Educational Legal Case Study

The Anatomy of Platform Liability Infringement

Platform Liability & Trademark Enforcement in E-Commerce

Based on Intellectual Property and Commercial Court, Civil Judgment 110 Min Shang Shang Zi No. 13

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Identifying the Parties

BURBERRY (Appellee)
The trademark owner.

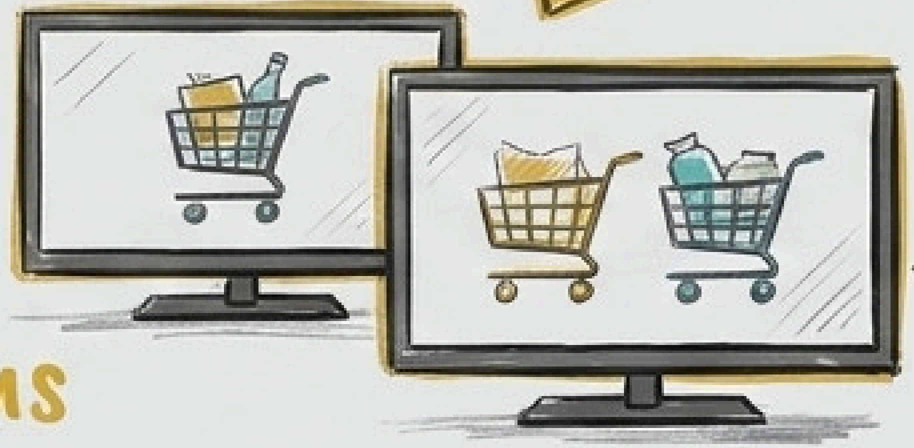
The Assets

BURBERRY

Trademarks
No. 01002226, 01049135, 01052398
(Watches, bags, leather goods)

The Supplier

Wan Shang Co., Ltd.
(Sourced and supplied the goods)



The Platforms

Sen Sen Co., Ltd. & Eastern Home Shopping & Leisure Co., Ltd.
(Sold the goods via Live TV & Online channels)

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Mapping the Core Legal Questions

1 **Duty of Care:** Did online and TV shopping platforms fulfill their obligation to verify authenticity?

2 **Executive Liability:** Are company directors personally liable for the tortious acts of their companies?

3 **Calculating Damages:** How are compensation amounts calculated under the Trademark Act, and what costs are deductible?

Footnote: Intellectual Property and Commercial Court (2021/2022)

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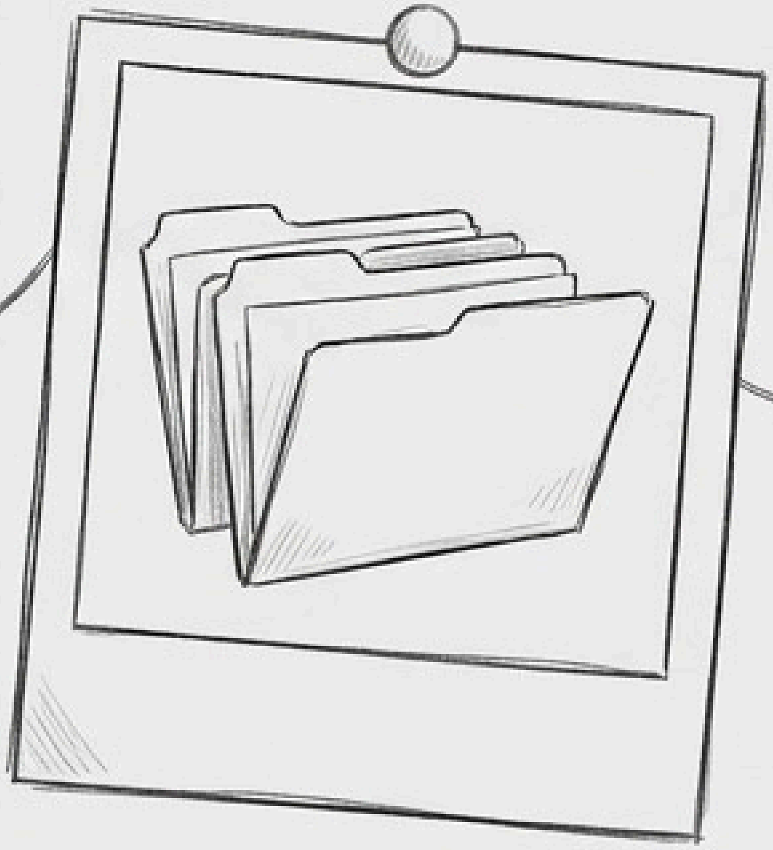
The Physical Evidence of Counterfeiting



Missing Documentation

The supplier (Wan Shang) claimed parallel imports but provided no legitimate authorization from the official manufacturer (Fossil) or matching import records.

