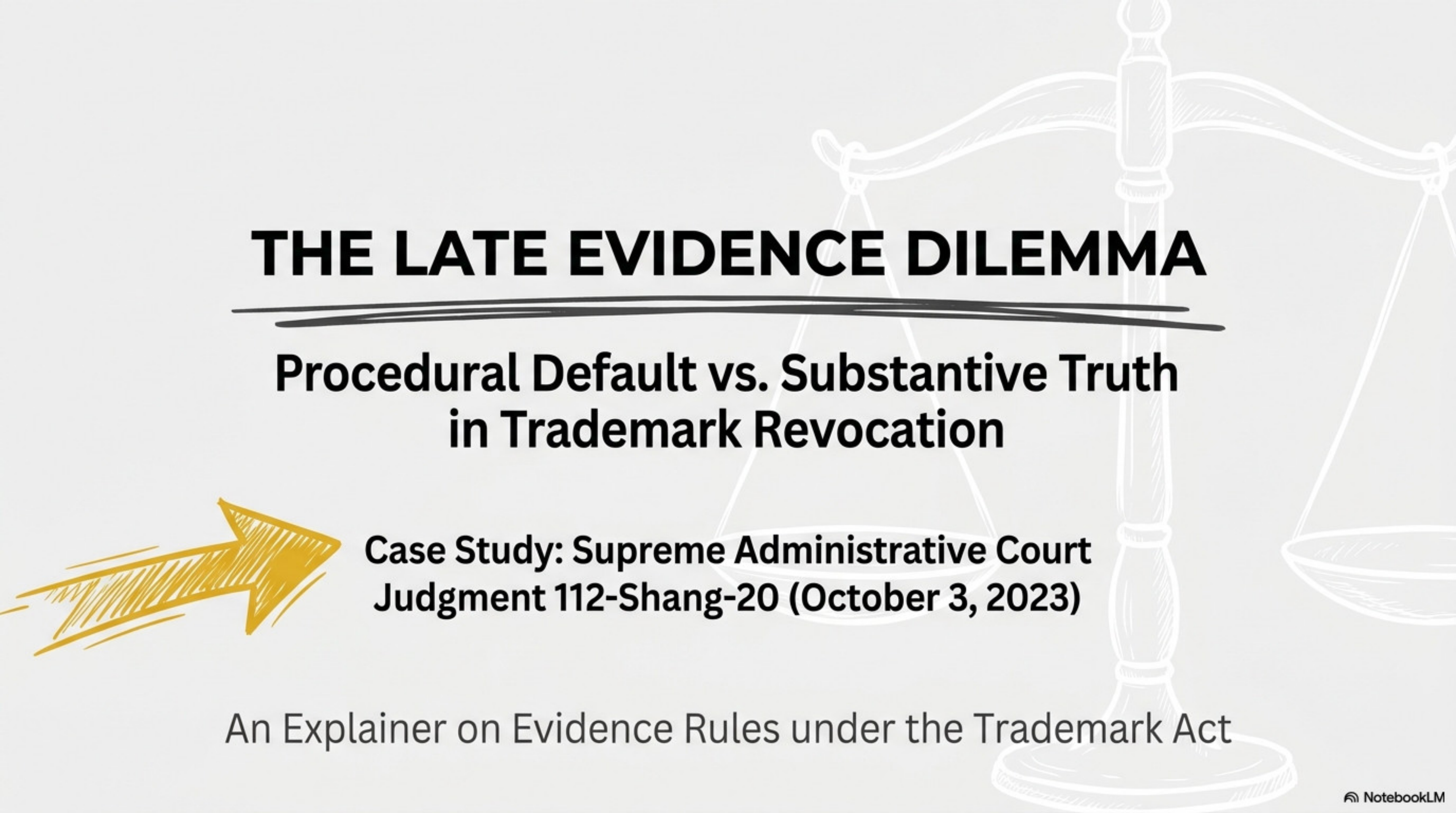




THE LATE EVIDENCE DILEMMA

Procedural Default vs. Substantive Truth in Trademark Revocation



**Case Study: Supreme Administrative Court
Judgment 112-Shang-20 (October 3, 2023)**

An Explainer on Evidence Rules under the Trademark Act



註冊第 01052077 號
第 9 類「軟體；電腦操作軟體
（已錄）；電腦程式；已錄之電腦程式；
檔案之管理及統合電腦軟體；軟體保護器」

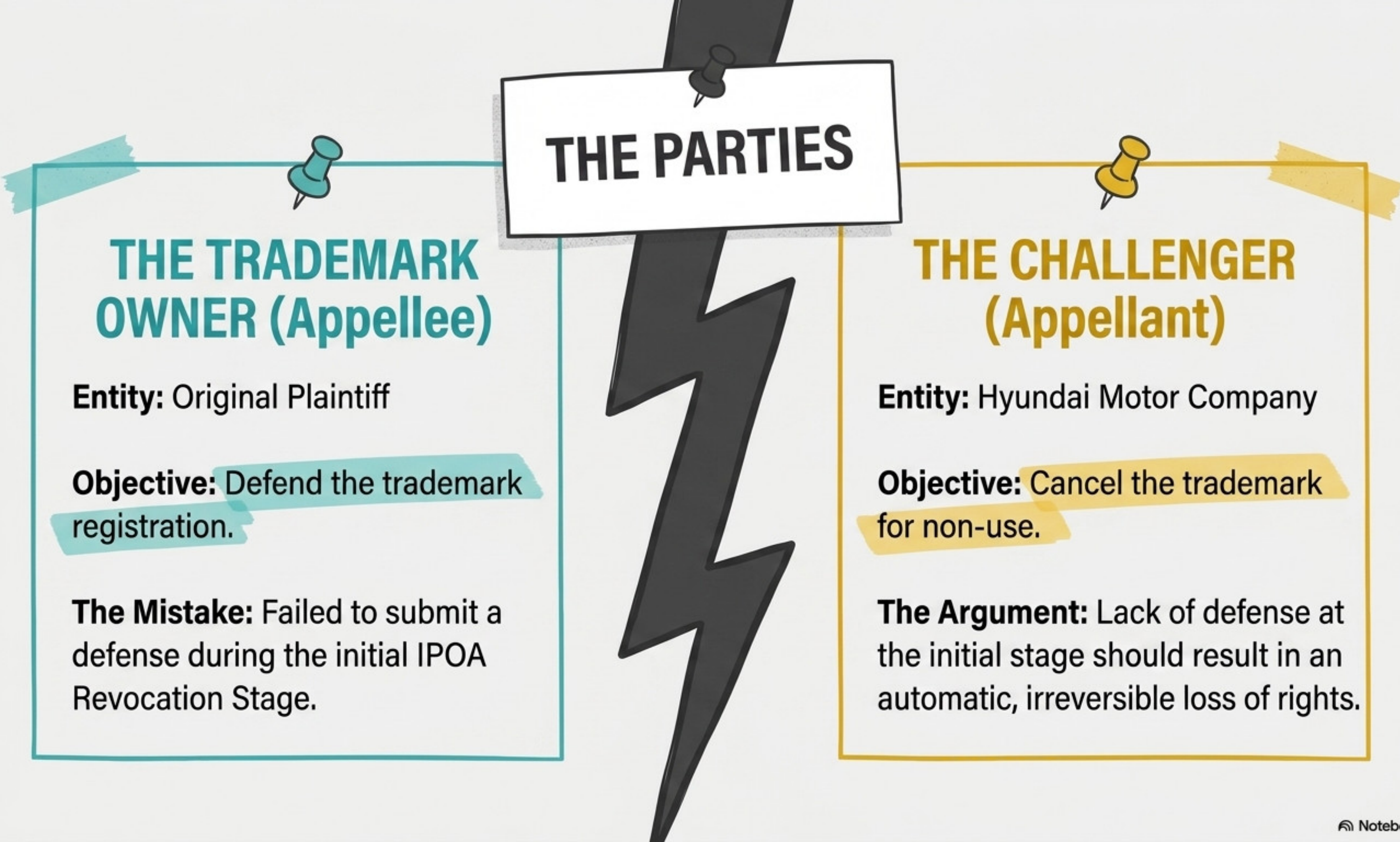
EXHIBIT A: The Disputed Trademark

Registration Number: 01052077 ("Genesis & Device")

Designated Class: Class 9

Covered Goods:

- Software
- Computer Operating Software (Recorded)
- Computer Programs
- Recorded Computer Programs
- File Management and Integration Computer Software
- Software Protectors



THE PARTIES

THE TRADEMARK OWNER (Appellee)

Entity: Original Plaintiff

Objective: Defend the trademark registration.

