

Intellectual Property & Antitrust

in 23 jurisdictions worldwide

Contributing editor: Susan M Hutton

2013



Published by
Getting The Deal Through
in association with:

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Koury Lopes Advogados

Lex Orbis IP Practice

Nestor Nestor Diculescu Kingston Petersen

O'Melveny & Myers LLP

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Yoon & Yang LLC



Intellectual Property & Antitrust 2013

Contributing editor:
Susan M Hutton
Stikeman Elliott LLP

Business development managers
Alan Lee
George Ingledew
Robyn Horsefield
Dan White

Marketing manager
Rachel Nurse

Marketing assistants
Megan Friedman
Zosia Demkowicz
Cady Atkinson
Robin Synnot

Administrative assistants
Parween Bains
Sophie Hickey

Marketing manager (subscriptions)
Rachel Nurse
subscriptions@
gettingthedealthrough.com

Assistant editor
Adam Myers

Editorial assistant
Lydia Gerges

Senior production editor
Jonathan Cowie

Chief subeditor
Jonathan Allen

Subeditors
Martin Forrest
Harry Phillips

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

Intellectual Property & Antitrust 2013
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

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ISSN 1753-0628

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Italy

Fabrizio Cugia di Sant'Orsola and Silvia Giampaolo

Cugia Cuomo & Associati

1 Intellectual property law

Under what legislation are intellectual property rights granted? Are there restrictions on how IP rights may be exercised, licensed or transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Intellectual property rights in Italy stem from the general principles of the Constitution, the Civil Code and Legislative Decree No. 30 of 10 February 2005 (Industrial Property Rights Code (the Code)) along with the Economic Development Ministry Decree No. 33 of 13 January 2010 regulating particular aspects of the Code, and Law No. 633 of 22 April 1941 on Copyright Protection. Such a system of law regulates the granting and protection of different patents, trademarks and other trade names and distinctive signs (different from trademarks) forming IP assets, along with other rights such as geographical indications, know-how, denominations of origin, designs, inventions, clinical trials, utility models, designs and models, domain names, topographies of semiconductor products, trade secrets and patents on new plant varieties.

Law No. 633/1941 also establishes the general protection of artistic works whenever fundamental elements of artistic value and creativity may be detectable. Such works may include literature, music, visual arts, architecture, industrial design, theatre and cinema works in their various modes and terms of expression. Limitations of use are also established by way of interpretation on images and landscape buildings forming Italian heritage. Software and computer programs and databases may also be protected, wherever innovation is introduced or an arrangement of contents renders such craftsmanship unique in some fashion.

Industrial property rights are acquired by means of registration of patents or other methods provided by the Code. The rights of a registered trademark holder consists in the right to make exclusive use of the trademark and exploit the relevant rights. Trademarks may be assigned in respect of all or part of the products or services for which registration is granted and may also be licensed, also on a non-exclusive basis, for all or part of the products or services for which it is registered and for the whole or part of the national territory, provided that, in the case of a non-exclusive licence, the licensee expressly undertakes to use the trademark in a way that may provide distinction from products or services traded by others in the territory. Trade secrets may also be protected under the general principles of the Civil Code, as well as confidential information, if duly evidenced in such a manner and obligation of confidence that applies.

Italy is a member of various international copyright conventions, and in this respect Community trademarks are deemed valid within the territory. Under general principles, the duration of copyright protection depends on the type of relevant works. Registration of trademarks is valid for 10 years and can be renewed. Patents on industrial inventions last 20 years from the date on which the application form was filed. Patents on utility models last for 10 years from filing and submission.

For the 'Industrial design right' model, the duration is 15 years. Patents on new plant varieties last for 25 years, increased to 30 years for species of vines, trees, potatoes and plants with wood stems. Literary, dramatic, musical and artistic works are usually protected for the author's life plus 70 years. Italy is also bound by the TRIPs Agreement and in some areas the rights exceed the minimum requirements set by this agreement.

2 Responsible authorities

Which authorities are responsible for administering IP legislation?