Packaging Anomalies

Police seized massive quantities of empty packaging, mismatched boxes, and blank warranty cards not aligning with inventory.

High Defect Rates

115 watches were returned or repaired by consumers for severe defects (hands falling off, water damage, cracked glass).

Conclusion: Goods supplied to the platforms were legally deemed unauthorized, counterfeit products (Trademark Act §68 I).

VERIFIED INFRINGEMENT

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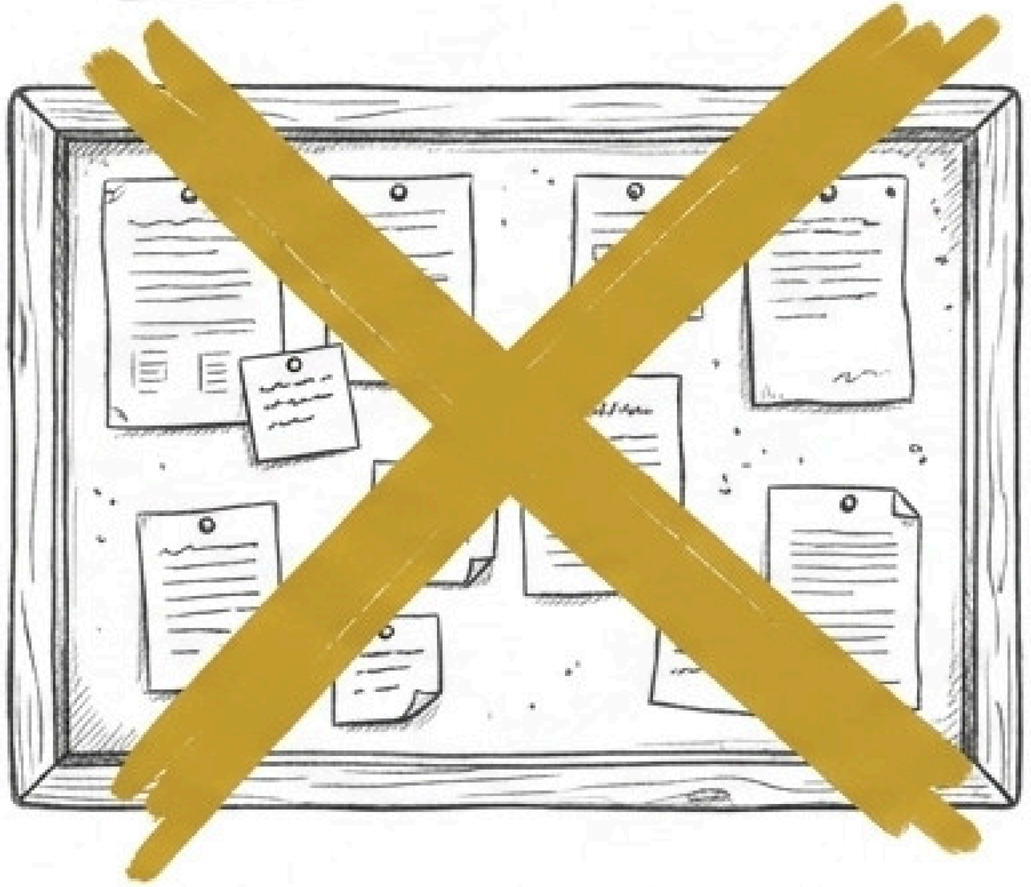
Deconstructing the Platform's Role

Defendant Argument



Passive Intermediary?

We are merely a passive B2B2C intermediary providing a sales channel with a simple "Notice and Take Down" obligation.

The Reality Check

Active Retailer!

- Platforms controlled marketing and broadcasting via strict contracts.
- Hosts actively promoted the goods on LIVE TV.
- Platforms collected money directly from consumers and issued invoices.
- Platforms handled returns, repairs, and customer service.

The court ruled the platforms were active, direct B2C Sellers, not just passive intermediaries.

