

RUCELLAI & RAFFAELLI
STUDIO LEGALE



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Founded in 1979, Rucellai & Raffaelli is an independent law firm, which over the years has acquired a wealth of expertise covering a wide range of practice areas. Based in Milan and having branch offices in Rome and Bologna, the firm currently employs approximately 80 professionals, specialised in corporate, antitrust, banking and finance, IP, EU Law, general civil and commercial law and employment, also with a special focus on regulated sectors. Their Partner, Enrico Adriano Raffaelli, spoke to us about his region and why intellectual property's role in transactions is now more important than ever before.

The reason for the growing influence of intellectual property in M&A transactions is due to the greater relevance that intellectual property rights have in companies' balance sheets. In fact, the weight of these intangible assets has overtaken the importance of tangible assets. This means that during an M&A transaction, the phase of evaluating the real value of these assets is probably one of the most difficult steps to take. For instance, the existence of an exclusive licensing agreement on the IP right may limit the actual value of the right. Therefore, this evaluation, because of its uncertainty, requires the assistance of a professional with specific experience in intellectual property law.

When processing a major deal, the situation can vary depending on what IP rights we are considering. In Italy, probably the most sensitive area is software, which is protected by copyright law and which therefore is not an "invention". As such, the provisions concerning ownership of inventions developed by employees do not apply and this can lead to uncertainties.

The same applies for 3P's developed software, which, lacking an express agreement to this end, may be considered owned by the 3P developer or by the customer depending on the case. Additional issues can arise from the use of "open source" software due to the misconception that since it is used for free it can be used without complying with the relevant terms of license.

Also trade secrets represent another sensitive area in Italy. Since their protection strictly depends on the efforts taken by the owner in order to maintain secrecy, if not properly protected by non-disclosure agreements and by proper security measures, their value and, therefore, the capacity of companies to maintain their competitive advantage may be seriously compromised.

All of these issues, if not properly addressed in terms of due diligence, remediation, warranties and indemnification, can affect the value of the IP transferred. Moreover, under Italian law certain breaches of third parties' rights on software (and other IP) can lead to a criminal liabilities since they are technically criminal offences. Some of these offences do not entail only the liability of the responsible person but also that of the legal entity in the interest, or for the benefit of which the offence was committed. Companies of course cannot go to jail, but under Italian law they can be ordered to pay hefty fines amounting to millions of Euros and companies may even be barred from contracting with Government or altogether suspended from doing business for a period of time.

Dealing with this risk is particularly tricky since, on the one hand, it makes due diligence all the more important; however, if a due diligence is carried out and the purchase is completed, it may increase the liability of the successor.

In terms of our philosophy, we have always provided highly competitive legal advice without compromising our basic values: loyalty and independence. Flexibility, meeting client demands, an understanding of the client's business and product quality are the main qualities of our firm. These features allow us to attract both primary multinational groups and top Italian entrepreneurs, giving life to long-period relations with them. Furthermore, our clients appreciate our policy of continuity, independence and internal growth, which allows little or no turnover in the attorneys assigned to deal at a top level with their case. All these qualities are the key of our highly-competitive legal assistance.

Our approach to our clients is a steadfast adherence to quality, consistency in relations with them and strong and shared professional ethics. The operating procedures on which the firm is based assure an absolute flexibility in relation to our clients' aims and a full comprehension of its business needs. Furthermore, thanks to our low turnover in the attorneys assigned to the cases, we are able to guarantee our clients a constant reference among our professionals, thus also minimising costs of services rendered.

With the quality of service we provide, Rucellai & Raffaelli's clients include leading multinationals as well as distinguished national companies operating at local and international level, which are active in various industries including information technology, manufacturing, chemicals, pharmaceutical, insurance, financial services, land and air transport, large-scale distribution, energy and international trade.

In a market that is characterised by the integration in international professional networks, by the sudden appearance of large mergers among competitors and their unexpected splits, Rucellai & Raffaelli's growth has been exclusively internal. Most of our professionals start and continue their careers in the firm, and pass on their expertise to new trainees. This process, together with our strong ethic of independence, represents the key element of our high-quality legal assistance.

In order to sustain our success, we invest a large amount of time and resources in training all of our professionals through organising internal seminars and lessons conducted by experts concerning the latest developments in both Italian and European law.

Looking towards the future, the aim of Rucellai & Raffaelli is to strengthen its inner structure, in order to guarantee our clients a high-quality legal assistance. We are particularly focusing on areas of practice which are becoming increasingly more relevant, such as administrative law. Moreover, in consideration of the growing importance of international litigation, the firm will intensify its relations with the most important foreign law firms, in order to guarantee our clients a worldwide legal assistance.