RG N. 79214/2012

# The TRIBUNAL OF MILAN
## SPECIALIST BUSINESS SECTION
## SECTION A

in the person of Judges:

- Marina TAVASSI presiding judge
- Alima ZANA judge
- Pierluigi PERROTTI judge rapporteur

in the precautionary proceedings with the above general role number, concerning the complaint to the Panel against the precautionary injunction dated 3.11.2012 presented by **LAMBRETTA SCOOTERS LIMITED, FINE WHITE LINE e LAMBRETTA SRL,** represented and defended by attorneys Cesare Galli, Giovanni Casucci and Niccolò Ferretti, as per the representation agreement on the margin of the record of voluntary joinder filed on 20.3.2012

**- COMPLAINANTS -**

AGAINST

**MOTOM ELECTRONICS GROUP SPA**, represented and defended by attorneys Marco Saverio Spolidoro, Nicola Gurrado and Marianna Gurrado, as per the representation agreement at the bottom of the memorandum of appearance filed on 10.01.2013

**- RESPONDENT -**

AND AGAINST

**SCOOTERS INDIA LIMITED**, represented and defended by attorneys Marco Andreolini, Andrea Parini and Francesca Andreolini, as per general power of attorney for litigation dated 09.05.2012

**- RESPONDENT -**

with regards to dissolving the reserve taken at the hearing on 21.3.2013, gives the following

**COURT ORDER**

### 1. Trial developments

**1.1.** By application filed on 2.7.2012 Lambretta Scooters Limited (hereinafter LSL), Fine White Line (hereinafter FWL) and Lambretta srl set out as follows.

Scooters India Limited (hereinafter SIL) licensed a few *Lambretta* trademarks it owned to FWL, which, in turn, FWL sub-licensed to LSL, which in turn still, had granted through a sub-license agreement to Motom via contract dated 31.3.2010. There was a risk, known and explicitly accepted by Motom, of the possibility for these trademarks of being declared expired. At the same time, FWL and LSL reached an agreement with the so-called Lambretta Consortium that included Lambretta Srl, owner of autonomous *Lambretta* trademark registrations, valid in Italy and many other countries. Motom had then started to produce *Lambretta* branded scooters under the 31.3.2010 agreement to sub license. LSL challenged Motom on serious and repeated breaches of contract, under which it had appealed to the termination clause, resulting in the supervening rescission. At a first injunction – reg. no. 20274/2011 and subsequent grievance procedure reg. no. 39115/2011 - the Milan Court considered likely founded the contract allegations performed by LSL. Following the conclusion of this precautionary stage there were further infringements, which made the contract *de facto* almost completely unimplemented by Motom. A second injunction was therefore introduced, aimed at the authorization of a provision for an accounts description, which ended with the request being granted. LSL's active legitimacy was found in the provision as well as the importance of serious breaches of the contract by Motom on 31.3.2010. Motom also registered a scooter model within the EC (registration no. 1176184) that slavishly recalled the features of the historical Lambretta models, benefiting from the evocative effect of the world-famous brand.

They concluded by asking that Motom be denied any further use of the *Lambretta* mark and of the registered EC design specified as well as that the seizure and withdrawal from the market of all Motom products bearing that trade mark, setting a fine followed by publication of the provision.