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The Failure of the "Good Administrator"

Supplier submits goods.

The Broken Defense: We required a guarantee of authenticity, tax documents, and a signed affidavit.

Sample-Only Checks
Customs declarations were only checked for a few samples, not the actual bulk inventory sold.

Blind Trust
Platforms relied entirely on the supplier's self-issued affidavits without verifying with the trademark owner.

Lack of Scrutiny
No effort made to identify obvious errors in the paperwork provided.

Legal Finding: Relying solely on a supplier's formal affidavit for high-end luxury goods constitutes a negligent breach of the duty of care.

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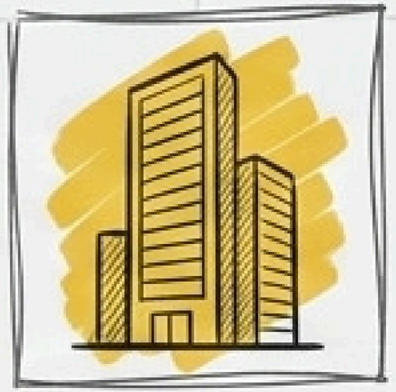
The Anatomy of Corporate Negligence

Burberry (Trademark Owner)

- Holds exclusive rights.
- Relies on secure, globally authorized supply chains (e.g., exclusive watch manufacturing by Fossil).

The Synthesis: Negligence is not defined by an inability to spot a fake visually, but by the failure of massive retail entities to implement rigorous verification processes proportionate to their business scale.



Platforms (Sen Sen / Eastern)

- Possess massive market power, resources, and consumer trust.
- Failed to utilize their capability to control risk.

