

NEWS FROM THE FIRM

The firm strengthens its Corporate Finance practice with the arrival of Giovanni Nicchiniello

[Giovanni Nicchiniello](#) (formerly a partner of a leading Italian law firm) has joined the firm as a partner, together with [Francesco Cesaroni](#). Giovanni's arrival has significantly strengthened the firm's [Corporate Finance](#) capability.

The firm advises Antares Vision on the acquisition of Convel

A team led by [Pierfrancesco Giustiniani](#) (with [Melania Cantore](#) and [Andrea Piatti](#)) advised the multinational Italian group Antares Vision on the acquisition of Convel, a company specialised in the field of automated inspection in the pharmaceutical industry

Leaders League rankings place the firm among the leaders in a number of practice areas

The specialist publisher [Leaders League 2020](#) lists the firm among the best firms in TMT, IT Law (Technologies, Internet & Telecommunications) (leading), Copyright Law (leading), Fashion Law (leading), Media, Sport & Entertainment (leading), Trademark Litigation, Patent Litigation, Labor Litigation, LBO Transactions, M&A (Large Cap).

Legal community Corporate Awards: Orsingher Ortu – Avvocati Associati again wins for best Corporate Compliance law firm

At the Legal Community Corporate Awards gala dinner held on 20 June, the firm was recognised as Corporate Compliance law firm of the year Italy.

RECENT PUBLICATIONS

FABRIZIO SANNA, [L'art. 4 L. 22 maggio 2017, N.81: l'appartenenza dei diritti IP sulle opere create dal lavoratore autonomo privo di organizzazione imprenditoriale](#), [2020] NLCC 1, 48.

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COVID-19 SPECIAL

CAPITAL MARKETS

Consob extends the enhanced transparency obligations on holding thresholds and investment plan statements

With resolution [No. 21434 of 8 July 2020](#), Consob extended the provisions of resolutions No. [21326](#) and No. [21327](#) of 9 April 2020, with which the Commission had strengthened the transparency obligations pursuant to Article 120 of TUF, for a period of three months – from 12 July 2020 until 12 October 2020, unless revoked earlier - due to the continuing uncertainty about the evolution of the economic and financial situation generated by the COVID-19 epidemic (for further details, please see [our April newsletter](#)).

REAL ESTATE

Inability to pay rents due to COVID-19 not a contractual breach

On 12 May and 25 May 2020, the Court of Bologna in [case No. 5503/2020](#) and the Court of Rimini in [case No. 1371/2020](#) issued two emergency decrees ruling that companies which were unable to pay rents due to the suspension of their business activities resulting from the Covid-19 emergency regulation cannot be considered in breach of their obligations under the lease agreement. In particular, the Courts upheld the urgent appeals filed pursuant to Article 700 of the Italian Civil Procedure Code by the tenants of a building used for commercial purposes (fitness and beauty centre activities) and of a hotel, respectively, ordering landlords not to cash cheques held to guarantee rent payments. Since these decisions are both temporary, issued *in audita altera parte* on grounds of urgency, the relevant Courts have set a date for a hearing for the confirmation, amendment or revocation of their respective decrees.

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](#)

CAPITAL MARKETS

Amendments to the AIM Italia Regulation

On 6 July 2020, Borsa Italiana issued [Notice No. 17857](#), which contains a number of amendments to the AIM Italia (AIM) Regulation. The amendments relate, inter alia, to the following areas: the rules regarding the so-called "Panel" in relation to its role in public takeover bids and delisting; the provision for a segment devoted to professional investors; new rules in terms of governance and transparency; new rules concerning the Nomad certain admission requirements; the definition of "Designated Markets"; provisions for convertible bonds and warrants and so-called penny stock; the capitalisation threshold and research. Certain of these amendments will enter into force on 20 July 2020 and the remainder on 16 September 2020.

