



The Quarantine Defense

Anatomy of an E-Commerce Trademark Dispute

Source: Intellectual Property and Commercial Court

Reference: Criminal Judgment 111 Xing-Zhi-Shang-Yi-Zi No. 33

Date: June 2, 2023

The Core Legal Dispute

Does selling goods on a foreign e-commerce platform equal "intent to market" domestically under Trademark Act Article 95?



- Action: Defendant sells meat products on Alibaba and Taobao.
- Target: Global internet users, theoretically including Taiwan.
- Legal Test: Is digital visibility enough to trigger domestic trademark infringement?

NOTES:

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Kow Kun Ltd.



Status: Lawful owner of the registered trademarks in Taiwan.



Territory: Taiwan (Protected Zone).

VS

Qiu O-Shan & Affiliated Companies



Status: Unauthorized user of identical/similar marks.

Corporate Web:

- ① Xiamen Kow Kun Food Co., Ltd.
(Mainland China, 2017)
- ② Kinmen Kow Kun Food Co., Ltd.
(Kinmen, 2018)

The Intellectual Property in Question

KOW KUN

Registration No. 01169270

Class 29: Beef jerky, pork jerky,
spicy beef slices, etc.



Registration No. 02032558

Class 28: Meat products, pork
products, canned goods, etc.

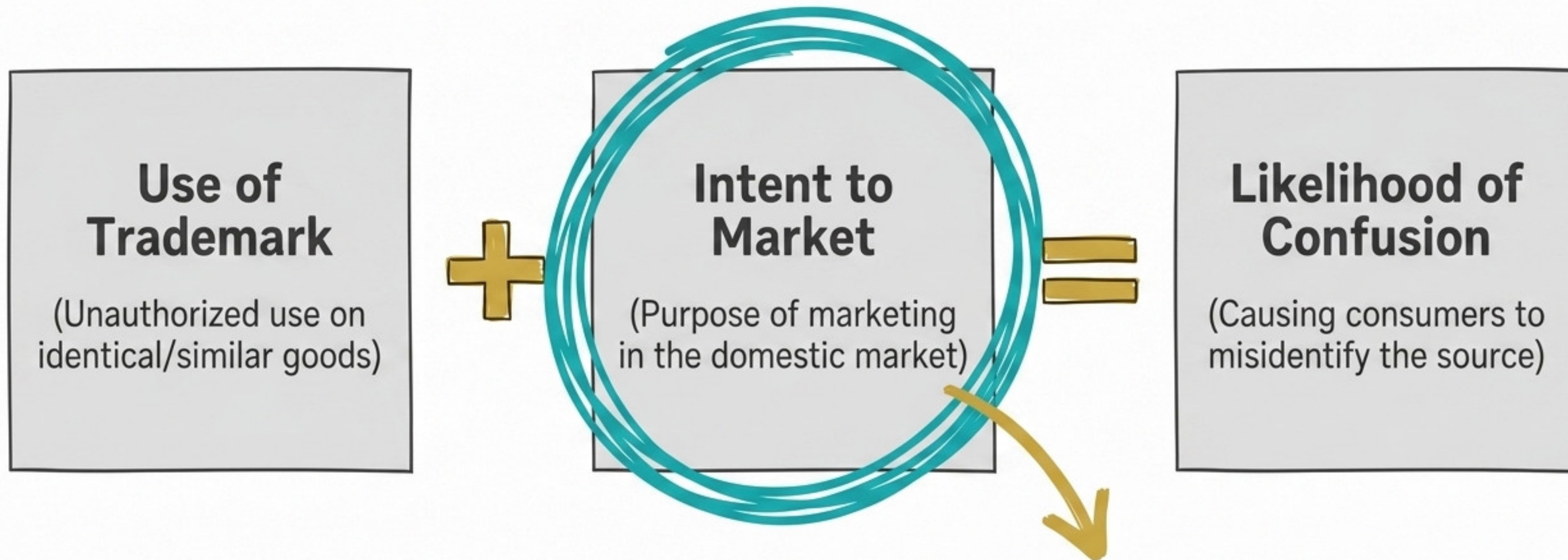
The Cross-Border Supply Chain



KEY INSIGHT: All physical production and digital uploading occurred strictly outside the geographic borders of Taiwan.

The Rule of Law:

Trademark Act Article 95



The prosecution's burden is to prove the digital Taobao listings satisfy the "Intent to Market" domestically in Taiwan.

The First Anchor: The Territoriality Principle

Mainland Area Market

- Goods marketed here remain here.
- Not governed by Taiwan's Trademark Act.

Taiwan Area Market

- Includes Taiwan, Penghu, Kinmen, Matsu.
- The exclusive zone of IP protection for the registered mark.

Legal Precedent: Act on Relations Between the People of the Taiwan Area and the Mainland Area, Article 40.

Rule: The two areas are distinct, independent political and economic trade zones. **Marketing** in one does not constitute marketing in the other.

The E-Commerce Conundrum

The Prosecution's Argument:

TIPO Guidelines suggest displaying a registered mark on a foreign webpage **COULD** be deemed "intent to market" in Taiwan.