The Ministry of Economic Development defines the general national industrial policies and sets incentives in innovation and research and development typically where IP assets are generated or refined. Also, specific protection programmes and management of related funds are set by the Ministry of Economic Development, generally on a yearly basis. Since 1 August 2008, the Ministry's Directorate General of Counterfeit Struggle has set up a specific office for claims and information regarding alleged violation of 'Made in Italy' protected rights. The Ministry of Economic Development has also set up an international network of IP rights desks in sensitive areas of the world, with the view of assisting Italian operators abroad in the defence of IP rights and orienting entrepreneurs in the adoption of protective measures. The National Council Against Counterfeit, chaired by the minister for Economic Development retains the specific functions of promoting and coordinating actions against counterfeiting at national level.

The Technical Committee Against Digital Piracy has a seat within the prime minister's offices, and is competent in the coordination of contrasting initiatives in the fields of multimedia and digital piracy. This committee is generally involved with and operates under the supervision of the Cultural Heritage Ministry, in particular in the analysis of protective measures and definition of codes of conduct for operators. The Ministry for Cultural Heritage supervises, generally, in the application of copyright law.

Local Chambers of Commerce are responsible for the administrative procedures linked to the receipt of applications for trademark registration as well as patents, industrial inventions and utility models, along with applications for registration for design rights. Finally, the Italian Patents and Trademarks Office (UIBM) is the focal point for industrial property rights enforcement and protection.

With regard to the protection of copyright in audiovisual material, the National Communication Regulatory Authority (Agcom) has increased its role significantly following the introduction of Law No. 248/2000 granting powers of inspection and supervision and the duty of Agcom to inform of eventual violations to the national police.

3 Proceedings to enforce IP rights

What types of legal or administrative proceedings are available for enforcing IP rights?

Under Italian law, the protection of patents falls within the scope of the Paris Convention for the Protection of Industrial Property, ratified by Italy. Section 3 of the Code, consistent with section 2 of the Paris Convention, states that citizens may enjoy full protection and exploit every remedy provided for by Italian law.

IP rights may, in general, be enforced both by means of legal and administrative proceedings. Judicial proceedings have been detailed by Legislative Decree No. 168/2003, amended by Law Decree No. 1 of 24 January 2012 and converted into Law No. 27/2012, identifying specific sections within Italian courts competent in the judgment of IP rights and relevant violations. Under article No. 134 of the Code, courts may judge on judicial proceeding related to industrial property and unfair competition, except in cases that may involve or indirectly interfere with the enforcement of industrial property rights, as well as unfair practices connected to the exercise of industrial property rights, for which ordinary courts are deemed competent.

With regard to administrative proceedings, the Code lays down a set of rules on the filing of appeals against the Italian Patents and Trademarks Office orders rejecting an application and registration or preventing the acknowledgement of an IP right. In the case of a claim regarding the priority or invalidity of a trademark, whenever the relevant titles are still pending and still not granted by the Italian Patents and Trademarks Office, this office is competent in establishing priority rights.

With Decree of 11 May 2011 of the Economic Development Ministry, article No. 174 of the Code has become operational and entitled parties may now intervene in proceedings for the registration of Italian trademarks, filing eventual oppositions, either by means of observations or counterclaims.

Finally, specific provisions set out by the Criminal Code also provide protection from unlawful introduction of counterfeited material in the territory.

4 Remedies

What remedies are available to a party whose IP rights have been infringed?

The entitled party has a roster of remedies. First and foremost it may apply for the seizure of some or all of the items of infringement, involving also the machinery, apparatus and systems utilised in the manufacture and craftsmanship performed in the violation. The seizure proceeding is governed by the general principles ruling precautionary proceedings, and prejudice and evidence of right are required. The preventive seizure requires a simple assessment of the use of goods with counterfeited trademarks for the commission of the felony regulated by article No. 474 bis of the Criminal Code (Court of Lecco, decision of 4 January 2011).

Moreover, the holder may request that an injunction be issued to prevent any imminent infringement of his or her rights or to forbid release of products, as well as removal from distribution and other provisional measures.

