

## OBSERVES

The claimants, Survey Marketing + Consulting GmbH + Co KG and its Italian branch Survey Marketing + Consulting srl, which specialize in marketing assistance and in particular in the organization of trade fairs and events, have requested this court to issue various precautionary measures (restraining injunction, attachment, change of company name and website, with infliction of penalty and publication of the measure) against Pordenone Fiere spa, Business International srl Import-Export, ExpoSicam srl and Carlo Giobbi, complaining that the organization of the event “SICAM – International Exhibition of Components and Accessories for the Furniture Industry”, which the defendants plan to hold at the trade fair district of Pordenone from 14 to 17 October 2009, would have entailed violations of the distinctive signs (de facto trade mark, company and sign), confidential information (data bases concerning exhibitors, visitors and suppliers) and regulations on competition associated with the trade fair event organized by the claimants “Zow-Sicam – International exhibition of components and accessories for the furniture industry”). The latter event - which was launched in Germany in 1995 and which had then given rise to a number of national versions, including the Italian one, which had already been held with the collaboration of the defendants (with the exception of ExpoSicam) for eight years (2001-2008) precisely during the month of October, in Pordenone, on the premises of the local Trade Fair Institution - is however scheduled to be held in 2009 (from 21 to 24 October) at the trade fair in Verona; the latter has been deemed, in terms of geographic position, space and available services, as more adequate to the dimensions and considerable success, also international, which has already been achieved.

In particular, the claimants have pointed out that the move from Pordenone to Verona had initially been backed and then on the contrary decidedly opposed by the self-same Giobbi, legal representative of BI and director of SMCI, who had allegedly incorporated ExpoSicam srl as early as December 2007; that the following elements of the new event were identical to the original one: the subject, name, date, promotional materials, registration modules, exhibition materials and furniture and, all in all, the self-same particular standardized organizational formula developed by the claimants (a formula which allowed, thanks to the standardization of the supply of spaces and furniture, considerable reductions of the costs, and which was particularly appreciated by the exhibitors), to the point that the defendants’ trade fair not only appeared as the exact copy, but even as the very same trade fair as that of the claimants, as the “usual” trade fair, or rather its ninth edition, and this is how it was presented in the invitations sent by the defendants, not to the exhibiting companies in general, but specifically for the attention of the persons who were already responsible for liaising with the trade fair organization.

The defendants, on their part, have objected by asserting that the opponents’ claims were unfounded, pointing out that the decision to ‘abandon’ Pordenone in order to move to Verona as of 2009 had been made by the claimants notwithstanding the fact that Giobbi disagreed with this choice, that the decision to organize also for 2009, also in this case in Pordenone, an event which was different even if analogous, as it featured the same subject (a decision in which BI was not involved, and which had involved Giobbi as holder of power of attorney – not founder – of ExpoSicam only after the release issued by SMCI) could not be criticized as such, in view of the self-same claimants’ decision to ‘leave’ the territory of Friuli, which was no longer considered suitable; that the claimants, during the previous editions, had distinguished their event by means of the sign Zow – international exhibition of components and accessories for

the furniture industry and not also the acronym “SICAM”, which undoubtedly is not, as such and due to its purely descriptive valence, appropriable, and that neither the materials, furniture, standard formulas used for the organization of the fair were appropriable; that the names of the persons to whom invitations to the fair in Pordenone had been sent were not confidential, but had already been diffused and were publicly known, and that the same applied to those of the persons responsible for liaising with the trade fair organization; that, finally, no non-competition agreement subsisted between the parties, and that Giobbi, in particular, had been expressly released from the obligation to comply with such an agreement also in his capacity of former director of SMCI.

On conclusion of the verbal discussion and by way of withdrawal of the reservations which have been expressed, the appointed judge does not deem the claimants’ requests for precautionary measures to meet the prerequisites provided by the law.

Indeed, many aspects which the claimants assert to be new and original – and which have thus allegedly been illicitly used by the defendants – in actual fact do not prove to be anything of the kind.

This is the case of the subject of the event in question, which certainly cannot be considered new, since the trade fair held in Milan, titled “International exhibition of accessories and semi-finished products for the furniture industry” has by now reached its 21<sup>st</sup> edition, and since various other events dedicated to the same theme are held regularly (see documents 1 dossier PF, 2 and 6 BT, 12 and 18 Expo).

Neither the organizational formula appears to represent a motive for claims on the part of the claimants since, on the one hand, the homogeneous and standardized structure with modular furniture (assemblies of shelves and single shelves) proves to have been leased (with the exception of the ceilings of the stands with the relative lighting system, see brief BI, page 8) from Benny & C. Design srl, owner of the stands (documents 43 B1, 2 PF), without any restrictions in terms of sole rights, and the latter could consequently have leased this structure to any other organizer for any other event; on the other hand, also the ‘turnkey’ clause which is in many cases even institutionalized (see documents 2, 2bis, ter etc. until 6 BI) can certainly not, as such, be subject of exclusive rights.

