

Kluwer Copyright Blog

Can a slogan be protected by copyright? The recent stance of the Italian Supreme Court

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An interesting [case](#) recently decided by the Italian Supreme Court (*Corte di Cassazione*) has focused on whether the slogan “500% FIAT” can be protected by copyright (decision No. 8276/2022, published on 14 March 2022). The dispute was started by the author of the slogan against the Italian carmaker FIAT. The author had registered the slogan with the Italian collecting management organisation (*Società Italiana degli Autori ed Editori – SIAE*), and then sued FIAT for using the slogan without his authorisation.



Photo by [S. Hermann](#) & [F. Richter](#) via [Pixabay](#)

Both lower courts (Court of Florence and Court of Appeal of Florence) had rejected the author’s arguments, taking into account (i) the inseparability of the slogan from the word “FIAT”, the latter being part of many of the defendant’s registered trademarks; and (ii) in any case, the lack of creativity and originality of the slogan, including because similar claims for cars other than FIAT already existed (e.g. “500%Joy”, “500%Unconventional”). The Italian Supreme Court upheld the lower courts’ decisions.

The Supreme Court first noted that marketing claims which include references to famous trademarks aim at catching the public’s attention by mainly exploiting the selling power associated with the sign. While it is true that such claims may include additional elements which might be creative (to the extent that they are not usually associated with the trademark), in some circumstances they may not be original enough for copyright purposes. This is especially true – the Court added – where the claim contains a reference to a trademark with a strong evocative power which ends up prevailing on, and thus excluding, the creativity of the claim itself. And this is

exactly what happened in the case at issue. Indeed, the claim “500%” has no evocative power in the eyes of the public if not used together with the term “FIAT”. A slogan is not original – the Court clarified – where it includes a strongly evocative brand as the latter is capable of making the claim less creative and innovative.

This was not the first time the Italian Supreme Court has taken a position on copyright protection for advertising claims. In two earlier cases, it dealt with these issues but found that the slogans discussed were protected by copyright.

In 2016, the Court ruled on the slogan “*You are, we car*” used (again) by FIAT to advertise its new “500” car model, without mentioning the name of the author who came up with the catchphrase. The action was again started by the creator of the slogan. While the court of first instance (Tribunal of Turin) granted an interim order, the Court of Appeal reversed it, as it found that there was an agreement between the author and the advertisement agency, according to which the former had transferred their economic rights in the slogan to the latter. However, the slogan’s eligibility for copyright protection was not challenged.

In this respect, the Italian Supreme Court confirmed the Court of Turin’s finding that publicity claims may attract copyright to the extent they are creative in nature and have “expressive completeness”, *i.e.* an expressive form which is able to communicate ideas. In other words, what is required to trigger the protection is the ability of the slogan to convey an easily recognizable and immediately understandable message capable of capturing consumers’ attention and strengthening or modifying their opinions – without relying on the evocative power of the name and/or the trademark of the advertised product and/or its manufacturer. By applying these principles, the court of first instance found that the slogan “*You are, we car*” can have an autonomous evocative effect. This was also due to the fact that the claim exploited the assonance with former US president Obama’s political slogan “*We care*” (emphasis added).

Copyright protection was also recognised in 2017 for a slogan consisting of a play on words “*Vuoi fare di testa tua? Il fai da te fa per te*” (“*Do you want to do your own thing? Do-it-yourself is for you*”). The claim was accompanied by an image representing a model with the semblance of a modern goddess Minerva, from whose head some bricolage objects came out. The campaign had been commissioned by a bricolage company named *Fai Da Te S.r.l.* (in English, *Do-it-yourself*) to an advertisement company, which then sued the former for continuing use of the slogan without permission. Although the slogan was partially based on the name of the manufacturer of the advertised product (*i.e.* “*Fai da te*”), the Supreme Court considered it copyrightable.

One may ask why these cases, especially the latter one, were decided differently from the FIAT 500 dispute. It could be argued that in the case focusing on the slogan “*Vuoi fare di testa tua? Il fai da te fa per te*”, the ability to catch consumers’ attention was generated by a component (“*Vuoi fare di testa tua*”) which was still separable from the manufacturer’s name; and that such an additional part was not associated with that name. The same could not be said of “*500% FIAT*”, where the non-trademark component “*500%*” does not have much evocative power. On the other hand, there is no doubt that the word “*FIAT*” (a well-known trademark which was first launched at the end of the 19th century) has a much stronger evocative power than the words “*Fai da te*”.

All in all, it seems that what is crucial when it comes to deciding on the copyrightability of slogans under Italian law is to establish whether they have an autonomous evocative effect which is independent from the trademark / names of the advertised products to which they refer. And

slogans may not be original enough for copyright purposes when they contain a direct reference to a trademark (e.g. “500% FIAT”) which has a strong evocative power that is likely to prevail on the other elements within the slogan.

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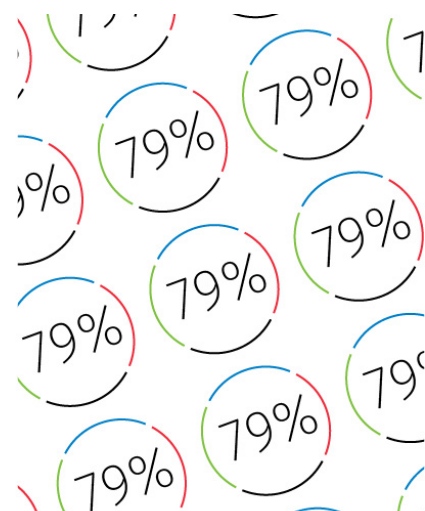
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