

Unfair Competition v. Passing Off

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Abstract

The enforcement of IP protection has become a most important practice for all the economic sectors so as to ensure proper research and development in the products and services which will further encourage the overall welfare of the companies and well as the customers. The companies tend to invest extensively in developing new technologies and products for the market and that investment results in a profit generating product which enhances the reputation of a company as well as demarcates it from other competitors. The developments derived through these R&D are to be protected through Intellectual Property Rights as the competitors may use these developments as their own without any investment whatsoever and gaining huge profits without any form of R&D. The ambit of IPR may be limited sometimes as observed in the Chinese market where many automakers are replicating the designs and features of various renowned automobile brands. In order to tackle this situation, the provisions of Unfair Competition provide alternative protection in order to protect market anomalies.

Keywords: Unfair Competition, Passing off, Jiangling Motors Corporation Limited, design patent

1. Facts of the Case

Jiangling Motors Corporation Limited (JMCL) is a China based automobile company. JMCL applied for a design patent for its product LandWind in November, 2013 which was duly granted in April, 2014. Later, an appeal by Jaguar- Land Rover (JLR) was filed with the Examination Board as the abovementioned design patent had evident resemblance with the design of one of JLR's product. The design patent by JMCL was held invalid. JMCL further appealed for reversing the order of the Examination Board which was accepted by the Beijing Intellectual Property Court, but later on, the order of the Court was also reversed in accordance with the appeal of JLR on March, 2019. JMCL was then directed to stop the manufacturing and sales of LandWind SUV and awarded damages to JLR totaling RMB 1.5 Million (Approx. USD \$223,065). Finally,

the matter was settled for good when the China Supreme People's Court rejected JMCL's appeal for removal of invalidation of their design patent and hence, JLR won the case and it was established that the design patent of JMCL was similar to the design of JLR's Evoque.

2. Analysis

JMCL's LandWind SUV's design had 5 similar elements which were similar to that of JLR's Evoque. The Evoque's design was earlier applied for patent in China, but it was rejected due to an exhibition of Evoque's design in an auto show. Because of the public display of the same, JLR faced a huge difficulty in enforcing their IP Right over their design. This paved the way for JMCL to use the said design to be applied in their car which will further enhance the physical appearance of LandWind and in addition creates a notion among the customers that they own a Land Rover. This practice of JMCL can be identified as passing off as such practices confuse or mislead the normal public and further damaging the goodwill of JLR as LandWind was priced at a fraction of a price as that of the Evoque. As, the JLR's hands were tied in respect of IP protection, the Law Against Unfair Competition (AUC) came into play. A very comprehensive defence was presented by the JMCL in respect of IP enforcement that a particular design could be the main source or focus of various intellectual property rights, parallel or independent of each other. The defence of JMCL was duly reaffirmed by the Court. Nonetheless, the provisions of the AUC came into play which gave clarity to JLR's claim and confirmed that the confusion created by the design of LandWind damaged JLR's legitimate interests and business reputation in China. In regards to unfair competition JLR established three major elements which helped their case:

- a) JLR, being an international company substantiated the Evoque's design to be in use for a longer period both in China and abroad;
- b) Identified specific features that were copied from Evoque in the LandWind;
- c) Proving the basis of confusion and misrepresentation to the general public.

3. Conclusion

IP infringement is very much prevalent in the automobile industry nowadays and it is equally hard for the manufacturers to make their case due to limited supported for 3-D articles as copyright works. An applied work of art may be relevant for the same, but

only in theory. The physical appearance of a car design having an aesthetic appeal along with its functionality and utility is a prerequisite of the applied art. In the above case, JLR successfully established the unique features which were copied, but those were not sufficient to establish the case of infringement. The common notion amongst the customers of automotive industry is the perception of a car as an industrial product rather than being a work of art. The strongest alternative for protection is a registered patent as it limits the possibilities of any type of infringement as well as provides a greater ambit of protection to the victim to establish their case. With the advent of Unfair Competition and a wider scope of protection under it, the intellectual property rights are also benefited from the same. It provides an alternate blanket protection to all the products are unable to fit under the extent of intellectual property rights and provides for a backup when the IP enforcement fell short. The evolution of IPR along with Unfair Competition is necessary not only in the automotive industry where there are many examples of exploitation of various famous designs of renowned companies, but also in different sectors such as pharmaceuticals, biotechnology, FMCG, etc. as different manufacturers are in violation of IP Rights in one way or the other. Many automakers in the past have accused the Chinese Automakers of making and selling the replicas of their best-selling models in the Chinese market and misleading the public by selling the duplicates at a fraction of a price. The victory of JLR over JMCL will further encourage other similar automakers to take appropriate actions against the duplicate-makers, hence encouraging a fair market scenario.