As to the name of the event, it must be recognized that the acronym Sicam has never been used in the eight years during which the event has been held in Pordenone (see doc. 16 BI) and that the (new) Sicam trade fair which is scheduled to be held in Pordenone in 2009 has always been clearly distinguished from the ZOW event in Verona (see claimants’ documents 20 and 21) without prejudice to the undeniable continuity in terms of geographic location and due to the presence of the team of Giobbi and his collaborators, and it consequently appears reasonable to exclude any danger of confusion associated with the use of the term “Sicam”. One must likewise recognize that every assertion of appropriation of the full name (“International exhibition of components and accessories for the furniture industry”) must be resolutely rejected on the grounds that it is of a descriptive nature, and that all the terms used may be retraced to the common language (see, for that matter, the almost identical name used by the competing Milanese fair).

Furthermore, as to the date of the event organized in Pordenone (which will take place one week before the one organized in Verona by the claimants), it must on the one hand be pointed out that the choice of the period, after the disinterest in the Pordenone venue demonstrated by the self-same claimants, does not, beyond the complained-of imitative intent, appear capable of being covered by monopoly and safeguard, it does not appear disputable, nor has it actually been specifically disputed, that the period in October was the only remaining available one, compatible with the other specialized events held by consolidated tradition (doc. 24 BI).

Finally, with regard to the information on exhibitors and their contact persons, visitors and suppliers, the documentation produced tends to exclude any confidential nature, since it has been ascertained that the names of the former, which are already well known in the (limited) sector of sub-supplies for the furniture industry, or are in any case easy to get to know (through chambers of commerce, yellow pages, Internet, etc.), are published in the catalogues and illustrative materials printed on the occasion of the last editions of the trade fair held in Pordenone (see documents 6 and 7 of the claimants, and 38 and 39 BI), the names of the visitors are obtained by the Trade Fair Entity by means of the registration cards compiled for the issue of the access card, and must therefore be considered as data available to the Trade Fair Entity (see documents 42 BI and 3 PF); as to the suppliers, they logically belong to the category of companies operating in the area and are thus well known and, as far as is known, they are not bound by any sole rights clause, and offer their services to any company which is interested.

Nor does there seem to be any justification for invoking the asserted violation of non competition obligations, as no such obligations subsist either with regard to Giobbi (who has been expressly exonerated from complying with them by the self-same Survey srl by means of the notice of revocation from the position of director dated 11.6.08 (see doc. 15 of the claimant) and thus after the announcement of the organization of the trade fair in Friuli, which was diffused by the press on 16.5.08 (see doc. 2 Expo), or to the other defendants, who are not linked to the claimants by any relationships which could imply said obligations under the law, or in other words in the absence of an express stipulation.

All the above considerations lead one to exclude, in the case in point, the possibility of recognizing the '*fumus boni iuris*'.

But also the '*periculum*' seems to be missing in this case.

Whereas the fact that the fairs are not held simultaneously does not even exclude, at least not in abstract terms, the possibility to participate in both, if for no other reason, at least to allow exhibitors and clients, all of whom are professional operators in the sector, to choose for the future after due consideration, it must be pointed out that the inferred 'misguidance of the clientele' is not compatible with the fact, declared by the self-same defendants, that a very ample majority of the exhibitors who participated in the last editions of the Pordenone fair (90% and in other words more than 200 companies) would have chosen Verona for the 2009 edition of the ZOW trade fair, while only a very small minority (less than 10%) would have preferred the event in Pordenone.

These percentages, provided by the self-same claimants (see doc. 27 BI), certainly cannot be considered significant and relevant for purposes of determining the existence of the 'imminent and irreparable' damage which is a prerequisite for the requested precautionary measures. Without considering that the serious character of the latter appears to be such as to cause damages to the defendants that would be very substantial (in terms of unused spaces, lost profits, futilely incurred costs) not to mention irreparable (in terms of image, as one must reasonably exclude any kind of future for an event if already the first edition has been prevented), and what's more, without producing any real benefits for the claimants (unless one wants to consider the very cancellation of the event in question scheduled to be held in Pordenone in 2009 as one).

All the above considerations thus lead to the rejection of the claim and the sentencing of the claimants to reimburse the expenses.

As to the latter, considering the quantity and quality of the questions tackled and thus the commitment associated with the defence, requested and concretely provided, it appears congruous to determine them as €2,500 to Pordenone Fiere and €2,500 to ExpoSicam srl (1,500 for fees, 800 for duties and 200 for expenses), and as a total of 3,260 to Business

International and Giobbi (of which 2,160 for fees, including the aggregate of the parties pursuant to art. 5 /4 Rates, 800.000 for duties, 300.000 for expenses), also in this case plus flat charges and charges as provided by the law.

For the above motives

The claim presented in the interest of Survey Marketing + Consulting GmbH + Co KG and of Survey Marketing + Consulting srl is rejected, and the claimants are sentenced to jointly reimburse the defendants of the expenses of the proceedings, which are settled as €2,500 to Pordenone Fiere and € 2,500 to ExpoSicam srl, and as a total of € 3,260 to Business International and Carlo Giobbi, everything in addition to lump-sum expenses and charges pursuant to the law.

Milan, 23 December 2008

The appointed judge

Domenico Bonaretti

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