

## ▪ Newsletter 2002-03

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### **Redazione e revisione di contratti e transazioni internazionali**

Austria - New opportunities - Congress Prato 21 November 2002

In collaboration with ABA (Austrian Business Agency) will be held in Prato at the premises of Entrepreneurs Association a congress dedicated to new business opportunities in Austria, direct investments, transactions and recovery of debt.

### **GIURISPRUDENZA**

#### **Diritto comunitario e della concorrenza**

European Court of First Instance, Case T-342/99

(Competition - Regulation (EEC) No 4064/89 - Decision declaring a concentration to be incompatible with the common market - Application for annulment - Relevant market - Collective dominant position - Proof)

The Commission Decision C(1999) 3022 final of 22 September 1999 declaring a concentration to be incompatible with the common market and the EEA (European Economic Area) Agreement is annulled since, far from basing its prospective analysis on cogent evidence, is vitiated by a series of errors of assessment as to factors fundamental to any assessment of whether a collective dominant position might be created. It follows that the Commission prohibited the transaction without having proved to the requisite legal standard that the concentration would give rise to a collective dominant position of the three major tour operators, of such a kind as significantly to impede effective competition in the relevant market.

### **GIURISPRUDENZA**

#### **Diritto civile e contenzioso**

Corte di Cassazione - Order 6591/2002

Defamation via Internet

The claim for moral injury via Internet may be brought before the Court where the plaintiff is domiciled if he suffered damages there.

### **GIURISPRUDENZA**

#### **Proprietà intellettuale, marchi e brevetti**

European Court of Justice - Case C - 63/97

Trade-marks directive - Unauthorised use of the BMW trade mark in advertisements for a garage

Articles 5 to 7 of First Directive 89/104 do not entitle the proprietor of a trade mark to prohibit a third party from using the mark for the purpose of informing the public that he carries out the repair and maintenance of goods covered by that trade mark and put on the market under that mark by the proprietor or with his consent, or that he has specialised or is a specialist in the sale or the repair and maintenance of such goods, unless the mark is used in a way that may create to the impression that there is a commercial connection between the other undertaking and the trade mark proprietor, and in particular that the reseller's business is affiliated to the trade mark proprietor's distribution network or that there is a special relationship between the two undertakings.

### **GIURISPRUDENZA**

#### **Proprietà intellettuale, marchi e brevetti**

European Court of first instance, Case T-179/00

"Council Directive 92/27/EEC - Labelling of a medicinal product - Centralised procedure for the authorisation of medicinal products - Inclusion of the local representative's logo in the blue box on the outer packaging of a medicinal product".

The logo plays an important role in identifying a company operating on the market. Its function is to constitute a unit in combination with the name of the company in order to facilitate identification of that company. Since the aim of Directive 92/27 is, according to its fifth recital, in particular to ensure a high degree of consumer protection, inclusion of the logo in the blue box of package of pharmaceutical products, which facilitates identification of the local representative, helps to increase consumer protection. Given that consumers may contact

the local representative more easily in the event of problems with the medicinal product and ask questions of him in their mother tongue and that, as regards questions of responsibility, the local representative can suggest to consumers that they contact the holder of the marketing authorisation, the inclusion of the logo of the local representative in the blue box is useful for health education within the meaning of Article 2(2) of Directive 92/27.

## GIURISPRUDENZA

### Proprietà intellettuale, marchi e brevetti

European Court of Justice, Case C-299/99

"Trade marks - Directive 89/104/EEC - Articles 3(1) and (3), 5(1) and 6(1)(b) - Signs capable of being trade marks - Signs consisting exclusively of the shape of the product."

