

No. 1796/09 R.G.

COURT OF MILAN
SPECIALISED INDUSTRIAL AND INTELLECTUAL
PROPERTY SECTION

united in chambers in the persons of:

Dr. Stefano	ROSA	Chairman
Dr. Marisa G.	NARDO	Relating Judge
Dr. Claudio	MARANGONI	Judge

In the contention proceedings ex sec.669 terdecies of the code of civil procedure from:

SURVEY MARKETING + CONSULTING GMBH + CO.KG e SURVEY MARKETING + CONSULTING s.r.l. in the persons of their pro tempore legal representatives, Attorneys Luca Trevisan, Gabriele Cuonzo and Donatella Anna Capelli, respectively;

- claimants –

Against

GIOBBI CARLO and BUSINESS INTERNATIONAL s.r.l. IMPORT-EXPORT, in the person of their mutual pro tempore legal representative, Attorney Alessandro Castellano;

- respondent –

EXPOSICAM s.r.l., in the person of its pro tempore legal representative, Attorney Marzia Greco;

- respondent –

PORDENONE FIERE S.p.A., in the person of its pro tempore legal representatives, Attorneys Alberto Cassini and Luigi Goglia;

- respondent –

against the out of court order from Dr. Domenico Bonaretti and lodged on 24.12.2008 in the proceedings no. 78770/2008 R.G. ex sec.700 of the code of civil procedure;

having read the case documents;

issued the following

order

through appeal lodged on 19.11.2009, Survey Marketing + Consulting Gmbh + Co.Kg and Survey Marketing + Consulting, the latter being the branch office of the former, a German company dealing in the field of consulting and marketing support and, in particular, the organisation of fairs

and events, stated: having conceived and organised a new-concept fair, raising it to international repute, apart from the new brilliant exhibition formula consisting of preparing and placing at the disposal of the participants substantially uniform stands (exhibitors hereby abandoning the frantic, competitive search for more visible spaces and locations), calling for modules, the fittings of which are only variable as regards size and type, but are aesthetically unified; having set up and used this form, for the first time, in Germany in 1995 and, thereafter, in various other countries, including Pordenone, since 2001, where the ZOW – SICAM, Salone Internazionale dei Componenti e Accessori per l'Industria del Mobile, fair was held for eight years in the spaces of the Ente Autonomo Fiere di Pordenone; having availed itself, for this Italian edition, of Business International, with whom an agreement of collaboration and gratuitous loan of some of Survey's instrumental assets was entered into (initially with the German company and then with the Italian branch), hereby involving Mr. Carlo Giobbi, the legal representative of Business, based on a consultancy agreement; having decided to move the location of this fair, for 2009 (already fixed for 21-24 October 2009), to Verona, since the grounds in Pordenone were no longer adequate due to both the outlying position and the vast success as well as the affluence of the many visitors and exhibitors; having met with clear opposition from Giobbi and Business International regarding the decision to move the location of the fair and, consequently, having decided to break off the collaboration, first with Business International and then with Giobbi, in June 2008, the latter of whom, during the agreement relations, had founded ExpoSicam s.r.l.; having learned, in June 2008, that Giobbi, availing himself of the works of Business International and ExpoSicam, was organising the SICAM fair (acronym for Salone Internazionale dei Componenti Semilavorati ed Accessori per l'Industria del Mobile) from 14 to 17 October 2009 in the spaces of the Pordenone Fiera in Pordenone, using the identical organisational and expository formula as that of Survey, i.e. an exact copy of the promotional and registration materials of the claimants, offering identical modules and expository materials and fittings to the exhibitors, so as to present it as the fair organised by the claimants, greatly risking confusion between exhibitors and clientele, who were intentionally convinced by the opposing parties, also through press releases, that the SICAM fair was the follow-up of previous fairs organised by the claimants.

All this having been said, the claimants alleged that the organisation of the fair in Pordenone distinguished by the SICAM name was illegal: by violation of the de facto trade name, business and logo of the claimants; by violation of the rights of the latter to the expository modules, designs and originals, constituting slavish imitation and violation of a three-dimensional sign, data bases and rights to the distinctive features represented by the original organisational formula and confidential

information useful to said organisation and creation; by defamatory activities and appropriation of the merits of the claimant as well as parasitical competition.

Owing to the existence of *fumus boni iuris* and *periculum in mora* (in re ipsa, but traceable in the risk of diverting exhibitors and, consequently, visitors), the claimants demanded a restraining measure against the illegal actions described, seizure of material making up the offence, an order to change the name of the company, ExpoSicam, and elimination any and all references to SICAM from the web site; through publication of the measure and imposition of a penalty.

