

THE “AMBER MADAM” TRADEMARK DISPUTE

E-Commerce Searchability vs. Trademark Infringement



An Educational Legal Case Study

Source: Intellectual Property and Commercial Court Criminal Judgment 2022 Xing Zhi Shang Yi Zi No. 21

Judgment Date: 2022 (Offense Period: October - November 2020)

THE PARTIES INVOLVED



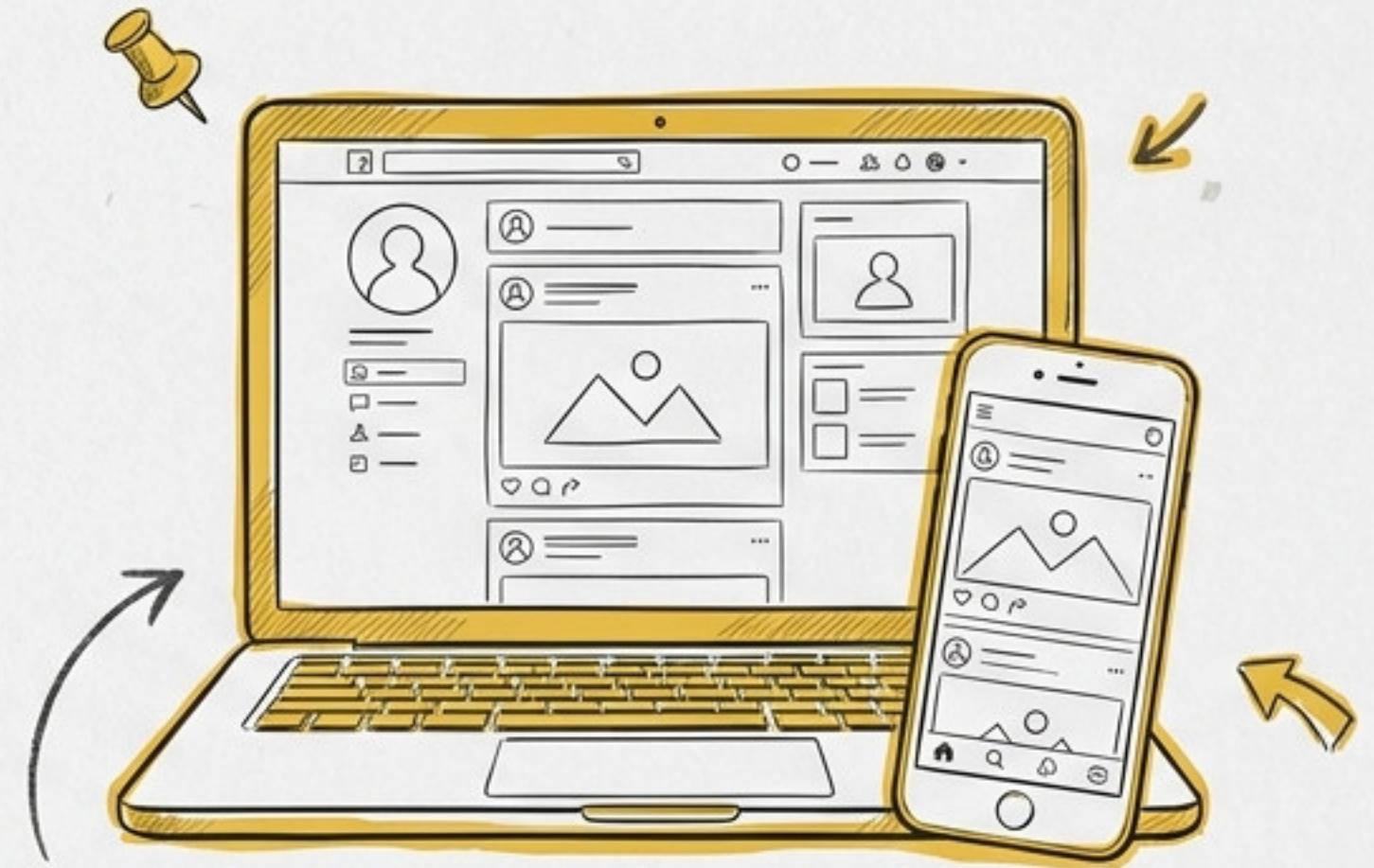
Role: THE PLAINTIFF

Identity: Official Brand Owner

Assets: Registered Trademarks
"AMBER MADAM" & "HU PO TAI TAI"

