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Table of Contents

**Articles ..... 3**

    The battle of the ZEOs: Mahindra’s trademark gets  
    the green light.....4

**Ratio Decidendi..... 9**

**News Nuggets..... 14**





# Article

## The battle of the ZEOs: Mahindra's trademark gets the green light

*By* **Kriti Sood and Chhavi Dhawan**

The Single Judge of the Delhi High Court has rejected claims of trademark infringement and refused a plea seeking to restrain Mahindra Last Mile Mobility Ltd. from selling its electric vehicle under the trademark 'eZEO'. The dispute was over the trademarks 'EZIO' and 'eZEO' and highlights the importance of the test of passing off, brand identity, first in the market advantage and weight of established reputation. According to the authors of the article in this issue of IPR Amicus, the decision reinforces the principle that a mere registration of a trademark without actual use is not sufficient and that the house marks lead to greater exclusivity and prominence. The authors believe that the decision also draws attention to the more general ideas of trademark law, like striking a balance between protecting consumers and acknowledging legitimate use by long-standing market participants.

# The battle of the ZEOs: Mahindra's trademark gets the green light

By Kriti Sood and Chhavi Dhawan

A recent dispute between Gensol Electric Vehicles Pvt. Ltd. ('**Gensol**') and Mahindra Last Mile Mobility Ltd. ('**Mahindra**') over the trademarks 'EZIO' and 'eZEO' highlights the importance of the test of passing off, brand identity, first in the market advantage and weight of established reputation.

The Single Judge of the Delhi High Court on 13 January 2025, rejected Gensol's claims of trademark infringement and refused their plea seeking to restrain Mahindra from selling its Electric Vehicle under the trademark 'eZEO'.

## Plaintiff and defendant's case at a glance:

### *Plaintiff's case*

The Plaintiff, Gensol Electric Vehicles Pvt. Ltd., is a subsidiary of Gensol Engineering Limited and is a company incorporated in the year 2022. The Plaintiff aspires to accelerate the adoption of electric vehicles for a sustainable future and produces various types of electric vehicles including mobility fleets, cargo vehicles, personal mobility solutions, etc., to cater to varied urban mobility needs.

Around August 2022, the Plaintiff envisaged the development of an innovative electric vehicle that specifically caters to urban mobility. The Plaintiff's design team inceptioned the work and on the finalization of the designs, the mark 'EZIO' was coined and adopted for the vehicle. Moreover, with the assistance of the third party, the Plaintiff also created the logo, **'ezio'**.

Subsequently, the Plaintiff applied for the registration of word mark, 'EZIO' in Class 12 on '*proposed to be used*' basis on 30 June 2023. The Trade Marks Registry granted registration to the said mark on 19 May 2024. The said registration stands valid, subsisting and renewed till 30 June 2033.

The Plaintiff tested its first electric vehicle on the roads of Pune, Maharashtra, on 7 January 2024, after procuring requisite permissions from the Automotive Research Association of India ('ARAI') and design registration for its vehicle.

The Plaintiff came across a newspaper article (dated 9 September 2024) that featured the Defendant's announcement of the launch of its new commercial electric four-wheeler bearing the mark, 'eZEO' / '**eZEO**' on 18 September 2024.

On further perusal, the Plaintiff found that the Defendant announced the launch of its Electric Vehicle bearing the mark, 'eZEO' on its website on 3 October 2024. Following that, the Plaintiff came across the Defendant's trademark filings for the marks, 'ZEO' and 'eZEO' in Class 12, on '*proposed to be used*' basis, on 29 August 2024 and 10 September 2024, respectively.

This led to the dispute that resulted in the current ruling.

### *Contentions of the defendant*

The Defendant, Mahindra Last Mile Mobility Limited, is a subsidiary of Mahindra and Mahindra and is a public limited company that manufactures and sells vehicles. The Defendant has been in the market since the last 20 years through its parent company and at present holds 50% of the commercial electric vehicle market share.

