

NEWS FROM THE FIRM

Legalcommunity IP&TMT Awards 2020. Marco Consonni Sports lawyer of the year. Fabrizio Sanna IP lawyer of the year

At the [Legalcommunity Awards web event held on 11 June](#), [Marco Consonni](#) received the award for Sports lawyer of the year in Italy. [Fabrizio Sanna](#) received the award for IP Lawyer of the year in Italy.

The Firm with Prelios in social housing financing in Umbria region

A team led by [Manfredi Leanza](#) (with [Federica Paniz](#) and [Francesco Senesi](#)) advised Prelios SGR on the financing of a social housing project in the Umbria region.

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COVID-19 SPECIAL

CAPITAL MARKETS

Related party transactions: Consob temporarily simplifies the procedure in relation to Covid-19 pandemic

By its [resolution](#) dated 10 June 2020, Consob suspended the application of certain provisions of the Regulation on related party transactions (the "Regulation") in order to facilitate urgent steps to bolster capital transactions involving related parties. Application of the provisions which derogate – in the case of urgent transactions – from procedural requirements to approve related party transactions has been suspended until 30 June 2021: companies may therefore benefit from the provisions expressly dictated for urgent cases, even if they have not provided for the exemption in the by-laws and in the internal procedure to be implemented for carrying out related party transactions. In the case of transactions subject to shareholder approval, the exemption referred to above only applies to urgent "connected to corporate crisis situations"; Consob has therefore also released a further communication stating that, until 30 June 2021, the need to deal with emergency cases related to the Covid-19 pandemic will result in an "corporate crisis". ([communication](#) dated 11 June 2020).

For more tips on COVID-19 see our **special newsletters**:

- [Special Newsletter: COVID-19 e HR \(2\)](#)
- [Liquidity Decree](#)
- [New disclosure obligations on holding thresholds and on shareholders "investment intentions" declarations for listed companies](#)
- [COVID-19 forward looking statements](#)
- [Contracts at the time of the Coronavirus](#)
- [COVID-19 and HR](#)
- [COVID-19 and Impact of Coronavirus on certain Corporate Issues](#)
- [COVID-19 and Suspension of Contractual Obligations](#)

CORPORATE

"Relaunch Decree": extension of the terms for implementing the execution programmes in the context of extraordinary administration procedures

Article 51 of [Law-Decree no. 34 of 19 May 2020](#) (the so-called "Relaunch Decree") sets forth a 6-month extension of the deadlines to implement disposal or restructuring programmes s adopted in the context of an extraordinary administration of a large enterprise in insolvency. The measure is applicable to programmes already authorised by the Ministry of Economic Development and expired/expiring after 23 February 2020 (including for programmes already extended by the Ministry).

Impact of Covid-19 pandemic on corporate financial statements for financial year 2019

Assonime recently released a [communication](#) on the impact of the COVID-19 pandemic on financial statements as at 31 December 2019; although events attributable to the COVID-19 pandemic cannot have an impact on the evaluation processes of recorded values, adequate related information must be provided in the explanatory notes when such events are considered significant. The uncertainty connected to the COVID-19 pandemic may also affect the directors' assessment of the company's ability to continue as a going concern. The related evaluation must be made in accordance with Article 7 of Law-Decree no. 23/2020, also considering the initiatives taken by national and international authorities to deal with the health crisis and the economic impacts of COVID-19.

ADMINISTRATIVE LAW

Sanction imposed beyond term set for conclusion of proceedings is void

On 14 May 2020, the Council of State (the ultimate administrative court in Italy) issued its judgment in [case no. 3307/2020](#) (*Fastweb S.p.A./AGCOM* (Italian Telecommunications Regulator)) in which it stated the peremptory nature of the term set for the conclusion of AGCOM proceedings. In particular, the Council of State considered that the terms for the conclusion of proceedings aimed at imposing an administrative sanction are, as a rule, peremptory in nature. The Council of State also observed that it is not sufficient that the term has been formally extended for further investigatory findings, if those findings have not, in fact, been acquired.

DATA PROTECTION

The EDPB annual report for 2019

On 18 May 2020, the European Data Protection Board ("EDPB") published its [annual report](#) summarising EDPB activities throughout 2019 and setting its main goals for 2020 ("Report"). Looking forward, the EDPB targets for 2020 primarily consist of providing guidance on data controllers and processors, data subject rights and the concept of legitimate interest, as well as intensifying its work in the context of advanced technologies, such as connected vehicles, blockchain, artificial intelligence and digital assistants.