The Mistake: Failed to submit a defense during the initial IPOA Revocation Stage.

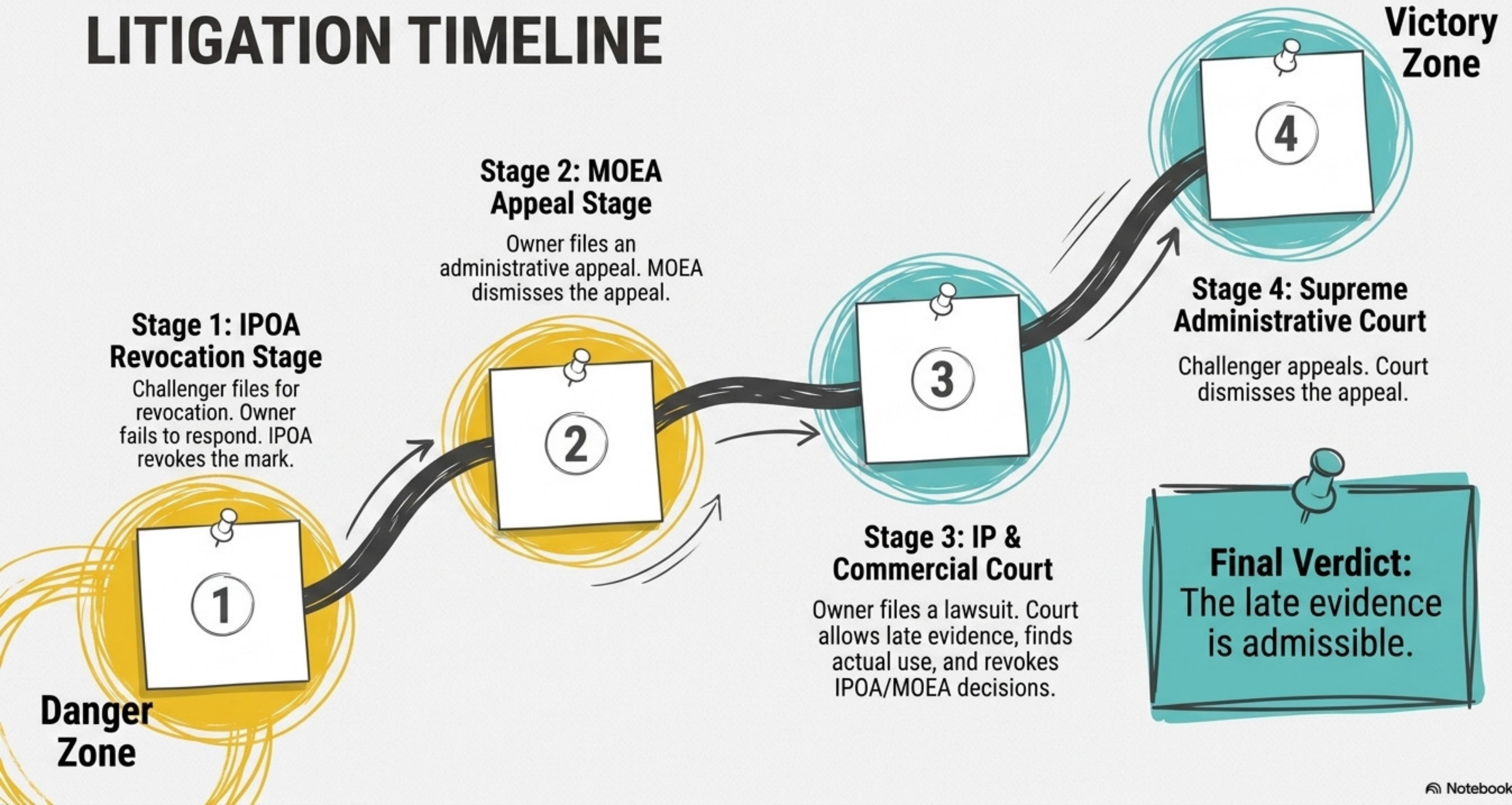
THE CHALLENGER (Appellant)

