

Supreme Court rules on product origin.

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The 'made in Italy' label is considered a national economic resource, so much so that numerous laws have been passed to protect consumers and Italian enterprises from misleading indications of origin on products.

Pursuant to Section 4(49) of Law 350/2003 (as amended),¹ the use of the 'made in Italy' label on products that are not of Italian origin (termed 'false indications') or the use of corporate brands or other elements (eg, signs or images) that may lead the consumer to believe that the product is of Italian origin (termed 'misleading indications') are punishable by a fine of up to €20,000 and up to two years' imprisonment under Article 517 of the Criminal Code.²

The Supreme Court recently clarified questions of interpretation surrounding Section 4(49) in a decision which marks a return to its traditional position.³

In the case in question, a leather goods manufacturer had been found to have imported leather goods made in China with the indication '*vera pelle Italy*' ('genuine leather Italy'). It was ascertained that the goods were effectively made in China with Italian leather and that a small adhesive label on the product - bearing the words 'made in PRC' - indicated their Chinese provenance. Nevertheless, the second instance court had found against the manufacturer on the grounds that the adhesive label was insufficient to prevent consumers from being misled as to the origin of the products. The Supreme Court overturned the decision.

When is a product Italian in origin?

Following previous case law, the Supreme Court confirmed that 'origin' does not refer to provenance from a particular place; rather, it refers to provenance from a specific manufacturer which guarantees quality control in the manufacturing process and bears sole responsibility in respect of consumers.

¹ Paragraph modified by Section 16(7) of Law Decree 135/2009.

² According to Section 4(49) of Law 350/2003, both forms of conduct may be regularised at an administrative level before products are put on the market:

- In the case of false indications, this involves removing the words 'Made in Italy'; and
- In the case of misleading indications, the offender bears the responsibility and expense of removing signs, images or anything else that may lead the consumer to believe that the product is of Italian origin.

³ Decision 37818/2010.

The fact that a product is manufactured abroad on behalf of an Italian manufacturer that guarantees its quality is irrelevant if the words 'made in Italy' are used fraudulently to suggest to consumers that the product has been manufactured entirely in Italy.

Pursuant to Section 4(49), the use of the 'made in Italy' mark or other geographical indication on products or goods that do not originate in Italy (according to EU regulations on origin)⁴ constitutes a false indication and is punishable under Article 517 of the code. The same applies to any other mark, figure or expression which could induce in a consumer the incorrect belief that a product or good has an Italian origin according to Community Customs Code.

Is it necessary to specify that a product was made abroad?

The Supreme Court ruled that according to Article 517 of the code and Section 4(49) of the law, Italian legislation does not require that the geographical origin of a product be specified. It further stated that a general obligation to include an indication of a product's geographical origin would conflict with EU and Italian constitutional principles, as it would:

- favour Italian goods over EU goods - a clear breach of the principle of free movement of goods within the European Union;⁵ and
- discriminate against Italian manufacturers in favour of other European manufacturers who are not obliged by national law to label their products - a breach of Articles 3 and 41 of the Italian Constitution, which prohibit discrimination and safeguard the freedom of private enterprise, respectively.

Although it did not apply in this case, the court clarified that a specific obligation to indicate foreign origin or provenance was introduced by Parliament on November 20 2009⁶ (by Section 4(49)(2)). The new provision states that when the use of a brand is capable of misleading the consumer with regard to a product's Italian origin, it is the brand owner (or the licensee)'s responsibility, to guarantee that during the marketing phase of the product the consumer is provided with all relevant, precise and clear indications regarding the foreign origin or provenance, thereof, either appended to or directly on the product, on the packaging or in any other manner as specified in the statement rendered by the brand owner (or licensee) upon presentation of the relevant customs declaration. Violation of this provision carries an administrative (rather than a criminal) penalty - a fine of between €10,000 and €250,000.⁷

Comment

The Supreme Court ruled that the manufacturer was not criminally liable because:

- the indication '*vera pelle Italy*' could not have a misleading effect, as it was true; and
- the producer was not obliged to indicate the geographical origin of the product.

⁴ EU Regulation 2008/450 sets out the current Community Customs Code. The regulation modernised the code introduced by EU Regulation 92/2913. Specifically, Article 36 states that "[g]oods whose production involved more than one country shall be deemed to originate in the country where they underwent their last substantial processing".

⁵ Articles 26 and 28 of the Treaty on the Functioning of the European Union.

⁶ Law 166/2009, which converted Law Decree 135/2009.

⁷ Under Section 4(49)(2) the brand owner (or the licensee) shall provide indications of the foreign origin or provenance of the product that are precise and clear, or in any case sufficient to avoid any misunderstanding of the actual origin of the product. A declaration of the actual foreign origin of the product shall be added in the commercial phase.

