[IT] The Mediaset Premium-Calcion case

IRIS 2016-8:1/25

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On 27 July 2016 the Tribunal of Milan partially rejected the request for interim measures filed by Mediaset Premium S.p.A. (Mediaset), the pay-TV arm of the Mediaset group, against the TLC companies Telecom Italia S.p.a., Vodafone Omnitel n.v., Fastweb S.p.a., Tiscali Italia S.p.a., H3G Italia S.p.a. and Wind Telecomunicazioni S.p.a. (TLC Operators).

The dispute arose from the illegal live streaming by the online portal Calcion, available at the domain name "calcion.at", of several clips related to football games the exclusive rights of which were owned by Mediaset. In the past, Calcion's previous domain names have been taken down. As a consequence, Mediaset sought for a judicial order to take down (i) the website available at the domain name "calcion.at" and (ii) any other "aliases" of the online portal Calcion (i.e., any domain using the word "calcion" in connection with any internet top-level domain extension) which might be created in the future, regardless of their IP addresses.

According to the Court, since Mediaset sought the removal of the future Calcion websites on a case-by-case request (i.e., Mediaset would provide to the intermediaries the list of the domains), the demand filed by Mediaset is not inconsistent with the general exclusion of a monitoring obligation of the 'mere conduit' providers set forth in Article 17 of legislative decree 31/2000 and in Article 15 of Directive 2000/31/CE.

Nevertheless, the Court ruled that it is impossible to order the take down of a website that does not exist at the time of the judicial decision, since non-existing websites cannot cause any damage. Furthermore, the Court highlighted that such a "blanket" measure would assign to the TLC Operators the power to assess the unlawfulness of the content available on the website.

For these reasons, the Court granted the judicial decision ordering the taking down of the website available at the domain name "calcion.at", but rejected the request for the take down of other future websites hosting the online portal Calcion.

TRIBUNALE DI MILANO, SEZIONE SPECIALIZZATA IN MATERIA DI IMPRESA, SEZIONE A, ordinanza 27/07/2016

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http://www.corrierecomunicazioni.it/upload/images/08_2016/160801172459.pdf

Tribunal of Milan, judicial order of 27 July 2016

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