**1.2.** Motom filed a statement on 20.9.2012.

At the outset it objected the inadmissibility of the request in several respects. The applicants were in irreconcilable conflict of interest between them, since they submitted registrations connected to different owners, respectively SIL and Lambretta Srl, on which existed said irreconcilable contrasts. The precautionary decision also appealed to identical complaints already evaluated in previous interim proceedings between the same parties (disputes bearing no. 20274/2011, 39115/2011 and 32119-1/2011). Also there was lack of standing to bring the suit in contrast with the determinations of the EC trade mark proprietor SIL, resulting in breach of article 22.3 of the EU Regulation brands. It held a plea of invalidity of the trademarks owned by Lambretta srl since they were registered in bad faith and with a clear deceptive and misleading attitude, in total discontinuity to the industrial history of Innocenti and anyway without suitable business planning. In this regard, it objected the considerations made in a previous corporate order on the significance of default, as based on erroneous assumptions of fact. It objected the failure of LSL to fulfill its primary contractual obligation of ensuring the peaceful right to use of the trademark sub license granted, even in light of the repeated disparaging and defamatory conduct that had led to a separate precautionary suit, which ended in the favor of Motom, with pronunciation of injunction against the appellants. It challenged the existence of multiple breaches reported by LSL and challenged that the contract acknowledged notice of dispute on the forfeiture of some licensed brands, in the EU and UK. The contract which expressly referred only to proceedings Motom was already involved with - that is evaluations of forfeiture in Italy and concerning Italian brands. Lastly it acknowledged that on 25.6.2012 the OHIM rejected the application for a declaration of invalidity of the EU model owned by Motom and thus there was nothing to support the application for injunction on the point.

**1.3.** SIL made an appearance filed at the hearing on 3.10.2012.

In essence, it claimed sole ownership of the *Lambretta* trademarks once purchased from Innocenti and that therefore only these were valid marks that allowed the marketing of scooters featuring this branding. It stated that it did not authorize FWL to carry out any initiative to protect the licensed trademark and that it challenged the original license agreement before the judicial authorities in India. All further different recordings of the *Lambretta* mark should be considered invalid for the reasons already provided by Motom. Moreover it had already won at first instance the disputes rooted in Milan and concerning the ascertainment of the forfeit of the *Lambretta* brands registered in Italy. The relative proceeding was currently pending before the Court of Appeal.

**1.4.** By order filed on 03.11.2012 the court of first instance dismissed the appeal, highlighting the objective situation of uncertainty caused by the recent decision of the lapse of the EC trade mark owned by SIL, the appeal by SIL of the licensing agreement with FWL, the pending various related disputes, on one hand, the loss of SIL's Italian brands and, on the other hand the validity of EC trademarks owned by Lambretta srl.

**1.5.** By an application lodged on 19.11.2012 LSL, FWL and Lambretta srl filed a complaint against this measure.

They confirmed all the defenses previously articulated and stressed that the declaration of expiration of SIL's marks represented an additional element supporting the absence of a suitable title for the continued use of the mark by Motom. They objected, particularly FWL, the receipt of any writ by SIL aimed at resolving the license contract between SIL and FWL, without prejudice to the claims carried out by the Indian company for payment of the license fees. It also stated that the unpaid debt for royalties towards Motom had reached the amount of € 750,000. All marks owned by SIL had been subject to decisions of withdrawal/expiration, except in Italy, where the second degree judgment was still pending.

**1.6.** Motom appeared with a statement of defense filed on 10.01.2013, reiterating the defensive arguments already carried out in the court of first instance.

It particularly highlighted that in the context of the Indian judgment initiated by SIL to obtain a declaration of termination of the license granted to FWL, the latter had pleaded the nullity of the original license agreement made with the Indian company, thus taking away legitimacy from LSL.

**1.7.** SIL appeared with statement of defense filed on 10.01.2013.

In addition to proposing the defense previously carried out, it stated that a negotiation with Motom was under way for the licensing of the Italian *Lambretta* brands. It reiterated in particular that the registrations obtained by the applicants were in any case invalid as they were made in bad faith, taking advantage of the notoriety of the *Lambretta* brand and with no connection, even indirect, with the previous commercial production experience of the Innocenti group, and this regardless of the confirmation of the validity of the *Lambretta* brands owned by SIL.

**1.8.** After an adjournment aimed to investigate the possibility of reaching a conciliatory solution of the dispute, the parties discussed the complaint at the hearing on 21.3.2013 and the Court reserved the decision.