Industry: Fashion Retail & Apparel

VS

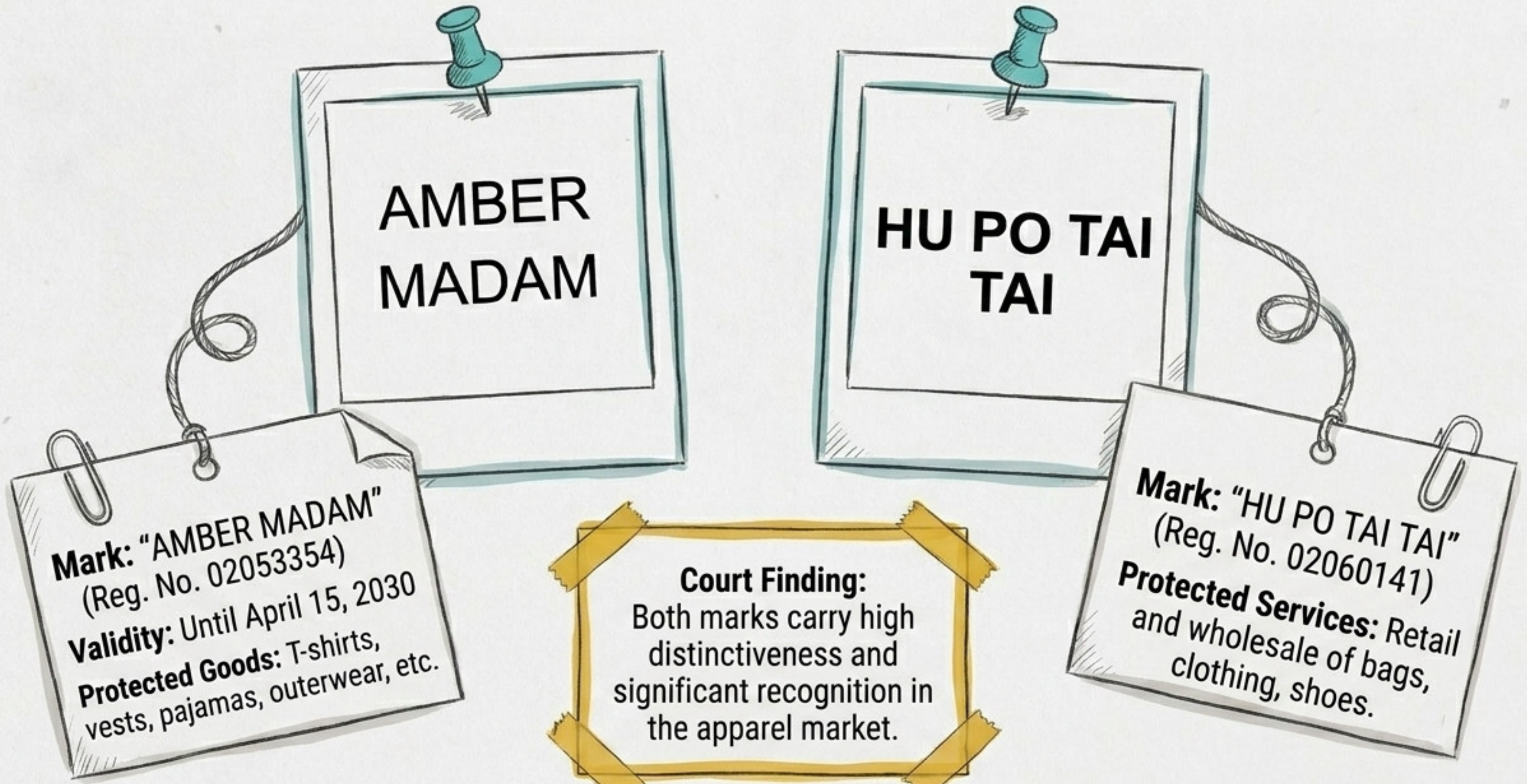


Role: THE DEFENDANT

Identity: Unauthorized Third-Party Seller
(Account: "Daisybibi")

Platform: Major E-Commerce App (Shopee)
& Facebook Page ("Couturier")

THE PROTECTED ASSETS



AMBER
MADAM

Mark: "AMBER MADAM"
(Reg. No. 02053354)
Validity: Until April 15, 2030
Protected Goods: T-shirts,
vests, pajamas, outerwear, etc.

