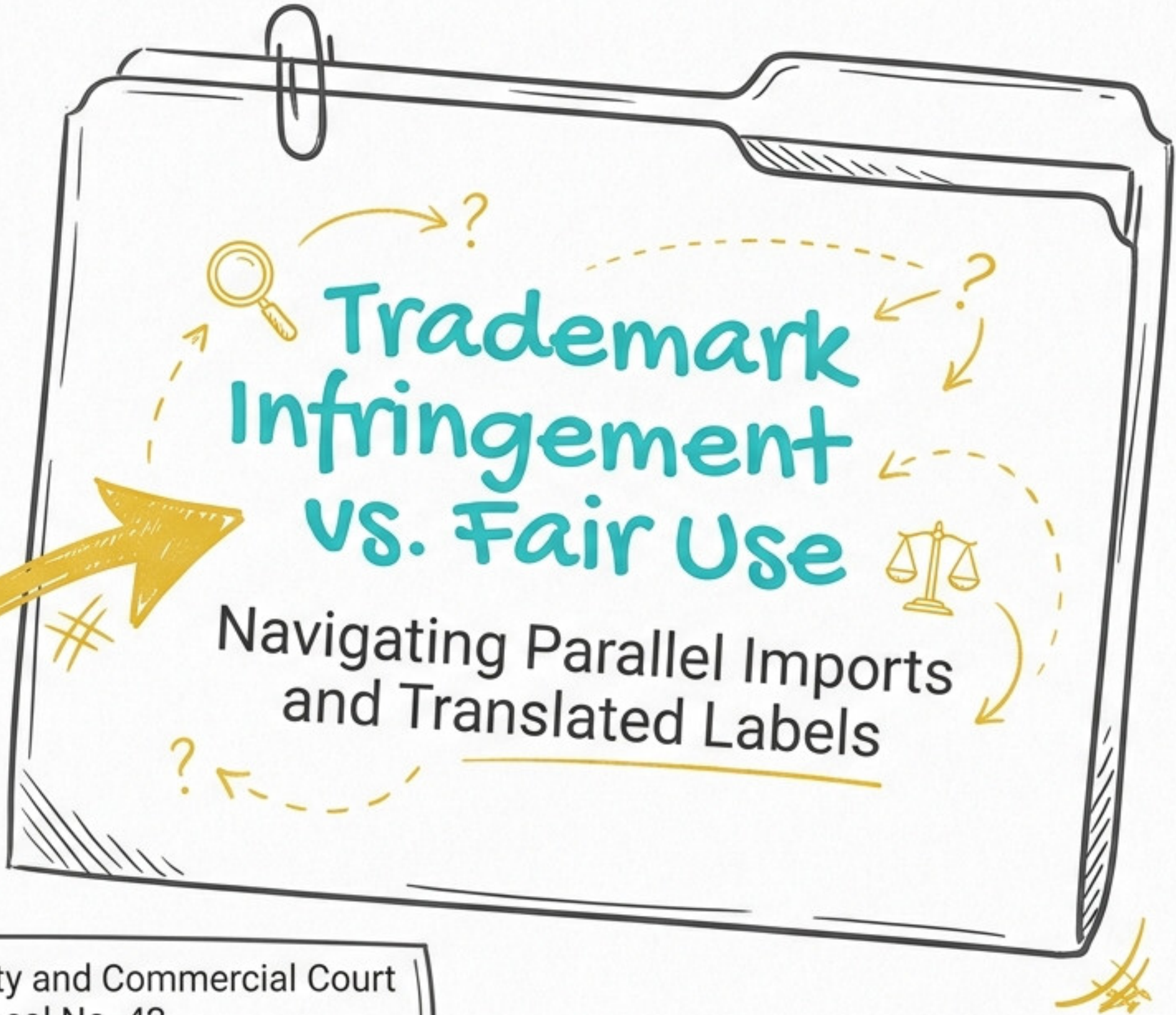




Trademark Infringement vs. Fair Use

Navigating Parallel Imports and Translated Labels

Source: Intellectual Property and Commercial Court
Case: 2022 Criminal IP Appeal No. 42
Date: February 20, 2023



The Core Legal Issue

Does adding a localized phonetic translation of a foreign trademark onto a parallel imported product constitute Trademark Infringement or is it Reasonable Fair Use?

Where is the line between protecting brand identity and allowing legitimate market competition?

The IP at Stake

Yuskin
ユスキン

Original Mark: Yuskin
Owner: Japanese Yuskin
Pharmaceutical Co.

[You-Si-Jing]

Disputed Mark: [You-Si-Jing]
(Phonetic Transliteration)

Registered Classes: 003 & 006
(Cosmetics, hand creams, detergents)

The Opposing Sides

Entity: Huisheng Trading Co., Ltd.
Role: The Exclusive Licensee
(Prosecutor's Stance)



Core Goal: Protect exclusive domestic distribution rights and ensure absolute brand integrity.



