

Third Individual Writing - Industrial Design Paper

- **The student should analyze the trademark issues facing industrial design – BMW Mini-Cooper 4-door vs the Lifan 320**
 - BMW Sells its Mini-Cooper 4-door in the US.
 - Assume that the Chinese auto manufacturer Lifan was selling its SUV in the US.
 - If BMW were claiming that Lifan infringes their trademark design in the US, would they win?
 - Apply US Trademark Law in the context of sales / consumers in the U.S.
- **Format**
 - Exec Summary / Main Body / References / Figures where appropriate



Where will it all end? Knockoff cars!?!?



RAPHAEL ORLOVE on JALOPNIK — CHINESE CARS — 4/22/13 4:28pm

74,888 185

RECOMMENDED BY RAPHAEL ORLOVE

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These Are China's Most Shameless Knockoffs



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The Chinese auto industry is famous for its knockoffs. Hell, the whole Chinese manufacturing industry is famous for its knockoffs. These are the best clones from the recent 2013 Shanghai Auto Show.

Truth be told, Chinese carmakers are a lot better than they used to be about making knockoff designs. Back in 2006, it seemed like every week there was a new lawsuit from BMW or Fiat or whomever that their designs were being poached in the Wild Wild East.

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Chinese Mini Cooper Clone Revealed By Lifan, Takes Badge-Copying To New Level Of Crazy



But looking at this abomination, the DNA is obvious — like Lifan's engineering team took a Mini Cooper, cut it in half, slapped a few extra inches on the frame to give room for a second set of full-size doors, then welded the whole thing back together — into a four-door Mini Cooper. We're at a total loss for words here — after one look at this Mini Cooper clone we're wondering whether intellectual property even exists anymore. Then we remember that it's China and oh yeah, it actually doesn't. [\[The Tycho\]](#)

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traditionally warrants nothing more than a collective "meh" from the mainstream automotive media, but it certainly... [Read...](#)



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It's A Jeep! No, It's A Hummer! No, It's The Beijing Auto Works B60!

We really should have taken a flight out to Beijing this week for the auto show. Given Chinese automakers fantastic ability to copy flatter every... [Read...](#)

OK, we thought the [Beijing Auto Works B60](#) was a great example of the badge-copying madness out of this week's Beijing Motor Show. Until we saw the Lifan 320. Don't get us wrong, the Jeep is a great example — but the 320 takes the brand flattery dial and turns it up to "11." The moment you set eyes on that front grille, the line of the hood and that rear end, you get flashbacks to the "Italian Job," so instantaneously do you know from whence the design direction originates. In fact, it doesn't even look like Lifan tries to hide the copyright-infringing brand bastardization — it's almost as if they're saying "Look, it's not mini-sized anymore, so it's obviously not a MINI."

BMW “Mini Cooper” vs Lifan 320

BMW “Mini Cooper”



Lifan 320



Third Individual Writing - Industrial Design Paper

- **Remember the legal test!**
 - The plaintiff (the party seeking court assistance) must prove
 - 1. that it owns a valid trademark,
 - 2. that it has priority (its rights in the mark(s) are "senior" to the defendant's), and
 - 3. that the defendant's mark is likely to cause confusion in the minds of consumers about the source or sponsorship of the goods or services offered under the parties' marks.
 - When a plaintiff owns a federal trademark registration on the Principal Register, there is a legal presumption of the validity and ownership of the mark as well as of the exclusive right to use the mark nationwide on or in connection with the goods or services listed in the registration.
 - These presumptions may be overturned in the court proceedings if the defendant makes a persuasive argument.

- **Your paper must address:**
 - Issue and the Conclusion: Does BMW own a valid mark? Yes/No/Maybe
 - Does BMW have a registered Federal Trademark? (Hint: look at **TM 78781927**)
 - Does BMW have “priority” - Yes/No – explain who is the senior user? Who is the junior user?
 - Will Lifan cause confusion in the minds of consumers?
 - Work through the 8 factors in the Trademark test
 - Will BMW prevail?

USE IRAC writing wherever possible to EXPLAIN your reasoning!

Industrial Design Paper

- **This paper should continue to conform to the margin and executive summary of the first two papers**
- **The paper should continue to use APA format for references**
- **There should be at least 10 direct quotes in the paper. Facts and outside opinions MUST be referenced.**
 - Stick to Legitimate Sources
 - Newspapers (ex. LATimes, Arizona Republic)
 - Respectable Magazines (ex. BusinessWeek)
- **The paper should be long enough to adequately cover the assignment, but concise enough to hold the reader's attention.**
 - Please keep it around 2,500 words.

MAE 400 - INDUSTRIAL DESIGN - TRADEMARK PAPER GRADING FORM

Grader _____ Date _____

Student _____

Section						
Total	Excels	Good	Fair	Marginal	Unsatisfactory	
Ideas and Content						
	5	4.5	4	2	0	Identify Players
	5	4.5	4	2	0	Define what the Trademark dispute is about (trade dress - look and feel so similar as to registered mark as to cause confusion / i.e. pizza-hut-roof / as to source of goods)
	5	4.5	4	2	0	Call out what is Registered at the USPTO - downgrade score if digression into patents occurs. The should find perilously little actually registered with the USPTO
	5	4.5	4	2	0	Identify Senior and Junior User of the Registered TM - BMW should be called as the senior user
	4	3	2	1	0	Apply Trademark Test: Strength of Mark - not just how famous the BMW name is, but how famous the BMW x5 non-functional-shape IS
	4	3	2	1	0	Apply Trademark Test: Similarity of Mark - how similar the non-functional elements of the shape - grill, wheels, head lights, turn signals, taillights, exhaust, overall "look"
	4	3	2	1	0	Apply Trademark Test: Relatedness of Goods
	4	3	2	1	0	Apply Trademark Test: Marketing Channels Used
	4	3	2	1	0	Apply Trademark Test: Evidence of Confusion
	4	3	2	1	0	Apply Trademark Test: Intent to Confuse - this differs from intent to infringe - specifically is Shuanghuan trying to pass off the CEO as a BMW X5Clone
	4	3	2	1	0	Apply Trademark Test: Quality of Junior Users Product
	4	3	2	1	0	Apply Trademark Test: Sophistication of Buyers
	1	1	1	0.5	0	Conclusion (choice of winner should reflect factors discussed)
Section Total						
Organization						
	3	2.5	2	1	0	Proper Format
	3	2.5	2	1	0	Executive Summary
Section Total						
Style						
	3	2.5	2	1	0	Paper written in a "Professional Voice"
	3	2.5	2	1	0	Sentences "flow"
Section Total						
Conventions						
	5	4.5	4	2	0	Spelling
	5	4.5	4	2	0	Capitalization
	5	4.5	4	2	0	Grammar - Run On Sentences
	5	4.5	4	2	0	Grammar - Verb Tense
	5	4.5	4	2	0	Grammar - Noun (pluralization)
	5	4.5	4	2	0	Punctuation - commas, quotes, semicolons
	5	4.5	4	2	0	Citation Format
Section Total						
	100	84.5	69	34.5	0	

TOTAL POINTS : _____