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ON SCOOTERS AT THE EU COURT

On 24 September 2019 the General Court of the European Union (GCEU) handed down a major decision on the exclusive rights to the **shape of scooters** in the lawsuit between Italy's Piaggio & C. S.p.A. and China's Zhejiang Zhongneng Industry Group. This decision establishes criteria for orientation in the difficult balancing act between exclusive rights and the free market, in a particularly crowded and competitive sector such as that of scooters.

Piaggio, based on its prior design rights, three-dimensional trademark rights and copyright on the shape of the Vespa LX, shown below:



contested the validity of the following European Union design of Zhejiang ("Zhejiang design"):



The GCEU decision rejected Piaggio's request and confirmed the validity of the Zhejiang design, deeming that it meets the necessary validity requirements and that it does not infringe any prior right of Piaggio's.

According to the GCEU, in fact, the Zhejiang design is **new** in respect of the Vespa LX design, because there is no identity between the two scooter shapes, and it also has an **individual character**, because the general impression elicited by that design in the informed user is different from the impression elicited by the shape of the Vespa LX.



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To reach this conclusion, the GCEU asked itself if the Zhejiang design produced a feeling of *déjà vu* in the informed user with respect to the Vespa LX, concluding that while the Zhejiang design is dominated by basically angular lines, in the Vespa LX rounded lines predominate, thus conveying impressions to the informed user that are actually the opposite of those of the Zhejiang design.

According to the GCEU, the Zhejiang design does not violate Piaggio's *de facto trademark* on the Vespa shape either, deeming that the average consumer does not pay attention to the four characteristics of the shape which were indicated by Piaggio as distinctive (the X-shape between the rear fairing and the undersaddle; the inverted-omega shape between the undersaddle and the legshield; the arrow shape of the front shield; the teardrop-shaped shell), but instead will have a general overview, will perceive the style, the lines and the overall appearance that characterizes the shape of the Piaggio scooter, which is evidently different from the Zhejiang design, therefore excluding a risk of confusion.

Finally, the GCEU observed that the subject matter protected by Piaggio's copyright on the Vespa shape, unlike the trademark, is precisely the four characteristics indicated above, which embody the artistic and creative core of the 1946 Vespa in a form that overall has a rounded, feminine and vintage character. In the Zhejiang design these features are not present, however, nor can the form be said to possess a rounded, feminine and vintage character. Instead, the Zhejiang design is characterized by straight lines and angles, with the consequence that the impressions triggered by the Vespa shape and by the Zhejiang design are different.

This decision is significant because it delineates clear boundaries between the scope of protection of a design, of a three-dimensional trademark or of a copyright in the scooter sector, recognizing on the one hand the value of these rights and on the other hand the limits that allow competitors to enter the market with different products.

Piaggio can appeal against the decision of the GCEU before the Court of Justice of the European Union. We must therefore await the next move from Piaggio and, if a new ruling is issued on this interesting and delicate issue, we will be sure to provide our comments.