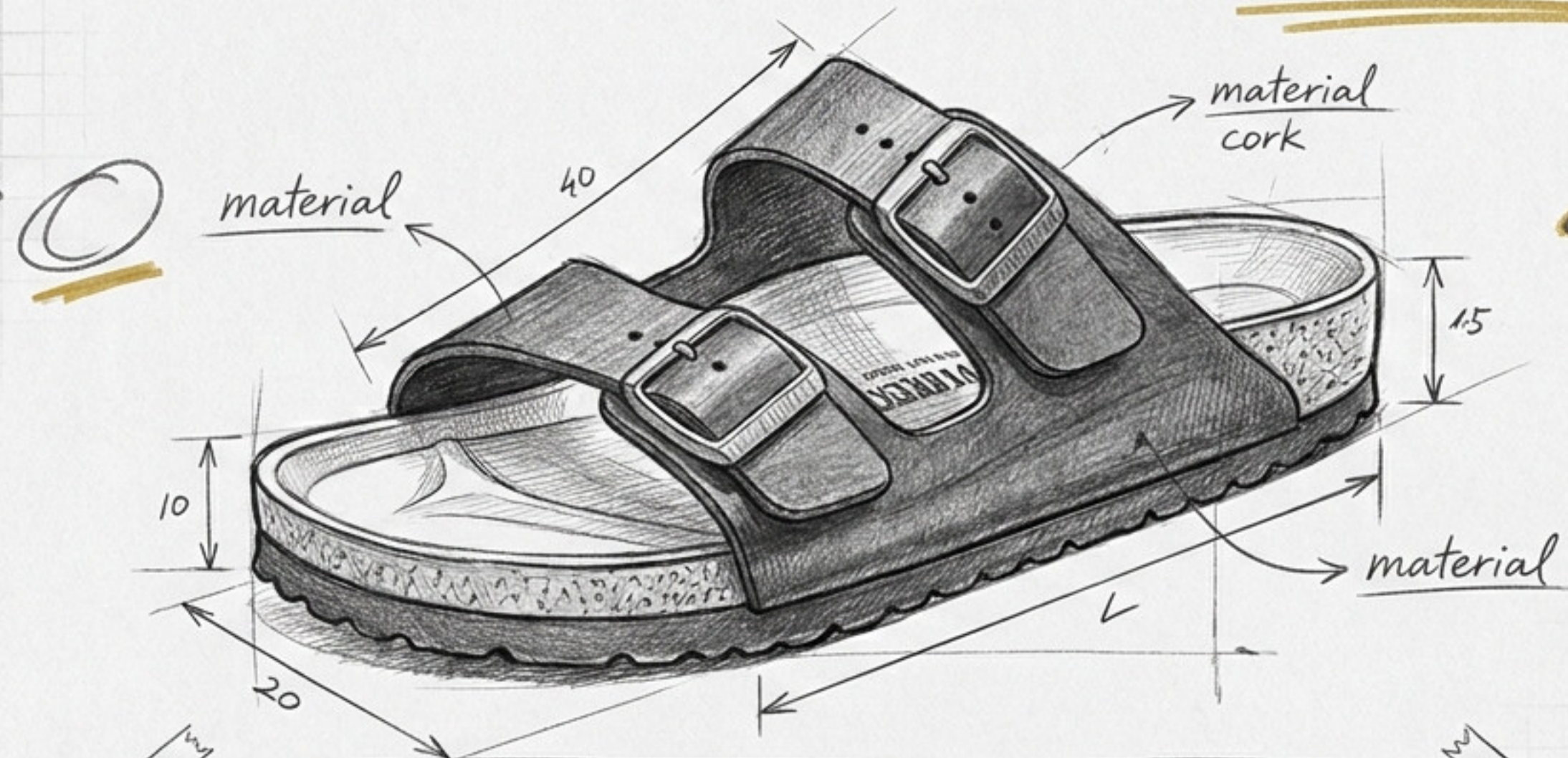


THE 3D TRADEMARK DILEMMA

Design Identity vs. Product Functionality

An Instructional Case Study on 3D Trademark Distinctiveness



Source: Supreme Administrative Court Judgment 112-Shang-55
Date: October 3, 2024 (113.10.03)



CASE DOSSIER: APPLICATION NO. 0419185

The Subject

A 3D trademark application for the shape of a two-strap sandal.