Around April 2024, the Defendant envisaged the launch of a new commercial electric four-wheeler with high voltage architecture to amplify its efforts in electrifying last-mile transportation. Amid the development phase, the Defendant *bona fide* coined and adopted the marks, 'ZEO' / 'eZEO', being the acronym for 'Zero Emission Option', for the said vehicle. The Defendant claimed that the afore-mentioned marks were adopted after conducting a trademark search on the Trade

Marks Registry website in April 2024, and market searches, that did not reveal any conflicting marks in the electric vehicle sector.

The Defendant also asserted that along with the mark, 'Ezeo', they also use the house mark, 'Mahindra/  
**mahindra**' belonging to its parent company to indicate the source of its vehicles.

The Defendant announced the launch of its new commercial electric four-wheeler bearing the trademarks 'eZEO' / 'ZEO' on the World Electric Day i.e., on 9 September 2024, through press release and promotions on social media accounts, which was subsequently reported by the leading business newspapers.

The Defendant claimed to be the prior user of the mark, 'eZEO', given that the use of the said mark commenced on 9 September 2024, whereas on the other hand, the Defendant alleged that the Plaintiff did not even launch its vehicle in the market. The Defendant claimed to be the '*first in the market*' with respect to its trademarks.

The Defendant highlighted that the Plaintiff first disclosed its mark publicly a day before the institution of the present suit i.e., on 25 September 2024, and has not disclosed the date of

launch of its vehicles in the market, owing to the fact that the same is still in prototyping stage.

The Defendant claimed significant dissimilarity with the Plaintiff' vehicle in design, functionality and target audience. The Defendant argued that the Plaintiff' use is intended for a two door, three-wheeler electric passenger vehicle, whereas on the other hand, the Defendant' trademark is a four- wheeler electric commercial vehicle catering to dissimilar purposes and consumers. Given the same, the Defendant asserted that there was no possibility of confusion among consumer, traders, or the public.

Notwithstanding the same, given the present conflict, the Defendant proposed to use only the trademark, 'ZEO', without the letter 'e' and additionally add the house mark 'MAHINDRA' in respect of its vehicles.

## Analysis and decision

The Court called upon the parties to explore the possibility of settling the matter. At the hearing the Defendant proposed to modify its mark to <sup>mahindra</sup> **ZEO**, however, the same was not amenable to the Plaintiff.

The Court pronounced that the Defendant shall use the modified mark, <sup>mahindra</sup> **ZEO** and not 'eZEO'. The Court compared

the Plaintiff' mark, **'ezio'** with the Defendant' mark, as illustrated below:

PLAINTIFF'S TRADE MARK	DEFENDANT'S TRADE MARK
	

and observed that the Defendant dropped the letter, 'e' and added its house mark 'MAHINDRA' in the revised mark. The Court further noted that the earlier mark of the Defendant 'eZEO' was almost identical to the Plaintiff' registered mark 'EZIO', however, after the modifications made by the Defendant, the two marks cannot be said to be identical. The Court stated that it would have to examine whether or not the modified mark of the Defendant causes confusion in the public or results in an association with the Plaintiff' mark as the same cannot be an automatic presumption of confusion according to Section 29(3) read with Section 29 (2)(c) of the Trade Marks Act, 1999.

The Court relied upon the following cases, *F Hoffmann- La Roche v. Geoffrey Mannors & Co. Ltd.* [(1970) 2 SCC 716)], *Mount Mettur Pharmaceuticals Ltd v. Ortha Pharmaceutical Corporation* [1974 SCC OnLine Mad 64] and *CFA Institute v. Brickwork Finance Academy* [2020 SCC Online Del 2744)] and opined that

the rival marks are visually and phonetically dissimilar and do not cause any confusion among the public.

The Court placed reliance on the case *Ruston & Hornsby Ltd. v. Zamindara Engineering Co.* [(1969) 2 SCC 727] and *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel* [(2006) 8 SCC 726)], and held that in order to determine the likelihood of confusion, it is imperative to assess the market presence of the parties and their respective goodwill.

