

Case File Study

CONFIDENTIAL

The 'Superdry' Pet Apparel Paradox

An Anatomy of Trademark Infringement,
Subjective Intent, and the 'Third-Party'
Defense.

Source: Intellectual Property and Commercial Court,
2022 Criminal Judgment Xing Zhi Shang Yi Zi No. 39.
(Case Report Date: April 2, 2023).

The Defense of the "Ghost" Brand



If a defendant copies a famous third-party brand, but accidentally produces a mark phonetically similar to the plaintiff's registered trademark... are they guilty of infringement?



The Legal Framework:
Trademark Act Article 95.
Is "accidental similarity" enough
for a criminal conviction?

The Cast of Characters



The Plaintiff (Chen).

Registered a trademark for pet clothing (Class 18) in Dec 2019.
Registration No. 02029136.

Pinyin: "Ji-Du-Gan-Zao"
(Meaning: Extreme Odor).



The Defendant (Zhang & Xue).

Night market vendors importing pet clothes. Accused of selling infringing goods in 2020/2021.

Pinyin: "Ji-Du-Gan-Zao"
(Meaning: Extreme Anxiety).



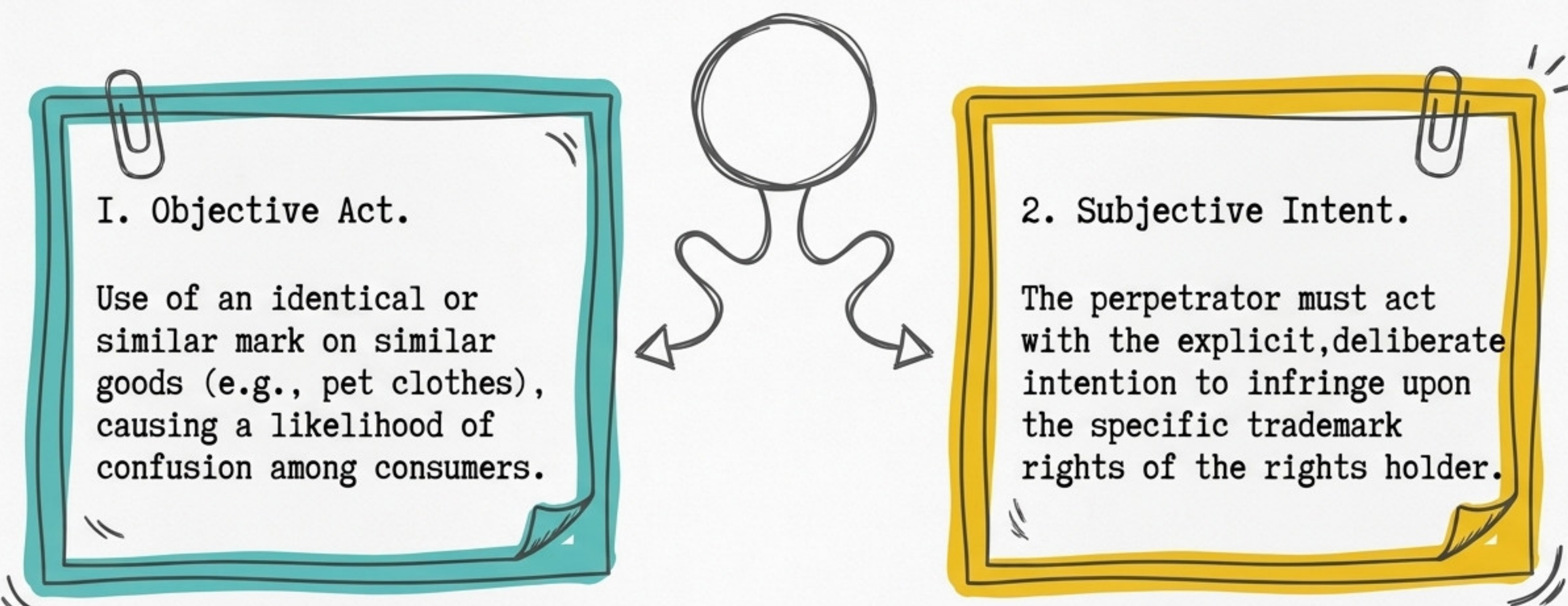
The "Ghost" Third Party.

DKH Retail Limited. The famous UK apparel brand "Superdry".

Pinyin translation:
"Ji-Du-Gan-Zao"
(Extreme Dryness).

The Burden of Proof (Article 95, Paragraph 3)

To prove criminal trademark infringement, two elements must exist simultaneously:



I. Objective Act.

Use of an identical or similar mark on similar goods (e.g., pet clothes), causing a likelihood of confusion among consumers.

2. Subjective Intent.

The perpetrator must act with the explicit, deliberate intention to infringe upon the specific trademark rights of the rights holder.

