

PBR ENFORCEMENT AND CLAIMS FOR DAMAGE COMPENSATION

Trevisan & Cuonzo, a leading European IP law firm and a pioneer in Plant Variety Protection (PVR), has defined the Italian case law on PBR enforcement, obtaining notable court rulings that are now available in the CPVO case law database.

More recently, the law firm obtained a landmark ruling – unique in the area of protection of plant variety rights. With decision no. 179 of 29 January 2021, the Court of Genoa calculated the damages due for infringement of a seed-protected variety by doubling the amount calculable as reasonable royalties.

INDEMNIFYING THE ENTIRE LOSSES SUFFERED BY THE RIGHT HOLDER

Once the infringement was confirmed, the Court of Genoa quantified the damages suffered by the breeder based on the unpaid royalties from the infringer (according to the 'reasonable royalties' criterion' provided for in Article 125 of the Italian IP Code). The damage was calculated in this way to both indemnify the entire losses actually suffered by the right holder and to avoid the compensation resulting in some beneficial outcome for the perpetrator of the violation. The increase in royalty principle is applied with a certain frequency by the Italian case law for infringement of other IP rights. Generally, the royalty rate is decided on a case-by-case basis and increased by two or three percentage points, even doubled, precisely in order not to give the infringer beneficial treatment. The decision at issue extended for the first time in Italy the aforementioned principle also in the case of PBR infringement, thus providing a ruling oriented to Article 18 of Regulation (EC)



It is hoped that the Italian courts will increasingly use the increase in royalty principle in cases of PVR infringement.

n. 1768/95. This rule provides that compensation for damages due to the breeder "includes at least a lump sum equal to four times the amount to be paid for the licensed production of an equivalent quantity of protected variety propagating material of the respective plant species in the same area".

PAVING THE WAY FOR DAMAGE RECOGNITION

It is now hoped that the Italian

courts will increasingly use this principle of doubling the royalty in cases of infringement of plant variety rights, hoping to be able to reach the full application of the said Article 18 of Regulation (EC) n. 1768/95 (in the cases falling under the same scope of application). In any case, this decision paves the way for the Italian courts to recognise damages that, although they cannot be 'punitive', can be a strong deterrent to the infringement of PBR.

By Vincenzo Acquafredda



TREVISAN & CUONZO QUICK FACTS

Trevisan & Cuonzo, established in 1993, is one of the leading independent Italian law firms working with some of the most technologically advanced and innovative businesses and industry leaders around the globe.

The firm has established a commanding reputation both domestically and internationally for its success and in-depth business and industry knowledge in intellectual property, commercial and product liability litigation.

Trevisan & Cuonzo has been a pioneer in protecting new plant varieties. The firm acts for prominent national and international companies active in the field of plant variety rights, offering strategic advice on their development and exploitation, as well as in their enforcement: litigation in this area is on the rise, as counterfeiting and infringement are becoming a more widespread phenomenon.