

The ZOBR Dispute: Defining Trademark Use



A Visual Case Study on Infringement vs. Product Specification

The Appellant



- ✓ Role: Trademark Owner
- ✓ Registered Mark: "Zobr" (Reg. No. 02089150)
- ✓ Protected Classes: 12, 35, 37 (Footwear, retail services)
- ✓ Market Reality: Focuses exclusively on shoe products; does not manufacture tires.

The Appellee



- ✓ Role: Alleged Infringer (He-Kuan & He-De Co.)
- ✓ Registered Mark: "Foal and device" (Reg. No. 01774392)
- ✓ Market Reality: Importer and retailer of tires.

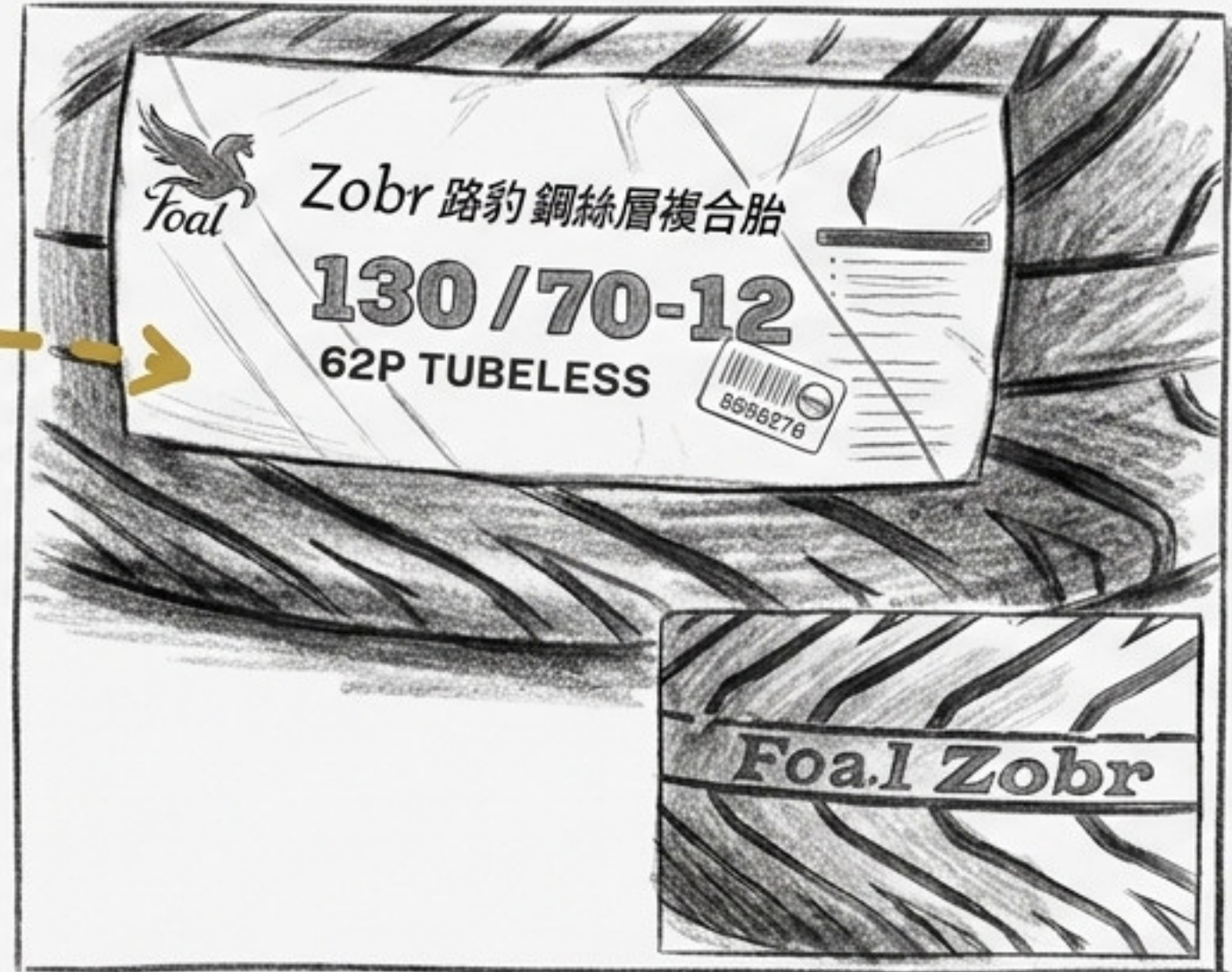
The Disputed Product

DIGITAL EVIDENCE



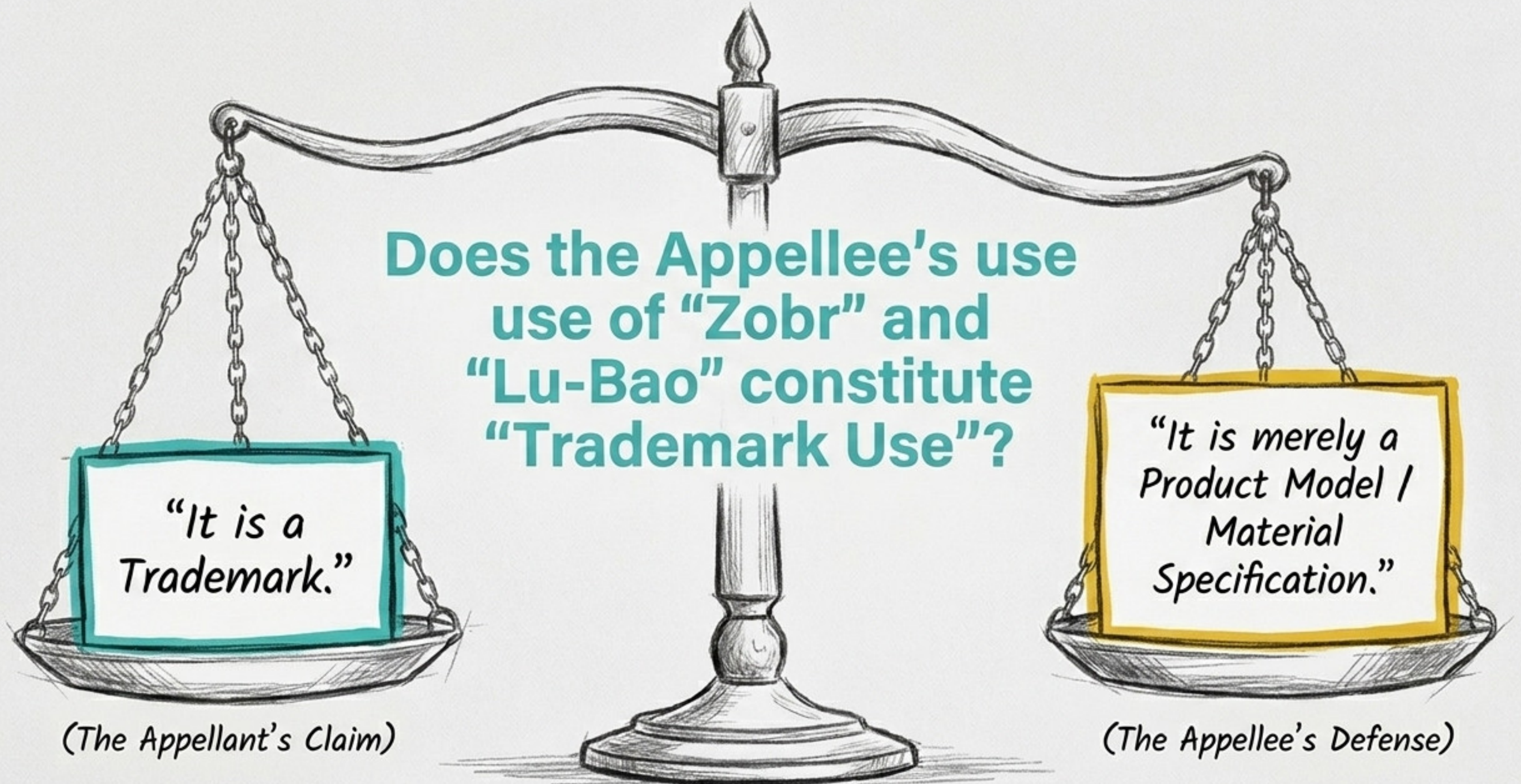
Appellee marketed the product on Facebook as the "Zobr Lu-Bao Steel Wire Composite Tire".