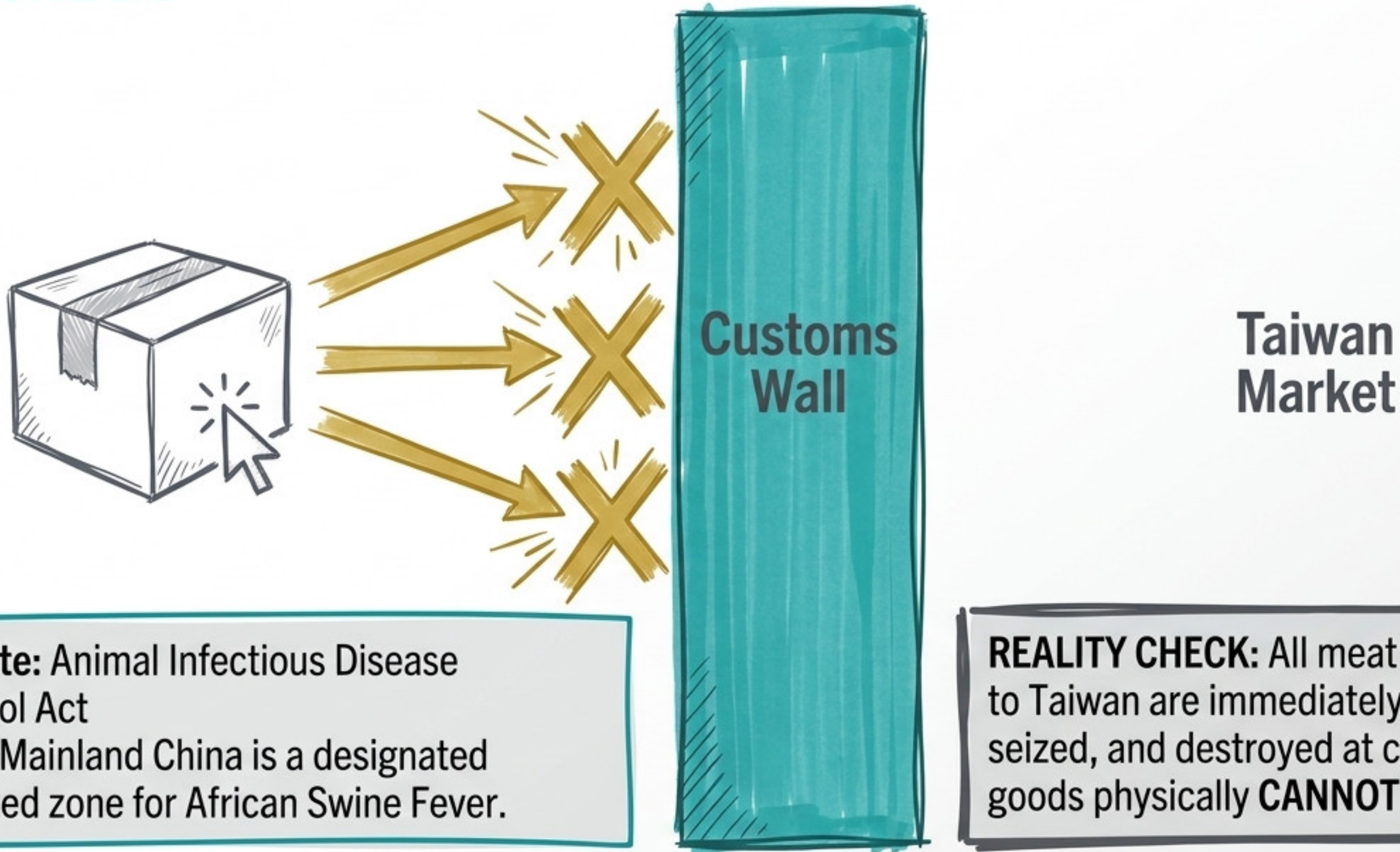
THE COURT'S REBUTTAL

- Guidelines are merely "Explanatory Administrative Rules."
- Judges operate independently.
- Courts are not strictly bound by administrative guidelines, relying instead on statutory law.

J.Y. Interpretation Nos. 137, 216.



The Decisive Twist: The Quarantine Blockade



Statute: Animal Infectious Disease Control Act
Fact: Mainland China is a designated infected zone for African Swine Fever.

REALITY CHECK: All meat products mailed to Taiwan are immediately intercepted, seized, and destroyed at customs. The goods physically **CANNOT** enter the market.

The Final Verdict



- ✓ 1. Goods are destroyed at the border.
- ↓
- ✓ 2. Goods can never reach Taiwan consumers.
- ↓
- ✓ 3. Therefore, an objective "Intent to Market Domestically" is physically impossible.
- ↓
- ✓ 4. Likelihood of confusion in the domestic market drops to absolute zero.

NOT GUILTY

of violating Trademark Act Article 95. Appeal Dismissed.

Synthesis & Strategic Takeaways



Territoriality is Absolute

Despite the borderless nature of e-commerce, IP rights remain strictly tethered to geographic and political realities. Digital visibility does not automatically equal domestic presence.



The Hierarchy of Law

Administrative agency guidelines serve as references, not rigid mandates. The court will always prioritize statutory reality (J.Y. Interpretations) over administrative assumptions.



Cross-Disciplinary Strategy

IP litigation does not exist in a vacuum. In this case, an administrative/customs law (Animal Infectious Disease Control Act) effectively neutralized an intellectual property charge. Litigators must look beyond the Trademark Act.