**2. Preliminary customary objections by Motom.**

**2.1.** Motom raised an initial question, appealing to a fundamental incompatibility of the positions of the applicants. Therefore a conflict of interest would be obvious, insurmountable and such that all interim requests would become inadmissible.

In this respect it can be noted that each side herein submits defensive theses that are alternative to each other, since based on different securities and property rights that are however considered equally suitable - in the claim of the complainants – to prevent Motom from any further legitimate use of the *Lambretta* mark.

The highlighted alternative choice of the court positions, in particular, held by LSL and Lambretta srl allows for homogeneity and logic consistency to the overall argumentative line of the complainants, which doesn't seem faulty with a possible conflict of interest, other than of course the duty to examine the foundation of their requests on the merit.

**2.2.** The procedural question posed by Motom is equally unfounded with reference to the formation of a provisional proceeding, resulting in the violation of the *ne bis in idem* principle. In the previous precautionary demand order made by this Court in the grievance procedure no. 19008/2012, dated 7.6.2012, some considerations have been effectively outlined on the applications for injunction and seizure, also carried out in that court of law by LSL. In the above provision it is clear that it does not appear possible to allow the revival by LSL of the precautionary measures for the seizure and injunction concerning the marketing of scooters manufactured by Motom after 15 November 2011, as the applications have not been made at the time of the breakdown of the conclusions of the claim, other than with a generic and insufficient reference to articles 129, 130 and 131 IPC. The order dated 7.6.2012 also clarifies that in the initial introductory application the precautionary petitions were requested as "seizure and injunction" with the quite atypical expression "possibly." The Court further specifies that the arguments made in the complaint say nothing about the reasons that should have led to the granting of seizure and injunction, resulting in the finding of a partial inadmissibility of the complaint, however without prejudice to the possibility of a possible repetition of the same applications during the relevant proceedings.

It is therefore clear that the rulings of the Panel regarding the request for an injunction and seizure in the previous interim proceedings brought by LSL against Motom remain limited to only one trial profile of inadmissibility, without any consideration on the substance of these claims.

According to a well-established interpretation principle, certainly applicable also to interim proceedings, the pronunciation of mere inadmissibility of the claim, without which there has been no examination of the alleged obligation in question, does not amount to an adverse judgment on the merit and therefore does not prevent the revival of the same question with a subsequent customary application of a new trial (see Cass. 22 July 2004, no. 13785, see also Cass. 24 November 2004 no. 22212 and Cass. 4 June 2010, no. 13614).

The precautionary applications by LSL are therefore fully eligible.

With regard to precautionary requests by FWL and Lambretta srl it is clear that these are completely new questions.

**2.3.1.** On the specific issue of the legal standing, a significant novelty has occurred here, that is the formal appearance in court of the Indian company SIL, which expressly took adverse position to the trial initiative taken by the claimants and based on the brands it owns.

However, the Court believes that the breach of the agnostic and ambiguous position previously held by SIL is not likely to cause an overrun of the previous considerations on the specific issue of the existence of legal standing of LSL, resulting in pre-trial admissibility of this precautionary initiative.

On this point we reiterate the considerations and arguments previously presented in the panel order dated 7.6.2012.

Article 23, paragraph 2 of the IPC provides that the trademark can be subject to non-exclusive license for all or part of the goods or services for which it is registered and for the whole or part of the territory of the State, provided that the non-exclusive licensee is expressly obliged to use the mark to distinguish goods or services equal to those for which the mark is used in the territory of the State by the owner or other licensees. There are no particular limitations in the national legislation to protect the mark for the licensee, given those boundaries are respected, whether the licensee is an exclusive or non-exclusive. Article 22, paragraph 2 of the EC Regulation no. 207/2009 provides that the licensee may start proceedings for the infringement of an EC trademark only if its proprietor consents thereto.