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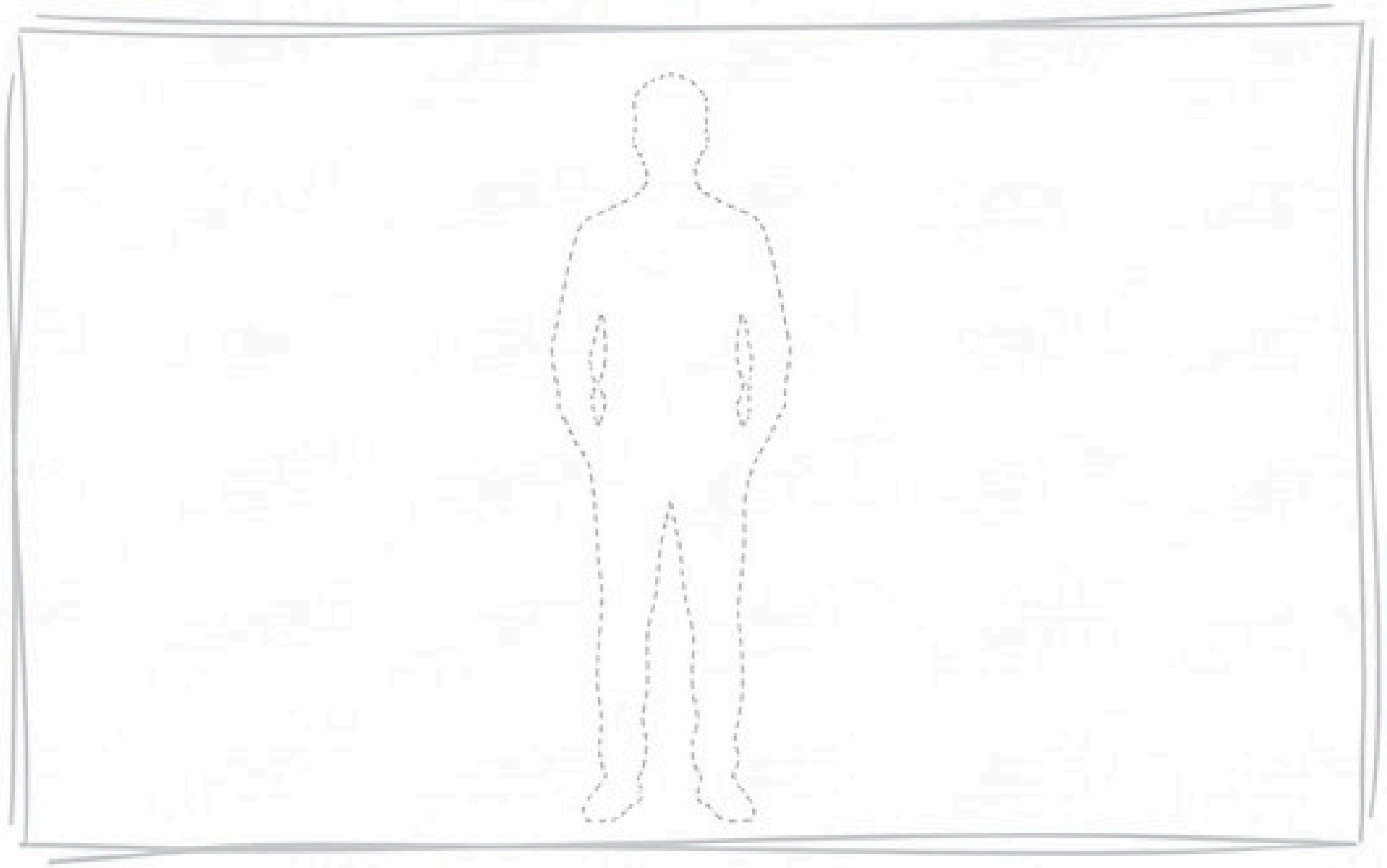
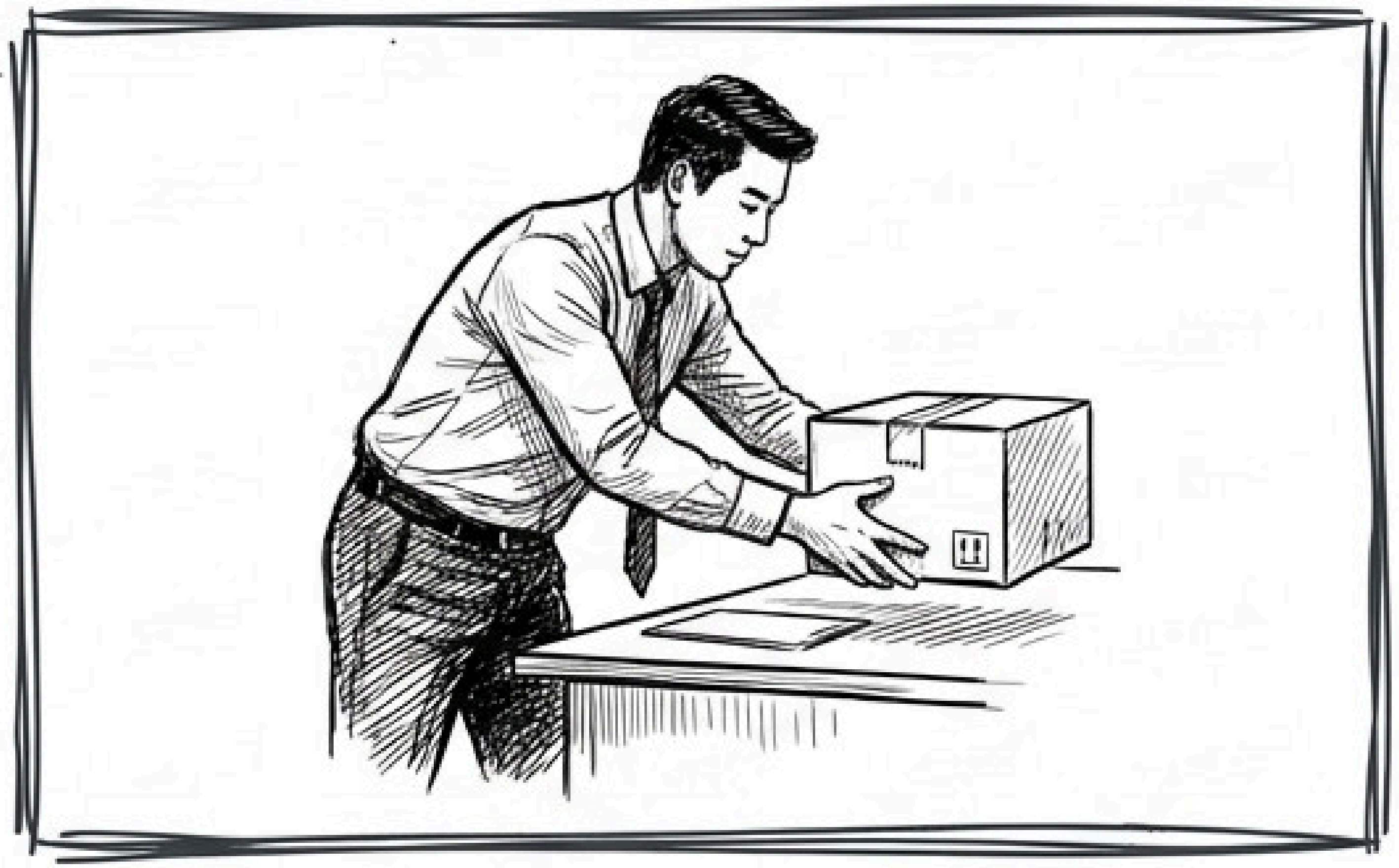
Piercing the Corporate Veil for Directors

