

Milan Local Division



Unified Patent Court
Court of First Instance
Milan Local Division

Final Order n. 33090/2025

ACT_45469/2024

UPC CFI_472/2024

App. N. 3288772025

Applicant

DAINESE SPA

(Applicant in the main proceeding)

Respondents

ALPINESTARS S.p.A

(Defendant 1 in the main proceedings)

ALPINESTARS RESEARCH S.p.A.

(Defendant 2 in the main proceedings)

MOTOCARD BIKE, S.L.

(Defendant 6 in the main proceedings)

Summary of facts

1. In the proceedings N. 32576/2025 regarding the security for costs requested by Alpnestars spa, Alpinestars Research spa and Motocard Nike SL, on 16/7/2025 spa Dainese lodged an application pursuant to rule 262A RoP Requesting that:

1. the Exhibits, 2, 3 attached to the Plaintiff's Comments to the Request pursuant to R 158 RoP are not disclosed to Defendants 1, 2 and 6;
2. Defendants 1, 2 and 6 are allowed access only to the redacted versions of the Comments to the Request pursuant to R 158 RoP and to the related Exhibits attached herewith;
3. that the information contained in its application marked in grey are not disclosed to Defendants 1, 2 and 6. (together Dainese Confidential Information)

2. By the preliminary order filed on 16 July 2025, The Court requested the defendants to comment the application.

3. On 26 July 2025, Defendants responded to do not oppose the preservation of confidentiality of Exhibits 2 and 3. However, a review of these exhibits is necessary for a proper exercise of the right of defense, they requested that access to the unredacted versions of Exhibit 2 and Exhibit 3 of Claimant shall be granted at least to one individual from Defendants, in addition to their UPC representatives and any member of the same firm supporting them in this proceedings.

Therefore, the defendants requested the access to:

- Ms. Caterina Buccimazza, General Counsel of Defendant 1);
- Gualtiero Dragotti, Constanze Krenz, David Kleß, Massimiliano Tiberio, Joshua Fiedler and more in general the UPC representatives of the Defendants and any members of their firms supporting them in the proceedings.

Grounds for the order

4. This ruling complies with:

- the principles of flexibility, proportionality and fairness set out in Preamble 2 of the P.o.R. and the need to protect confidential information;
- the Rule n. 58 UPCA, the Rule N. 262A RoP, the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure;
- case law of the UPC on the protection of confidential information.

This order:

- takes into account that this is an application within an proceedings for security costs,, which requires -on the one hand- respect for confidential information and -on the other hand- respect for the principle of a fair trial in view of the urgency of the case, without prejudice to the hearing already scheduled for 15 October 2024.

Nature of information

5. Confidential information declared by the applicant (defendant in the proceedings on security for costs) regards Dainese's financial situation, not generally known and not available to third parties;

Indeed, Defendants agree with this nature: this point it is undisputed.

The Court observes that according to a non strict construction in accordance with the purpose of the law, Article 58 UPCA must be interpreted as meaning that it extends protection not only to trade secrets but also to confidential information.

Its disclosure to the market could have a detrimental effect on the applicant that outweighs the risks of litigation and could unfairly distort competition.

Confidentiality club

6. Dainese's claim for confidentiality is modulated by a request for limited access to the defendants UPC representatives.

7..The defendants have observed that the confidentiality request is too narrow and disproportionate. According to R. 262A R.o.P., the number of persons who have access to confidential information shall be no greater than necessary to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial.

8.The Court recalls the case law of the UPC on this matter and in particular:

“When deciding the application of the defendants to grant protection for the allegedly confidential information, the court has to weigh the right of a party to have unlimited access to the documents contained in the file, which guarantees its fundamental right to be heard, against the interest of the opposing party to have its confidential information protected. Both fundamental principles have to be balanced against each other on the instant facts of the particular case” (Düsseldorf Local Division App_6761/2024 related to the main proceedings ACT_578607/20239)

“R. 262A.6 RoP establishes with all desirable clarity as a ground rule of paramount importance that at least one natural person from each party and the respective lawyers or other representatives are to be granted access in order to ensure a fair trial. The provision therefore reflects the spirit of the trade secret directive, which also demands for access of at least :

-one natural person from each of the parties and

-their respective representatives in order

-to guarantee the fundamental right to a fair trial (see recital 25 and Art. 9 (2) of the trade secrets directive). This has been an express decision by the Member States of the European Union which is to be respected by the UPC (Art. 20, 24(1)(a) UPCA)” (Düsseldorf Local Division App_6761/2024 related to the main proceeding ACT_578607/20239);

-“When deciding upon the level of restriction, again the circumstances of the case are to be taken into consideration (...)