CAPITAL MARKETS

The Italian Consolidated Financial Act: provisions on transparency, asset managers and proxy advisors enter into force

On 10 June 2020, the provisions of Part IV, Title III, Chapter II, Article I-ter of the Italian Consolidated Financial Act – introduced by [Legislative Decree no. 49 of 10 May 2019](#) implementing [Directive \(EU\) no. 2017/828 of 17 May 2017](#) – entered into force. Accordingly, asset managers (i.e. asset management companies and open-ended/closed-ended investment companies directly managing their own assets, and entities authorised in Italy to provide portfolio management services) and institutional investors (i.e., essentially, insurance companies and pension funds) investing in listed companies based in any EU Member State shall adopt a policy of commitment (to be disclosed to the public) describing the most significant aspects characterising the relationship with their respective portfolio companies. Proxy advisors are also required to comply with similar obligations in order to adequately inform clients of the accuracy and reliability of their activities.

DESIGN

A registered design generating the same overall impression as that of the well-known Piaggio scooter is invalid

On 18 May 2020, the Invalidity Division of the European Intellectual Property Office issued its [judgment no. ICD 109 661](#), by which it declared the invalidity of a design registered by a Chinese company for the production of scooters very similar to the well-known "Vespa" manufactured by Piaggio and widely protected by registered and unregistered intellectual and industrial property rights. The rationale of the decision lies in the fact that "the challenged design does not produce a different overall impression from that of the prior design. It closely reproduces features of the prior design that are arbitrary and not subject to any technical necessity obliging a designer to adopt a particular shape and size". Therefore, the challenged Chinese design does not meet the requirement of individual character in the sense of [Article 6\(1\)\(b\)](#) of Regulation (EC) no. 6 of 12 December 2001 on Community designs.

CORPORATE

Notarial Council of Florence's new guidelines on statutory clauses

The Notarial Council of Florence has issued two new guidelines: (a) guideline [no. 72](#), stating the validity of statutory clauses which, while not affecting the holdings of shareholder, prevent and/or resolve the deadlock of the administrative body or the shareholders' meeting using composite techniques and (initial or final) terms and/or conditions (precedent or subsequent); and (b) guideline [no. 73](#), stating the validity of so-called "Russian roulette" statutory clauses, regardless of whether the provision (in the relevant clause) of a mechanism for the determination of the price of the holding subject to transfer (i.e., the validity of such clauses is not subject to the condition that the criteria to be followed for the determination of the relevant price are indicated in the relevant statutory clause and that the price is at least equal to the value determinable in case of exercise of the right of withdrawal pursuant to Articles 2437-ter and 2473 of the Italian Civil Code).

Court of Appeal of Rome decision on Russian roulette clauses

On 3 February 2020, the Court of Appeal of Rome issued its decision on so-called "Russian roulette clauses" contained in shareholders' agreements, stating *inter alia* the following principles: (a) a Russian roulette clause which provides for one party's right to choose at will whether to sell or buy a holding cannot be considered void with regard to the determination of the scope of the agreement to the mere will of such party; (b) failure to identify the criteria for determining the value of the holding to be transferred does not invalidate the clause or violate the prohibition of the so-called "patto leonino"; (c) a Russian roulette clause which applies in the event of non-renewal of a shareholders' agreement falls within the scope of Article 2341-bis (on duration of a shareholders' agreement) of the Italian Civil Code.

Statutory clauses on the exclusion of a quotaholder

On 6 May 2020, the Court of Bolzano issued a [decision](#) on the clause contained in the by-laws of a limited liability company setting forth a special case of exclusion of quotaholders for just cause. In the case at issue, the by-laws provided for the exclusion of any quotaholder in breach of his/her obligations towards the company. Since such a clause is too generic and vague, it cannot be considered to be in compliance with the provision of Article 2473 bis of the Italian Civil Code, according to which the by-laws of a limited liability company may provide for specific cases of exclusion of quotaholders, provided that they meet the criteria of both specificity and just cause, in order to prevent the exclusion of a quotaholder on a generic basis.

Invalidity of clauses shaped to avoid the association contract rationale

On 13 February 2020, the Court of Appeal of Milan issued a [judgment](#) (published on 16 June 2020) holding that a put option provision in a shareholders' agreement, taken together with a contractual mechanism exempting a shareholder from liability for operating losses, is void as a result of the illegal basis of the contract, even where the investment has zero value as a result of the total erosion of the corporate capital. According to the Court of Appeal of Milan, a provision of this nature violates the prohibition on so-called "patto leonino" clauses in Article 2265 of the Italian Civil Code, and is aimed at distorting the function of the association contract under Article 2247 of the Italian Civil Code, a general principle under which the joint exercise of an economic activity implies the sharing profits and losses.

