



PAX Moot Court Competition – 2024 Petar Šarčević Round

MyStream is a social media platform that hosts videos about university social life, commentaries on classes, student associations, and related issues. It is based in Raleigh, North Carolina, and enjoys immense popularity among university students as well as young adults. In recent years, it has experienced rapid expansion in Europe by broadening its content scope, targeting a wider audience, actively inviting creators to join its platform, and establishing MyStream Europe, a subsidiary located in Tallinn, Estonia.

To support its growing number of creators, MyStream established the MyStream Creator Program (MySCP), which offers support to popular content creators and grants them access to various resources, including developer tools and monetization features such as ads and viewer memberships. European content creators who join MySCP enter into a partnership agreement with MyStream Europe and receive compensation for their videos through the accounts associated with their channels. Registration as a content creator is open to anyone aged fifteen or older. Individuals under the age of eighteen require parental consent to register.

Giulia, born on 26 April 2006, has both Slovenian and Italian nationalities. She has Tourette Syndrome, a neurodevelopmental disorder that causes her to exhibit abnormal and involuntary facial gestures, along with vocal tics. Her parents, Ms. Martina Marchetti (Italian national) and Mr. Jure Zupančič (Slovenian national), lived together with Giulia in Ljubljana, Slovenia until their separation in 2015. They were not married. Upon their separation, they mutually agreed that Giulia would live with her mother while maintaining regular contact with her father. They resolved this amicably without the involvement of lawyers and did not formalize any written agreements. In Slovenia, parents share the primary and equal responsibility for the care, upbringing, and development of their child by law. Giulia and her mother, Ms. Martina Marchetti, continued to reside in Ljubljana until February 2023 when they relocated to Trieste, Italy. Giulia's father consented to their move and chose to remain in Slovenia, where he currently resides.

Please note that, in Italy, joint parental responsibility is acquired by operation of law if parents are married. Unmarried parents do not automatically acquire parental responsibility by operation of law.

In March 2022, Giulia created a MyStream account where she uploaded some videos commenting on various local celebrities. Her videos quickly became viral because of her facial and vocal tics. MyStream Europe noticed her popularity and offered Giulia to join MySCP and make more videos about Slovenian celebrities. She agreed to the terms of the partner contract and her mother, Ms. Marchetti, digitally signed the contract on her behalf. The contract included a hyperlink to the general terms and conditions, with inter alia a jurisdiction clause in favour of Wake County courts in North Carolina (USA) and a choice of law in favour of the law of North Carolina (USA).

From this point, Giulia was actively supported by Ms. Marchetti to post more videos, which continued to amass viewers. As a result, she started receiving remuneration through the account linked to her

channel on the platform. Under both Slovenian and Italian law, this type of contract may validly be concluded if a minor has been duly represented by the holder(s) of parental responsibility.

In June 2022, Giulia's father, Mr. Jure Zupančič, married Ms. Lydia Saro, a Slovenian super giant slalom ski world champion and a famous socialite. Ms. Saro serves as a brand ambassador for the Austrian sportswear giant, Feline SE, a renowned producer of sports garments and shoes. According to the terms of her contract, Ms. Saro is obligated to exclusively wear Feline garments, footwear, and accessories during all her public appearances and must refrain from wearing any clothing, garments, footwear, or accessories displaying visible trademarks from other brands. Violations of these conditions will be considered a breach of the contract, potentially leading to the immediate termination of the agreement.

During her regular visits to her father, Giulia created candid videos featuring her father and Ms. Saro, along with her own brief commentary. She uploaded these videos to MyStream, which garnered significant viewership, partly due to Ms. Saro's prominent public profile. This trend continued for several months, resulting in the posting of approximately fifty videos on the MyStream platform. In a substantial number of these videos, Ms. Saro is seen wearing clothing from brands other than Feline, leading to Feline's decision to terminate the sponsorship contract and seek damages for the alleged breach of contract by Ms. Saro.

In response to this situation, in November 2023, Ms. Saro initiated legal proceedings by filing a lawsuit against Giulia, Ms. Marchetti, and MyStream Europe in the District Court in Ljubljana. She asserts that the respondents share joint liability for the damages incurred as a result of the infringement upon her personal rights and that the respondents share joint liability for the financial losses that she suffered due to the breach of her sponsorship contract.

In addition, Ms. Saro has requested the court to issue an order directing Giulia and MyStream to remove all videos featuring the claimant from Giulia's channel, along with an interim measure for the immediate removal of these videos while the proceedings for the final decision are pending.

In his capacity as a holder of parental responsibility, Mr. Zupančič has instituted legal proceedings within the same court against MyStream Europe. He maintains that the partner contract, concluded on Giulia's behalf, is invalid due to the absence of consent from both parties vested with parental responsibility. Alternatively, he is seeking the immediate termination of Giulia's contract with MyStream Europe, because of its deleterious impact on her psychological well-being and broader personal development.

The parties are asked to address the following matters:

1. Does the court seized have international jurisdiction to hear the case of Ms. Saro on the damages?
2. What is the applicable law on the claim for damages?
3. Does the court have international jurisdiction to order the removal of the videos depicting Ms. Saro uploaded by Giulia on MyStream, and to issue an interim order until the final judgment is given?
4. Does the court have international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe?
5. What is the applicable law to the validity or the termination of the contract?

Note:

- 1. Teams are required to base their memoranda on the facts of the case, with no arguments on the content of national laws.*
- 2. The Claimant represents Ms. Saro in the case for damages, and Mr. Zupančić in the case for the validity of the contract.*
- 3. The Defendant represents Giulia, Ms. Marchetti, and MyStream in the case for damages, and MyStream in the case for the validity of the contract.*
- 4. Both cases take place before the District Court of Ljubljana.*



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