Entity: Hyundai Motor Company

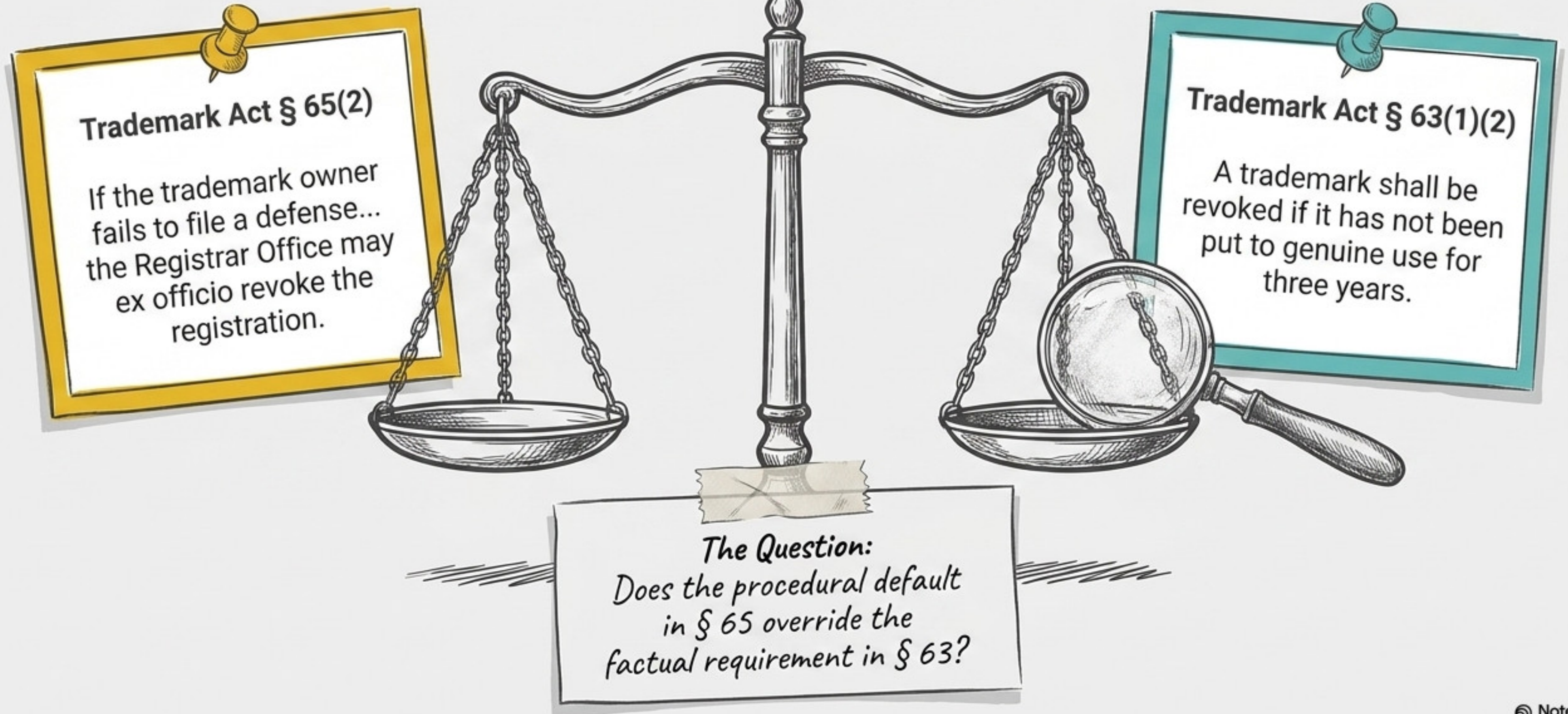
Objective: Cancel the trademark for non-use.

The Argument: Lack of defense at the initial stage should result in an automatic, irreversible loss of rights.