The Court held that the Plaintiff has not yet launched its vehicles bearing the trademark 'EZIO' in the market, owing to which it does not have goodwill with respect to its vehicles. On the contrary, the Defendant is a well-known player in the field of commercial electric vehicles and provided sales turnover for the financial year 2023- 2024 and promotional expenses in their reply.

The Court further held that the Defendant sells a variety of electric vehicles under a plethora of different marks in the market that uses the mark of the Defendant' parent company 'Mahindra/ **mahindra**' to indicate the Defendant' connection with the Mahindra Group, that are sold only through the Defendant' authorised dealers. Given the same, the Court opined that there cannot be any question pertaining to

the Defendant seeking to piggyback upon the goodwill and reputation of the Plaintiff or cause injury thereof.

The Court took into account the screenshots placed on record by the Defendant to substantiate its claim that it had conducted a trademark and Google Search before adopting the marks, 'ZEO/ eZEO', wherein no conflicting mark including the Plaintiff' mark 'EZIO' showed. Pursuant to the same, the Court opined that there is a remote possibility of the Defendant copying the mark of the Plaintiff given that the Plaintiff' mark was disclosed on 25 September 2024, in the public domain after the Defendant had announced the launch of its vehicles. The Court also considered the Defendant's justification of the adoption of the marks, 'ZEO/ eZEO' as an acronym of 'Zero Emission Option' to be *bona fide*. It was held that the present case was not where the Defendant had copied the Plaintiff' mark in order to ride upon the latter's goodwill and reputation.

The Court stated that both the parties in the case were engaged in the business of selling motor vehicles, i.e., high-end products. A consumer intending to purchase a motor vehicle will not make an impulsive decision unlike customers purchasing Fast Moving Consumer Goods (FMCG) at departmental stores. The customer intending to purchase a motor vehicle would visit the showroom of the car

manufacturer or its authorized dealer to inspect about the car or to take test drive of the vehicle before arriving on the decision to purchase. In the current scenario, the consumers can access a plethora of information at their fingertips and perform searches to verify and authenticate the same pertaining to the products they are willing to buy.

The Court opined that Plaintiff' vehicle is an electric passenger vehicle and on the other hand, the Defendant' vehicle is an electric commercial vehicle, given which their shape, size and configuration and prospective customers would be different.

The Court held that the name of the manufacturer becomes very important while purchasing a motor vehicle and an average consumer considers the model of motor vehicle along its manufacturer. It is a settled position in the automobile industry that a car model is recognised by the name of the model and the manufacturer, for instance, car models such as Mercedes E220, Toyota Camry, Honda Accord, Maruti SX4 that are not recognized without the name of their manufacturer, i.e., Mercedes, Toyota, Honda, or Maruti respectively. Therefore,

the name of the manufacturer is imperative for a consumer and becomes a distinguishing factor, given that the consumers consider the manufacturer's name and not only the car model.