PATENTS

New patent consultancy services vouchers for innovative start-ups

On 22 May 2020, a Directorial Decree of the Italian Ministry of Economic Development containing measures aimed at supporting the competitiveness of innovative start-ups, including vouchers for patent consultancy services provided by industrial property consultants or lawyers ("Vouchers"), was published in the Official Gazette [LINK: <https://www.gazzettaufficiale.it/eli/gu/2020/05/22/131/sg/pdf> o https://uibm.mise.gov.it/images/Decreto/Decreto_Voucher_31_maggio_2020.pdf] Notably, the Vouchers may be used to purchase the following patent consultancy services: (a) assessments on patentability and prior art searches (Voucher value: €2,000.00 + VAT); (b) drafting of patent applications and relevant filing before the Italian Patent and Trademark Office (Voucher value: €4,000.00 + VAT); (c) filing of patent applications abroad (Voucher value €6,000.00 + VAT). Vouchers are subject to availability, and may be applied for on the official website of Invitalia S.p.A., at <https://www.invitalia.it/>, as from 12:00 am of 15 June 2020. More information is available [here](#).

TRADEMARKS

The scope of protection of "weak" trademarks

On 14 May 2020, the Italian Supreme Court issued its [judgment no. 8942](#) (O.T.S. S.p.A. / O.T.S. Italia S.r.l.), which confirms the scope of protection of so-called "weak" trademarks (i.e. trademarks with a low degree of distinctive character), as opposed to "strong" trademarks (i.e. trademarks with a high degree of distinctive character). In relation to "strong" trademarks, all modifications, even if relevant and original, are to be considered illegitimate as long as the trademarks concerned still share the same expressive and individualising core. On the other hand, in relation to "weak" trademarks, the scope of protection is narrower: even slight modifications or additions are sufficient to exclude infringement.

INDUSTRIES

MEDIA

Term to file IES postponed

On 5 May 2020, the Italian Telecommunications Regulator ("AGCOM") enacted a decision regarding the final term for filing Economic System Information ("IES"). Law Decree no. 18 of 17 March 2020 – converted with amendments by Law no. 27 of 24 April 2020 – granted the right to convene ordinary shareholders' meetings within 180 days from the end of the fiscal year. AGCOM now allows companies that exercise this right to file the 2020 IES by 30 September 2020 (instead of 31 July 2020). More information [here](#).

TECHNOLOGY

"Planned obsolescence" is an unfair commercial practice

On 29 May 2020, the Regional Administrative Tribunal (T.A.R.) of Rome issued its [judgment no. 5736](#) in the case brought by the Italian Competition Authority against Apple Inc., Apple Distribution International, Apple Italia S.r.l. and Apple Retail Italia S.r.l., confirming that, with respect to firmware updates of technology devices (such as, in the case at issue, iPhones), the burden is on the manufacturer to (a) identify the models that are compatible with the firmware update; (b) evaluate the impact of the released updates on devices already in use, taking into account the possible state of the hardware on which they may be installed (such as the level of battery wear); (c) clearly inform consumers of such impact; and (d) provide adequate assistance to consumers to restore the pre-existing functionality of the equipment if damaged by the upgrades. Therefore, the periodic, insistent and unsolicited re-proposal of software updates which actually slow down the functionality of older models, without any prior information and mistakenly inducing consumers to purchase new models of the product, amounts to a misleading and aggressive commercial practice pursuant to Articles 20, 21, 22 and 24 of the Italian Consumer Code.

FASHION

The Supreme Court rules (again) on the "Fiorucci" case

On 29 May 2020, the Italian Supreme Court issued its judgment No. 10298 and reopened the "Fiorucci" case. This long dispute between the current (Edwin Co. Ltd. and Edwin International GmbH) and former (Mr. Elio Fiorucci) owners of the "Fiorucci" trademarks, stemming from the filing and use by Mr. Fiorucci of a trademark including his name ("*Love Therapy by Elio Fiorucci*"), after having assigned all the "Fiorucci" trademarks and related products to Edwin. The Supreme Court overuled the judgement No. 3443/2015 of the Milan Court of Appeal (which excluded the likelihood of confusion between trademarks), since it failed to "update the criterion of "professional fairness" or "loyalty in industrial and commercial practice", by taking into account a wider range of criteria meant to assess, *inter alia*, together with the undue benefit that a third party derived from the exploitation of the patronymic present in the trademark of another party", the prejudice thereby caused to the owner of the exclusivity rights".

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