“Without subjective intent targeting the Plaintiff, there is no crime.”

The Encounter (January 19, 2021)

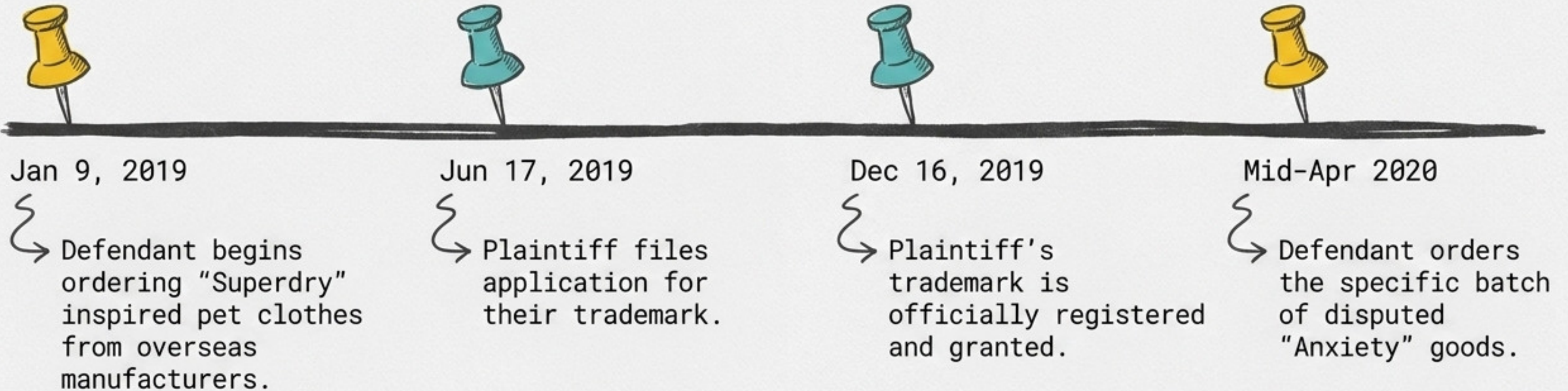
At the Da-Dong Night Market in Tainan, the Plaintiff's spouse discovers the Defendant selling pet clothes bearing the mark 'Ji-Du-Gan-Zao' (Extreme Anxiety).



Despite explicit warnings that the goods infringe on the Plaintiff's registered 'Ji-Du-Gan-Sao' (Extreme Odor) trademark, the Defendant ignores the warning and continues to sell the inventory.

The Plaintiff presses criminal charges.

The Timeline Tells a Different Story



The Logical Flaw: How could the Defendant possess the subjective intent to infringe on a trademark that didn't even exist when they first established their product line?

The Smoking Gun: Overseas Manufacturer Chat Logs

Change the text to 'Anxiety'. Change the white circle text to 'TW'. We need to avoid copyright issues.

Yes, because of copyright issues, we must alter the final character.

So we are modifying the 'Superdry' layout just to avoid brand infringement, right?

The Defendant was actively modifying their design to evade the famous UK Brand's rights, completely unaware of the Plaintiff's existence!

Objective Confusion Analysis

	Plaintiff's Mark	Defendant's Mark	UK Brand
Pinyin Pronunciation	"Sao" (S-A-O)	"Zao" (Z-A-O)	"Zao" (Z-A-O)
Literal Meaning	"Extreme Odor" or "Foul Smell"	"Anxiety" or "Restless"	Part of "Extreme Dryness"
Visual Component (Radical)	Uses the "Flesh" radical 	Uses the "Foot" radical 	Uses the "Fire" radical 

Court Conclusion: Pronunciation, typography, and literal meanings are entirely distinct. The court found zero objective likelihood of consumer confusion.

The Final Irony: Revocation

Before the final verdict was delivered, the Taiwan Intellectual Property Office (TIPO) took decisive action—against the Plaintiff.

Disposition No. 11180844280 (Dec 30, 2022).
TIPO officially revoked the Plaintiff's trademark.

Why? The Plaintiff had been improperly altering their own registered mark in commercial use, adding attachments to make it look exactly like the famous UK "Superdry" logo, thereby causing actual consumer confusion.



Verdict & Strategic Takeaways

Criminal Appeal Dismissed. Defendant found NOT GUILTY.



Intent is Specific: Criminal liability under Article 95 requires the subjective intent to infringe upon the plaintiff's specific trademark. Actively altering a design to avoid a third-party brand successfully negates this intent.



Chronology is Armor: Documenting product design history and manufacturer communications prior to a plaintiff's registration date provides a bulletproof defense against claims of malicious intent.



The Clean Hands Doctrine: Rights holders must use their trademarks exactly as registered. Altering your own mark to mimic a famous foreign brand will not only lose you the infringement case, but result in the revocation of your own IP rights.