In a dispute revolving around technical aspects it is of fundamental importance that a party may have resort to technically qualified employees in order to exercise its right to be heard (Düsseldorf Local Division App App_6761/2024 related to the main proceeding ACT_578607/20239).

The case at hand

9. In the case at hand, The Court notes that the joint request of the three defendants is to grant access to only one employee.

On this point, the defendants' request and that of Dainese are not the same.

10. However, to comply with the principle of adversarial proceedings and the right to defence, the Court considers that at least one natural person should be included in the club. This is because the confidential information in question relates to technical accounting data requiring expertise beyond that of the legal and patent representatives.

The defendant's request is an extremely reasonable solution that balances the right to defence with the right to protect confidential information, since access is not being requested for three different individuals, one for each defendant. Access is requested jointly only for the same natural person for all three defendants. This minimises the number of people who can access the confidential data.

Therefore, balancing the opposite interests, the Court considers that confidential club shall include:

- a defendants's authorised representatives;
- b. -Ms. Caterina Buccimazza, General Counsel of Defendant 1)..

The right of defence must therefore be fully respected.

These considerations lead to the following assessments as regards the appealability and suspensive effect of this order.

Leave to appeal

11. Leave to appeal is granted.

Suspensive effect

12. So as not to create a *fait accompli*, the Court decides not to grant access for the further person named by the claimant- which is in dispute, before the time period for bringing an appeal and an appropriate time period to bring an application for suspensive effect before the Court of Appeal before it has elapsed.

Indeed, pursuant to Section 354 of the RoP, decisions and orders of the Court are directly enforceable from the date of their notification and an appeal, pursuant to Section 74 of the UPCA, has no suspensive effect unless the Court of Appeal decides otherwise. However, these provisions do not prevent the Court of First Instance from deciding that an action should be enforced at a future date.

Therefore, the Court considers it appropriate to defer the enforceability of this order after the period of 15 days for bringing an appeal under R. 220.2 RoP and an additional week, after having brought the appeal, during which an application for suspensive effect may be lodged, has elapsed (Düsseldorf Local Division UPC_CFI_355/2023).

This gives Dainese sufficient time to appeal and request suspensive effect, pursuant to Article 223 of the RoP.

In light of the above considerations

ORDER

1. the access to:

- (i) the Exhibits, 2, 3 attached to the Plaintiff's Comments to the Request pursuant to R 158 RoP;
- (ii) the unredacted versions of the Comments to the Request pursuant to R 158 RoP and to the related Exhibits attached herewith;
- (iii) the information contained in its application marked in grey (together Dainese Confidential Information)

containing confidential information which is hereby classified as confidential, shall be restricted from the Defendants n. 1, 2 and 6 side exclusively to the persons as follows:

-with immediate effect:

- Gualtiero Dragotti, Constanze Krenz, David Kleß, Massimiliano Tiberio, Joshua Fiedler and any members of their firms supporting them in the proceedings;

-After the period of 15 days for bringing an appeal under R. 220.2 RoP and an additional week after having brought the appeal, during which an application for suspensive effect may be lodged, has elapsed:

Ms. Caterina Buccimazza, General Counsel of Defendant 1);

2. The information referred to in paragraph 1 shall be treated as confidential by the persons referred will be treated confidentially in that paragraph;
3. Such information shall not be used or disclosed outside of these court proceedings, except to the extent that it has come to the knowledge of the receiving party outside of these proceedings, provided that the receiving party has obtained it on a non-confidential basis from a source other than the defendant or its affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with the defendant or its affiliates.
4. The foregoing persons shall also be under an obligation to the claimant to maintain the confidentiality of the information contained in the unredacted versions of the foregoing documents.
5. This obligation of confidentiality shall continue to apply after the termination of these proceeding;
6. in the event of a breach of this order the Court may impose a penalty pursuant to Rule No. 354(3) R.o.P.;
7. leave to appeal is hereby granted;
8. the costs relating this proceeding will be settled together with the costs of the main proceedings”

Issued in Milan, 26 August 2025

The judge rapporteur

Alima Zana

Order details

Order no. ORD_33090/2025 in ACTION NUMBER: ACT_45469/2024

UPC number: UPC_CFI_472/2024

Action type: Infringement Action

Related proceeding no. Application No.: 32887/2025

Application Type: APPLICATION_ROP262A