The opposing parties, Giobbi, Business International s.r.l., Expositicam s.r.l., and Pordenone Fiere S.p.A., appeared separately to contest the opposing claims on the basis of chiefly common arguments. Based on trust, in offering a reading of the contracts to Business International, ex novo, for the organisation, fitting out and logistics of the Italian edition of the ZOW fair, the opposing parties denied that the claimants had conceived and created an original formula for fairs, having limited themselves to offering exhibitors the “turnkey” solution, already known for years (also in the components and furniture accessory sectors) and organised in Italy for some time by Mr. Giobbi for other fair events. It was likewise revealed that Business International was involved in the precautionary measure without having carried out any activity in organising SICAM, while Giobbi had only taken part in it after relations had been severed - with ample acquittance in his favour for pursuing the activity of fair organisation – as ExpoSicam attorney, a role that he did not assume until after cancellation of the collaboration with the claimants and after having left the position of administrator of Italian Survey. Then it was pointed out that the claimants were exclusive title holders of the ZOW trade name and had never used SICAM as an individual symbol nor could they lay claim to the words from which the acronym was drawn. The opposing party again denied the alleged violation of the data base of the claimant, pointing out that the exhibitors in the components sector for furnishings made up a well-defined category in both Italy and abroad and could be easily traced in the yellow pages or registers at the Chamber of Commerce. In any case, ExpoSicam had begun operations on the basis of an ad hoc task awarded to the company Orgraf, while the list of ZOW visitors could not be deemed confidential, since the names of visitors were collected by Pordenone Fiere, sole party responsible for aforesaid data and its collection, and the suppliers were the usual ones operating in the area and used for all events taking place at the Pordenone Fair grounds. As regards the expository modules, the opposing parties indicated that they were not the property of the claimants, but of Benny Design in Bergamo, who rented them out. The same party denied that the promotional material and module type used for SICAM were similar to that of Survey and the period fixed for the SICAM fair was strictly determined by the fair calendar, which did not allow for a different location; nor, on the other hand, was there any limitation to the period

selected, since the claimants had no time and territory monopoly thereto. Finally, having denied any parasitic conduct or act of linking the fairs, aimed at confusing the exhibitors about their organisation, the opposing parties further contested the existence of *periculum in mora* and demanded that opposing adverse claims be dismissed.

The contention proceedings rejected the precautionary requests concerning the allegation that the following could not be deemed original nor claimed by the claimants: the purpose of the event, the organisational formula and the SICAM acronym. According to the first Judge, Survey could not expect to lay claim to the full name of the aforesaid acronym, owing to the marked descriptiveness and traceability to commonly used terms. The cautionary Judge did not detect conduct meant to confuse or associate by the opposing parties, hereby pointing out that the new SICAM fair had always been kept separate from ZOW, and, owing to the indifference shown for the Pordenone grounds, Survey could not expect to monopolise the date of the event and hinder the one in Pordenone from being held during the period in October that, among other things, was the only time available and compatible with other specialised reviews of established tradition. Furthermore, the data related to exhibitors, visitors and suppliers was not deemed confidential and the *periculum in mora* was considered non-existent, owing to the absence of irreparable jeopardy, because, apart from the two fairs not being contemporaneous, the percentage of exhibitors, who would have chosen Verona, based on declarations from the claimant, was 90% compared to those of the previous editions in Pordenone.

The claimant sustained the erroneous nature of the judgement: a) for having excluded the originality of the individual aspects; b) for not having grasped the overall framework, from which the clear violation of the canons of the code of professional fairness emerges; c) for having omitted to pronounce judgement on the unfair competition under all aspects of sec.2598, nos. 1 and 3 of the civil code.

Concerning the first part from the claimant, observation was made that the purpose of the request for protection was not the modules for the stands themselves, but the “*use of these modules for creating a certain fair layout*” (page 27 of the complaint); these modules, although materially produced and owned by Benny Design, were originals and characteristic of all of the ZOW fairs, in Germany and in other countries, where a national edition of ZOW took place, so much so as to have become a distinctive feature of fairs organised by the claimants.

However, the Bench remarked that such considerations were without foundation. Having considered that the ownership of said modules and the right to use them freely was given by the owner was not contested, there are no grounds for the claimants to hinder their use (by the respondents) in order to set up the fair of Pordenone. Of further consideration was that the modules

in question, a serial type, have no special feature that merits protection, neither as an idea (peacefully ascribed to Survey) nor as a production. Hence, their use for fair organisation (the apparent aim of the modules) is deemed entirely allowed, also because they are easily replaced by modules having the same structure and size and may possibly be provided by other suppliers.