The Rule: Company Act §23 II (Joint liability for directors executing business).





Nominal Directors (Escaped Liability)

Liu (Wan Shang), Liao (Sen Sen), Chen (Eastern).
The Plaintiff failed to prove they had actual intent, active participation in the infringement, or a direct hand in creating the flawed verification mechanisms.

Actual Operator (Held Liable)

Huang (Wan Shang).
Was the actual operator who sourced and supplied the counterfeit goods.

Takeaway: Liability requires proof of actual tortious behavior or direct failure in executing specific duties, not just a name on a corporate registry.

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The Mathematics of Restitution

Legal Basis:
Trademark Act §71 I (2)

[Damages] = [Sales Revenue] – [Direct Costs & Necessary Expenses]

Base Revenue Figures

Sen Sen: $22,491,933 TWD
Eastern: $20,204,014 TWD

The Lingering Question: What exactly counts as a deductible ‘Cost’ for a massive e-commerce platform?

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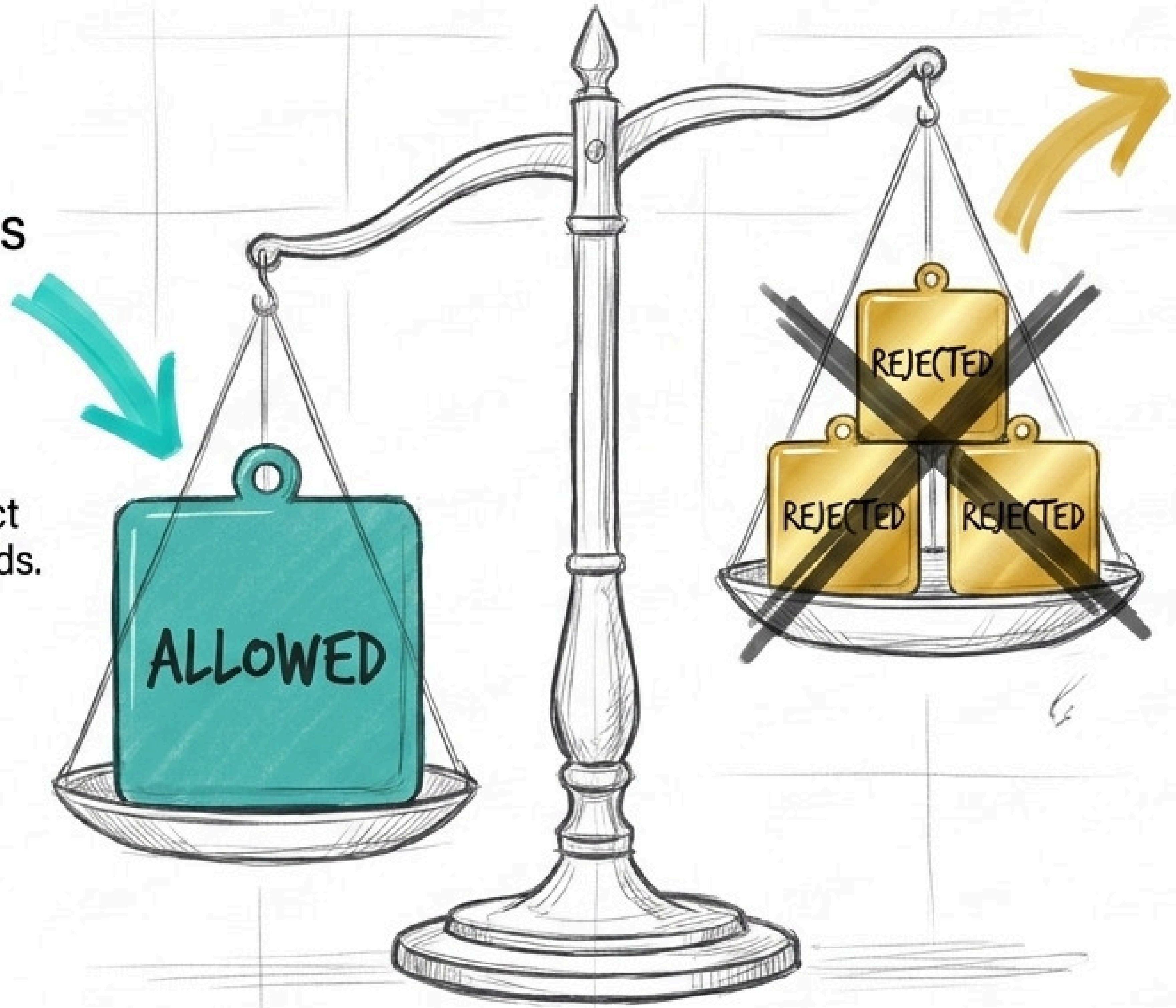
Defining Deductible Costs