Consob on the prospectus control criteria

On 9 July 2020, Consob released [Communication No. 7/2020](#) on the criteria of control for the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market under the new rules set out in [EU Regulation 1129/2017](#) and [EU Commission Delegated Regulation 2019/980](#). With a view to facilitating investigative processes with issuers, Consob clarifies the circumstances and areas of information in which Consob may undertake fuller investigations. The other main issues addressed in the Communication concern the following areas: (a) exchanges of information within Consob departments and with other supervisory authorities in the financial sector; (b) additional control criteria for the prospectus, also clarifying which controls are out-of-scope in the context of the verification activity; and (c) the application of the proportionate approach to the scrutiny of the prospectus, its constituent parts and supplements.

ESMA Guidelines on disclosure requirements

On 15 July 2020, The European Securities and Markets Authority (ESMA) published its [final Guidelines](#) on disclosure requirements under the Prospectus Regulation. The Guidelines provide guidance to financial market participants regarding the disclosure of financial and non-financial information in the prospectus, in order to ensure that market participants have a uniform understanding of the relevant disclosure required in the various annexes included in [EU Commission Delegated Regulation 2019/980](#) (the Delegated Regulation). The Guidelines will help (a) those responsible for the prospectus to assess which disclosure is required and to promote consistency across the European Union in how the annexes to the Delegated Regulation are applied; and (b) competent authorities in properly assessing the completeness, comprehensibility and consistency of the information in prospectuses. The Guidelines will be effective two months from the date of their publication on ESMA's website in all the official languages of the European Union.

CORPORATE

Notarial Council of Milan's new guidelines

On 16 June 2020, the Notarial Council of Milan issued three new guidelines: (a) [guideline No. 189](#) stating the validity of statutory clauses providing for a cap on the right to profits, to be expressed in absolute or relative terms as well as in relation to time; (b) [guideline No. 190](#) stating the validity of statutory clauses providing for the automatic extinction of shares or quotas upon expiry of a term or upon occurrence of a condition that is not merely discretionary, also in the case where the relevant owner has no right of liquidation; (c) [guideline No. 191](#) stating the validity of paid capital increase resolutions taken in the period from 9 April 2020 to 31 December 2020 which are not preceded by a reduction in the capital to cover losses, given the suspension, in such a period, of the provisions on mandatory capital reduction to cover losses.

FINANCE

Liquidity Decree enacted

On 6 June 2020, the Official Gazette published [Law No. 40 of 5 June 2020](#) enacting the conversion into law of [Law Decree No. 23 of 8 April 2020](#) (the "Liquidity Decree"). For further information on the special measures introduced by the Liquidity Decree please refer to [Our Echo - April 2020](#). In the context of the conversion, certain provisions of the Liquidity Decree have been amended as follows: (a) the issuance of the guarantee by SACE has been extended to the assignment by way of security of certain receivables entered into by the assignor in favour of banks and financial institutions. [Further details regarding the relevant procedure and required documentation are to be provided by SACE S.p.A.] (b) further, the issuance of the guarantee by SACE has been extended, to 31 December 2020 for banks, financial institutions and other subjects underwriting bond or other debt securities, issued in Italy by companies which are rated at least BB- or equivalent (for ratings lower than BBs-, the original underwriters of the securities will continue to hold at least 30% of the value of the issue for the entire duration of the instrument. Specific limitations are also provided for the application of such measures in relation to bonds issued by entities other than banks, financial institutions or other entities authorised to grant credit and (c) on a separate note, it has been expressly stated that companies that directly or indirectly control (or are controlled by) a company resident in a tax haven country, pursuant to Article 2359 of the Italian Civil Code, shall not benefit from the guarantee, unless they prove there is an effective economic activity, carried out through the deployment of personnel, equipment, assets and premises. Finally, specific negative covenants have been included for the beneficiary company, such as not to approve distribution or share buy-back for the whole of 2020 and not to relocate production.

