

# PAX MOOT 2024

## PETAR ŠARČEVIĆ ROUND

REQUESTS FOR CLARIFICATIONS

### GUIDING PRINCIPLE:

*When the case does not mention circumstances that can be relevant in law, those circumstances do not exist. To what extent rights, duties or obligations exist or may be implied in law based on the known facts, is a matter for the court to decide. Furthermore, certain issues are by necessity vague, as to allow Moot teams to discuss them during submissions and pleadings.*

### MyStream and MyStream Europe: organisation and relationship

- CQ1. Is the registered office of MyStream the same as its real seat?  
*MyStream is registered in Raleigh, North Carolina, USA. It operates servers for the North American market from that site. MyStream Europe is registered in Tallinn, Estonia and operates servers for the European market from that city.*
- CQ2. Where are MyStream Europe's servers located?  
*Tallinn, Estonia. Also, see answer to CQ1.*
- CQ3. What is the relation between MyStream and MyStream Europe, do they operate the same platform with the same American servers?  
*The case is sufficiently clear and does not require further clarification. Also, see answers to CQ1 and CQ2.*
- CQ4. Is MyStream Europe a separate legal entity incorporated in Estonia?  
*The case is sufficiently clear and does not require further clarification. See the answer to CQ1.*
- CQ5. Does the term "subsidiary located in Tallinn" mean that MyStream Europe has its statutory seat, central administration or principal place of business in Tallinn?  
*See answer to CQ1.*
- CQ6. Are "MyStream" and "MyStream Europe" interchangeable and should they be considered one judicial entity? [...] Note 3 clarifies that MyStream is a defendant in the case for damages and in the case for the validity of the contract.  
*When MyStream is mentioned in notes of the case, it should be interpreted as MyStream Europe. All claims are directed against MyStream Europe.*
- CQ7. What role do MyStream and MyStream Europe play in the partner contract?  
*MyStream Europe signed the contract with Giulia. The case is sufficiently clear and does not require further clarification.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

- CQ8. When MyStream is mentioned in question n. 3, are you referring to the principal located in USA or the subsidiary in Europe? Important for stating the ministry of law regarding parental responsibility (Q4).  
*Question 3 refers to the app (application or website) MyStream. It does not refer to the company MyStream or its subsidiaries.*

### Contact between MyStream and Giulia

- CQ9. Did Ms. Marchetti or Giulia click and open a hyperlink in the partner contract between Giulia and MyStream Europe, and view the general terms and conditions before signing the contract?  
*Anyone who wants to sign the contract is required to click the link, which opens the general terms and conditions of the contract. It is then to scroll down to the end of the contract and click either 'agree' or 'disagree'. The link did work and accordingly did allow Ms. Marchetti or Guilla to access the general terms and conditions and to view them before signing the contract.*
- CQ10. Where and when was the partner contract between Giulia and MyStream Europe signed?  
*Gulia was underage when signing the contract. The case is sufficiently clear and does not require further clarification.*
- CQ11. In what exact date was the partnership contract concluded? Important to determine Giulia's age at the time of signing.  
*See answer to CQ10.*
- CQ12. Does MyStream Europe give Giulia specific orders concerning her content and must Giulia follow these orders according to the contract?  
*The general terms and conditions of the contract do not specify the content of the videos.*
- CQ13. Does the wording of the jurisdiction clause in the general terms and conditions state exclusivity in favour of the Wake County courts in North Carolina?  
*This is an exclusive choice of court agreement.*
- CQ14. Does the choice of law clause indicate that Giulia continues to enjoy the protection of the mandatory rules of the law of her habitual residence? (Is representation by legal representatives also necessary under US law?)  
*The case is sufficiently clear and does not require further clarification.*
- CQ15. Did the hyperlink to the General terms and Conditions of MySCP had the possibility to reproduce the content of the general terms and conditions?  
*See answer to CQ9.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

- CQ16. What was the date of the conclusion of the contract between Giulia and MyStream Europe?  
*See answer to CQ10.*
- CQ17. Could you further explain the relationship between Giulia and MyStream Europe?  
*The case is sufficiently clear and does not require further clarification.*
- CQ18. According to the case, Giulia “agreed to the terms of the partner contract and her mother, Ms. Marchetti, digitally signed the contract on her behalf”. Can it be assumed that Ms. Marchetti did not personally read and understand the terms of the contract?  
*The case is sufficiently clear and does not require further clarification.*
- CQ19. Can we assume that the contract between Giulia and MyStream Europe has been signed between March and July 2022?  
*Yes. Also see answers to CQ10 and CQ16.*
- CQ20. What date was the MySCP contract signed/executed with Giulia, her mother and MyStream Europe?  
*See answer to CQ10.*
- CQ21. What does the partnership contract entail?” It is relevant to discern what kind of contract it is.  
*The case is sufficiently clear and does not require further clarification.*

