



## **Piaggio's intellectual property rights in the Vespa LX scooter have not been infringed**

*The Community design of the Chinese company Zhejiang's scooter remains registered*

In 2010, the Chinese company Zhejiang Zhongneng Industry Group obtained from the European Union Intellectual Property Office (EUIPO) the registration of the following Community design ('the Zhejiang scooter'):



In 2014, the Italian company Piaggio & C. filed an application with EUIPO for a declaration of invalidity of that design, claiming that it lacked novelty and individual character with respect to the design 'Vespa LX' ('the Vespa LX scooter': see images below), first made available in 2005 and incorporating the lines and shape characteristics of the famous motorcycle ('the Vespa'), an icon of Italian design since 1945. Piaggio also argued that the Vespa LX scooter was protected in Italy as an unregistered three-dimensional trademark and, in France and Italy, as a copyrighted intellectual work.



By decision of 2015, confirmed in 2018 following an administrative action by Piaggio, EUIPO rejected Piaggio's request for a declaration of invalidity.

**By today's judgment, the General Court dismisses Piaggio's action against the EUIPO decision and thus confirms its legality.**

The General Court points out, first of all, that a design is to be protected under the Community Design Regulation<sup>1</sup> only to the extent that it is new and has individual character. After finding that **Piaggio**, first, no longer invoked the lack of novelty of the Zhejiang scooter, and, secondly, **had chosen only the Vespa LX scooter** in relation to any previous presence in the design corpus, the Court notes that **EUIPO correctly concluded that the Zhejiang scooter and the Vespa LX scooter produce different overall impressions** and that the former has an individual character compared to the latter. Indeed, **while the Zhejiang scooter is dominated by substantially angular lines, the Vespa LX scooter favours rounded lines**. The shape characteristics of the Vespa LX scooter are also not found in the Zhejiang scooter, while the differences between them are many and significant and will not escape the attention of an **informed user**.

The Court then observes that, **on the basis of the evidence presented by Piaggio, EUIPO could not establish that the Zhejiang scooter had made use of the unregistered three-dimensional mark corresponding to the Vespa LX scooter**. In this regard, the Court points out that the relevant public likely to purchase scooters, who have a high level of attention, will perceive the style, lines and appearance that characterise the Vespa LX scooter as visually different from those of the Zhejiang scooter. Due to the different impressions of the two scooters, **there is no likelihood of confusion** on the part of the relevant public.

Finally, the Court **confirms EUIPO's analysis excluding infringement of Piaggio's copyright on the Vespa LX scooter, in Italy and France**. The Vespa LX scooter - protected by Italian and French copyright as a concrete expression of the artistic core of the original 'Vespa', insofar as it encompasses its shape characteristics and its specific overall appearance, endowed with a 'rounded, feminine and "vintage" character' - has not been the subject of unauthorised use in the Zhejiang scooter.

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**NOTE:** EU trade marks are valid for the entire territory of the EU and coexist with national trade marks. Applications for registration of an EU trade mark are addressed to EUIPO. Actions against its decisions may be brought before the General Court.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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<sup>1</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).