

THE MILAN LAW COURT

Industrial and Intellectual Property Division

including:

dott.ssa Marina Tavassi,	President
dott.ssa Paola Gandolfi	Judge
dott. Claudio Marangoni	Judge Rapporteur

meeting in closed session returned the following

Order

with reference to the complaint ex Art. 669 terdecies C.C.P. for the interest of ROCKET ESPRESSO Ltd ITALIAN BRANCH and FELIX NOMINEES Ltd. Against the order delivered by the Judge of this Court on November 6, 2010 as a result of the protective proceedings promoted by today's complainants with reference to the BANKRUPTCY of ECM di Friedrich Berenbruch & C. s.a.s., UNIVEST s.p.a. and LA PAVONI.

The Court holds that the complaint cannot be accepted.

The assessments of the first judge regarding the baselessness of the *fumus boni iuris* of the rights claimed by the complainants to models of household coffee machines called *GIOTTO PREMIUM* and *CELLINI PREMIUM* shall be confirmed, nor did said complainants offer any additional and new elements able to deliver some positive facts on the matter.

First of all an effective evidence is lacking on the case of original title by DBL s.r.l. of rights to said machines deriving from their development and planning, which would have been licensed for use to ECM s.r.l. between 2003 and 2007.

Even at the complaint stage nothing could be produced as evidence of said asserted autonomous and original design, development and planning of said models – which followed a prior production and sale by ECM s.r.l. of *GIOTTO* and *CELLINI* models started in 2003 – bearing in mind that even the actual design differences from the technical standpoint of the most recent *PREMIUM* range are still vague, that same, from its look, seemingly including just some slight aesthetical changes compared with earlier models (see documents 50 to 53 complainants' file).

Thereby, in view of actual circumstances there is no reason to doubt that the *PREMIUM* range of the machine models in question results from a mere evolution of earlier models, which are undisputably in accordance with ECM s.r.l.'s knowledge base.

If, on one hand, the only documents produced by the complainants in order to support the point of a licence granted at that time to ECM s.r.l. to make and sell *GIOTTO PREMIUM* and *CELLINI PREMIUM* models appear clearly unfit to the purpose (since they are invoices issued by DBL s.r.l. to ECM s.r.l. covering unspecified „*commercial services*“ see documents 1 to 5, complainants' file), one has to take as lacking a suitable document support the further fact inferred by the complainants according to whom in 2007, once its stock had been transferred to ROCKET ESPRESSO Ltd ITALIAN BRANCH, ECM s.r.l. had taken a formal obligation towards FELIX NOMINEES Ltd. to dismiss any activity in the household coffee machine manufacturing industry (see item 2.2. of the agreement dated 23.7.2007, documents 6 and 57, complainants' file).

With reference to said agreement documents we shall actually confirm its invalidity as against the BANKRUPTCY of ECM di Friedrich Berenbruch & C. s.a.s since said documents' date is not certain in compliance with art. 2704 c.c. (CC), an element which cannot be completed with the mere addition of the *Apostille* on the *Affidavit* dated 23.7.2010, supposing that said certification actually confirms only the qualification of *Notary Public* according to New Zealand laws of the subject who received the statement and that only at the date of that same statement - not of earlier acts annexed to it - legal certainty can be acknowledged.

On the other hand - as elements from which one can infer that ECM s.r.l. (later ECM s.a.s.), though having stopped the manufacturing of household machines in 2007, had taken no actual obligation as against third parties to finally leave that specific industry - one can point out that the inventory of assets transferred to ECM Espresso Machines s.r.l. as part of the company lease contract dated May 5, 2008 included many components of *GIOTTO* and *CELLINI* machines (see Annex „C“ to the lease contract: actually this inclusion seems to contradict the assumed limited business activity regarding household machines) and that on the same contract the rented company was mentioned as having as its purpose „*the development, production and sale of express machines and the like* “ without any limitation to type or destination of the products (see document 24, complainants' file).

Based upon said remarks, one has to think that the company, later auctioned further to the ECM s.a.s. bankruptcy included in its assets also the production and sale of household coffee machines - a business actually carried out until 2007 - and in this case, the rights due on *GIOTTO PREMIUM* and *CELLINI PREMIUM* models, as a further development of prior *GIOTTO* and *CELLINI* models.

Lacking any actual evidence of an original development and planning title of the claimed models by DBL s.r.l. - adding the formal invalidity as against the ECM s.a.s. bankruptcy of documents exchanged between third parties, entered into the files, - there exists a sufficient reason to consider the complainants as lacking any titles to the rights they put as a basis of their claims, a reason that takes in all other objections claimed by the opposing parties.

However the College considers it fair to join the rejection of the complaint to the integral compensation between the parties of court fees concerning the complaint, bearing in mind that until today the contract to transfer the company in favour of UNINVEST s.p.a. has not yet been formalised and that at least the legal basis of actions taken by the opponent parties to the exploitation of assets belonging to the bankrupt company appears doubtful.

Reasons of the order

According to Art. 669 terdecies c.p.c. (C.C.P.):

- 1) the court rejects the claim submitted by ROCKET ESPRESSO Ltd ITALIAN BRANCH and by FELIX NOMINEES Ltd concerning the bankruptcy of ECM di Friedrich Berenbruch & C. s.a.s., of UNINVEST s.p.a. and of LA PAVONI s.p.a. as against the order issued by the Judge of this Court on 6th November,2010;
- 2) orders the full compensation of the complaint stage fees between the parties.

As ordered in Milan, by the jury in closed session on 13th January, 2011

(signature)

President

Stamp

MILAN LAW COURT

Lodged at the Registry under today' date

19th January, 2011

Court clerk