Aside from the provisional measures referred to above, the party may obtain full recovery from the damages suffered in connection with the copyright infringement (article 125 of the Code). Damages are estimated by the judge according to the evidence provided by the offended party and also with regard to eventual royalties, which the offending party should have paid the IP owner in order to lawfully exploit the patent (paragraph 2 of article 125). However, in the case of illegal parallel importation into the EU of goods from non-EU countries utilising distinctive signs in contrast with protected rights, damages may be settled equitably in absence of a specific benchmark criteria, taking into account both the detriment of the commercial image and the diversion of customers to the duping (Court of Appeal of Naples, Decision of 24 January 2011).

Under article No. 125 of the Code, the relevant proceeding, which may yield a definitive decision by the court, may also provide for:

- inhibition to further manufacture, sell or use the infringing goods;
- withdrawal from the market;
- destruction of infringing goods; and
- imposition of fines in the case of further violations.

The indicated measures may be also applied against intermediaries involved in the release or sale of goods. The Code also sets particular measures against piracy and illegal duplication and distribution of artistic works, entitling the direct administrative seizure of counterfeited products.

5 Competition and abuse of IP rights

What consideration has been given in legislation or case law to competition in the context of IP rights, and in particular to any anti-competitive or similar abuse of IP rights?

IP right holders have the legitimate right to make exclusive use of IP assets.

Slavish imitation is prohibited under article No. 2,598 of the Civil Code as a typical unfair trade practice possibly involving the violation or abuse of IP rights.

However, Italian case law (eg, Court of Turin, IP department, Decision of 11 March 2009, and similarly, Court of Bologna, IP department, Order of 24 February 2009) requires, for a slavish copying instance to be recognised, that the assumed, offending goods copy not just the shape and design of the patented design, but a particular feature or distinctive sign capable of identifying the patented product on the relevant market, such as to make it immediately distinguishable by, and attractive to, potential customers. The Court of Bologna recently stated that the 'functional shape' of a product (ie, the shape imposed by the design and technical requirements of the product), cannot be regarded as having a distinctive and characterising nature in itself. Slavish copying protection fully relies on the possibility for confusion among customers on the market. Recently, the Court of Milan (IP section, Decision of 5 May 2012) set out, with particular reference to unfair competition as a form of slavish copying, that article No. 2598, paragraph 1 of the Civil Code refers to goods that can be instantly recognised in shape and design; this article does not relate to the mere protection of formal elements of copied goods since the perception by consumers of the formal elements does not, in itself, necessarily trigger a perception of differentiation among similar products.

Confusion and unfair competition may occur in the use of names and trademarks when products are destined to the same market sectors (Supreme Court, 9 February 2000, No. 1,424). However, the possibility of confusion cannot be evaluated on the basis of hypothetical parameters or generalised criteria (Supreme Court, landmark decision of 19 March 1999, No. 4,841).

6 Remedies for deceptive practices

With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices in addition to traditional 'passing off' or trademark infringement cases?

Legislative Decree No. 206 of 6 September 2005 (the Consumer Code) sets out a series of specific rules protecting consumers from deceptive practices, yet does not provide specifically for other remedies in addition to traditional 'passing off' or trademark infringement cases. This law grants to the Antitrust Authority, acting on its own authority or at the request of any individual or organisation withholding interest, the right to prohibit the continuation of any unfair commercial practices; article No. 21 sets out that a commercial practice shall be

regarded as misleading if it contains false information or is untruthful in any way, including the overall presentation or use of deceitful trademarks capable of confusing average consumers in relation to the nature or illustration of one or more of the following elements:

- the rights and titles of the trader or his or her agent;
- his or her qualifications, status, affiliation or connection with the producer; and
- ownership of industrial, commercial or intellectual property rights related to the products.

7 Technological protection measures and digital rights management

With respect to copyright protection, is WIPO protection of technological protection measures and digital rights management enforced in your jurisdiction? Does legislation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Could TPM or DRM protection be challenged under the competition laws?

Law No. 633 of 22 April 1941 on Copyright Protection, as amended, sets out the general rules related to technological protection measures (TPMs) and digital rights management (DRM). Under article No. 102-quater, rightholders of any copyright may apply protective measures on goods or works in order to prevent or restrict unauthorised use. The article provides that technological measures of protection shall be deemed 'effective' where use or access to the protected work is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or any other transformation by means of copy control mechanisms.