It is then expected by the same standard that the exclusive licensee may start such proceedings if the proprietor of the trade mark, subject to formal notice (obviously by the same licensee) does not himself start infringement proceedings within unspecified terms, but referred to as "appropriate". Similarly, the licensee (even if not exclusive) may intervene in the infringement proceedings brought by the proprietor to obtain compensation for the damage suffered.

Under the contract dated September 2006, SIL, calling itself the proprietor of marks no. EU 1495100, EU 1618982, UK 2134922, UK 2107935, UK 874581, UK 2122788, UK 831769, has licensed these brands to FWL for the territory of the European Union and Brazil, expressly defining it an exclusive license.

The statement of LSL of being entitled to sub-license by FWL is the assumption of the contract between LSL and Motom, since it was never doubted by the latter that such an agreement existed between FWL and LSL and put LSL in the position to sub-license in turn to Motom the right to use the trademarks.

On the other hand, the joint defense in the trial proceedings and in this interim proceeding of LSL and FWL, suggests not only that there are no doubts about the origin of the license rights given to LSL by FWL, but also that FWL fully shares all judicial actions and defensive lines of LSL.

It should then be noted that the marks sub-licensed by LSL to Motom with the contract dated 31.3.2010 are the same mentioned above, already under license from SIL to FWL.

As previously said, during earlier precautionary stages a substantial indifference displayed by SIL had been found with regards to the events at issue.

Clause 15.2 of the contract between SIL and FWL states that SIL reserves to keep the responsibility to initiate any proceedings for the protection of its brand, including providing that the licensee should work with SIL in the implementation of any action required. It does not provide autonomous rights for FWL to act against the infringer.

It is clear that FWL did not convey to LSL more than what was included in the contract with SIL.

In this way the provision of art. 22, paragraph 3 of the EC Regulation n. 207/2009 - "subject to the terms of the license agreement" - in this case does not lead to a different conclusion than the text of that provision, but in fact confirms the need for an agreement between licensor and licensee to promote infringement actions.

The Panel believes that a consistent interpretation of the rule in its various phases and in line with the *ratio* thereof, must lead to state that the start of the infringement proceeding that the provision in question deals with, cannot but be limited to the actions against third parties and not to the actions against the subcontractors.

With respect to relations with the latter, indeed, it is definitely the sub licensor that has an interest in exercising the rights concerning relationships themselves, without its action getting influenced towards consent or refusal by the trademark holder.

Undoubtedly, however, the exclusive or non-exclusive licensee may take action for breach of contract against the sub licensor that makes use of the trademark in a way that violates the contractual agreements or is responsible for additional various defaults that stray from contractual obligations. In addition to the abstract statement of the licensee’s right to take action, it has to be noted that in this case the defense of LSL has undeniably deduced a number of breaches of contract imputable to Motom during the interlocutory proceedings.

It is therefore sufficient to recall the shortfalls listed on pages 7 onward and 10 onward of the complaint to realize how all the objections raised about Motom are attributable, on one hand, to an autonomous infringement of a trade mark for which LSL is sub licensor and pertain, at the same time, to the failure to comply with contractual obligations assumed by Motom with the contract dated 31.3.2010.

It is undisputed, moreover, that many of these obligations relate to the use of the *Lambretta* brand, manners with which this brand was going to be used in the production of scooters by Motom, the distribution approach of the product bearing that mark, as well as the payment of related *royalties*. It is therefore undeniable that those errors, albeit in their contractual status, result in a violation of the right on the mark due to LSL.

In this perspective, one must conclude that LSL can validly invoke the whole set of sanctions and precautionary measures provided for by the Code of Industrial Property, as well as a full anticipatory judicial protection *ex* art. 700 of the Civil Procedure Code, in relation to the use of the mark made by today's respondent in violation of contractual agreements, resulting in the rejection of the exceptions of lack of legal standing and the inadmissibility of the applications presented by Motom.