Designated Goods (Class 25)

Soles; midsoles; insoles (non-orthopedic); footwear.

The Core Legal Dispute

- Trademark Act § 29(1)(1): Devoid of Inherent Distinctiveness.
- Trademark Act § 29(2): Failure to prove Acquired Distinctiveness (Secondary Meaning).

THE COURTROOM CLASH

How two parties viewed the exact same shoe.

THE APPELLANT (Applicant)

Unique Design

The shape features highly unique, clever designs distinct from common sandals. Consumers recognize the brand source.

Market Proven

Long-term sales, marketing, and a Nielsen survey prove consumers link the shape directly to our brand.

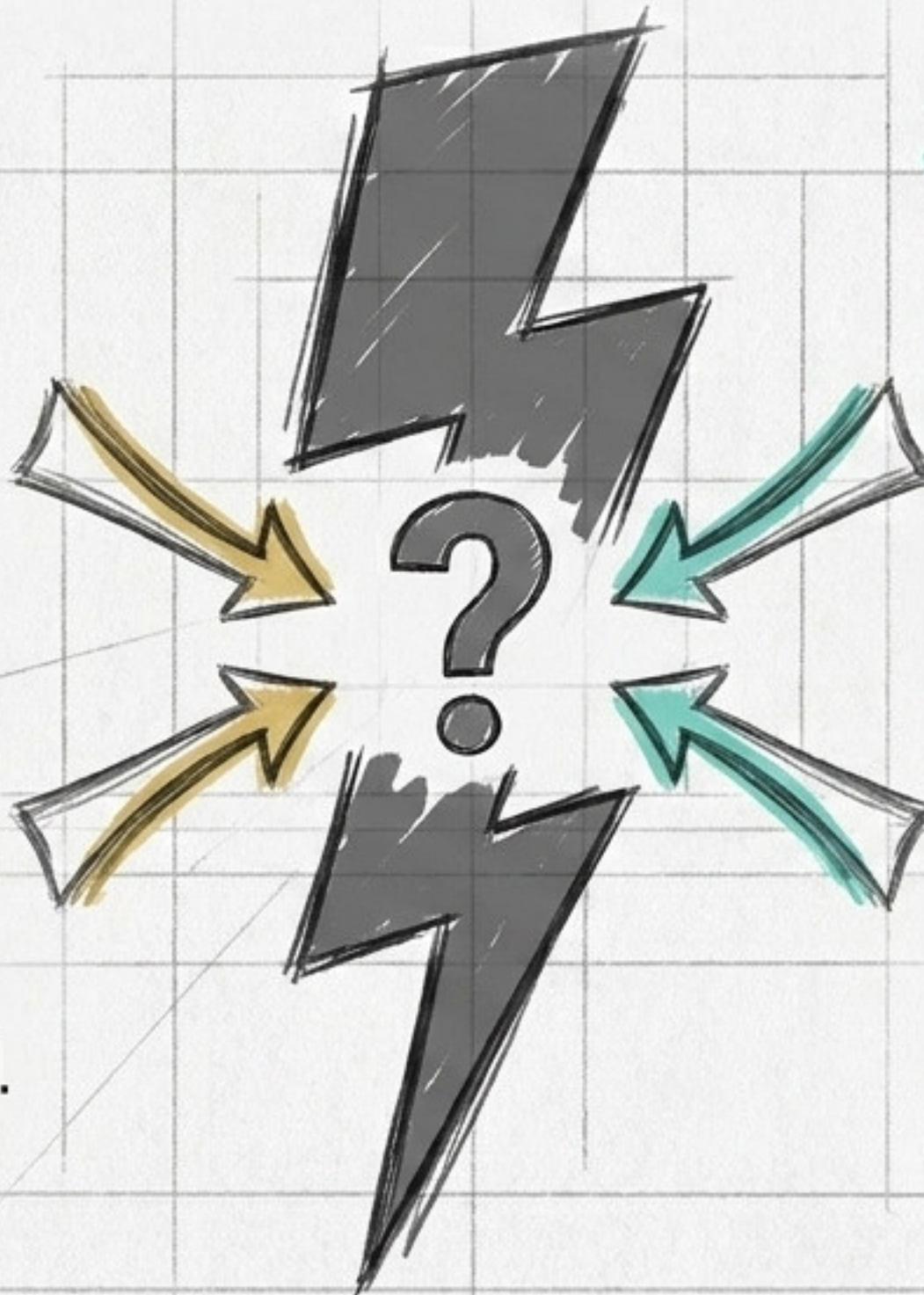
THE COURT (Supreme Administrative Court)