Article No. 171-ter states on its part that any person who, for purposes other than personal use and with gainful intent, manufactures, imports, distributes, sells, rents, transfers under whatever title, advertises for sale or rental, holds for commercial purposes devices, products or components or provides services whose main purpose or commercial use is to circumvent any effective technological measure of protection (under article No. 102-quater) or that are primarily designed, manufactured, adapted or performed for the purpose of enabling or facilitating the circumvention of said measures, shall be liable to imprisonment and to the payment of a fine.

The use of source codes on software is lawful if made granting interoperability with other programs (Court of Turin, IP section, 16 January 2009).

8 Industry standards

What consideration has been given in legislation or case law to the impact of the adoption of proprietary technologies in industry standards?

A general principle applies, under which the owner of patents triggering industry standards must comply with general competition principles and grant, where applicable, to any requesting party, similar benefits and advantages in terms of market access, by means of the release of licences on patented technologies (Court of Genoa, 8 May 2004).

Patent ambush falls within the general principles of unfair trade practice. The Code sets out a general principle under which patents may be granted, if not in violation with prior rights of patent holders. In such an event, a patent may not be assigned unless technological progress or economic value is implied. The holder of the prior patent, in such an event, has the right to be granted a compulsory licence on the patent of the depending invention, at reasonable conditions.

Competition

9 Competition legislation

What legislation sets out competition law?

Law No. 287 of 10 October 1990 introduced the general provisions on competition and fair trading. This law applies to agreements, abuse of a dominant position and concentrations outside the scope of articles 65 and 66 of the Treaty Establishing the European Coal and Steel Community, articles 85 and 86 of the Treaty Establishing the European Economic Community (EEC), EEC Regulations or European Community acts having an equivalent statutory effect.

The law's main objectives are:

- to ensure the basic preconditions for freedom of enterprise by providing economic operators with equal opportunities for market access and competition; and
- to protect consumers by promoting price containment and quality improvement for products derived from the free play of competition.

10 IP rights in competition legislation

Does the competition legislation make specific mention of IP rights?

The fundamental antitrust law (No. 287/90) does not make specific mention of IP rights, yet a series of legislative acts with competition effects make reference to such rights.

11 Review and investigation of competitive effect

Which authorities may review or investigate the competitive effect of conduct related to IP rights?

The Italian Antitrust Authority is an administrative independent authority, established by Law No. 287 of 10 October 1990. Subsequent laws endowed it with additional powers, the most important of which concern the repression of unfair commercial practices, misleading and unlawful comparative advertising and the application of conflict of interests laws to government office-holders. This authority is also entitled to enforce and apply the principles contained in Legislative Decree No. 145/2007 (enactment of Directive 2005/29/EC) on misleading and unlawful advertising, as well as the Consumer Code provisions (as modified by Legislative Decree No. 146/2007 with regard to unfair commercial practices).

Further, on the protection of copyrights, the Antitrust Authority, with resolution No. 21959 of 17 January 2011, required Google to allow publishers of edited articles to select or remove property content on Google News Italy. The Antitrust Authority stated that Google should guarantee that the publishers can choose whether to allow direct access to their sites from Google News, make decisions on selectively excluding specific articles or images or to bring up only the titles of the articles and not abstracts of the edited text of the same articles.

12 Competition-related remedies for private parties

Do private parties have competition-related remedies if they suffer harm from the exercise, licensing or transfer of IP rights?

All parties, including those that are private, may require direct intervention of the Antitrust Authority under article 12 of Law No. 287/90 in the case of unfair trade practices, undue conduct or competition restrictions and also the abuse of IP rights or related licensing. In urgent cases where a liability of irreparable damage may be sought, the authority may directly exercise ex officio interim measures to be adopted.

13 Competition guidelines

Has the competition authority issued guidelines or other statements regarding the overlap of competition law and IP?

Not expressly.