Another aspect that is not original is the “turnkey” formula, which, according to the documents produced by Business International and recalled in the precautionary measure, dates far back in time, in view of the fact that said opposing party already offered fair set-ups with the “turnkey” formula in 1984. Neither was there any detection of the circumstance of this formula being addressed to the organisation of “collectives” of producers and not to an entire fair event considering that the offer concerned stands and services that make up the central nucleus of what the claimants deem their organisational “brainwave” and, in particular, the creation of uniform stands in a common space, sharing services essential and useful to exhibitors, visitors and relations between exhibitors and visitors. Moreover, this formula, as indicated by the first Judge, is widely employed and also used in the sector of components and accessories for the furniture industry, but even if it were not, there is no proof that the use of such a common formula in this sector has a special connotation of originality in favour of the claimants.

Just as unoriginal is the choice of the purpose of the ZOW fair, in view of the fact that, as already pointed out by the Cautionary Judge, there are already fairs for accessories and semi-finished products for the furniture industry and it is completely irrelevant if the fairs in this sector take place at times differing from that of ZOW or if they are organised according to different expository formulas.

In addition, the grievances referring to the use of the SICAM acronym are unfounded as the claimants never used it in the past and their fair is known as ZOW. As previously pointed out, the claimants may not expect to appropriate the name Salone Internazionale dei Componenti e Accessori per l'Industria del Mobile, from which the acronym indicated is drawn, owing to the reasons of descriptiveness and traceability to commonly used terms, clearly expressed by the first Judge.

Furthermore, the claimants limited themselves to sustaining the violation of confidential information by Business International, this information having been used for organising the SICAM fair. However, assuming the existence of an obligation of confidentiality by Business International, including after termination of relations with Survey (see point 5 of the private contract of 4.01.2006, doc. 9, in the claimants' file), and granting the indirect cooperation of this opposing party in organising SICAM, there is no proof that the data used for the aforesaid organising (exhibitors, visitors and suppliers) was confidential. Neither the names nor references of the exhibitors, which

were published in the same catalogues as the individual ZOW events (doc.38, Business International file) as well as on the Survey internet site (doc.39, Business International file), can be considered confidential. The names and addresses of the referring parties of the individual companies were also easily accessible by contacting the aforesaid companies and by consulting exhibitors' internet sites (see docs. 40 and 41, Business International and JJ, produced at this time). As regards the lists of visitors and names of suppliers, there was no founded disclaimer for the affirmation by Pordenone Fiere, who stated having collected data from visitors at the time they registered, which remained available to Pordenone Fiere, while the suppliers used were the usual ones operating in the area and employed for all of the events on the Pordenone fair grounds, hence this data could not be considered for the Survey event in Verona.

In the end, it was precisely the first Judge who deemed the date of the event organised in Pordenone not susceptible to monopoly; those fair operators in Pordenone, who choose to reserve the same period for this kind of event, cannot be blamed or criticised, in view of the satisfaction shown by the influx of exhibitors and visitors. On a more general level, the competitive time schedule between fair events with similar purposes is perfectly legal; there is no specific regulation or general professional criterion, which carries weight to prevent it.

Actually, in the measure contested, the form design and promotional materials of the two events were not compared, nonetheless no graphic similarities of the two events can be detected. Although the general conditions on the back of the forms for participation are absolutely similar, they are standard conditions and the claimants do not deal with the specific work-up, originality and distinctiveness point by point.

As regards the distinctive features indicated in point b) above, as the correlated conduct is legal, the overall framework of such conduct cannot be deemed illegal and, thus, contrary to professional fairness. Said conduct is resolved in competition based on the organisation and offer of the services in the same (previous) seat of operations: the methodical nature of the (deduced) parasitic competition is, in the case in point, only apparent, since it deals with former conduct in itself not creditable to converging practicalities in setting up the only relevant competitive event (Fiera di Pordenone).

Relative to the complaint in point c) above, one must consider that only in this judgement phase did the claimants allege the existence of illegal competitive conduct as per sec.2598, point 2 of the civil code. At first they limited themselves to pointing out how the offences ascribed to the counterpart were indicated in view of point 3 of the regulation cited above. Indeed, the impugment of the claimants is considered founded with regard to the information disseminated by the respondents concerning the organisation and setting up of the SICAM Fair.