Industry Standard

Sandals are everyday goods with low consumer attention. Exceptional uniqueness is required to transcend mere product display.

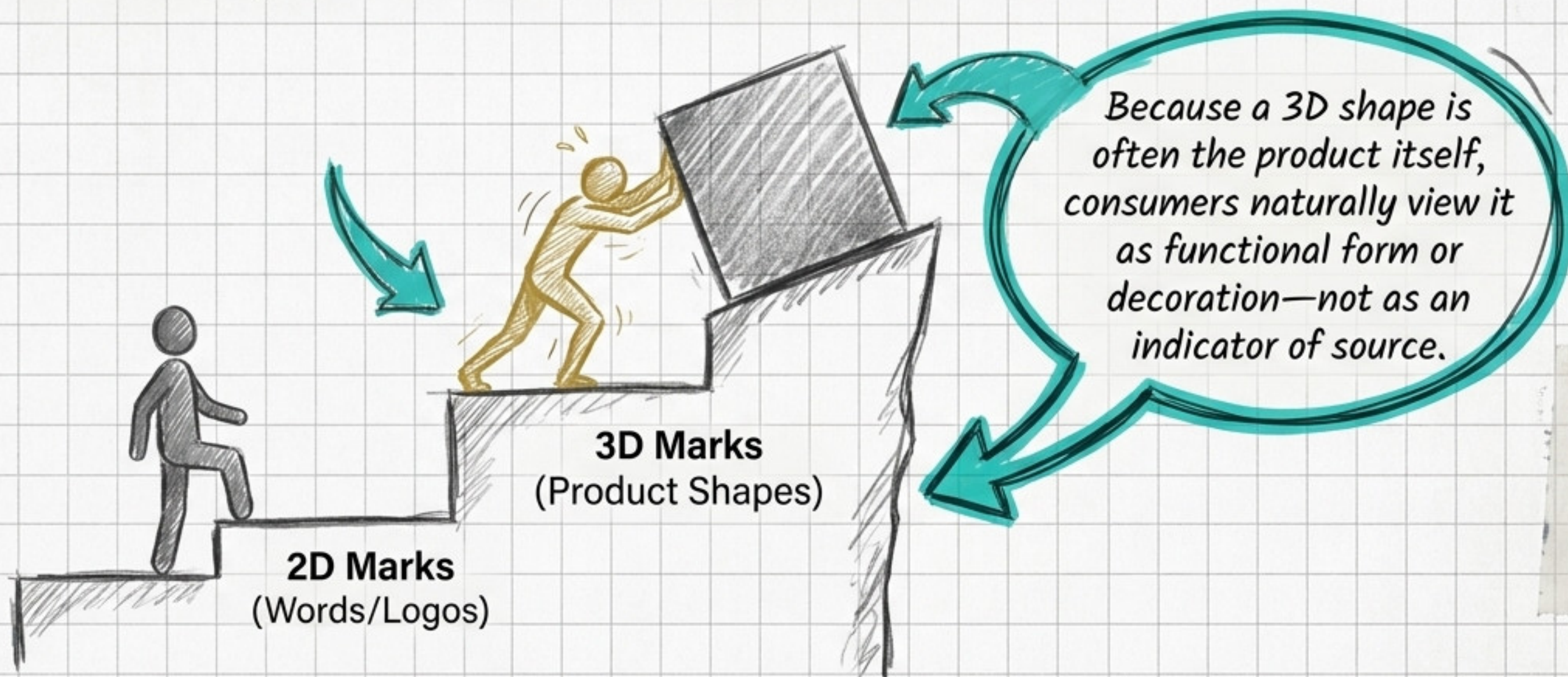
Functional & Decorative

Features are ergonomic or aesthetic. Evidence fails to prove nationwide source identification.



THE BURDEN OF PROOF

The strict legal standard for Inherent Distinctiveness



Key Rule: For daily goods (like low-priced sandals), **consumer attention is low**. The **shape must be exceptionally unique** to leave a profound impression and act as a trademark.

ANATOMY OF A REJECTION

Deconstructing Design into Functionality



Feature: Upper U-Shape & Adjustable Buckles

Court's Classification: Aesthetic Styling.
Common industry method to enhance exterior appearance.

Feature: Raised edges, Toe grip, Heel cup

Court's Classification: Ergonomic Function.
Built for anti-slip, arch support, and prolonged standing pressure relief.

Feature: Tread Pattern

Court's Classification: Utilitarian Function.
Standard design for wear resistance and anti-slip.

THE SECONDARY MEANING TEST

Failing to prove Acquired Distinctiveness under Trademark Act § 29(2).



The Evidence Submitted:

Company history, sales invoices, retail promos, media reports, blogger shares, and a Nielsen Market Research Report.

The Fatal Flaws (Court's Critique):

Generic Evidence: High sales volumes and invoices prove a popular product, but fail to prove consumers recognize the shape alone as a trademark independent of the brand name.

The Fatal Flaws (Court's Critique):

Survey Bias: The Nielsen survey data was heavily skewed toward the Greater Taipei area, lacking the nationwide representativeness required to prove distinctiveness.