**2.3.2.** It is clear that SIL has rooted a judgment against the licensee FWL in India. The Parties discuss the exact qualification and nature of this judicial initiative and the question presents itself as being potentially relevant for the purposes of verification of authorization to act in the present case of FWL and, above all, of LSL.

If this dispute was really directed to confirm that a resolution of the agreements between SIL and FWL has taken place and the application were accepted, the legal and factual basis for the recognition of the validity and effectiveness of the subsequent agreement between FWL and LSL as well as of a subsequent further sub license agreement between LSL and Motom might actually disappear. As a matter of fact, the entire contractual chain would be swept away, including the last ring.

From the reading of the case files of the Indian judgment a procedural framework of different content seems to stand; within this framework SIL complains of several, serious and repeated contractual breaches by FWL and asks, where the aforementioned infringements are detected, the punctual fulfillment of several FWL obligations specified in the 2006 agreement.

Therefore the object of this process does not appear suitable- at least at the state of the proceedings - to determine the feared repercussions at the level of the legal standing of FWL and LSL.

**2.4.** Finally, Motom also criticizes the lack of legal standing of Lambretta srl. arguing that there is no evidence of registration in its name, of the marks of which the claimant claims ownership.

Such issue, properly attributable to the merits of the dispute, is out of date in light of the documentary evidence (see Doc. 5 claimants and Doc. A and B of LSS and FWL for the judgment) from which ownership of Community Trade Marks no. 8718405, no. 7502263, no. 6509822, n. 5991559, no. 6510291 and international brands no. 715 694 and n. 712094 is confirmed in favor of Lambretta Ltd..

**3. Preamble**

Once all the issues of a procedural nature have been dealt with, the Court considers it appropriate to provide a brief generic method introduction, modeled on the peculiar characteristics of the complex case under examination.

Substantially speaking, it is clear that there has been an evolution of economic strategies pursued by the concerned parties with an increasing polarization of conflicting interests. At present, a stark contrast can be observed between the position, to some extent in common between SIL and Motom, on the one hand and that of the three complainant companies belonging to the so-called Lambretta Consortium.

In addition to this descriptive simplification there is an underlying legal reality that is rather complex, intricate and even – in many ways – contradictory.

At this particular moment there is actually a global litigation between the parties that extends– as announced to this Panel – on several fronts, closely linked together.

The first front is represented by the dispute – already mentioned above – introduced by SIL in July 2012 against FWL before the judicial authority of the Indian State in relation to the license agreement between SIL -FWL. From reading the acts, one can understand that SIL started legal action against its contractual licensee mainly aimed at getting economic relief for damages arising from multiple severe breaches by FWL, as described in the summons. FWL, in turn, appearing in this trial asked - among other things – to ascertain the absence of the SIL's trademark rights which were object of that license agreement.

At the same time the litigation relative to the assessment of revocation for lack of use of EC trademarks owned by SIL is pending in the EC. After the ruling that confirmed a clearly established expiration by the internal governing bodies of OHIM – Division for cancellation and boards of appeal – SIL recently brought an appeal before the Court of first instance; the outcome of its proceedings is expected.
The dispute concerning the revocation for lack of use of three Italian *Lambretta* brands owned by SIL is also close to reaching a second-degree decision, against which the ruling of the Appeal Court of Milan is expected, after the Court of Milan ruled at first instance to maintain the effectiveness of these marks.
Lastly, we must also acknowledge the present dispute to which belong these interim proceedings held to discuss upholding or declaring null and void the sub-licensing contract dated 31.3.2010 entered into and executed by LSL and Motom as well as the request made by SIL that seeks to ascertain the nullity of all registrations of the *Lambretta* mark carried out in violation of its earlier national and community registration by the complainants. As noted by the Court of first-instance, the pending of these reviews gives clear proof of the high variability of the legal framework that can at any time set decisions that could substantially influence some crucial aspects of the case considered by this Panel.
It is also clear that the Court is objectively unable to yield such a multitude of incidental judgment predictions judgments, abstractly based on substantial and procedural standards very different from each other as well as on factual platforms that are particularly detailed and complex.
So this judge is in mandatory need to articulate all the assessments that are useful for the purposes of this decision on the basis of the current factual and legal framework, as determined based on the evidence available at the time of this ruling, therefore omitting every possible consideration on unpredictable developments of the divided mosaic of procedural situations as above synthetically laid out.