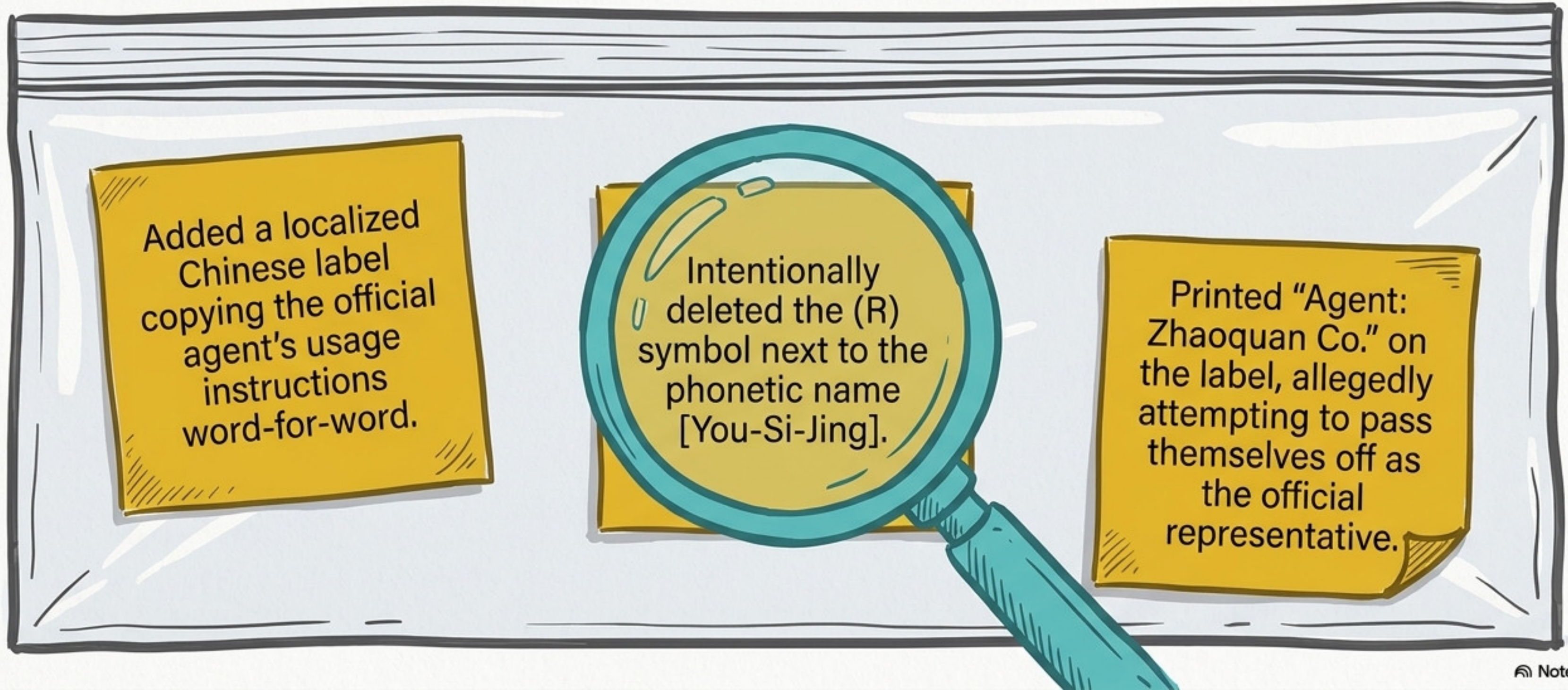
Entity: Zhaoquan Co., Ltd.
Role: The Parallel Importer



Core Goal: Sell legally acquired, authentic imported goods in the domestic market with localized consumer information.

The Accusation

The Defendant legally imported authentic Yuskin hand creams. However, the Plaintiff claimed malicious intent based on three specific labeling actions:



Court's Logic I: Visual Hierarchy & Consumer Perception



Design: Beautiful, consistent, prominent typography.

Role: The primary source identifier. This is what consumers use to identify the brand.