### **Giulia’s activity on MyStream**

- CQ22. Where did Giulia upload the bulk of her content?  
*Most of the videos relevant for the case were uploaded from Trieste, Italy.*
- CQ23. Where do the majority of Giulia’s followers come from?  
*MyStream does not give content creators details about the geography of their followers. The case indicates that MyStream is popular in the USA and rapidly expanding in Europe.*
- CQ24. In what city was Giulias place of residence when she uploaded the first video with Ms. Saro wearing any clothing from another brand?  
*See answer to CQ22.*
- CQ25. Where was Giulia physically located when she uploaded the videos in which Ms. Saro is seen wearing clothing from brands other than Feline?  
*See answer to CQ22.*
- CQ26. In which country did the uploading of the videos featuring Ms. Saro take place?  
*See answer to CQ22.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

CQ27. Should we assume that Ms. Saro and Mr. Zupančič are aware of the taking and the posting of the videos in Giulia's account?

*Ms. Saro and Mr. Zupančič were not aware that Giulia had been posting videos of them.*

CQ28. When and where did Giulia create and decide to upload the videos with Ms. Saro – while still in Slovenia or when in Italy?

*The case is sufficiently clear and does not require further clarification. About the upload see the answer to CQ22.*

CQ29. Can it be assumed that Giulia was in Slovenia when she posted the videos with Saro?

*The case is sufficiently clear and does not require further clarification. See also answer to CQ22.*

CQ30. On the territory of which MS are Giulia's videos predominantly viewed? This fact will help us determine the grounds for jurisdiction in Claim 1.

*See answer to CQ22.*

CQ31. Considering how crucial the location in which the damages occurred is, to determine which court has jurisdiction to hear about Ms. Saro's claim, we would like to confirm the geographic location in which the videos were uploaded.

*See answer to CQ22.*

CQ32. Did Mr. Zupančič give consent for Giulia to be on MyStream prior to the execution of the MySCP contract?

*Parental consent is not needed to register as a user on MyStream. Mr. Zupančič did not know about Giulia opening a MyStream account.*

### Questions about Giulia

CQ33. What is the degree of Giulia's disability?

*Giulia's neurodevelopmental disorder should not be considered a disability. Persons suffering from Tourette Syndrome exhibit abnormal and involuntary facial gestures, along with vocal tics and other than this, their life is normal.*

CQ34. Is Giulia's domicile subject to argumentation or is it in Italy from February 2023 onwards? (Art 62 Brussels I-bis Regulation refers to national law)

*The case is sufficiently clear and does not require further clarification.*

CQ35. (P) Giulia's birthday: Will a judgement be given on each day of the trial (oral rounds) or do we have to apply different law on the 2nd day (25 th April) of the oral rounds (when she is already 18)?

*Giulia's birthday is 1 January. She is 16 years old in 2023. Also, see answer to CQ10.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

CQ36. From whom does Giulia receive remuneration?

*From MyStream Europe, as stipulated in the contract.*

CQ37. Continuing with the previous question, could we understand that Giulia and her mother (Ms. Marchetti) will stay/live in Italy permanently?

*There is no indication on the future plans of Giulia and Ms Marchetti.*

CQ38. As the case states, Giulia and Ms. Marchetti have been living in Trieste, Italy since February 2023. Considering the relevance of knowing where Giulia's daily activities take place, we would like to know if Giulia goes to school in Trieste, Italy?

*Giulia goes to school in Trieste, Italy.*

CQ39. Does Giulia still pay regular visits to her father after the move to Italy in February 2023?

*Yes.*

CQ40. In which Member State was Giulia born? Important regarding parental responsibility.

*The case is sufficiently clear and does not require further clarification.*

### **Mr. Zupančič's claim**

CQ41. Can it be assumed that Mr. Zupančič instituted legal proceedings against MyStream Europe simultaneously with Ms. Saro's claim, i.e., in November 2023?

*All the claims were filed in November 2023.*

CQ42. Did Mr. Zupančič file the claims in his own name or as a representative of his daughter?

*In the claim for the invalidity of the contract, Mr. Zupančič acts as a representative of Giulia.*

### **Contract between Feline and Ms. Saro**

CQ43. When was the sponsorship contract between Ms. Saro and Feline SE exactly terminated?

*The contract was terminated between February 2023 and November 2023.*

CQ44. When exactly did Feline SE terminate the contract with Ms. Saro? Before Giulia moved to Italy or after?

*See answer to CQ43.*

CQ45. Do the "damages incurred as a result of the infringement upon her personal rights" refer to immaterial damages or are they the same as the financial losses suffered due to the breach of the sponsorship contract?

*The case is sufficiently clear and does not require further clarification.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

### The damage suffered by Ms. Saro and her claim

CQ46. Does the case of the damages involve two separate claims?

