

Intellectual Property**Commercial exploitation of Italian history, art**By **Emanuela Truffo**

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(September 14, 2021, 8:47 AM EDT) -- Italian cultural, music, art and landscapes are among the most exploited resources by companies around the globe. Just think of the entertainment industry — in Hollywood as well as in Canada. It uses Italian culture as inspiration much more often than you might expect. That is the reason Canadian lawyers assisting domestic and international companies must have a basic knowledge of the legal framework ruling the commercial exploitation of the cultural heritage and environment of the Italian peninsula.

In a nutshell, do not even think of using images of the Coliseum or Michelangelo's Moses without having obtained proper authorization.

It sounds straightforward, and it's anything but.

First, you have to identify the status of the Italian cultural image you're using. The Italian Ministry for Cultural Heritage and Activities and for Tourism (MIBACT) maintains and updates a database of all the masterpieces granted "membership" in the protected cultural and artistic heritage club. However, if it is true that all the familiar monuments and masterpieces are included in the database as "cultural and artistic assets," the opposite is not true. Any piece of art could be substantially even if not formally deemed a "cultural and artistic asset." Perhaps they have not gone through all the legal procedures required by the *Code of Cultural Heritage and Landscape Protection*, but they are protected — hence not freely deployable in a company's marketing strategy.

Simply being "antique" or "not recent" does not mean being "a cultural asset."

For instance, in the last decade the Italian chambers of commerce have joined forces with the Italian Patent and Trademark Office (PTO) and Ministry of Economy to enhance the awareness about historical Italian brands for the advantage of Italian entrepreneurs.

Despite the investments deployed to defend them, historic brands are not members of the club, unless they can be protected as masterpieces pursuant to art. 1 and art. 2 of the Italian *Copyright Act*. In that case, their authors — or the heirs — might receive related royalties and/or be entitled to react against any form of potential detriment caused to the piece of art and its creator.

However, trademarks do not share the same protection as cultural and historical assets: the former are the exclusive property of a single business, the latter the property of the community; i.e., "the Italian people." The moment a trademark becomes part of the common heritage, its distinctive power is diluted. No matter how important they might be, or how artistic they might be, historic trademarks will never share the legal status of the cultural and historic assets belonging to Italian Heritage.

A few intangible assets are included on MIBACT list. Examples include the Festival of the Mind (organized in Sarzana in Liguria) and The Economy Festival in Trento. What about the other festivals or historical (or religious) enactments organized throughout the country and deeply part of the Italian pop cultural background? Are they protected against unauthorized exploitation potentially causing a detriment to their reputation? Yes, they are, even though not as intangible assets of the cultural heritage but as mere elements related to the image and the reputation of a place and its community.

Basically, the legal entities involved in such events can rely on the ordinary remedies granted to any entertainment and tourist business, even though they're excluded from any possible claim based on the *Code of Cultural Heritage and Landscape Protection*.

However, once a piece of art or a monument is included on the MIBACT list, two defences are available. For instance, an architectural style; — the Turin lucernarium, say — is protected two ways: as one of the intangible assets belonging to the cultural heritage and as a distinctive symbol of a town. Hence, it is not available for a commercial use without prior consent.

This is the second part of a four-part series. Part one: Weighing the past: Heritage protection vs. economic value.

Emanuela Truffo is a partner at Studio Legale Jacobacci e Associati in Milan, Italy. She specializes in contentious and non-contentious intellectual property matters and commercial litigation across a wide range of local and international practices. She has developed expertise in negotiation and drafting of agreements such as licence, non-disclosure, non-compete and coexistence agreements concerning IP rights and copyright as well as for commercial transactions. The title of her presentation at the webinar is Product liability, IP infringements and torts: the basics of damages compensation pursuant Italian Law.

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