Allowed Deductions (Direct Costs)

- **Supplier Cut:** The money actually paid out to the supplier (Wan Shang). **Reasoning:** This is a direct cost of acquiring the goods.



Rejected Deductions (Indirect Costs)

- **Installment Processing Fees:** Cost of offering consumer credit, unrelated to the IP.
- **Customer Service Payroll:** IP owners shouldn't subsidize the infringer's everyday staff.
- **Administrative & Listing Fees:** General company overhead.

Note:
A $3M TWD criminal restitution already paid by the supplier must be subtracted from the final civil damages to prevent double recovery.

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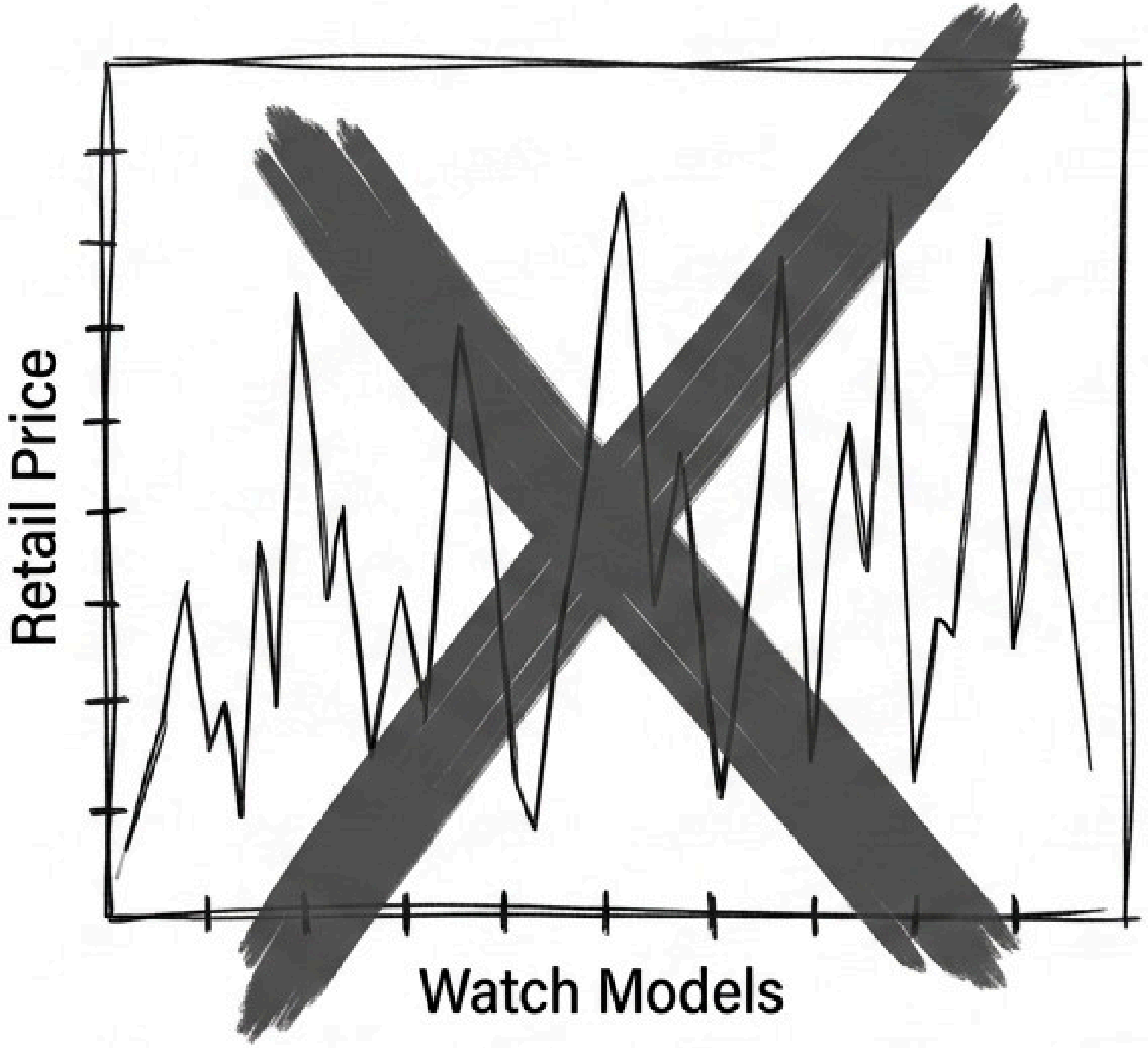
Rejecting the Multiplier Method



