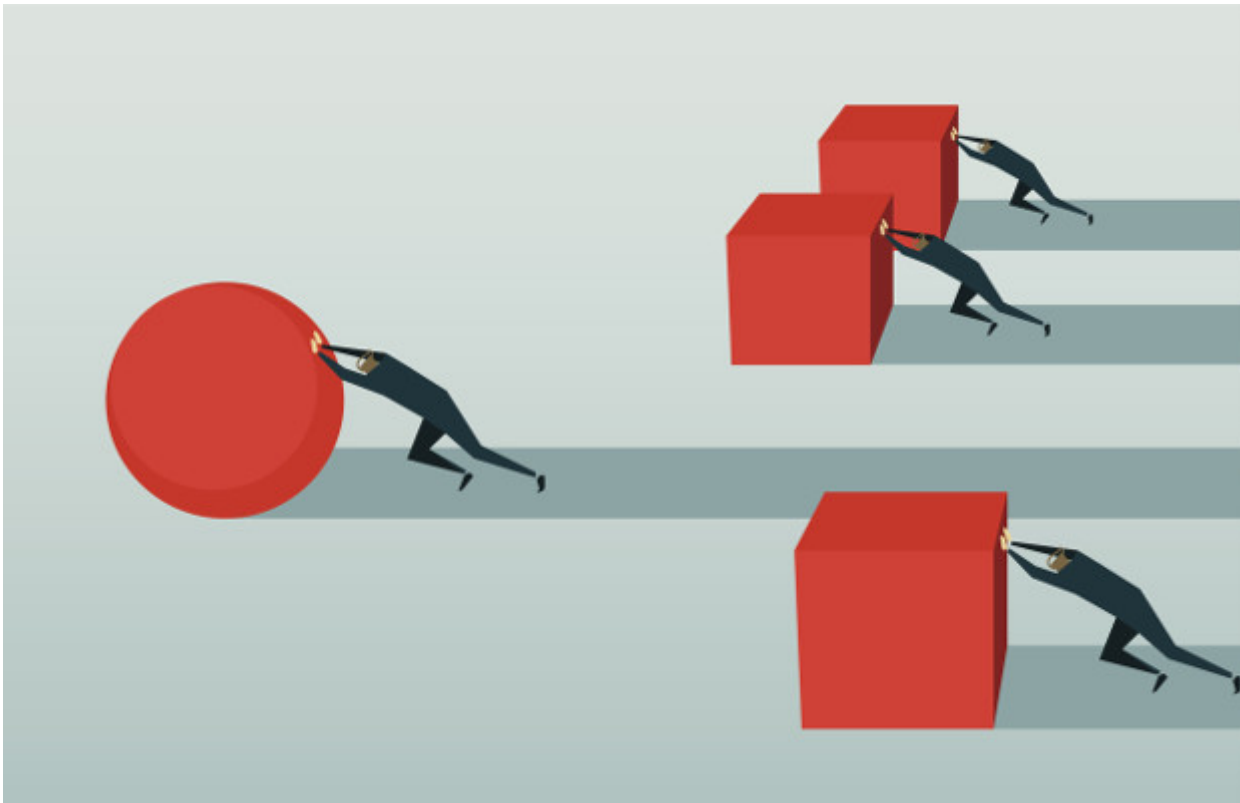


## Italy jurisdiction report: Keeping advertisers in line

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The Istituto dell'Autodisciplina Pubblicitaria (IAP) is the Italian advertising standards authority, a private body created in 1966 with the aim of ensuring that every marketing communication must be honest, fair and truthful.

The specific rules are set forth in the Code of Advertising Self-Regulation and are enforced by the review board and the jury.

The code constitutes a legal framework that is independent of the Italian State rules and, therefore, it is binding only for those who adhere to it (eg, companies, radio, television, ISPs, etc). However, it is

predictable that the code and decisions by the jury also produce effects for those working with the associates.

The code protects the interests of consumers and competitors.

In particular, companies are granted protection of their interest in differentiating their commercial proposals and, above all, in defending their IP and related values. In this regard, the following decision is of particular relevance.

In 2014, the jury held that advertising broadcasted by Fiat Group Automobiles (now FCA) infringed articles 13 and 14 of the code. The advertiser was deemed to have unduly exploited the reputation and the corporate image of a competitor through a marketing communication, which was similar to that transmitted by the competitor itself and had a defamatory effect.

In particular, the tagline “Panda Cross. Italia, Land of Panda” (a Fiat car model) clearly recalled Volkswagen’s advertisement “Audi. Italia, Land of Quattro”. Moreover, the Italian advertising included the scene of a Panda crossing rough terrains and woods, while a voiceover was ironically suggesting that Italy is not a country known for its forests but, on the contrary, Italians need a car that can be easily parked in the downtown (Decision no. 89/2014).

In this case, despite the Italian advertising sounding ironic and funny, the IAP decided to defend Volkswagen’s corporate image and brand reputation against undue exploitation and denigration.

These values, connected to IP, are also defended by article 15, concerning comparative advertising. Through this provision, every undue reference to the products of competitors and related trademarks is forbidden.

It can be seen from the above that the code is not an exemption to trademark and unfair competition laws.

### **Limitation on use**

The code’s rules also represent a “limitation” on trademark use by rights owners, when the IAP deals with misleading advertising.

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Last January, a significant injunction was issued by the jury (injunction no. 10/2018) about a chocolate and nut spread named 'Buonissima' (the Italian term for 'delicious').

The message, under the heading "The chocolate that is very healthy, it's delicious" shows in the foreground the advertised hazelnut and cocoa spread jar and a chocolate bar, while the body copy explains that it is a new "functional chocolate" and that each taste in which it is available, both tablet and spreadable, corresponds to a different functionality, for example: "Good mood"; "Line and Beauty"; "Memory and cognitive functions"; or "Tone and Energy".

It also explains that for every taste the product contains "microRepair", which offers "protection for your teeth". It is important to note that 'microRepair' is an Italian trademark (classes 1, 3, 5, and 30) and the owner is Coswell.

The jury considered that the wording infringed article 2 of the Code, as it conveys a misleading message to consumers. Among the various indications censured, we highlight, in particular, expressions such as "is very healthy" and "pleasure without remorse".

According to the jury, they are incorrect in relation to the category to which the product belongs and its role in the overall diet. In fact, the advertising message has the effect of creating an alibi to the consumer, reassuring them that the product, in all its variants, is indeed delicious and appetising, but also "good for health", because it brings specific benefits.

In this context, states the jury, it is also incorrect to claim "tooth protection", related to the presence of "microRepair", which is also included in the list of ingredients: "Microrepair (calcium salts of orthophosphoric acid)". Whereas sugar and sucrose included in the products are, in any case, important contributing factors to dental caries, the communication as a whole strengthens the conviction that eating this kind of chocolate is free from such risks.

Therefore, it can be observed that the jury also has the right to consider the deceptive use of a trademark (in this case 'microRepair') and restrict its use.

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