14 Exemptions from competition law

Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

No. However it must be noted that article 4 of Law No. 287/90 sets a general principle by which the Antitrust Authority may authorise, for a limited time period, agreements or categories of agreements to be prohibited as restricting freedom of competition, which may have the effect of improving the conditions of supply in the market, leading to substantial benefits for consumers. Such improvements must be identifiable, also taking into account the need to guarantee the undertakings the necessary level of international competitiveness, and shall be related, in particular, with increases of production, improvements in the quality of production or distribution, or with technical and technological progress, and thus in line with theory applicable to particular IP assets.

The exemption may not permit restrictions that are not strictly necessary for the indicated purposes.

15 Copyright exhaustion

Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws, for example with regard to efforts to contract out of the doctrine, to control pricing of products sold downstream and to prevent 'grey marketing'?

Law No. 633 of 22 April 1941 on the Protection of Copyright sets out rules related to the 'first sale'. Article 17 of this law lays down that the exclusive right of distribution concerns the right to market, place in circulation and make available to the public, by whatever means and for whatever purpose, a work or copies thereof. It also includes the exclusive right to introduce into the territory of the European Union for distribution, copies of a work made in countries not members of the European Union.

16 Import control

To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

The holder of a trademark may prohibit third parties from utilising the trademark or affixing signs to the products or to the packaging thereof for the purposes of offering such products in the market, as well as detaining, storing or holding such goods retaining trademarks for such purposes. Also, it can inhibit offering or supplying services bearing undue signs, importing or exporting products bearing protected trademarks as well as using the sign on business papers and in advertising.

On its part, patent holders retain the rights to the following:

- if the object of a patent is a product, the right to forbid third parties from producing, using, releasing on the market, selling or importing for such purpose, the product at issue other than with the holder's consent; and
- if the object of a patent is a process, the right to forbid third parties from applying such a process, as well as from using, placing on the market, selling or importing for such purposes the product directly obtained from the process at issue, other than with the holder's consent.

17 Competent authority jurisdiction

Are there circumstances in which the competition authority may have its jurisdiction ousted by, or will defer to, an IP-related authority, or vice versa?

Competences between authorities and courts are well specified, albeit complex to a certain extent, in such a fashion that ousting should not occur. In specific areas, such as communications and online services, the Antitrust Authority shares a competence with sector-specific authorities (such as the Communications Authority, with reference also to the general media and entertainment industries) and, in that respect, market definition and identification of remedies may be shared between involved entities.

Merger review**18 Powers of competition authority**

Does the competition authority have the same powers with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

Yes. Law No. 287/1990 and Decree of the President of the Italian Republic No. 217/1998 set the powers of the Antitrust Authority for the review of mergers, which applies to all markets.

19 Analysis of the competitive impact of a merger involving IP rights

Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

No, it does not differ, specifically. The Antitrust Authority performs its market analysis under general principles, yet evidently takes into account the specific references and realities of a given market, for which it applies its particular criteria of examination. Law No. 287/1990 refers to every undertaking that pursues an economic activity that may have an impact on the market, with no further detail.

20 Challenge of a merger

In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights?

The challenge of mergers involving the transfer or concentration of IP rights follows the same general principles set by article 5, paragraph 1, letter b of Law No. 287/1990. This means that, also with reference to IP rights, the Antitrust Authority may challenge a merger when the outcome may determine market distortion, or provide excessive market share to the involved undertakings such to jeopardise the level playing field. This may also determine examination of access to the relevant market limitation, or the creation or strengthening of dominant positions.

In such circumstances, the undertakings have the duty to inform the Antitrust Authority (article 16 of Law No. 287/1990), for the evaluations of implications or market impact analysis.

21 Remedies to alleviate anti-competitive effect

What remedies are available to alleviate the anti-competitive effect of a merger involving IP rights?

In particular cases, limitations or mandatory provisions may be imposed. In a recent case, implying possible abuse of dominance (*Giochi24 Srl/Sisal SpA*, A419, No. 22301 of 2011) the authority imposed the order on Sisal to renounce the use of a particular trademark, under the principle of article 14-ter of Law No. 287/90.