THE COPYCAT DEFENSE

Does the existence of similar products prove your design is uniquely yours?

The Appellant's Claim:

Competitors (Fu Fa, GILIS, Crocodile) are selling identical sandals. This proves the market is copying our highly unique design!

Appellant's Argument



The Rebound Effect (Court's Rebuttal):

- **No Causation:** The Appellant failed to provide manufacturing dates proving the competitors copied them after the application date.
- **The Result:** Without a timeline, the existence of these shoes simply proves the design is a common, generic style in the market—further destroying its distinctiveness.

Court's Conclusion



JUDGMENT SUMMARY & STRATEGIC TAKEAWAYS

Distilling Supreme Administrative Court Judgment 112-Shang-55

- **Function is NOT Identity:** Ergonomic features (arch support) and common aesthetics (buckles) are viewed as product characteristics, not trademarks.
 - **The 3D Hurdle is High:** For everyday consumer goods, a 3D shape must be exceptionally profound to achieve Inherent Distinctiveness.
 - **Market Surveys Must Be Flawless:** To prove Acquired Distinctiveness, surveys must be geographically balanced. Regional bias (e.g., Taipei-only) invalidates the data.
 - **Sales $\neq$ Trademark Recognition:** High volume proves you have a popular product; it does not automatically prove consumers recognize the shape as the brand.
 - **Beware the Competitor Argument:** Pointing to similar market products without strict date evidence will backfire, proving the design is generic rather than original.
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