PHYSICAL EVIDENCE



- Tires imported from China featured "Zobr" pre-printed.
- Appellee appended "Lu-Bao" (an inversion of a famous auto brand) and specification text.

The Crux of the Matter



Defining “Trademark Use”

Trademark Act, Article 5, Paragraph 1 & 2



Marketing Purpose: Used intentionally to market goods or services.



Active Display: A positive action to mark the symbol on commercial documents or advertisements (including digital/network media).



Objective Recognition: Objectively sufficient to make relevant consumers recognize it as a brand identifier, serving to indicate the source.

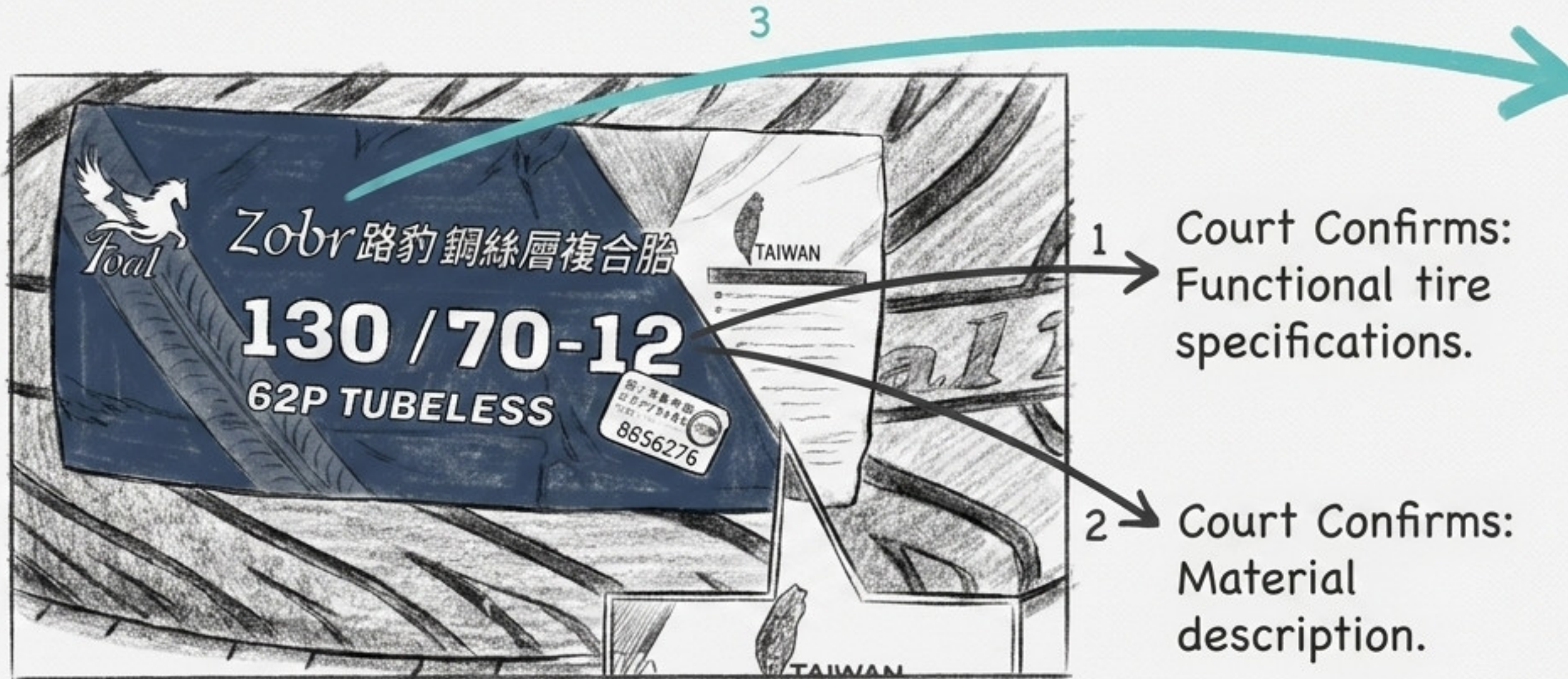
The Appellee's Defense Playbook

Co-existence:
"We prominently displayed our own registered Foal trademark directly on the tire."

Descriptive Use:
"Zobr Lu-Bao merely indicates the material and specific model of the steel wire composite tire."

Customs Proof:
"Official import declarations list Zobr strictly under the Model category, not under Brand."

Court Rebuttal I: Visual Impression vs. Specification



Court Rules:
NO connection to
product performance,
material, or
characteristics.

Because 'Zobr' has no
intrinsic meaning, the
consumer's visual
impression is that it
functions as a
trademark.

Court Rebuttal II: The Athlete Jersey Analogy

The Analogy:



Using multiple trademarks on a single product is common commercial practice.

The Reality:



The presence of a primary, registered mark ('Foal') does not magically negate the trademark use of a secondary mark ('Zobr').

Co-existence does not equal immunity.

Court Rebuttal III: Market Reality Over Paperwork

The Paperwork

Listed as 'Brand: FOAL' and 'Model: ZOBR'.

CUSTOMS DECLARATION

Prezentarea prezenta Declarație de
 Import este un document obligatoriu care trebuie
 prezentat la momentul prezentării mărfii.

Barcode

Regimul de import/export		Regimul de import/export	
Sistemul de import/export		Sistemul de import/export	
Sistemul de import/export		Sistemul de import/export	
Sistemul de import/export		Sistemul de import/export	