**4. Precautionary requests by Lambretta srl.**

It is precisely in accordance with the preamble that has just been given that one proceeds, first, to assess the precautionary requests by Lambretta srl.

In the previous interim period the marks owned by Lambretta srl had been used by LSL on the basis of the said free circulation of property rights between the subjects participating to the so-called Lambretta Consortium. In this proceeding, Lambretta srl acts in fact autonomously asserting their trademark rights directly, based on a series of registrations that are duly documented.

In the judgment SIL appealed to its previous registrations – Italian and EC –, disputing the validity of trademarks of Lambretta srl, and asked that any further used be prohibited to the complainants.

It has already been said that SIL's EU and Italian registrations are all *sub judice*. It is evident that the outcome of these reviews for revocation of SIL's marks could affect with finality the purported right of Lambretta srl.

Nevertheless, in the state of the proceedings, it is clear that there are previous registrations of EC and Italian trademarks owned by SIL, currently *sub judice* but still valid and enforceable. It therefore appears correct, *rebus sic stantibus,* to exclude here an autonomous space of interim protection for Lambretta srl's marks, notwithstanding that in the judgment of merit there will also be a proper investigation from a procedural and substantial standpoint of the application of invalidity of these brands, application made via counter-claim by SIL appealing to the lack of news as well as the bad faith and the deceptive character of said registrations.

In compliance with the preamble, the Court is aware of the possibility that in Italian and/or EC courts, rulings can take place that are potentially fit to cancel out, in whole or in part, any previous securities owned by SIL. In the current state of the proceedings it is however indisputable that these are valid and prior marks to those implemented by Lambretta srl.

**5. Precautionary requests by LSL.**

**5.1.** The Court has already had an opportunity to examine evidence of the *manifest existence of the rights for which the provisional measures requested are intended to ensure protection* in relation to the same facts alleged in the present case, even though this is done for the different purpose to assess the existence of the conditions for the issuance of an order of description.

In particular, the Panel has already analytically motivated with reference to the non-payment of *royalties*, failure to send *reports,* failure of Motom to send the declaration referred to in clause 5.5.2., failure of Motom to send advertising material as in Clause 14.2 (and that also with reference to the period after 15 November 2011), failure to comply with the obligation to submit the choice of distributors for the approval by LSL and finally failure of Motom to send information provided for in the contract - clause 23.1.2. – and relative to the termination of the license agreement.

The Panel notes that Motom itself never relied on the reasons of nullity of the contract or of some of its clauses, having instead acted to apply for its renewal. It must therefore be believed that there are - at least since the second notice of termination of contracts submitted by LSL and dated 22.11.2011 – valid reasons that can lead to consider that the contract has already terminated. Nevertheless, Motom continues the use of the *Lambretta* trademark placing it on its scooters, which it continues to sell, and using it on promotional material and anything else related to its activities as of late.

We must also reiterate that the complaints by Motom concerning the lack of a peaceful fruition of the trademark must be balanced with the detection of a continuation of the actual use of the mark, even within the known claims of which it was perfectly aware from the moment of signing of the trade agreement with LSL. It was learned during the discussion, by direct admission of Motom, of the existence of a project aimed at re-launching the production of scooters branded *Lambretta*, based on a business plan in the process of being drawn up which in turn focuses on the recovery of production centers located in Italy.

This new circumstance implies a worsening of the circumstantial evidence of serious failures, since there was a further significant distancing by Motom from the scope of legitimate use of *Lambretta* signs conventionally agreed with LSL.