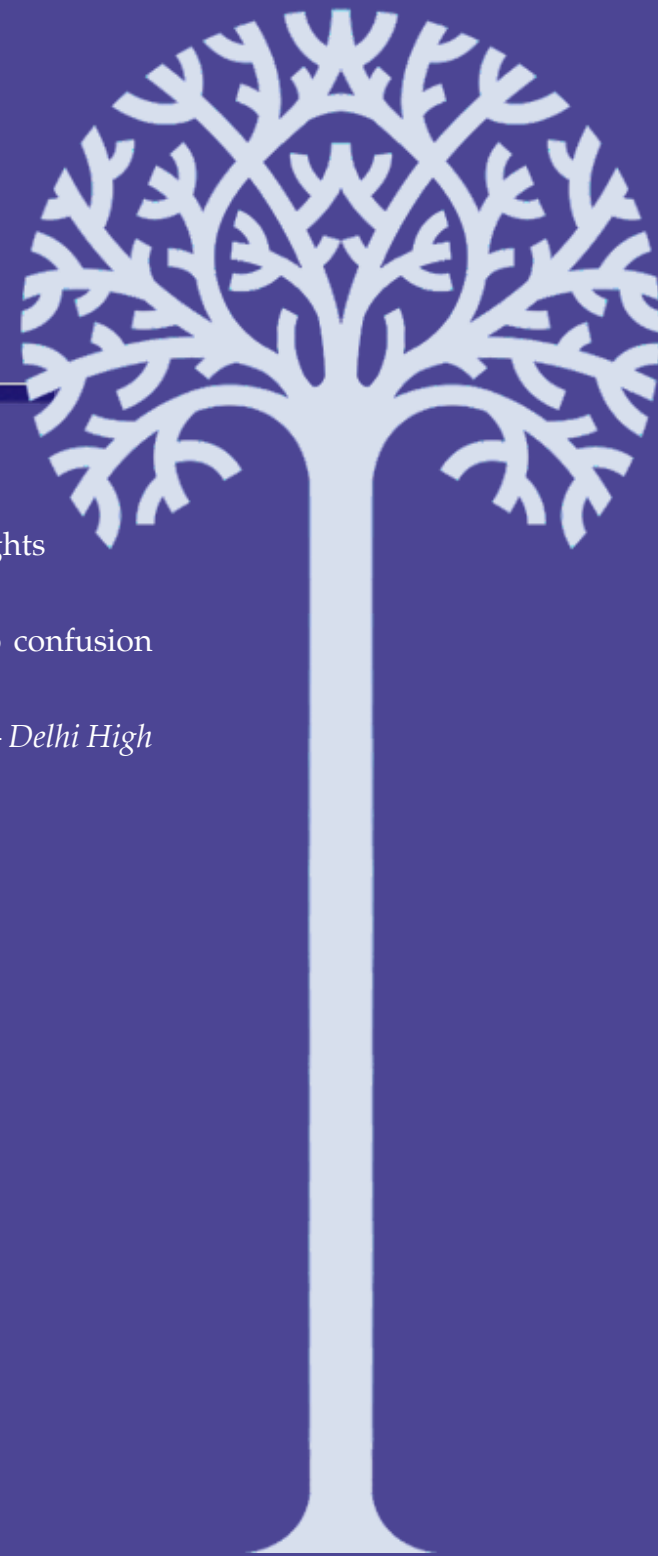
The Court observed that the addition of 'MAHINDRA' to the Defendant' mark 'ZEO' makes the mark distinctive and dissimilar from the mark of the Plaintiff, both structurally and phonetically.

## Conclusion

The decision of the Delhi High Court is an instructive example that reinforces the principle that a mere registration of a trademark without the actual use is not sufficient to claim exclusivity. This ruling also signifies that the house marks lead to greater exclusivity and prominence, thereby leading to minimal confusion. It also draws attention to the more general ideas of trademark law, like striking a balance between protecting consumers and acknowledging legitimate use by long-standing market participants.

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# Ratio Decidendi



- Patents – Appeal to High Court against order-in-review issued under Section 77(1)(f) when maintainable – *Madras High Court*
- Copyright in musical work – Second proviso to Section 17, incorporated in 2012 in respect of rights of music composers, is not applicable for agreements entered before 2012 – *Delhi High Court*
- Trademarks ‘BundlePe’ and ‘LatePe’ are not deceptively similar to the mark ‘PhonePe’ – No confusion possible – *Madras High Court*
- Trademarks – Incorporation of dominant feature, though in translated version, is infringement – *Delhi High Court*
- Trademarks – Use of identical registered marks when not prima facie fatal – *Delhi High Court*

## Patents – Appeal to High Court against order-in-review issued under Section 77(1)(f) when maintainable

The Madras High Court has observed that a statutory appellate remedy under Section 117-A of the Patents Act, 1970 is not provided for against an order-in-review issued under Section 77(1)(f). The Court in this regard noted that Section 117-A provides for appeals to the High Court against, *inter alia*, an order of the Controller issued only under the Sections mentioned in sub-section 2 of Section 117-A and that Section 77(1)(f) is absent there.

