

General Registry 79336/14 AdGlamor against Lucini

Today, 5/2/2015, before

CIVIL AND CRIMINAL COURT OF MILAN
1st SECTION CIVIL – BUSINESS COURT

In the Council chambers in the persons of:

- 1) Mr Ciampi, President
- 2) Mr Marangoni, Judge
- 3) Ms Zana, Judge

There appeared:

as complainant AdGlamor, Lawyer D. Merlo

as defendants Lawyer P. Ozalesi, and Mr Gianluca Borraccia, practitioner, and Mr Marco Lucini, legal representative of both defendants.

The attorneys illustrate their defence.

The Court reserves its decision.

The Chairman.

The Court,

composed as above, by lifting the reserve referred to in the preceding minutes;

in view of the records of the case;

considering the groundlessness of the proposed complaint;

considering, in particular, the following:

a) that of all that is disputed is, even in this Court, the fact that the database of the defendant, despite composed of elements of information widely available on the market, deserves protection pursuant to Articles 98 CPI and 102-bis LDA [Copyright Law] as regards, incontestably, the acquisition of the aforementioned information, in the market, it is not free but costly and, therefore, requires the need for considerable investment;

b) that, with reference to all matters deducted, the Court perfectly agrees as specified in the contested order, at least in the context of the typical evaluation summary here, relating to the irrelevance of the complaining party's matter regarding the legitimate possession of a very substantial number of email addresses (approximately 93%) from the same used and equal to those included in the defending party's database and this for two reasons: firstly, the complaining party has not provided (except in a very limited extent) evidence of substantial investment that it would have had to engage in to acquire such data in the market, nor has it shown any sharing of profits which would have characterised the purchase agreements of the data itself; also, it appears to signify a illegal acquisition without cost by the fact that the same claimant has, in the course of the proceedings, agreed to delete such information from its computer memory (except to assume an intent of subsequent recovery, but more will be discussed about this later with regard to the "periculum");

c) that, in this case, as shown analytically by the court-appointed expert witness report and recovered by the Deputy Judge, the unlawful intent, by the complainant, of leveraging the work carried out by the defendant and the content of the database of the latter also results from the fact that a very large amount (approximately 81%) of the horoscopes of the complainant slavishly copied at least 30 consecutive characters of corresponding horoscopes, in various languages, of the defending party (and, in this context is, in the opinion of the Court, a truly gratuitous and unproven affirmation that according to which a match of such magnitude and extent can be reconnected to the simple use of expressions used in the field);

d) that, in this specific case, in addition to the “prima facie” so far described, the necessary prerequisite of “periculum” also applies, as regards the proposal of this complaint to the inhibitory (imparted without prejudice of proof of lawful acquisition), after the voluntary acceptance, by the complainant and in the course of the proceedings, of the deleting the disputed data from their computer memory, it is not understood which legitimate reasons it intends to protect and it may well legitimise the suspicion, as previously mentioned above, that the same unlawfully desires to restore such data in the same memory (suspected corroboration of the impediment, carried out on the court-appointed expert witness report at the described site, to examine the computer memories of the suspected employees);

having considered, therefore, for all of the reasons exhibited, in this specific case, the lack of conditions for accepting the complaint;

For these reasons

rejects,

the proposed complaint, confirming the contested Ordinance in its entirety and acknowledging that the conditions in Article 13, paragraph 1-quater, Presidential Decree 115/02 for the payment, by the complainant, of the further unified fee referred to in Article 13, paragraph 1-bis, Presidential Decree 115/02;

defers

to a later stage of the proceedings the discipline of the costs of this phase also.

Decided in Milan on 5 February 2015.

The President.