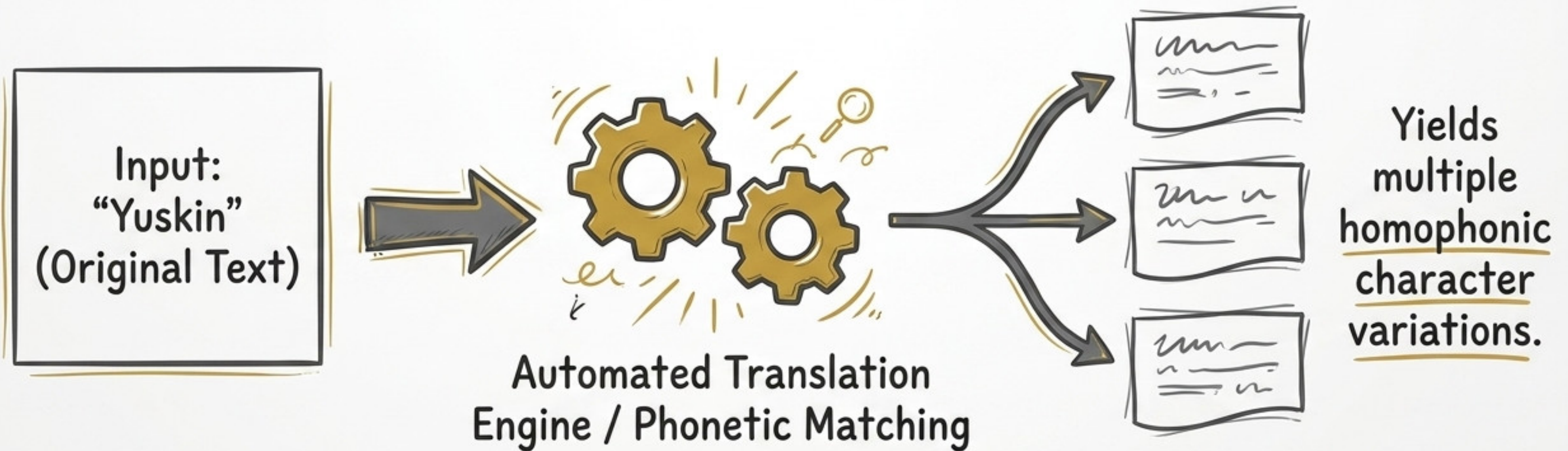
Conclusion: The back-label text was too small, unstylized, and poorly placed to be considered an active "Trademark Use" by a reasonable consumer.



Design: Crooked, rough aesthetic, extremely small text completely different from the primary branding.

Role: Informational. Consumers look here only for ingredients, volume, and usage details.

Court's Logic II: Phonetic Reality



The court noted that translating "Yuskin" naturally yields similar-sounding phonetic characters. Selecting the exact phonetic match [You-Si-Jing] is a logical, descriptive translation of the product's name for local consumers, rather than automatic proof of subjective intent to infringe.

Court's Logic III: Industry Norms

The court investigated other third-party sellers in the open market to establish behavioral baselines.



Competitors routinely place the phonetic translation directly under the English 'Yuskin'.



Competitors routinely omit the (R) symbol on translated labels.



Crucial Finding: The official brand website itself sometimes omits the (R) symbol next to the phonetic name.

Omitting the trademark symbol and using the phonetic translation is standard market practice, reinforcing that it is viewed merely as a translation, not brand hijacking.

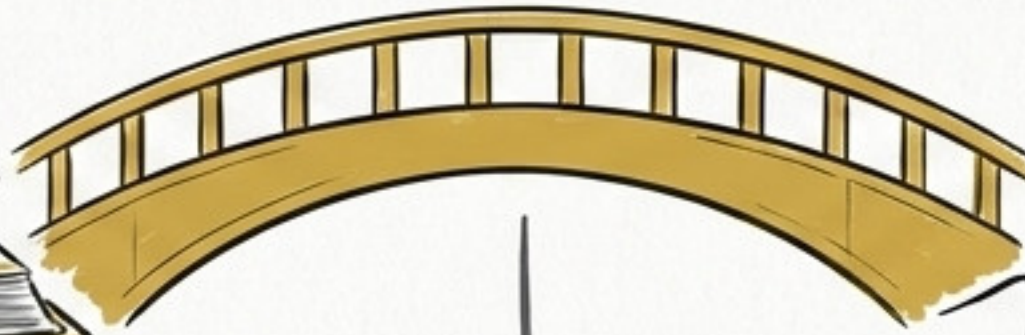
Court's Logic IV: Statutory Obligations

The Law



Commodity Labeling Act Article 9(1) explicitly requires all importers to label the product name, manufacturer, and importer details before goods can enter the domestic market.

The Reality



The Defendant testified: "Adding labels is a government requirement... we mandate our partners to do this before stocking."

Labeling themselves as the "importer/agent" and naming the product was a mandatory act of legal compliance, entirely negating any subjective intent to infringe on the trademark.

The Doctrine: Descriptive Fair Use



Under Trademark Act Article 36, Paragraph 1, Subparagraph 1, using terminology merely to describe the name, shape, quality, or origin of the goods—without using it as a trademark—is legally protected.

Because the translated text was placed in an unprominent location purely for consumer translation and regulatory compliance, it did not reach the threshold of active "Trademark Use".

The Final Ruling



The Defendant is found not guilty of trademark infringement.
Their actions are legally recognized as reasonable, descriptive
fair use strictly within the context of parallel importing.

Final Takeaways & Strategic Implications



Visual Placement Matters

Courts heavily differentiate between brand identifiers (beautiful front packaging) and informational text (rough back stickers). Unstylized text suggests descriptive use.



Intent vs. Compliance

Adhering to the Commodity Labeling Act provides a robust defense. Labeling product names and importer details is a statutory duty, which shields against claims of malicious intent.



The Parallel Import Ecosystem

Exclusive licensees cannot easily weaponize trademark law to block parallel imports, provided the importer merely uses accurate, localized phonetic translations in a non-prominent, purely descriptive manner.