Sistemul de import/export		Sistemul de import/export	

Descrierea bunurilor				
Sl.	Descrierea	Unitate de măsură	Valoare	Preț
1	Import de bunuri de import	KG	1000	10000

Importul este: ☐ în valoare ☐ în cantitate

OFFICIAL USE ONLY		This form is to be used by the importer to declare the value of the goods imported. It must be filled out by the importer and submitted to the customs authorities. It is not to be used for the purpose of claiming a refund of duty.	
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Declarația este valabilă pentru:

Importul este:

Importul este:

Importul este:

Import/Export Form

Administrative categorization is not the final determining factor.

VERSUS



The Market Reality

Appellee used 'Zobr Lu-Bao' prominently in marketing copy and as standalone identifiers.



How the mark is actually presented to the consumer dictates whether it is a trademark.

The Final Judgment



- The Court officially recognized the Appellee's actions as **trademark use** for marketing purposes, constituting infringement.
- Appellee must bear 1/2 of the litigation costs.
- The Appellees are legally required to append a specific, **equally-proportioned disclaimer** to all their products, packaging, and webpages.

“This product is unrelated to the R.O.C. Registered Trademarks No. 02089150 and 02091778 belonging to Huang.”

Key Takeaways for IP Practice

1. Placement vs. Function

Words lacking a descriptive relationship to product mechanics (like 'Zobr') will likely be deemed trademarks, regardless of where they are squeezed onto a label alongside actual specifications.

2. Co-existence is Not a Shield

Applying your own legally registered trademark alongside a infringing mark on the same product does not immunize you from infringement claims (The Multiple Trademark Doctrine).

3. Market Reality Dictates 'Use'

Courts prioritize objective consumer impressions in actual marketing channels (e.g., Facebook ads) over how items are categorized on administrative, back-office forms (e.g., Customs documents).