TRADEMARKS

The EU Court of Justice clarifies the concept of "use" of a trademark

On 2 July 2020, the EU Court of Justice (ECJ) issued its judgment in [case C-684/19](#) (*mK advokaten GbR/ MBK Rechtsanwälte GbR*) on the interpretation of Article 5(1) of [Directive \[EC\] No. 2008/95 of 22 October 2008](#) (to approximate the laws of the Member States relating to trademarks), which sets forth the exclusive rights of a trademark owner (now Article 10 of [Directive EU No. 2015/2344 of 16 December 2015](#), which has in the meantime repealed the previous Directive). The issue raised before the ECJ was whether, in light of the above-mentioned Article 5(1), a subject that has arranged for an advertisement, including a sign which infringes a third party's trademark, to be placed on a website is "using" such infringing sign if third operators reproduce that advertisement on other websites. Based on settled European case-law, the "use" of a trademark must involve an active conduct and direct or indirect control of the act constituting the use. Therefore, according to the ECJ, if website operators reproduce an advertisement on their own initiative and in their own name, the economic operator whose goods or services are so promoted cannot be regarded as their customer and thus "user" of the infringing trademark.

COPYRIGHT

The EU Court of Justice clarifies the meaning of "address" as information to be given by online platforms on users infringing copyright

On 16 July 2020, the EU Court of Justice (ECJ) issued its judgment in [case C-264/19](#) (*Constantin Film Verleih GmbH/ Google Inc., YouTube LLC*) on the interpretation of Article 8(2)(a) of [Directive \[EC\] No. 2004/48 of 29 April 2004](#) on the enforcement of intellectual property rights. Based on that Article, the competent judicial authority may order, on the basis of a justified and proportional request of the claimant, order the disclosure of the "names and addresses" of certain categories of subjects involved in the infringement of the claimant's intellectual property rights. The issue raised before the ECJ was whether the term "addresses" covers, in respect of a user who has uploaded files which infringe intellectual property rights, his/her email address, telephone number and IP address (used to upload those files or when the user's account was last accessed). According to the ECJ, the meaning of the term "address" covers only the postal address, i.e. the place of a given person's permanent address or habitual residence; therefore, an online platform is not required to disclose any information in addition to the postal address of the user who uploaded infringing content.

EU Advocate General on liability of online platforms

On 16 July 2020 the EU Advocate General Saugmandsgaard Øe delivered [his opinion](#) on the liability of online platforms for contents infringing copyright in the context of a request for a preliminary ruling to the EU Court of Justice in cases [C-682/18](#) (*Frank Peterson c. Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH*) and [C-683/18](#) (*Elsevier Inc. c. Cyando AG*). Based on such opinion, operators of online platforms should not be held directly liable for contents, uploaded by their users, infringing copyright. Indeed, such operators do not carry out an act of "communication to the public", pursuant to Article 3 of [Directive \[EC\] No. 2001/29 of 22 May 2001](#) (on the harmonisation of certain aspects of copyright and related rights in the information society), but they are mere intermediaries that allow their users to carry out such communication. Further, according to the Advocate General, the operators concerned may benefit of the exemption from liability under Article 14 of [Directive \[EC\] No. 2000/31 of 8 June 2000](#) (on e-commerce), provided that they do not play an active role. For this purpose, they must have knowledge of or control over the uploaded content, while it is irrelevant whether they provide functions (e.g. of indexing and search) that optimize their service.

DATA PROTECTION

The Privacy Shield contrary to EU Laws

On 16 July 2020, the ECJ issued its judgment in [case C-311/18](#) (*Data Protection Commissioner v. Facebook Ireland and Maximilian Schrems*) holding that the [Privacy Shield Adequacy Decision](#) is invalid because it fails to protect unnecessary and disproportionate access to personal data of EU data subjects by US intelligence agencies. The ECJ has upheld the [Decision on Standard Contractual Clauses \(SCCs\)](#) as a data export mechanism.

