

TRADEMARK INFRINGEMENT OR FAIR USE?

The Landmark Dilemma: Real Estate Marketing & IP Law

An Educational Analysis of Trademark Act
Limits on Geographical Descriptors

Source: Taiwan Intellectual Property and Commercial Court, 2022 Min
Shang Shang Zi No. 14 Civil Judgment (Decided: February 1, 2023)





Descriptive Fair Use (Trademark Act, Art. 36)

Using a name purely to describe a physical location or living circle.



Trademark Infringement (Trademark Act, Art. 68)

Unauthorized use causing consumer confusion and exploiting brand goodwill.

THE CORE QUESTION: Can a real estate developer freely use another entity's registered trademark as a geographical description to market their own project?

THE PLAINTIFF'S INTELLECTUAL PROPERTY

QINMEI TIAN DI

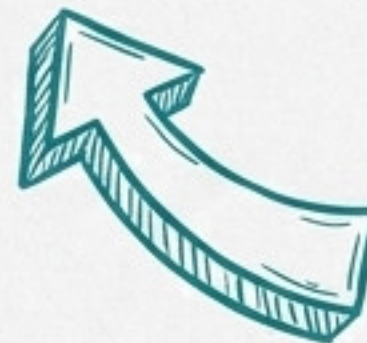
Reg. No. 01872487
(Class 36: Real Estate Leasing,
Sales, Management)

QINMEI TIAN DI

Reg. No. 01872723
(Class 42: Architectural Design,
Interior Design)

**QINMEI GREEN
PARKWAY**

Reg. No. 01872485
(Class 36: Real Estate
Leasing, Sales)



The name "QINMEI" is recognized under the Fair Trade Act as a highly famous corporate brand with immense market goodwill.

THE MARKETING CAMPAIGN



The Infringing Act

The Defendant (APEX Construction) used these identical or highly similar phrases to market their own real estate units under the guise of 'location description'.

THE LEGAL BATTLEGROUND

PLAINTIFF'S CLAIM (Infringement)



QINMEI is a famous, protected corporate entity.

Identical/similar marks were used to sell identical services (Real Estate).

The marketing causes severe Likelihood of Confusion among the public.

DEFENDANT'S DEFENSE (Fair Use)

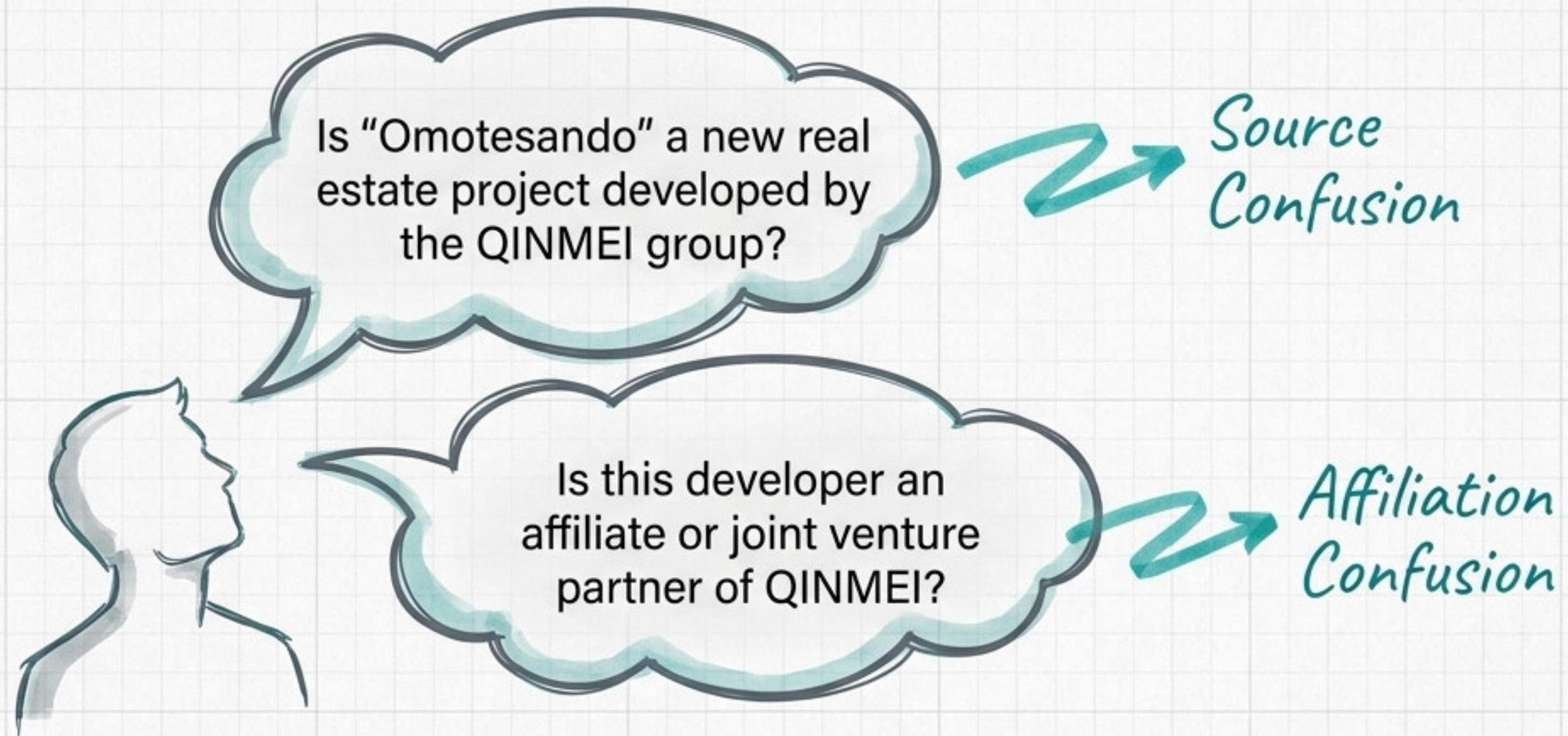


The project is 1.1km away (3-4 mins by car). Words merely describe the geographical "living circle".

