

Image rights: what are the limits to their exploitation?

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In a judgement published on 9 February 2015 (No. 1699/2015), the judges of the specialized intellectual property ('IP') Section of the Milan Court outlined the limits to the use of an individual's image, in the absence of his/her consent.

The dispute arose following the commercial use, by RCS Mediagroup S.p.A. ('RCS'), of some merchandising products through the daily newspaper '*La Gazzetta dello Sport*'. More specifically, RCS marketed medals depicting the well-known former football player, Gianni Rivera, DVD containing video clips of football matches and interviews released *inter alia* by the latter, and a photographic portfolio showing the same (both on and off the pitch).

Gianni Rivera brought action against RCS, contending that the commercial exploitation of his image rights without his prior consent was unlawful.

The claim for damages was only partially upheld. In reaching this conclusion, the Court drew the following distinction between the various items merchandised by RCS:

- The films, interviews and photographs, which represented the claimant during or in connection with a match, pursued a mere documentary-information purpose; consequently, according to art. 97, first paragraph of the Copyright Law (Law n. 633/1941) the use of these materials was legitimate, even in the absence of the consent of the person photographed;
- Conversely, the use of Gianni Rivera's image in the medals and photographs, which showed him on occasions which were unrelated to his professional football activities, had a purely commercial purpose and, as such, required the claimant's prior consent.

This decision helped further clarify that the legitimacy of the commercial exploitation of an individual's image without the consent of the same depends on the actual goal of the exploiter and must strictly abide by the limits set forth under art. 97 of Copyright Law.