The High Court, however, went on to scrutinize the appeal on its merits here. It noted that the impugned order was issued in the nature of an order-in-original under Section 15 of the Patents Act, i.e., after a detailed re-examination of the patent application. The Court observed that the Controller had dealt with the review application as an original application for grant of patent, conducted a second full-fledged hearing and issued the impugned order in the nature of an order-in-original under Section 15, refusing grant of patent.

However, the appeal was found to be failing even under Sections 10(4), 10(5), and 3(k) of the Patents Act by the Court here. The

Court was of the view that the claimed invention did not disclose any workable criteria to arrive at the intended result, let alone the best mode of performing the invention; was ambiguous and failed to fairly base the claims on the disclosures in the complete specification; and did not possess any technical effect, much less any impact on hardware.

[*Caleb Suresh Motupalli v. Controller of Patents* – Judgement dated 29 January 2025 in C.M.A. (PT) No. 2 of 2024, Madras High Court]

## Copyright in musical work – Second proviso to Section 17, incorporated in 2012 in respect of rights of music composers, is not applicable for agreements entered before 2012

In a case involving alleged infringement of copyrights in a song of a cinematographic film, wherein the agreement on the basis of which rights were being claimed by the plaintiff-assignee was of the year 1980, the Delhi High Court has injuncted the defendant No. 1 (producer of second film) from using the song in question, in its film.

The question before the High Court was as to whether the copyright in the song ‘*En Iniya Pon Nilave*’ from the cinematograph film ‘*Moodu Pani*’, vested in the plaintiff, in view

of the assignment in its favour by the producer of the said movie, or as to whether the copyright of the same vests with a defendant No. 3, the music composer of the song in question and who assigned it to defendant No. 1.

The High Court in this regard rejected the contention of the music composer that in view of second proviso to Section 17, which was inserted by way of amendment in 2012, he shall have right with effect from 2012. As per the second proviso, the rights of a music composer of a song, which is part of a cinematograph film, are not affected. The Court noted that the present case pertained to work before the 2012 amendment, and therefore, the said amendment was not applicable. According to the Court, the amendment was prospective in nature and cannot be considered to operate in a retrospective manner.

Further, noting that the copyright in the song, which vests with a producer of the film, includes the literary work, i.e., the lyrics of the song, the Court observed that defendant no. 3, as the music composer, had no copyright over the lyrics and therefore, defendant no. 3 had no right to assign such rights in the lyrics to a third party. Also, the Court further rejected the contention that the song in question was in the nature of adaptation in terms of Section 14.

*[Saregama India Limited v. Vels Film International Limited – Judgement dated 30 January 2025 in CS(COMM) 38/2025, Delhi High Court]*

## Trademarks ‘BundlePe’ and ‘LatePe’ are not deceptively similar to the mark ‘PhonePe’ – No confusion possible

The Madras High Court has held that the marks ‘BundlePe’ and ‘LatePe’ are not deceptively similar to the plaintiff's registered mark ‘PhonePe’ and that they are thus not likely to cause consumer confusion. The Court was of the view that the use of ‘Pe’, a common term in the payment industry, along with the significant differences in the marks’ prefixes (‘Phone’ on one side and ‘Bundle’ and ‘Late’ on the other) undermines the plaintiff's argument of consumer confusion.

Further, it also observed that the defendant's focus on recharge and bill payment services was also different from the broader payment services provided by the plaintiff, which further minimizes the likelihood of confusion. Absence of any evidence of actual consumer confusion was also noted by the Court here.

In respect of uniqueness in the word ‘Pe’ and the plaintiff's contention of passing off, the Court was of the view that the term is not unique or distinctive, as same is commonly used in the payment services industry and is a transliteration of the word ‘Pay’, which is widely used by other prominent companies such as Google Pay, Paytm, and Apple Pay. According to the Court,

the argument of passing off was thus weak. Dismissing the petition, the Court also noted that the plaintiff failed to demonstrate that the mark 'PhonePe' was so uniquely associated with their specific range of services that any use of the word 'Pe' by others would cause a misrepresentation.