*Ms. Saro alleges to have sustained two types of damages. She files the suit claiming payments for all damages suffered.*

CQ47. Do damages in terms of applicable law and jurisdiction in the first and second question include both damages for infringement of personal rights and financial losses as a whole or do they constitute two separate claims for damages?

*See answer to CQ46.*

CQ48. Do financial losses refer to the damages sustained by Ms Saro in the form of lost profits from the termination of the contract or in the form of the remuneration she had to pay to Feline S.A. for the alleged breach of contract?

*Ms. Saro suffered a loss of profit due to termination of the contract.*

CQ49. The facts of the case are unclear. Ms Saro has suffered financial losses due to the breach of the sponsorship contract. The unclear question is (i) what are the personal rights that are infringed, (ii) on what ground did she claim to suffer infringed personal rights and (iii) overall are there any personal rights damaged due to the breach of the sponsorship contract. This is important as the jurisdiction can be decided in different places when it comes to the financial losses and personal rights. The question is also relevant to decide whether Ms. Saro filed one claim or two claims - one for the infringement of her personal rights and one for the financial losses she suffered. It is important to determine the nature of the claim/claims and whether there are two claims or only one.

*The case is sufficiently clear and does not require further clarification. Also, see answer to CQ46.*

CQ50. Could you clarify what is meant by 'personal rights'?

*The case is sufficiently clear and does not require further clarification.*

CQ51. Regarding the claim of Ms. Saro, is there a distinction between the damages incurred as the result of the infringement upon her personal rights and the financial loss she suffered after the breach of her sponsorship contract? Are these distinct damages?

*See the answer to CQ46.*

CQ52. Please clarify where the damages were sought between Feline and Ms. Saro. Please clarify if the damages were heard in the same jurisdiction where Ms. Saro has commenced proceedings against Giulia, Ms. Marchetti and MyStream Europe?

*The case is sufficiently clear and does not require further clarification.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

CQ53. Please clarify the damages that Ms. Saro suffered from the termination of her sponsorship contract with Feline.

*The case is sufficiently clear and does not require further clarification.*

### Questions about Ms. Saro

CQ54. Did Ms. Saro file 2 separate claims for damages: one for infringement of her personal rights and one for the financial losses she suffered? If there are two separate claims - on what ground does she claim damages for infringement of her personal rights and which personal rights Ms Saro claims to be damaged - for instance Ms. Saro's reputation?

*See answer to CQ46.*

CQ55. Is Ms. Saro a tax resident of Slovenia or any other EU Member State, and if yes, which?

*Ms. Saro is a tax resident of Slovenia only.*

CQ56. Besides Feline SE, is Ms. Saro sponsored by sponsors from any other EU Member States, and if yes, what percentage of Ms. Saro's income do they represent?

*The case is sufficiently clear and does not require further clarification.*

CQ57. [...] We would like to know the location of the account where Ms. Saro receives the payments from her sponsorship contract with Feline SE.

*Ms. Saro receives the payments at the bank account in the country of her domicile.*

CQ58. In paragraph 7 of the case, it's stated that Ms. Saro is a Slovenian super giant slalom ski world champion and famous socialité. Since her job as an athlete can be carried out abroad, where can we understand the main site of her professional activity to be?

*The case is sufficiently clear and does not require further clarification.*

### Miscellaneous

CQ59. Where are the bank accounts of Ms. Saro, Giulia, Ms. Marchetti and MyStream Europe located?

*The case is sufficiently clear and does not require further clarification.*

CQ60. Under Slovenian law, given the fact that there is no distinction in the case like under Italian law, is there any difference between married and unmarried couples regarding the attribution of parental responsibility by law?

*The case is sufficiently clear and does not require further clarification.*

# PAX MOOT 2024

## REQUESTS FOR CLARIFICATIONS

CQ61. Should the defendants of the legal proceedings of Ms. Saro (Ms. Marchetti, Giulia and MyStream Europe) pursue the same line of defense or could they introduce different claims?

*The case is sufficiently clear and does not require further clarification.*

CQ62. Does question 3 contain 2 claims, so that the removal and the interim order are treated separately? Or is only the interim order to be examined, which automatically includes the removal?

*The case is sufficiently clear and does not require further clarification.*

CQ63. Is it also not permissible to make arguments on the content of national laws when determining the parties' domicile?

*The case is sufficiently clear and does not require further clarification. The rules of the competition do not allow arguments based on national law.*

CQ64. May we use national conflict of laws rules? If so, could you please provide a translation of them?

*It is prohibited to address both national substantive and private international law. It is sufficient for students to indicate which national law will have to be applied. For example, when the admissibility of the claim has to be assessed according to Chinese law, students shall just indicate that. Students do not need to delve into Chinese law.*

CQ65. What does Slovenian law say regarding domicile?

*The case is sufficiently clear and does not require further clarification. See answer to CQ63.*