1. There is no category of marks which is not excluded from registration by Article 3(1)(b), (c) and (d) and Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks which is none the less excluded from registration by Article 3(1)(a) thereof on the ground that such marks are incapable of distinguishing the goods of the proprietor of the mark from those of other undertakings.
2. In order to be capable of distinguishing an article for the purposes of Article 2 of the Directive, the shape of the article in respect of which the sign is registered does not require any capricious addition, such as an embellishment which has no functional purpose.
3. Where a trader has been the only supplier of particular goods to the market, extensive use of a sign which consists of the shape of those goods may be sufficient to give the sign a distinctive character for the purposes of Article 3(3) of Directive 89/104 in circumstances where, as a result of that use, a substantial proportion of the relevant class of persons associates that shape with that trader and no other undertaking or believes that goods of that shape come from that trader. However, it is for the national court to verify that the circumstances in which the requirement under that provision is satisfied are shown to exist on the basis of specific and reliable data, that the presumed expectations of an average consumer of the category of goods or services in question, who is reasonably well-informed and reasonably observant and circumspect, are taken into account and that the identification, by the relevant class of persons, of the product as originating from a given undertaking is as a result of the use of the mark as a trade mark.
4. Article 3(1)(e), second indent, of Directive 89/104 must be interpreted to mean that a sign consisting exclusively of the shape of a product is unregistrable by virtue thereof if it is established that the essential functional features of that shape are attributable only to the technical result. Moreover, the ground for refusal or invalidity of registration imposed by that provision cannot be overcome by establishing that there are other shapes which allow the same technical result to be obtained.

## GIURISPRUDENZA

### Diritto della fiscalità internazionale

Corte di Cassazione - Sentenza 3367/2002

Permanent establishment

The Corte di Cassazione held that to recognize the existence of a permanent establishment of a non-resident in Italy it is necessary the employment of human resources, while it is not sufficient the mere presence of plants or machinery

## GIURISPRUDENZA

### Diritto della fiscalità internazionale

European Court of Justice, Judgment C-508/99

The provisions of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by the Act concerning the conditions of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded must be interpreted as not precluding the levy of capital duty upon the conversion of a partnership into a capital company within the meaning of that directive, where, before the entry into force of that directive, a duty such as that provided for in Paragraph 33, item 16(1), point 1(b), of the *Gebührengesetz* has already been levied on all the capital contributions made for the acquisition of shares in the partnership.

## COMMENTI

European SME

A new kind of company will be introduced at European level. It has to be a SME and will be recognized in all Member States. The European SME will benefit by a favourable fiscal regime and will be regulated by common European rules. Minimum capital stock: Euro 15.000.000,00. The existence of the European SME is subject to the carrying out of a business at European level or the presence of at least two shareholders coming from different Member States.

## COMMENTI

### Diritto della fiscalità internazionale

Svizzera -Cantone Losanna e Neuchatel

The two Cantons have merged resources to attract foreign direct investments; among several incentives, it is granted a free assistance to prepare a business plan and a tax holiday which may last for ten years. Of particular interest is the tax saving if the investment is linked to a Luxembourg holding or Dutch BV. For further information, please contact directly Avv. Olivieri in Florence.

## COMMENTI

### Diritto della fiscalità internazionale

Companies taxation - Luxembourg

Tax rates applicable to companies carrying out financial and business activities have been further reduced, with particular regard to So.Par.fin.

## LEGISLAZIONE

Decreto Legislativo n. 61/2002

Companies' directors liability

Title XI of the Italian Civil Code on companies' directors liability has been materially amended.

## LEGISLAZIONE

### Diritto civile e contenzioso

European Council - Regulation n. 1348/2000

Service of judicial acts

In civil and commercial matters, the service of judicial acts must be transmitted directly, in the shortest time and by any appropriate means, including postal service, couriers, fax. The contents of the document received must be in conformity with the one transmitted.

## LEGISLAZIONE

### Diritto dell'informatica, di internet e del commercio elettronico

European Council - Regulation n. 733/2002

Internet domain .EU

Individuals or companies having their residence or legal seat in Europe(or central management or principal place of business) will be entitled to register for a .EU domain

## LEGISLAZIONE

### Diritto della fiscalità internazionale

EU Directive 38/2002

Electronic commerce - VAT regime

The EU Directive on e-commerce, with particular regard to VAT regime will enter into force in Italy on 01 July 2003.

## LEGISLAZIONE

### Recupero di crediti

European Council - Regulation n. 1346/2000

Bankruptcy

The Regulation n. 1346/2000 of the European Council allows the creditors to commence only

one bankruptcy procedure in the Member State where the debtor had his principal place of business. Said procedure would regulate the treatment of the assets located in the other Member States.

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