Not used as a trademark to indicate the source of goods.

Ads clearly included the actual developer's name (APEX Construction), preventing any confusion.

RULING I: ESTABLISHING CONFUSION (Art. 68)



The Court ruled that visual, conceptual, and phonetic similarities, combined with identical services (Real Estate), confirm a Likelihood of Confusion. The ordinary consumer is misled.

RULING II: REJECTING FAIR USE - VISUAL IMPACT (Art. 36)

Core Visual Axis:

The trademark is used as the headline across all 5 pages, overpowering the actual project name.

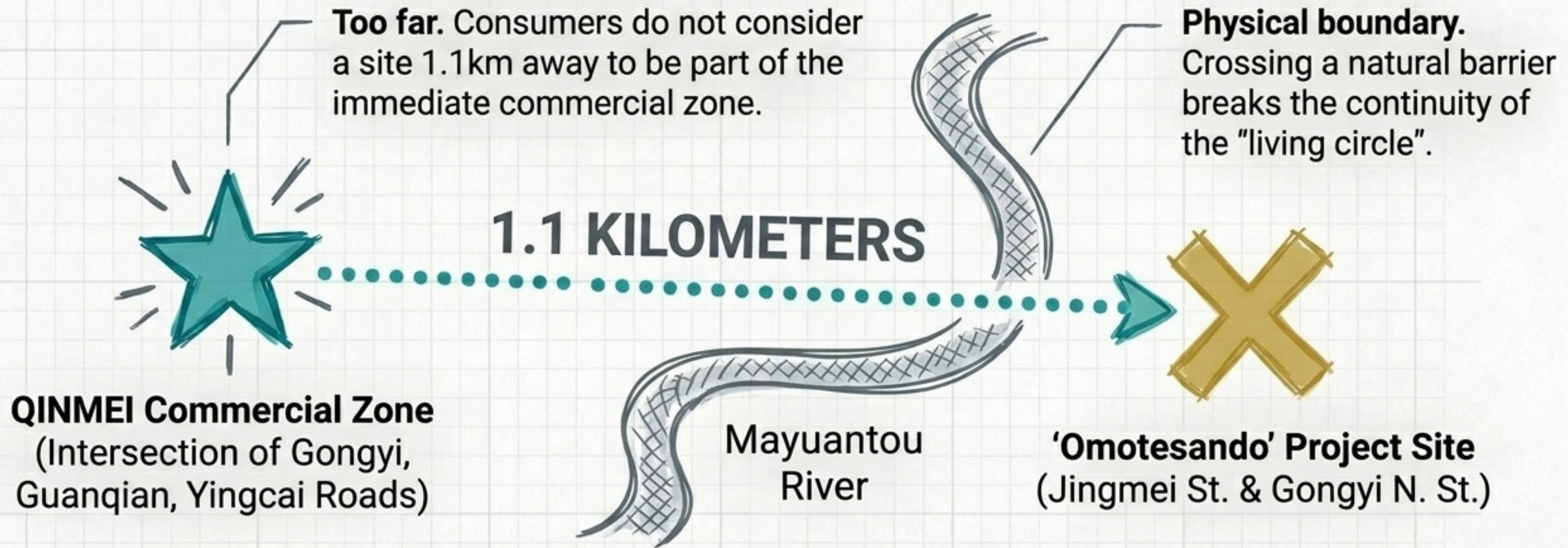


Hidden Identity:

True developer name buried in tiny font and only appears on the first page.

'Descriptive fair use' fails when the design intentionally prioritizes a competitor's trademark to create visual shock and hijack brand power.

RULING III: REJECTING FAIR USE - GEOGRAPHIC REALITY



THERE WAS NO LEGITIMATE NECESSITY TO USE THE MARK AS A LOCATION DESCRIPTOR.

THE VERDICT & FINANCIAL CALCULATION



Injunction Granted. Defendant strictly prohibited from using identical/similar marks in any related commercial materials or ads.

Estimated Project Revenue (56 units @ ~15M TWD) = **> 840,000,000 TWD**



Industry Standard Net Profit Margin (17%) = **> 142,800,000 TWD**



Court Awarded Damages =
1,000,000 TWD
(+ 5% annual interest).

The Plaintiff conservatively requested 1 Million TWD. The Court granted it in full, dismissing the Defendant's claim that the penalty was "too high" given their massive illicit profit margins.

SUMMARY + STRATEGIC INSIGHTS



Hierarchy Matters.

If a competitor's trademark is rendered larger, bolder, or more centrally than your own brand name, courts view it as bad-faith trademark infringement, not "fair use description".



Accuracy over Aspiration.

Claiming a landmark as a "geographical descriptor" fails if the physical distance (e.g., 1.1km) and natural boundaries (e.g., rivers) contradict standard consumer perception of the area.



Digital Footprint.

Naming social media accounts using a competitor's trademark while deliberately hiding your actual corporate identity constitutes a clear likelihood of confusion.

Intellectual Property must be respected. 'Location' is not a free pass to hijack brand goodwill.