LITIGATION TIMELINE



THE CORE LEGAL DILEMMA



THE APPELLANT'S STANCE

Procedural Strictness



- **Absolute Forfeiture:** Violating the obligation to defend under Trademark Act § 65(2) should result in a substantive loss of rights.
- **No "Supplementing" Evidence:** Since the owner submitted zero evidence during the IPOA stage, there is nothing to "supplement" later.
- **Irreversible Legality:** Later defense cannot shake the legality of the original IPOA revocation decision, which was entirely valid at the time it was made.

THE APPELLEE'S STANCE

Substantive Reality



- **Genuine Use Exists:** The primary purpose of a trademark is its active use in commerce, not administrative paperwork.
- **Facts Over Formality:** The owner possesses concrete evidence (contracts, invoices) proving the mark was actively used within the critical 3-year window.
- **Right to Due Process:** Administrative litigation exists precisely to uncover the substantive truth, regardless of early-stage omissions.

DECONSTRUCTING TRADEMARK ACT § 65(2)

Why did the Supreme Administrative Court reject the Challenger's argument?

The law allows IPOA to revoke without digging for facts to save administrative resources, NOT to punish the owner.

Because the Trademark Act provides that the IPOA may revoke a trademark registration after giving notice, this provision serves to **Relieve Ex Officio Investigation Duty** because the **Burden of Proof** is on the owner, ensuring we **Protect Procedural Rights** by allowing the owner to present evidence of use.

It shifts the burden to the owner because only the owner knows their own business operations.

The notice is meant to give the owner a chance to speak, not to set an absolute trapdoor.

Conclusion: § 65(2) does NOT restrict the time limit for a trademark owner to submit evidence.

LEGISLATIVE INTENT OVERRULES PROCEDURAL DEFAULT

Interpreting Trademark
Act § 63(1)(2)



The True Goal: To ensure trademarks are genuinely used, functioning as source identifiers, and creating commercial value.

The Factual Test: If evidence proves genuine use within 3 years prior to the revocation application, it does not fall under the penalty of § 63(1)(2).

The Unfairness Doctrine: Depriving rights solely because of a missed IPOA deadline would inappropriately strip the owner of property and harm fair market order.

THE EVIDENCE BOARD

What did the Appellee present to the Administrative Court?

Contracts & Quotes

Dongshurk printeS Advanced haricr0
Juding Technology)

Trademark printed directly next
to company name (Dongshuo
Information & Juding Technology).

Mentions "GTiMES Advanced
Module License".

VERIFIED

Top-left front-end display.

Embedded in software
registration info.

Validates actual B2B
commercial
transactions.

Tax Invoices

VALIDATING 'USE IN COMMERCE'

The Supreme Administrative Court affirmed the IP Court's factual findings.

Based on marketing purposes?	 Mark appeared on quotes, invoices, and commercial agreements.
Identifies the source of goods?	 Placed adjacent to the corporate name; displayed digitally inside the software interface.
Aligns with commercial habits?	 Standard practice in B2B software licensing (MES software systems).

Result: The evidence successfully proved genuine use within the statutory 3-year period.

DEBUNKING THE APPELLANT'S COUNTER-CLAIMS

Appellant's Claim:

The mark was only a "company logo" on documents, not a product trademark.

Private investigator (Jinghua Commercial Information) reports and witness testimony prove non-use.



Court's Rebuttal:

- Using a trademark adjacent to a company name on commercial documents is a highly standard way to identify the source of goods.
- Digital placement inside software confirms product-specific use.
- Subjective private investigator opinions do not override objective, B2B documentary evidence.

KEY TAKEAWAYS & STRATEGIC IMPLICATIONS

Lessons from Supreme Administrative Court Judgment 112-Shang-20



The Rule of Evidence

Late Evidence is Admissible. Administrative litigation seeks the substantive truth. Failing to reply to the IPOA does not permanently bar the submission of genuine use evidence in court.



Burden & Risk

Don't Ignore Notices. While late evidence is allowed, ignoring IPOA notices forces expensive, multi-year litigation. Reply early to save resources.



Valid Trademark Use

Document Everything. Contracts, quotes, and invoices are powerful. Ensure your mark appears adjacent to your entity name to clearly link commercial acts to the mark.



Digital Proof

Software UI Matters. For Class 9 goods, embedding the mark in the front-end UI and registration info fields constitutes strong, recognizable “use in commerce.”