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The Italian “Historic Trademark of National Interest” is now available, but no one knows its real purpose

(<http://trademarkblog.kluweriplaw.com/2020/05/27/the-italian-historic-trademark-of-national-interest-is-now-available-but-no-one-knows-its-real-purpose/>)

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"Few ideas and confused". This was a frequent comment from high school professors reviewing our test results which seems strangely apt to describe this latest attempt by the Italian Government to protect Italian companies and the so called "made in Italy", using trade mark rights. The Ministerial Decree of 10 January 2020 set the final rules concerning the procedure of registration in the special Register of the "Historic trademark of national interest" (Art. 11-ter of the **Italian Intellectual Property Code**



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which was inserted back in 2019 in the legislation aimed at the protection of "made in Italy". In a nutshell, the owner (or exclusive licensee) of any trademark which has been registered (or used) for at least 50 years by an Italian "company of excellence" historically connected with the national territory, may obtain the right to use the Historic Logo and the inclusion in the "Register of historic trademark of national interest". However, the purpose of this "thing" is, well, unclear. The law expressly says that "it is not an IP right" (art. 6 of the Ministerial Decree), so what is it? In addition, while the TM Office should carry out the examination of the requisites for the inclusion in the "Register of historic trademark of national interest", no one knows how this examination will be carried out, and there is no definition or explanation of what "*company of excellence, historically connected with national territory*" actually means and which its characteristics should be. For instance, does "excellence" refers to objective factors such as a broad economic success or is dependent upon subjective factors like consumers/critics reviews? And does being "connected with the national territory" also include companies which, although being based in Italy, have delocalized part of the production abroad, or is it necessary for the entire production cycle to be within the Italian borders (and possibly also by Italian workers)? Or could there be a connection with the national territory if the company was founded in Italy and sources its raw material from Italy but is now located elsewhere? In addition, what if during the 50 years the original registration has gone through some restyling and the original registration, no longer used, has been abandoned? Would that still count? No one knows. And no one knows what difference it makes. Even conceding that some consumers might notice and be swayed by the presence of the Historic Logo on a product (we are aware that some other commentators have also speculated that this "thing" might be useful in oppositions or lawsuits, but, mildly put, we are unconvinced), one may wonder what the usefulness of this "thing" is and what the real deal is. Indeed, lurking in the convoluted language of the law, a perfect Trojan horse seems to have been hidden. As a matter of fact, Article 185-*bis* of the Italian IPC says that any company which might have a trademark eligible to be an Historic Trademark (and regardless of whether or not the company has requested it) and intends to close its main factory by ceasing production or by delocalization, must inform (with a penalty from 5,000 to 50,000 euro) the Ministry of Economic Development so that it may intervene with the resources of a public Fund. However, the information must include the economic and technical reasons of the closure and of the delocalization, the actions adopted to minimise

the layoffs, the efforts to find a buyer and the provision of a takeover bid, i.e. information which are by their nature quite sensitive and usually confidential. So, one might not want to tell the Ministry. So what this is all about? All for a mere 50,000 euro fine? And how is this idea of “keeping things at home” to be reconciled with the idea of free movement within the EU? Few ideas, and confused.

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