The findings discussed thus far induce the Panel to reaffirm the evaluation already expressed in previous complaint procedures no. 18873/2012, 19008/2012 and 19009/2012. In terms of likelihood and the current state of the proceedings - the existence

of the failures indicated by LSL can thus be proven and the existence of *prima facie case* requests for precautionary injunction and seizure conducted by LSL is thus demonstrated.
Lastly we find no merit in Motom's demand to gain legitimacy of its actions that began upon being granted the use of the Italian brands owned by SIL, currently *sub judice* before the Court of Appeal of Milan. In its documentation, SIL merely acknowledged the existence of a difficult negotiation that has, however, not yet reached a general agreement on the granting of a license. At this time there is therefore a finding of mere tolerance, probably supported by the declared intention to bring about an agreement but that this is not likely to result in an overrun of the considerations articulated in terms of *prima facie case*.
**5.2.** The persistent use by Motom of the marks included in the contract in the absence of a suitable condition to justify the continuation of this use, introduces serious elements of risk and potential damage to the complainants, which are difficult to quantify and problematic to repair.
Moreover, the already mentioned perspective represented by Motom of impending establishment of a new business plan for the revival of the production of scooters branded *Lambretta* makes that danger even more obvious, resulting in a compelling urgency to take the required measures.
In the light of the findings so far explained, the complaint brought by LSL must be accepted in part, resulting in the issuance of seizure and injunction and the establishment of an adequate fine, indicated in the purview.
However, the request to order the withdrawal from the market of motorcycles or other similar products branded *Lambretta* distributed by Motom in the absence of precise and detailed evidence on the current actual availability shall not be granted.
The macroscopic relevance of the commercial and industrial story examined so far makes the publication of the measure appropriate, so as to provide a suitable point of clarification to the market and, in particular, to the consumers. The modalities for its execution are listed in the purview.

**6. On the precautionary requests for Community model no. 1176184-0001.**

On this point it is sufficient to reiterate that no clarification has occurred of the doubts already raised during the previous interim proceedings - regarding the actual existence of legitimacy by the claimants to assert their rights related to an alleged trademark that is de facto three-dimensional, essentially matching the form of one or more historical models of Lambretta scooters produced by Innocenti.

The demands of the complainants must therefore be rejected.

**7.** The costs of the present interim review will be liquidated in the judgment of merit.

**For these reasons**

the Court, also in function of Court of trademarks, EC models and designs, rejects every other instance and exception:

1. Welcomes the complaint lodged by Lambretta Scooters Limited and for the effect:

- it authorizes the seizure from Motom Electronics Group spa, of all products and all advertising and promotional materials made from counterfeiting of *Lambretta* marks covered in the 31.3.2010 license agreement, found in offices, shops, warehouses, depots or other appurtenances of the respondent, allowing the complainants or their representatives to attend the operations, for the sole purpose of finding material;
- prohibits further use by Motom Electronics Group spa from each further use, in any form or in any way, of the *Lambretta marks* covered by the 31.3.2010 contract;
- orders the publication of the operative part of the present ruling, publication to be carried out in the *Corriere della Sera,* once only, over two columns and double the normal character, by and at the expense of Motom Electronics Group spa, within thirty days of the notification of the measure, with faculty for the complainants to do so themselves, in case of incomplete or untimely fulfillment by Motom Electronics Group spa, requesting these expenses by simple submission of invoice;
- sets € 10,000 as the penalty due by Motom Electronics Group spa for each violation found after the commencement of the period of 30 days from the notification of the present decision and € 2,000 as the penalty due for each day of delay in this execution by Motom Electronics Group spa after the commencement of the period of 30 days from the notification of the present decision;

2. rejects all further precautionary requests by Lambretta Scooters Limited, Fine White Line Limited and Lambretta srl;
3. applicable expenses.

Let it be known.

Milan, 21 March 2013.

The Presiding Judge
(*Marina TAVASSI*)