Specific competition law violations

22 Conspiracy

Describe how the exercise, licensing, or transfer of IP rights can relate to cartel or conspiracy conduct.

Court interpretations and antitrust opinions share a common view by which agreements for the sale of licences, as well as multilateral cross-licence agreements, may give way to cartel or conspiracy conduct, as long as particular market and legal conditions apply (restriction of trade, limitation to access to market, etc).

23 (Resale) price maintenance

Describe how the exercise, licensing, or transfer of IP rights can relate to (resale) price maintenance.

Licensing or transfer of IP rights may be freely negotiated and conditions set and defined, yet disproportionate pricing may be identified as a market restriction practice (as well as the imposition of tying clauses or contractual limitations).

Acquisition and merger control – competition

24 Exclusive dealing, tying and leveraging

Describe how the exercise, licensing, or transfer of IP rights can relate to exclusive dealing, tying and leveraging.

Tying may be considered an anti-competitive practice. In the case of an undertaking and owner of an IP right tying the sale of such a product to another not subject to any other IP right for the purposes of unduly increasing the undertaking's power on the market and taking advantage of the prerogatives concerning the IP right of the first product, the case falls within the provisions of Legislative Decree No. 30/2005. Mediation by the ministry is possible, in view of balancing interests, yet in the case of no agreement being reached, the Antitrust Authority may intervene. The possibility for the owners of IP rights to act against forgery finds a specific limit in the need of a competition safeguard that cannot be compromised by the refusal of licensing.

25 Abuse of dominance

Describe how the exercise, licensing, or transfer of IP rights can relate to abuse of dominance.

The prohibition of an abuse of dominance position is set by article 3 of Law No. 287/1990. Generally, the ownership of an IP right may be regarded as a limitation or barrier to market entry whenever the exclusiveness provided by the IP right covers essential information in the relevant market or for geographical coverage. The exercise of related rights must be done in respect of the general competition provisions (eg, through the direct or indirect imposition of prices or other unfair selling conditions).

26 Refusal to deal and essential facilities

Describe how the exercise, licensing, or transfer of IP rights can relate to refusal to deal and refusal to grant access to essential facilities.

Refusal to deal is a particular case of abuse of dominant position, albeit not expressly identified in article 3 of Law No. 287/1990. The refusal to deal may determine an anti-competitive practice when applied as a tool to limit or force unfair trade practices.

The regulation of the use and access to essential facilities is provided by article 8 of Law No. 287/1990, with reference to the undertakings that manage services of general economic interest or that operate within legal monopolies. These undertakings have the duty to allow access to products or services subject to exclusive rights to a direct competitor, as well as an obligation to negotiate. Particular cases of use of essential facility and conditions of opening of resources

have been discussed and partially settled in the use of national railway systems, access segments of the communications network, water and electricity distribution markets and, more recently, in electronic payments (the clearing system between credit institutions is provided by a national network).

Remedies

27 Remedies for violations of competition law involving IP

What sanctions or remedies can the competition authority or courts impose for violations of competition law involving IP?

According to article 15 of Law No. 287/1990, the Antitrust Authority, as well as the IP sections of ordinary courts, may adopt interim measures or remedies. The Antitrust Authority and the specialised sections can also adopt precautionary measures, having injunctive or informative scopes.

Seizure of some or all of the items of infringement may be adopted, which may also involve the machinery, apparatus and systems. The seizure proceeding is governed by the general principles ruling precautionary proceedings, and prejudice and evidence of right are required. In addition, the holder may request that an injunction be issued to prevent any imminent infringement of his or her rights or to forbid release of products, as well as the removal from distribution and other provisional measures.

28 Competition law remedies specific to IP

Do special remedies exist under your competition laws that are specific to IP matters?

As mentioned, Legislative Decree 168/2003, as amended by Law Decree No. 1 of 24 January 2012, has created, for IP-related matters, specialised sections within ordinary judicial courts that have direct competence for cases related to national and European trademarks, patents for inventions, utility models, copyrights and all cases of unfair competition that may interfere with the protection of IP rights. The provisional measures allowing inhibitory actions and seizures relate to the general remedies of the Civil Procedure Code, yet under article 124 of the Code, injunctions may be imposed for damages or withdrawal from the market whenever a decision has been issued clarifying a violation of an IP right. Destruction and seizure of goods is a typical protective measure displayed by the specialised sections.