The Court also concluded that the use of 'BundlePe' and 'LatePe' does not dilute the distinctive character of the plaintiff's mark 'PhonePe', as the marks are not likely to cause confusion or weaken the public's association of 'PhonePe' with the plaintiff.

It may be noted that the High Court here also rejected the plaintiff's request for declaration of the mark 'PhonePe' as a well-known mark.

[*Phonepe Private Limited v. BundlePe Innovations Pvt. Ltd.* – Judgement dated 21 January 2025 in Civil Suit (COMM DIV) No.119 of 2023, Madras High Court]

## Trademarks – Incorporation of dominant feature, though in translated version, is infringement

The Delhi High Court has cancelled the registration of a mark which incorporated the dominant feature of another's trademark in its trademark, *albeit* a translated version in Hindi language.

Comparing the two marks, plaintiff's  and defendant's , the Court was of the view that the affinity between the two

marks was so close, that the use by the respondent would undoubtedly lead to confusion that the mark of the respondent in fact emanates from the petitioner, more so when the petitioner was the prior user.

Further, it was also noted that the petitioner was using the mark 'Rohit' not only as a trademark, but also as a trade name, which again constitutes as use of the trademark. The Defendant's mark was also found to be phonetically similar to the petitioner's registered mark, though in English language. The Court was thus of the view that the two competing marks were deceptively similar, and since both the parties were in similar trade and business, it was bound to cause confusion in the minds of the consumers. It was thus held that the adoption of an identical and similar trademark by the respondent would amount to infringement of the petitioner's trademark.

The High Court in this regard also observed that in a country like India, where the public at large is aware of multiple languages and understands the same, there exists all possibilities of confusion arising for a consumer when products are sold under a mark, especially, in the two of the most spoken languages in the country, that being, Hindi and English.

Cancelling the registration of the defendant's mark, the Court thus observed that the competing marks being identical, though in

different languages, are bound to be confused *qua* each other on account of imperfect recollection in multi-lingual society of India.

[*Anshul Vaish, Partner Rohit Wrappers v. Hari Om and Co. and Anr.* – Judgement dated 7 February 2025 in C.O. (COMM.IPD-TM) 86/2021, Delhi High Court]

### Trademarks – Use of identical registered marks when not *prima facie* fatal

In a case where the plaintiff was using the mark 'BROAD PEAK' while the defendant had set up an asset management company under the name 'Broad Peak Capital Advisors LLP', the Delhi High Court has rejected the grant of interim injunction in favour of the plaintiff.

The Court in this case found that that the defendant was honest and concurrent user of the impugned mark while the plaintiff failed to establish goodwill or reputation of a prior user of the mark in India, and that both the marks were registered. It was hence of the view that the defendants cannot be restrained from using the impugned mark at the interlocutory stage.

On confusion, the Court noted that the defendant's clients were either private equity investors investing in unlisted companies or unlisted companies who want to raise capital from private

equity investors, while plaintiff was in the business of investment management and buying and selling equities and other listed instruments of various Indian listed companies. The High Court was hence of the *prima facie* view that the businesses of the plaintiffs and the defendants were different and the possibility of the plaintiffs and the defendants having common customers or clients was remote. The Court also noted that both the plaintiffs and the defendants provided their services to sophisticated corporate entities, whose officials would be well-qualified in the field of business and finance. Therefore, according to the Court, it was highly unlikely that clients of such sophistication would get confused between the services offered by the plaintiffs and defendants.

It may be noted that while rejecting the application for interim relief, the High Court also noted that the plaintiffs may be a well-known name internationally, but that by itself cannot be a ground to assume that there has been a spillover of the reputation and goodwill of the plaintiffs' mark in India.