Although SICAM has always been presented as separate from ZOW in said information, there undoubtedly exists special emphasis, above all by Giobbi, in presenting the SICAM event as the same as the previous editions of the fair in Pordenone, since *“The change will obviously only be the name of the show. Nothing else”* (see Giobbi’s statements, doc. 20, claimants’ file). Giobbi, once again, in the interview, see doc.21 (Survey file) states: *“SICAM 2009 shall take place from 14 to 17 October, that is, on the same day and in the same place as notified to exhibitors and visitors and that they have learned to appreciate. As the saying goes, ‘You don’t change a winning team’, we are not changing anything in the organisational team because the success of past editions is due to this team...”*. He further stresses that *“exhibitors will find the same environment they have learned to appreciate over the years and that has allowed them to attract the attention of visitors, more to the products and less to the appearance of the stand”*.

In giving notification of the SICAM event on the Pordenone Fair website, the Chairman of Pordenone Fiere, Alvaro Cardin, states, *“For us, but particularly for the market...very little will be changed: only the name of the event. The organisational staff and the persons the participating companies will find, will still be the ones, with whom they have dealt over the years, and the suppliers of the main services... will remain the same.”*

Through this information, the organisers of the SICAM fair, emphasising being the only real authors of the successful previous editions of the ZOW Fair on the assumption that ZOW is, by now, an organisation drained of content and had moved elsewhere, presented themselves as the direct successors of this organisation and SICAM as the continuation of the previous event, not as a first new fair in the same sector. Hence, the respondents, failing to abide by the principles of professional fairness and, thus, through conduct relevant to sec.2598, point 3 of the civil code, took advantage of the role entrusted to them by Survey for the organisation and carrying out of the ZOW fair in order to attain former ZOW exhibitors and visitors, hereby convincing them that SICAM would actually be the ninth edition of the former ZOW (*“The only change will obviously be the name of the Fair. Nothing else”*) and induce them not to follow the Survey event – indirectly presented as newly organised – to its new location, but to remain with the Fiera di Pordenone in view of its seriousness and reliability proven in the past.

In addition, there is no agreement on the disputed measure in the part stating that *periculum in mora* is deemed non-existent. In fact, one observes that there is no dispute that the current number of exhibitors, who have decided to adhere to the SICAM Fair is already at 25% of those who subscribed to ZOW in the past, i.e. an increase of 15% from the date the appeal was presented and, given the brief lapse of time between the two events, it would seem highly improbable that the exhibitors could participate in both. Hence, there is a real, current danger that, if the respondents

continue in the unfair conduct outlined above, other exhibitors may abandon ZOW and turn to SICAM, and the continuance of the aforesaid, competitively illegal conduct must be prohibited.

The prohibition must only be addressed to Giobbi, Expo Sicam and Pordenone Fiere; there is no evidence that Business International, although its legal representative is Giobbi, played any formal or, rather, substantial part in organising SICAM.

The percentage increase, within a very limited lapse of time, of exhibitors who have adhered to SICAM, hereby abandoning ZOW, induces the acceptance of the request for publication of the prohibition (within the limits that shall be indicated within purview) with the purpose of containing the detriment caused by the illegal conduct of the respondents and redress the balance of the competitive situation.

With regard to the position of mutual condition of the losing parties, the respondents Giobbi, ExpoSicam and Pordenone Fiere are held to reimburse the claimants for half of the expenses for the first and second phases of the procedure; in view of the common defence of Business International with Giobbi, the expenses between the claimants and the former may be compensated.

For these reasons

In view of sec.669 terdecies of the c.c.p.;

In partial reversal of the disputed measure;

Prohibits Carlo Giobbi, ExpoSicam s.r.l. and Pordenone Fiere S.p.A. from presenting the SICAM fair as the continuation of the previous fairs concerning semi-finished components and accessories for the furniture industry, held in the spaces of Fiera di Pordenone or, in any case, to link the SICAM event with the ZOW event previously organised by Survey Marketing during the period of 2001-2008;

Arranges for the purview of this measure to be published once in the "Gazzettino di Venezia", national edition, in two columns and in letters double the normal size at the expense of the opposing parties, Carlo Giobbi, ExpoSicam s.r.l. and Pordenone Fiere S.p.A., within the 15th day of notification of this order, giving the claimants the right to provide for it directly in case of ill-timed or incomplete fulfilment by the obligors, with the right to recovery of the amount paid by simple presentation of an invoice to the opposing parties indicated;

Orders Carlo Giobbi, ExpoSicam s.r.l. and Pordenone Fiere S.p.A. to refund 50% of the expenses for the cautionary proceedings and this dispute procedure to the claimants; pay the entire amount of €5,300, of which €2,800 are for the cautionary phase and €2,500 are for the dispute phase; and pay the litigation expenses between the claimants and Business International s.r.l.

So decided in Milan on 12 February 2009

The Chairman
Dr. Stefano Rosa
[illegible signature]

Partially legible stamp
From the court clerk's office
Lucia Cirolla [illegible signature]