

JAGUAR LAND ROVER V LANDWIND: ACTS OF UNFAIR COMPETITION AND COPYRIGHT INFRINGEMENT

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On 13 March 2019, the three-year court battle between British automotive manufacturer Jaguar Land Rover ("JLR") and Chinese automotive manufacturer Jiangling Motors Corporation ("Jiangling") resulted in a long-awaited victory for JLR and the wider automotive industry. The Beijing Chaoyang District People's Court ("Court") ruled at first instance that Jiangling's unauthorised use of the LandWind X7 ("LandWind") design, which is almost identical to the Range Rover Evoque ("Evoque"), a design enjoying certain influence in the market of the People's Republic of China ("China"), caused confusion amongst the public and damaged JLR's legitimate interests and business reputation in China in breach of article 6 of the Law against Unfair Competition ("AUC").

Whilst the Court reaffirmed the well-established position that a singular design could be the object of many intellectual property rights, parallel and independent of each other (a defence proposed by Jiangling), JLR lost on their separate claim of copyright infringement by failing to establish that the exterior design of the Evoque met the degree of originality and artistic creation required by art works protected under Copyright Law in China.

Nonetheless, a finding of unfair competition was sufficient for the Court to order that Jiangling (and LandWind joint venture partner, Beijing Dachang Lufeng Motors Limited) immediately stop all acts of unfair competition, including, manufacturing, displaying, offering for sale and selling the LandWind, and awarded damages totalling RMB 1.5 million (approximately USD\$223,065) to compensate JLR for its economic losses.

Background

Jiangling, first launched their LandWind sport utility vehicle at Guangzhou motor show in

November 2014 where the model drew attention not for its turbo-charged petrol engine but for its indisputable similarities to JLR's hugely popular Evoque (first exhibited at the same show four years prior) and retailing for a third of its starting price.

Prior to JLR commencing formal proceedings in China in 2016, they sought to rely on the protection of their Chinese design patent filed in 2011 for the Evoque design. Following an invalidation request from Jiangling, the patent re-examination board found that the novelty of the design had been destroyed by the public exhibition of the Evoque in 2010 at the very fair which launched the LandWind. The prior disclosure resulted in the design patent being invalidated for lack of novelty. According to Article 23 of the Patent Law, a design shall not be identical or similar to "an existing design that is known to the public both domestically and abroad before the date of application". Therefore, JLR lost a critical weapon in its intellectual property (IP) enforcement armoury.

However JLR was not alone in this respect with Jiangling filing and subsequently appealing the decision reached on its administrative action against the patent re-examination board's decision to invalidate Jiangling's design patent in China for the LandWind in 2013, with the Beijing Higher People's **Court** re-affirming that there were no significant differences between the LandWind and the earlier design of the Evoque.

Key Takeaways

Unfair Competition

Unfair Competition has been playing an increasing role in the protection of Intellectual Property where the product does not neatly fit under the rubric of copyright, patents or trade mark; proving an essential avenue for backup or blanket protection where other rights have fallen short. This is particularly prevalent in the car manufacturing industry where the Chinese market is flooded with domestic copycat companies seeking to exploit the limited design protection for foreign car models through competitive pricing strategies. JLR is not the only internationally renowned car manufacturer to have filed claims against alleged copycats, with Fiat Chrysler and Honda each failing to enforce their designs of the Panda car and CR-V vehicle respectively.

In order to protect a product design under the AUC a claimant must establish three elements, being that:

1. the claimant's product design has gained a certain influence (JLR successfully established long-standing use and promotion of the Evoque in China);

2. the defendant's product design is similar to the claimant's design (five unique design features of the Evoque were found to have been copied); and
3. the use of the Defendant's product design may confuse or mislead the relevant public.

This landmark decision suggests that the Chinese courts may in future adopt a broader concept of unfair competition from the previously high hurdles set for product reputation and likelihood of confusion. Nonetheless, the threshold for establishing a certain influence remains unclear. The 2018 amendments to the AUC neglected to define "certain influence" and whilst it may appear that the amendments have lowered the reputational burden on international car manufacturers, the impact of JLR's significant brand presence in China should not be underestimated. Therefore, to optimise a claim of unfair competition it is critical that rights owners maintain sufficient supporting evidence such as prior use, sales information, promotion and advertisement costs, designer's drawings and any relevant awards to demonstrate a certain influence in the Chinese market.

Copyright Infringement

Copyright infringement is notoriously hard for automotive manufacturers to establish due to the limited support for 3-D articles as copyright works. It is, in theory, possible under the criteria of an applied work of art. However, this requires evidence of both artistic quality of the car design as well as its utilitarian functional value. Despite the **Court's** finding of five unique characteristics of the Evoque, these specific expressions were insufficient to meet the high threshold of originality and ultimately JLR could not overcome the core issue that the inherent functionality of the product leads consumers to perceive the car as an industrial product rather than having distinct elements of artistic craftsmanship.

Early filing

The strongest protection against design infringers is undoubtedly provided by a registered design patent in China. Therefore, to avoid the uncertainty of relying on alternative claims of unfair competition and copyright, it is advisable to file all design applications as early as possible. Early filing enhances the stability of the design patent whilst providing protection against creators of similar designs who are attempting to file their application first to allow them to use the right against the original creator.

As expected, the battle is not over for JLR. Jiangling has since filed an appeal before the Beijing Intellectual Property **Court** on the grounds that the design of the LandWind is

significantly different from that of the Evoque and that there are various distinct factors such as brands, sales channels and prices, which interplay in the automotive sector so as to eliminate any confusion amongst the relevant public. Brand owners will be eager to see if the higher **court** will uphold this welcomed step towards China increasing the importance placed on combatting copycat designs both in the automotive space and beyond.

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Author(s)

Jamie Rowlands

Partner - London

 Email

jamie.rowlands@gowlingwlg.com

 Phone

+44 (0)20 7759 7891

 vCard

Jamie Rowlands