

NEWS FROM THE FIRM

The firm wins for Viaggiare and Lastminute before the Italian Supreme Court

A team led by [Marco Consonni](#) and [Ludovico Anselmi](#) successfully defended Viaggiare and Lastminute in two proceedings before the Italian Supreme Court regarding their liability for 'screen scraping' Ryanair's website (in order to collect and compare flight cost data from various air carriers). The Supreme Court confirmed that Viaggiare and Lastminute were not liable for copyright/trademark infringement for scraping data/information from Ryanair's website, and stated that Ryanair is abusing its dominant position in the relevant market by trying to prevent online travel agencies from scraping its website.

The firm in the restructuring of the FIA loan

A team led by [Manfredi Leanza](#) (with [Federica Paniz](#), [Mariachiara Crea](#) and [Riccardo Valgoi](#)) assisted Prelios and the pool of lending banks (led by Banca Imi) in the negotiation of a restructuring agreement for the medium/long-term loan in the real estate FIA managed by Prelios.

Toplegal Awards 2019. Fabrizio Sanna best IP lawyer of the year

At the Toplegal Awards gala dinner held on 18 November, [Fabrizio Sanna](#) received the award for IP Lawyer of the year in Italy.

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DATA PROTECTION

EDPB on contracts for online services

On 8 October 2019, the European Data Protection Board (EDPB) adopted the [Guidelines on the processing of personal data under Article 6.1\(b\) GDPR](#) in the context of contracts for online services. The EDPB has clarified that, where a controller seeks to establish that the processing is based on the performance of a contract with the data subject, it is important to assess what is objectively necessary to perform the contract. Furthermore, controllers should make sure to avoid any confusion as to what the applicable legal basis is. Article 6.1(b) applies: (a) when the processing takes place in the context of a valid contract between the controller and the data subject and the processing is necessary in order for the particular contract with the data subject to be performed; and (b) where processing is necessary in order to take steps at the request of the data subject prior to entering into a contract. The applicability of Article 6(1)(b) requires that the processing is objectively necessary for a purpose that is integral to the delivery of the relevant contractual service to the data subject.

The EDPS on hash functions as a personal data pseudonymisation technique

On 30 October 2019, the European Data Protection Supervisor ("EDPS") and the Spanish Data Protection Authority ("AEPD") issued a [joint paper](#) on "hash functions" as a personal data pseudonymisation technique (the "Paper"). The Paper analyses the ability to ensure pseudonymisation of personal data by means of hash functions to the benefit of data controllers who intend to have recourse to such techniques in the context of the GDPR. After pointing out that hash functions may be applied to all types of digital content (i.e. text, images, videos, etc.), the Paper concludes that: (a) the more un-hashed and plain text personal information is linked to a hashed output, the higher the risk of re-identifying the digital content behind that hashed output; (b) the former risk may be limited by various techniques such as encryption of the digital content, adding a notice to the digital content, including digital watermarks and introducing noise elements in the digital content; and (c) the likelihood the the previous re-identification risk increases over time due to the cumulative effect of information. Considering the above, the Paper specifies that a case-by-case, objective assessment must be carried out to evaluate the robustness of the pseudonymisation process. Finally, the Paper clarifies that, in order to achieve anonymity, data controllers themselves should not be capable of re-identifying the data holders in an anonymised file.

COPYRIGHT

Poland on nullity of the Directive on Copyright in the Digital Single Market

On 24 May 2019, the Republic of Poland brought [an action before the EU Court of Justice](#) (ECJ) (C-401/19), seeking the annulment of Article 17.4 letters (b) and (c) of Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market (the "Digital Single Market Directive"). The Republic of Poland claims that the imposition on online content-sharing service providers of the obligation to make best efforts (a) to ensure the non-availability of specific works and other subject matter for which the rightsholders have provided service providers with the relevant and necessary information, and (b) to prevent the future upload of protected works or other subject-matter for which the rightsholders have lodged a sufficiently substantiated notice, makes it necessary for service providers — in order to avoid liability — to introduce preventive control mechanisms and carry out prior automatic verification (i.e. filtering) of content uploaded online by users. According to the application, such mechanisms undermine the essence of the right to freedom of expression and information. Moreover, should the Court find that the contested provisions cannot be deleted from Article 17 of the Digital Single Market Directive without substantively changing the rules contained therein, the Republic of Poland claims that the Court should annul Article 17 of the Digital Single Market Directive in its entirety.

PATENTS

The Supreme Court on European patents and Italian patents claiming the same invention

On 16 September 2019, the Italian Supreme Court issued a [judgment \(No. 22984/2019\)](#) holding that, in the event that both a European patent and an Italian patent claiming the same invention are owned by the patentee, the final revocation of the European patent opposed before the European Patent Office does not entail per se the invalidity of the corresponding Italian patent under Article 59 of the [Italian Intellectual Property Code](#), which falls to be independently assessed pursuant to national law.

Brexit: the UK Government publishes its Guide on patents and SPCs

On 17 October 2019, the UK Government published a guide reporting on the envisaged amendments after Brexit in connection with patents and supplementary protection certificates, which is available [here](#).

FINANCE

Invalidity of a mortgage loan (*mutuo fondiario*) for non-compliance with the funding limit

On 25 June 2019, the Court of Appeal of Venice issued its [judgment in case No. 2660](#). The Court of Appeal upheld a decision of the Court of Padua, and confirmed that a mortgage loan (*mutuo fondiario*) is null and void if the funding limit provided by [CICR Resolution of 22 April 1995](#) and Article 38 of [Legislative Decree No. 385](#) of 1 September 1993 is not complied with. The relevant legislation provides that a mortgage loan may not be granted for an amount higher than 80% of the value of the relevant property, to be assessed also on the basis of the purchase price of the property determined between the parties. According to the Court's ruling, the funding limit has the purpose of reducing the risks related to transactions which are not feasible and, therefore, relates to the public interest and shall be considered a mandatory rule, with non-compliance leading to the invalidity of the relevant mortgage loan.

INDUSTRIES

TECHNOLOGY

The European Commission applies interim measures to Broadcom

On 16 October 2019, the European Commission [ordered](#) Broadcom (i.e. the world leader in the supply of chipsets for TV set-top boxes and modems, including so-called systems-on-a-chip), by way of interim measures, to cease applying certain anticompetitive provisions contained in agreements with its main customers, on the basis that it is (*prima facie*) infringing competition rules by abusing its dominant position. Specifically, by means of the interim measure, Broadcom has been ordered to: (a) unilaterally cease to apply the anticompetitive provisions identified by the European Commission and to inform its customers that it will no longer apply such provisions; (b) refrain from agreeing the same provisions or provisions having an equivalent object or effect in other agreements with these customers, and (c) refrain from implementing any other punitive or retaliatory practices having an equivalent object or effect. The substantive investigation on the merits of all parts of the case is still ongoing.

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