29 Remedies and sanctions

What competition remedies or sanctions have been imposed in the IP context?

Competitive measures adopted in the various market sectors differ substantially, from inhibition of release of videos in the film industry to the preventive measures against ISPs with the view of inhibiting file sharing services (Criminal Court of Bergamo, Court Order 1 August 2008, No. 3277, in which the encouragement and set up of peer to peer file sharing services on websites has been identified as infringing intellectual property rights of legitimate owners).

In the *Parmalat/Eurolat* case of 2005, the Antitrust Authority ordered Parmalat to distribute competitive milk brands in order to restore conditions of effective competition following its concentration with Eurolat (Measure C3460D, No. 13984).

30 Scrutiny of settlement agreements

How will a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective?

From a competition perspective, it must be noted that article No. 2 of Law No. 287/1990 prohibits agreements between undertakings having the effect of impeding, restricting, affecting or limiting competition in a relevant national market. When established, agreements

Update and trends

A particularly hot topic is freedom of speech, and the consideration of blogs within the scope of the new obligations set by the recently-discussed reform of the press law, intending to set a series of limitations and responsibilities on editors.

are considered null and void, so, in general, parties tend to have clearance of agreements well under way before closing. The criteria of examining the compliance of such agreements to general competition provisions follow the general principles mentioned earlier.

Economics and application of competition law**31 Economics**

What role has economics played in the application of competition law to cases involving IP rights?

Economics plays a fundamental role. The economic analysis of markets and services for antitrust purposes involving IP rights and related content plays a critical function when defining markets, and, additionally, in the field of offering online services, involves the distribution of roles between the National Communication Authority (AGCOM), responsible for services in the particular field of communications services, and the general Antitrust Authority (AGCM), set up in 1990. Both periodically review market definition and coordinate in the eventual set up of ex ante remedies for relevant markets in communications law. The General Communications Law of 2004 sets, also, an integrated evaluation system (so-called SIC) on revenues withheld by operators involved in the aggregated offering of press, content, radio, television, advertisement and online content, aside from traditional communications services.

32 Recent cases

Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

On 15 February 2012, the Court of Venice excluded the protection of the shoes 'Crocs' as a trademark, rather recognising their protection under the provisions of unfair competition for slavish imitation (Decision of 15 February 2012).

On 3 September 2012, the Regional Administrative Court of Lazio issued Decision No. 2,467/2012, which upheld the appeal filed by Pfizer against the Antitrust Authority's resolution ordering Pfizer to pay a sanction (approximately €10 million) for abuse of dominant position in relation to patent utilisation on active ingredients on generic drugs and restriction of free entrance in the market.

In 2011, two cases brought Italian court interpretations under the spotlight: the Court of Milan case involving Google (Decision No. 1,972 of 24 February 2010) is probably the most famous case of recent years. Google was not classified in this case as a hosting provider, but rather as an active hosting provider, due to the fact that Google appeared not only to be hosting but also actively offering video uploads that retained a fundamental economic interest. In a different *Google Suggest* case, again in Milan, on 24 March 2011, Google was condemned in a defamation case due to the 'suggest' algorithm, which linked the name of an entrepreneur with suggested links such as 'fraud', due to former and quite obsolete information.

Also, the Court of Milan (Decision of 16 July 2007) on online service providers, which forced such operators to remove intellectual property works protected by copyright when illegally published by users on websites and also disabling access to the information posted on such websites in execution of any lawful provision issued by any competent authority has been extensively discussed.

CUGIA CUOMO & ASSOCIATI

STUDIO LEGALE

Fabrizio Cugia di Sant'Orsola
Silvia Giampaolo

f.cugia@cugiacuomo.it
s.giampaolo@cugiacuomo.it

Corso Vittorio Emanuele II, No. 184
00186 Rome
Italy

Tel: +39 06 9603 8100
Fax: +39 06 9652 6071
www.cugiacuomo.it

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