The Italian Data Protection Authority on bank data breach

On 10 June 2020, the Italian Data Protection Authority issued an [order](#) imposing a fine of Euro 600,000.00 on a major Italian bank after ascertaining that it had caused a data breach by allowing abusive access to the personal data of over 700,000 customers through the credentials of an external partner's employees. The abusive access occurred between April 2016 and July 2017 and concerned the data of a wide range of customers. The fine was applied pursuant to the Italian Data Protection Code (i.e. before the entry into force of the GDPR). Several elements were taken into account, including (a) the significant number of data subjects involved; and (b) the fact that the bank adopted a number of measures and initiatives aimed at strengthening the security of its IT systems following the data breach. This fine follows the authority's [decision No. 87 of 28 March 2019](#), according to which Unicredit committed an administrative violation by failing to adopt the minimum security measures provided for by the Italian Privacy Code and by failing to comply with the rules established by the Authority's [decision No. 192 of 12 May 2011](#) regarding the tracking of banking transactions.

PATENTS

The Advocate General on "Pay-for-delay" agreements

On 4 June 2020, the Advocate General Kokott ("AG") issued its opinion in [case C-591/16 P](#) (*Lundbeck v. EU Commission*) by applying the reasoning of the EU Court of Justice in [case C-307/18](#) (*Generics UK and Others v. Competition and Markets Authority* (see [Our Echo No. 51](#) of April 2020)). The AG held that the "pay-for-delay" agreements entered into between Lundbeck pharmaceutical group and four manufacturers of generic medicinal products are contrary to EU competition law in that they qualify as "restrictions of competition by object", since the value transfer from the patent holder to the manufacturer of the generic medicinal products has no explanation other than the common commercial interest of the parties not to engage in competition on the merits.

INDUSTRIES

TECHNOLOGY

An Italian Strategy for AI

On 2 July 2020, the group of experts appointed by the Italian Ministry of Economic Development issued its final report on the Italian strategy for Artificial Intelligence (the "Report"). The Report covers global and local AI trends and sets forth 82 specific recommendations on the main focal points for a sound development of AI in Italy. Notably, transparency, auditability and trustworthiness are pivotal according to the Report. From a purely legal standpoint, sets of standard clauses shall be adopted and used to draft B2B and B2C agreements, and a specific new rule shall be formulated for misleading advertising. The government is also invited to introduce a mandatory civil liability insurance mechanism.

BEREC on Open Internet

On 16 June 2020, the Body of European Regulators for Electronic Communications ("BEREC") presented a new version of the "Guidelines for the application of the discipline on Open Internet based on EU Regulation No. 2120/2015" during a virtual public debriefing held on BEREC's website (the "[BEREC Guidelines](#)"). Along with the BEREC Guidelines, BEREC also published on its website (a) the [results](#) of the public consultation held in 2019 in relation to the proposal to revise the guidelines adopted in 2016, and (b) the [contributions](#) received from various stakeholders. More information [here](#).

E-COMMERCE

AGCOM on secondary ticketing on e-platforms

On 16 March 2020, AGCOM issued injunctions [No. 102/20/CONS](#), [No. 103/20/CONS](#) and [No. 104/20/CONS](#) by which it ordered *Miywayticket SA*, *Stubhub Inc.*, and *Viagogo AG* to pay Euro 3,700,000.00, Euro 1,750,000.00 and Euro 3,700,000.00 respectively for violating Article 1.545 of Law No. 232 of 11 December 2016 regarding the protection of customers vis-à-vis secondary ticketing. AGCOM ascertained that the three companies (a) made available for sale show and concert tickets for a price that was higher than their nominal value; and (b) were fully aware of the unlawful sales occurring on their platforms as they did not limit themselves to simply putting potential buyers in contact with potential sellers but had as their objective the promotion of events so as to maximise the number of tickets sold.

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