HU PO TAI
TAI

Mark: "HU PO TAI TAI"
(Reg. No. 02060141)
Protected Services: Retail
and wholesale of bags,
clothing, shoes.

Court Finding:
Both marks carry high
distinctiveness and
significant recognition in
the apparel market.

THE DIGITAL EVIDENCE (OCT - NOV 2020)

Product Title Box

Korean Boutique Style
Leather Spliced Drop
Shoulder Vest BEST
[HU PO TAI TAI]

Brand Specification Field

AMBER MADAM

System Metadata Box

The Crucial Error: The seller did not just use the name in the title; they explicitly selected the **competitor's trademark** in the platform's mandatory backend **Brand Field**.

THE CORE DISPUTE



LOWER COURT RULING:
NOT GUILTY

Reasoning: Merely a descriptive function for searchability. No malicious intent to hijack the brand.



Does selecting a competitor's name in a platform's "Brand Field" constitute **"Trademark Use"** under the law?

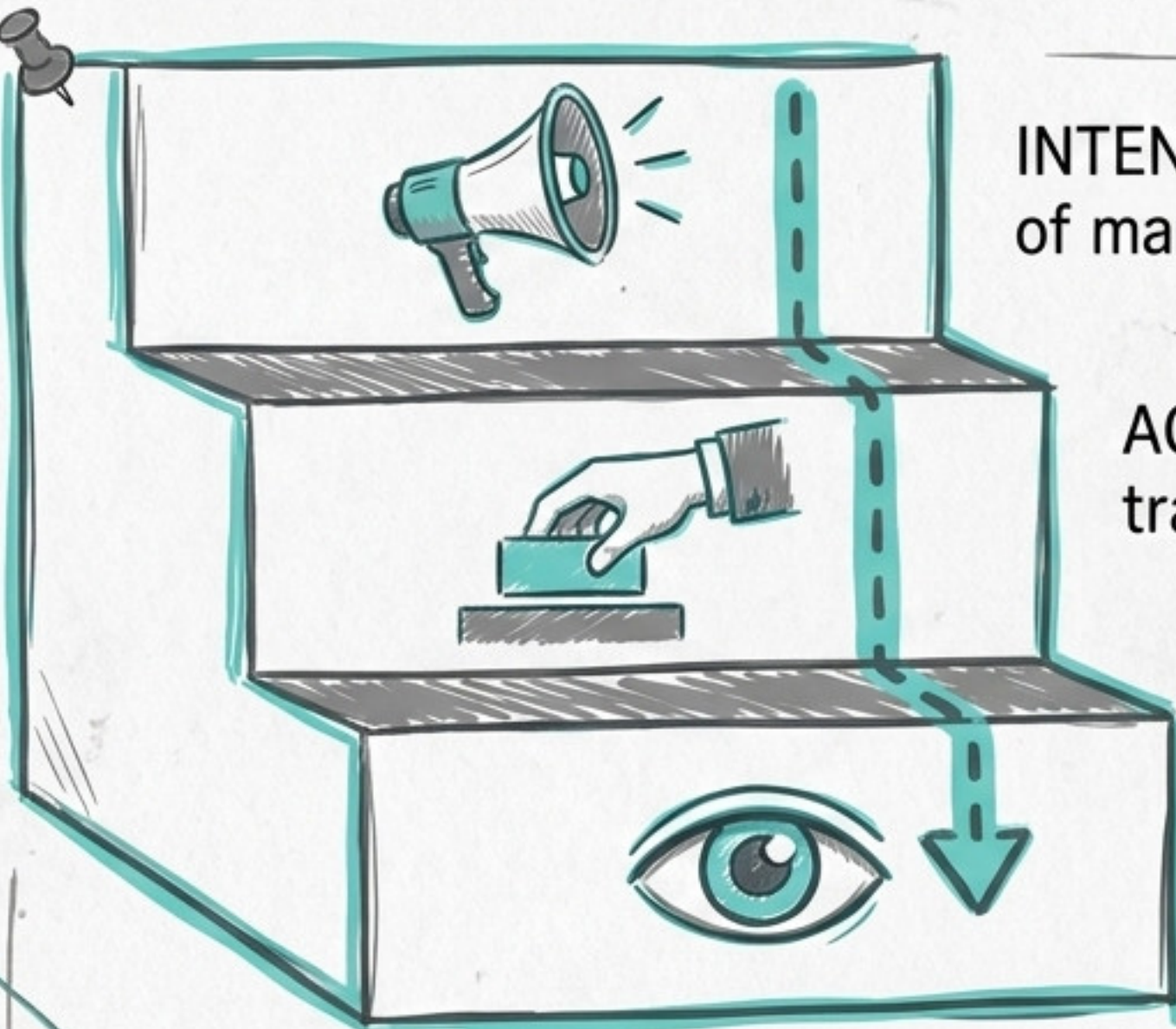


APPELLATE IP COURT:
GUILTY (OVERTURNED)

Reasoning: Placement in a designated brand field acts as a clear, unauthorized **Source Identifier**.

LEGAL FRAMEWORK: TRADEMARK ACT § 5

The Three Elements of “Trademark Use”



INTENT: Conducted for the purpose of marketing goods or services.

ACTION: Active display or placement of the trademark (including digital/e-commerce metadata).

PERCEPTION: Sufficient for relevant consumers to recognize it as a trademark (Source Identifier).

This statute applies equally to physical labels and electronic media.

THE DEFENDANT'S ARGUMENT



"It was an accident."
(Claimed no deliberate intent to infringe on the plaintiff's rights).

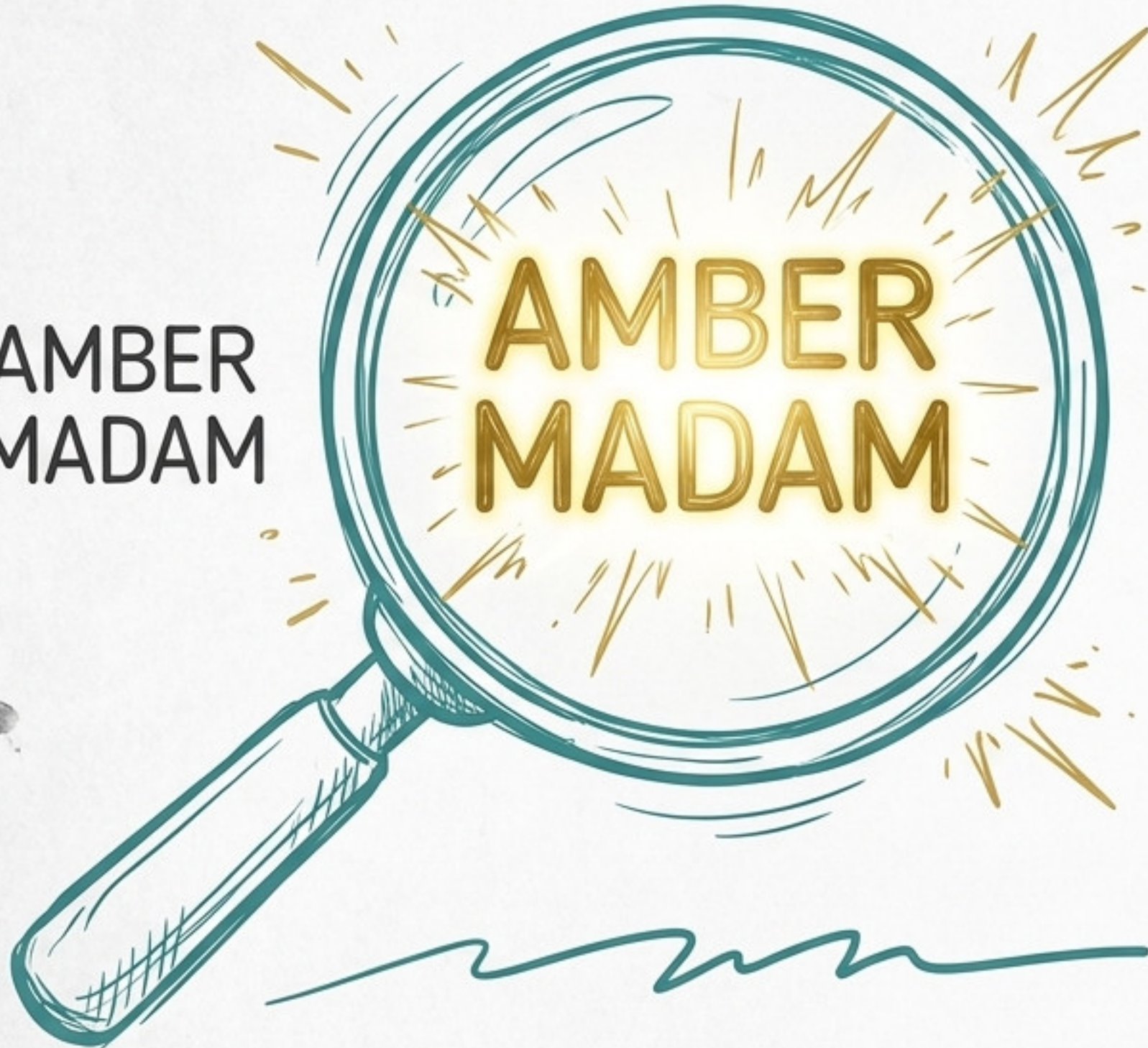
"The system made me do it."
(Argued that e-commerce platform mechanics required filling out the brand field to list the item).

