Guidelines, given their nature as "voluntary accountability tools", Codes of Conduct are suitable for demonstrating GDPR compliance, as well as achieving consistency and harmonisation in the application of the GDPR at an EU level. In addition, provided that Codes of Conduct are drafted by category representatives, they represent an opportunity for data controllers to discuss and agree on specific privacy rules that reflect the specific characteristics of the relevant sector. With the aim of exploiting the potential of Codes of Conducts, the Guidelines assist code owners in the drafting of codes to ensure GDPR compliance in a practical, transparent and cost-effective manner. The Guidelines are also addressed to the relevant Supervisory Authority, which is requested to follow specific criteria not only to approve a code, but also, at a prior stage, to undertake a review of the code, for the sake of efficiency.

Italian DPA on processing of special categories of data

On 5 June 2019, the Italia Data Protection Authority issued **Decision No. 146/2019** relating to the data processing of special categories of data. Notably the DPA set the requirements to process special categories of personal data in connection with employment relationships; by foundations, churches and religious organizations; by private investigators; when genetic data are involved; for scientific research purposes.

DESIGN

The GC on the designs of Porsche's iconic models

On 6 June 2019, the General Court (the GC) of the EU issued its judgment in **cases T-209/18 and T-210/18**, upholding the EUIPO decisions that Porsche's Community designs incorporating an updated version of the iconic car model Porsche 911 are invalid for lack of individual character pursuant to Article 6 of **Regulation (EC) No. 6/2002** of 12 December 2001. The GC considered that the essential features of the challenged designs (i.e. the shape of the car, doors and windows) are identical to the design of the original Porsche 911 model, and therefore held that the overall impression made on the informed user (which, according to the CG, is a car passenger and not a Porsche 911 user) does not differ from the overall impression produced by such prior designs.

FINANCE

Public consultation on Crowdfunding Regulation

On 20 June 2019, the Italian Companies and Stock Exchange Commission ("Consob") launched a public consultation (the "Consultation") on certain proposed amendments to the crowdfunding regulation adopted under Consob Resolution No. 18592/2013 (the "Crowdfunding Regulation") in order to implement certain provisions introduced by Law No. 145 of 30 December 2018 (the "2019 Budget Law"). The 2019 Budget Law amended the **Italian Consolidated Law on Finance** (the "TUF") by extending the availability of on-line crowdfunding platforms to bonds and debt securities issued by small and medium enterprises and by providing, *inter alia*, that such debt financial instruments may now be underwritten on online crowdfunding portals by certain categories of investors (other than professional investors) to be identified by Consob. The proposed amendments currently under Consultation relate to Consob's proposal to identify the following categories of non-professional investors: (a) banking foundations, innovative start-up incubators and investors supporting small and medium-sized enterprises, pursuant to Article 24, paragraph 2, of the Crowdfunding Regulation, (b) investors that hold a portfolio in excess of an amount of Euro 250,000.00, (c) investors that invest at least Euro 100,000.00 and declare in writing that they are aware of the risks associated with the planned investment, and (d) retail investors in the context of portfolio management services or investment advice. The Consultation period ended on 20 July 2019.

LABOUR

Italian Supreme Court on the challenging of settlements signed before Unions

On 1 April 2019, the Italian Supreme Court issued a judgment (**No. 9006/2019**) in a case regarding a challenge to a settlement agreement signed by an employer and an employee before union representatives and the elements required in order that such a settlement not to be challenged. The Supreme Court confirmed that settlement agreements signed before Union representatives that contain waivers and transactions relating to the employee's rights under mandatory provisions of law or collective agreements, pursuant to **Article 2113 of the Italian Civil Code**, cannot be challenged only if the assistance provided by the Union's representatives was real and effective, so that employees can have full knowledge of the consequences they face by signing such an agreement.

TRADEMARKS

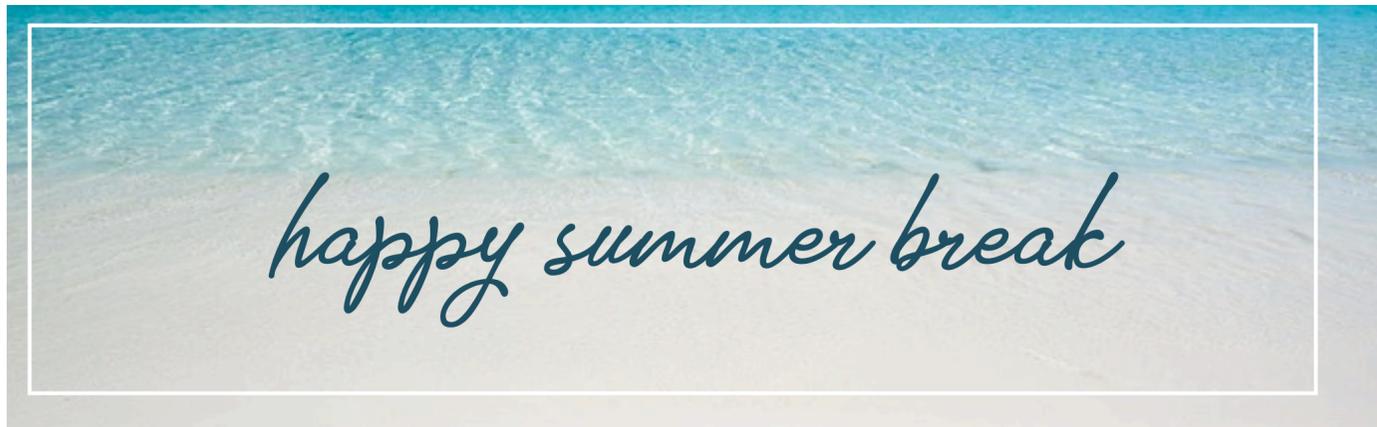
New EUIPO Common Practice on use of a trademark in a different form