The Law:

Trademark Act §71 I (3) allows damages based on multiplying the retail price (up to 1,500x) when actual damages are hard to prove.

The Plaintiff's Ask:

Requested calculation using an average retail price multiplied by the number of units.

The Court's Rejection:

- This is an e-commerce case; exact sales volumes and revenues are clearly documented.
- Using an arbitrary average of different watch models artificially inflates the numbers.
- The goal of civil damages is compensation, not unjust enrichment. The actual profit method (§71 I 2) is far more accurate here.

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Can a Corporation Feel Pain?

The Claim:

EMOTIONAL DISTRESS?

- Plaintiff requested 10 Million TWD in non-property damages (spiritual/reputational harm) per Civil Code §195 I.

The Court's Reasoning:

1. Corporations are legal entities; they do not possess a physical body or emotions, hence they cannot suffer "spiritual pain." NO PHYSICAL BODY
2. Corporate "Goodwill" has a calculable economic value. ECONOMIC VALUE
3. If goodwill is damaged, the corporation must prove the exact financial loss (property damage) through rigorous accounting and valuation, not claim abstract non-property emotional distress.

MUST BE PROVEN WITH ACCOUNTING

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Restoring the Brand Name

The Legal Remedy:
Civil Code §195 I allows for "appropriate measures" to restore a damaged reputation.

The Context:
The infringement impacted a globally recognized brand and was heavily reported by major media.

The Physical Order:

- The infringers must publish the judgment title, case number, parties, and main text.
- Format requirement: Font size 10.
- Placement requirement: Front-page header of the United Daily News for 1 full day.

The Goal:
To formally and publicly clear Burberry's name at the infringers' expense.

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The Architecture of Liability

Inauthentic Solidary Liability

Multiple parties owe the same debt for different legal reasons.
If one pays, the others are released from that portion.

Group 1 (Platform Sales)

Sen Sen & Eastern are jointly liable with Wan Shang for their respective platform sales due to joint tortious acts (Negligence + Infringement)

Group 2 (Operations)

Huang is jointly liable with Wan Shang due to actual execution of business.

The Injunction: Wan Shang, Huang, and Eastern are permanently **barred from selling unauthorized identical or similar** trademarked goods.

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Key Precedents & Strategic Implications

Platforms Are Sellers, Not Spectators

B2C platforms cannot hide behind 'Notice & Takedown' safe harbors if they control marketing, payments, and customer service. They bear a direct, active duty of care.

"Paper Promises" Are Legally Insufficient

Relying solely on supplier affidavits or sample customs declarations is legally negligent. High-volume platforms must verify authentic origin at scale.

Strict Boundaries on Damage Calculations

General operating expenses (like customer service) cannot be deducted from infringement profits. Furthermore, corporate reputational harm must be proven with hard financial data, not claimed as abstract emotional distress.

Case Closed. (Reference: Civil Judgment 110 Min Shang Shan

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