"It's just for searchability."
(Claimed the tag was purely to help customers find styles "recommended" by the brand).

**REJECTED BY
BY APPELLATE
COURT**

THE COURT'S RATIONALE: IDENTIFICATION

AMBER
MADAM



Point 1: High Distinctiveness.

"AMBER MADAM" has no direct relation to the quality, function, or nature of clothing. It is an arbitrary, highly distinctive mark.

Point 2: Contextual Perception. When consumers see this specific term isolated in a designated "Brand Field," they inherently perceive it as indicating the origin of the goods.

Conclusion: It creates explicit association, confusing consumers into thinking the unauthorized goods are affiliated with the official brand.

THE COURT'S RATIONALE: LACK OF NECESSITY

The Counter-Argument: If the goal was merely descriptive (allowing customers to find a "style"), there was zero necessity to put the competitor's registered name in the official Brand Field.

The seller could have inputted their own brand name, or simply selected "Other/Blank".

SAFE ✓

By actively bypassing alternatives to force "AMBER MADAM" into the brand field, the seller revealed deliberate intent to project a strong source-identifying impression.

INFRINGEMENT!

FAIR USE VS. INFRINGEMENT

(Trademark Act § 36)



Descriptive Fair Use (LEGAL)

Using terms in accordance with honest commercial practices to describe the shape, quality, nature, or origin of *one's own* goods. (e.g., "Phone case compatible with Brand X").



Source Identification (ILLEGAL)

Using another's mark to represent the source of your goods, causing consumer confusion regarding origin, affiliation, or endorsement.



The Court's Finding:

Defendant's actions crossed the line from describing a style to claiming an origin, violating honest commercial practices.

THE FINAL VERDICT

Ruling: The original district court judgment is hereby REVERSED.

Conviction: Guilty of Trademark Infringement under Trademark Act Article 95, Subparagraph 1 (Using an identical trademark on identical goods for marketing purposes without consent).

Penalty: 50 days of criminal detention (convertible to a fine at NT\$1,000 per day).



SUMMARY & KEY TAKEAWAYS



Context Dictates Function. Using a trademark in a platform's "Brand Field" inherently acts as a source identifier. It is never just a "descriptive keyword."



Searchability is Not an Excuse. Attempting to capture search traffic by misusing competitor names in official metadata fields violates honest commercial practices.



Intent is Judged by Action. Even if a seller claims ignorance of platform systems, deliberately bypassing alternatives (like "Other Brand") to use a registered mark constitutes clear infringement intent.