

213. Court of Turin, order dated March 7, 2005 – Docket no. 37134/2004 – Judge Ratti – VASCO INTERNATIONAL S.r.l. (Attorneys P. Fasano, P. Bernardini and V. Meinardi) v. ANTONIO NADAL S.A. and v. F.&G. COMPAGNIA DI COMMERCIO S.r.l.

TRADEMARKS – International trademark – label – same product category – likelihood of confusion – infringement – unfair competition by imitation – plurality of protections

(Madrid Agreement dated April 14, 1891 as amended; Trademark Law; Article 2598, paragraph 1, Civil Code)

PROVISIONAL MEASURES – seizure – injunction

(Articles 61-63 Trademark Law)

Having said that Article 61 Trademarks Law entitles also the owners of rights on trademarks pending registration to start a provisional action, the use of an identical expression to characterise a product – exactly reproducing the international denominative trademark of another company – is an obvious infringement, and this in particular when the label is used on a product which is included in the same category of the products for which the trademark registration has been obtained (in the case at issue the label has been put on the front of the bottle used by the defendant to distinguish a product belonging to the same goods category no. 33 for which the claimant had applied for and had obtained the registration of its trademark).

The use of two identical expressions and of almost identical figurative elements (in the label of the defendant there is a picture where there is the representation of bottles and glasses and in the claimant's one a picture representing female faces and bodies) constitutes infringement considering the likelihood of confusion and the confusion that may be caused in the consumers public, having regard also to identical products (both of them are alcoholic drinks anise based).

- *On the basis of a global judgement of likelihood of confusion, the images identity constitutes also unfair competition pursuant to Article 2598 paragraph 1 Civil Code in consideration of the present or potential clients' passing off of the claimant company due to the likelihood of confusion of the two labels.*

From the above it can be inferred the existence of the "periculum in mora" (clients' passing off) that justifies the issuance of provisional measure like the injunction not to use the trademark as well as the seizure of the defendant's products marked with the sign infringing the claimant's International trademark protected by the law.

214. Tribunale di Torino, ord. 10 marzo 2005 - R.G. 4920/2005 – Giudice Vitro - Forno Bianco S.r.l. c. Biscogris S.n.c., Massimo Lacchio e Piera Milano

CONCORRENZA – accordo di cessione - patto di non concorrenza – sviamento di clientela

(art. 2557 c.c.; art. 2598 n. 3 c.c.)

QUESTIONI PROCESSUALI – difetto di legittimazione – intervento nel giudizio cautelare - sanatoria

L'art. 2557 cod. civ. è applicabile analogicamente all'ipotesi di cessione di quote di partecipazione societaria, laddove tale cessione realizzi sostanzialmente una cessione di azienda.