

CASE FILE 46

Trademark Infringement & Cross-Border E-Commerce

An Educational Analysis of Likelihood of Confusion
in Online Marketplaces

*Source: Intellectual Property and Commercial Court,
Civil Trademark Suit No. 46 of 2023*

THE PLAINTIFF



CLAIRE

Registration No.: 01076607

Class 11: Electric kettles, air purifiers, etc.

Registered: Dec 2003

THE DEFENDANT



CLAIR

Registration No.: 02304122

Class 11: Air purifiers, air conditioners, etc.

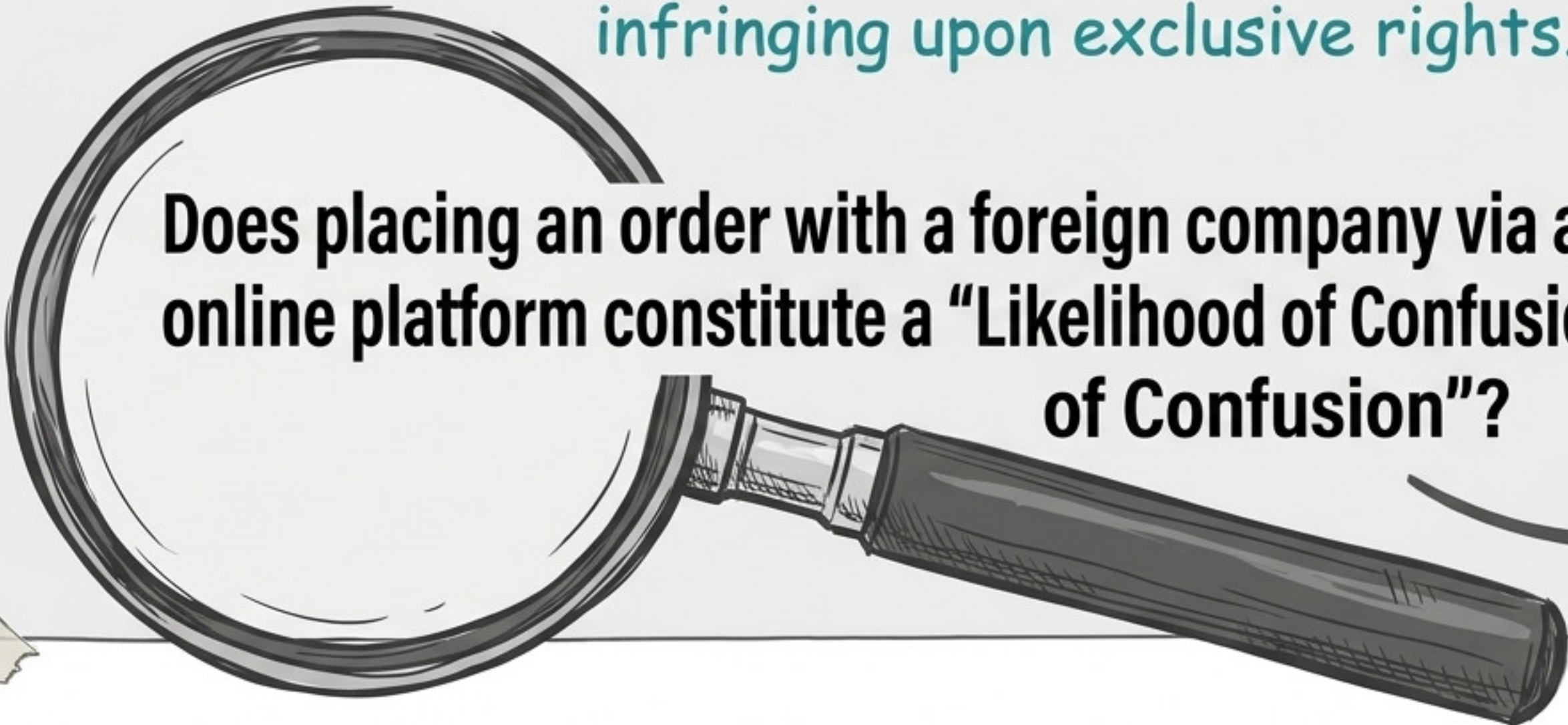
Applied: Jan 2020

VS.

The Trigger: Highly similar marks used on identical goods (air purifiers).

The Legal Framework: Trademark Act Article 68(3) & Article 69.

Plaintiff alleges Defendant utilized the highly similar 'CLAIR' mark on the Shopee online marketplace starting in late 2020, infringing upon exclusive rights.



Does placing an order with a foreign company via a cross-border online platform constitute a “Likelihood of Confusion” of Confusion”?



Trademark Rights Timeline & Status

Sept 27, 2021: Revocation of

~~Plaintiff's Rights~~

Taiwan Intellectual Property Office (TIPO)
formally revokes Plaintiff's Class 11 rights
(Trademark Act Article 63(1)(2)).

Jan 21, 2020: Defendant applies
for "CLAIR" registration AND
files to invalidate Plaintiff's mark
due to 3 years of non-use.

July 1, 2023: Defendant's
"CLAIR" mark is officially
approved and published.

The Result: Plaintiff
holds absolutely zero
trademark rights
after this date.
Infringement claims
post-revocation are
legally impossible.



South Korea

Defendant
manufactures here.
(‘CLAIR’ mark registered
in Korea since 2013,
proving good faith).

The Marketplace: Shopee

Platform data confirms Defendant
operated purely as a ‘Cross-border
Seller’ using direct delivery.



Taiwan Consumer

Official Customs Data (Ministry of
Finance Customs Administration):
Zero import records by Defendant
prior to Sept 27, 2021.



Observation: Consumer sees "CLAIR" air purifier on Shopee. Shipping origin is explicitly listed as "South Korea".



Cognition: Consumer recognizes this is a direct cross-border transaction. They know they are purchasing from a foreign entity, not a local one.



No Likelihood of Confusion.

Because the foreign origin was transparent, consumers would never mistakenly believe they were purchasing from the Taiwan-based Plaintiff. The requirements of Trademark Act Article 68(3) are completely unsatisfied.





Final Judgment: Plaintiff's suit and request for provisional execution are completely dismissed. Litigation costs borne by Plaintiff.

1. Use It or Lose It

Under Trademark Act Article 63, rights for specific classes can be entirely revoked if not actively used for 3 years. You cannot enforce rights you have allowed to expire.

2. Context Overrides Similarity

High visual similarity between marks does not automatically equal infringement. The precise context of the sale dictates the "likelihood of confusion".

3. The Cross-Border Defense

Platform transparency is a shield. Clearly indicating a foreign point of origin and utilizing direct cross-border shipping mechanisms effectively mitigates confusion regarding the source of goods.