On 6 June 2019, the European Union Intellectual Property Office (EUIPO) published the **draft Common Practice of the CP8 project ("Use of a trade mark in a form differing from that registered")** which aims at identifying general principles for assessing when the use of a trade mark in a form differing from that registered alters its distinctive character. Any such assessment should be made on the basis of a 2-step test (described in the draft with several practical examples): i.e. (i) "identify what is regarded as the distinctive character of the sign as registered, taking into account its distinctive and/or dominant elements" and (ii) "determine whether the distinctive and dominant elements of the sign as registered are present in the sign as used and assess in a direct comparison of the two signs whether the sign as registered is used in a form which does not alter its distinctive character".

PATENTS

UPC judges' recruitment re-opened

On 3 June 2019, the Preparatory Committee of the Unified Patent Court (**UPC**) **re-opened the recruitment process** for judicial positions in the UPC to new applications. The deadline for submitting applications was 29 July 2019. The finalisation of the appointment procedure is dependent on the entry into force of the Protocol on Provisional Application and subsequently the Agreement on the UPC.



INDUSTRIES

E-COMMERCE

The ECJ on the means of communication between e-commerce platforms and consumers

On 10 July 2019, the EU Court of Justice (ECJ) issued its judgment in **case C-649/17** (German Federal Union of Consumer Organisations and Associations v. Amazon EU S.à r.l.), ruling that e-commerce platforms are not obliged in all circumstances to make telephone and fax numbers available to consumers. The Court interpreted the requirements established under the Consumer Rights Directive and clarified that, while traders must provide direct and efficient means of communication to consumers (e.g. for customer service purposes), it is also necessary to strike a balance with the traders' freedom to conduct a business. Therefore, traders are not prevented from making available other means of communication (such as electronic contact forms, instant messaging or telephone callback), provided these allow for direct and efficient communication with consumers and are accessible to consumers in a clear and comprehensible manner.

MEDIA

The EU introduces transparency obligations for online platforms

On 11 July 2019, **Regulation (EU) No. 1150/2019** of 20 June 2019 (on promoting fairness and transparency for business users of online intermediation services) (the "Regulation") was published in the Official Journal of the European Union. The Regulation mainly aims at establishing a legal framework that guarantees transparent terms and conditions for business users of online platforms, as well as effective possibilities for redress. The Regulation essentially applies to online intermediation services and online search engines, irrespective of their place of establishment, provided that they serve business users that are established within the EU and that they offer goods or services to consumers who are also located within the EU. Notably, providers of online intermediation services may change their terms and conditions with only 15 days' prior notice (with some exceptions), on a durable medium, to the business users concerned. These users shall have the right to terminate the contract with the provider within 15 days from the receipt of notice of any change. Emphasis is also placed on parameters determining the ranking of goods and services, to be clearly outlined in the terms and conditions, and on the trading identity of business users, to be clearly visible online. To provide effective redress, the Regulation obliges all platforms (apart from small enterprises, as defined) to set up an internal system for handling complaints from business users. In addition, the terms and conditions must identify two or more mediators for cases where the internal system is not able to resolve a dispute. Judicial proceedings against platforms that do not comply with the requirements of the Regulation are also available and Member States may set out penalties for infringements of the Regulation. The Regulation will enter into force as of 31 July 2019 and it shall apply from 12 July 2020.

Guidelines and recommendations on Big Data issued jointly by AGCM, AGCom and DPA

On 2 July 2019, the Italian Antitrust Authority ("AGCM"), the Italian Communications Regulatory Authority ("AGCom") and the Italian Data Protection Authority ("DPA") jointly issued their guidelines and recommendations on Big Data (the "Guidelines"). According to the Guidelines, in the context of the data-driven economy, the intensive use of Big Data poses cross-sectoral challenges for societies, which requires public authorities to cooperate closely. Firstly, the Guidelines invite the Government and Parliament to promote a legal framework aimed at safeguarding transparency in the use of personal data, ultimately for the sake of protecting fundamental rights, competition and pluralism. Equally, information asymmetries between users and digital platforms must be reduced, mainly by fully informing users about which transfers of their data to third parties are required for the functioning of the digital services they subscribe to. Transparency and user awareness are also key to protecting pluralism in relation to informative content made available online by digital platforms. On that note, the Guidelines suggest allocating powers to audit and inspect digital platforms to independent authorities in order to monitor and enhance their accountability. As to competition issues, the weight of data lakes and the user profiling capabilities of Big Data players necessitate broadening data portability rights beyond the current scope of the GDPR. More generally, the Guidelines invite public authorities to join forces and adopt a multifaceted approach to issues stemming from Big Data, ensuring continuity between consumer protection tools and other instruments of law. For further information, please see [here](#).

FASHION

Adidas' three-stripes EU trade mark deemed invalid by the Court of Justice

On 19 June 2019, the EU Court of Justice (ECJ) issued its judgment in case **C-307/17** (*Adidas AG v EUIPO*) stating the invalidity of the Adidas' EU trade mark, consisting of three parallel stripes applied in any direction, for lack of distinctive character. Firstly, the ECJ noted that the mark "is not a pattern mark composed of a series of regularly repetitive elements, but an ordinary figurative mark". Secondly, the ECJ argued that Adidas failed to prove that the trademark had acquired distinctiveness through use in all the 28 member States. Adidas' current trademark (three black lines of equal width, slanting from left to right against a black background) remains protected in all EU states.

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