[*Broad Peak Investment Holdings Ltd. v. Broad Peak Capital Advisors LLP And Anr.* – Judgement dated 20 January 2025 in CS(COMM) 405/2024, Delhi High Court]



# News Nuggets

- OpenAI to face several Indian media outlets and music companies in copyright battle
- Footwear whether can be a 'work of applied art' – Germany's highest court to decide
- Trademark 'Peter England' declared a 'well-known trademark'
- Trademark disparagement by a subjective and biased ranking system
- India sets target of reaching 10,000 GI tags
- European Union disputes Chinese patent licensing measures

## OpenAI to face several Indian media outlets and music companies in copyright battle

Several Indian media outlets have filed a legal case against OpenAI, alleging unauthorized use of copyrighted content by ChatGPT. They argue that OpenAI's actions harm their copyright and profits, highlighting the lack of similar partnership deals in India. As per *Economic Times* news report available [here](#), the media outlets have told a Delhi court that they want to join an ongoing lawsuit against the ChatGPT creator, as they are worried that their news websites are being scraped to store and reproduce their work to users of the AI tool.

Further, as per another news report by *Economic Times*, as available [here](#), a group of India's top Bollywood music labels, from T-Series to Saregama and Sony, is seeking to join this copyright lawsuit against OpenAI. The music companies are concerned about 'unauthorised use of sound recordings' in training AI models that breaches their copyright.

## Footwear whether can be a 'work of applied art' – Germany's highest court to decide

Germany's Federal Court of Justice will have to decide on the future of the cork-soled sandals by Birkenstocks after three

lawsuits have been filed by the footwear manufacturer against alleged copycat competitors. As per a news report by *The Guardian*, available [here](#), Birkenstock's lawyers argue that the company's shoes should be considered 'works of applied art'. It is argued that copyright law gives to the sandal creators the exclusive rights of use, as it would to any artist or creator, whether of written works, computer programmes, or paintings. The footwear company in this regard observes that '*Under copyright law it has been recognised for decades that outstanding designs of everyday objects can also be protected by copyright*'.

## Trademark 'Peter England' declared a 'well-known trademark'

The Delhi High Court has declared the trademark 'Peter England' as a Well-known Trademark. As per *Economic Times* news report available [here](#), the High Court noted the mark's significant sales turnover, extensive network of 380 outlets across 180 cities, longstanding trademark registrations, endorsements by celebrities, various awards and recognitions, and substantial advertising efforts. 'Well-known trademark' is defined under Section 2(1)(zg) of the Trade Marks Act, 1999.

## Trademark disparagement by a subjective and biased ranking system

The Delhi High Court has granted *ad-interim* injunction in favour of Play Games24x7 to protect its intellectual property rights in its games RummyCircle and My11Circle. The Court hence restrained the defendant from adversely ranking these games based on a subjective and biased ranking system in the advertisement published by the defendant. As per *Economic Times* news report available [here](#), the Court observed that the rankings in advertisements *prima facie* unfairly undermined the reputation and goodwill of the trademark owner.

## India sets target of reaching 10,000 GI tags

The Indian government has set an ambitious target of reaching 10,000 Geographical Indication (GI) tags by 2030. As per *Live Mint* news report available [here](#), the move aims at closing the gap with China, which currently holds a significantly larger GI product portfolio. The news report also highlights that products bearing GI tags not only enjoy legal protection from imitation but also command premium prices in international markets due to their authenticity and quality assurance. It may be noted that GI products play a critical role in export promotion by

highlighting the unique qualities tied to specific regions, cultures, and production methods.

## European Union disputes Chinese patent licensing measures

The European Union has on 22 January 2025 requested for consultations with China, at the WTO, on the latter's certain patent licensing measures. EU disputes the legal instruments giving Chinese courts the authority to take, without the consent of both parties, decisions setting the conditions for worldwide licences for standard essential patents (SEPs), which are binding on both parties and enforceable in China, including with respect to non-Chinese SEPs. According to the European Union, this measure appears to curtail the ability of the parties, SEP owners and implementers, to enforce their rights and ensure the respect of obligations with respect to non-Chinese SEPs in the courts of the jurisdictions where the non-Chinese patents were granted. EU also alleges that this curtails the ability of the courts of the jurisdictions where the non-Chinese patents were granted to adjudicate actions relating to those patents in the respective jurisdictions. The measures are alleged to be in violation of various provisions of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights ('**TRIPS Agreement**').

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