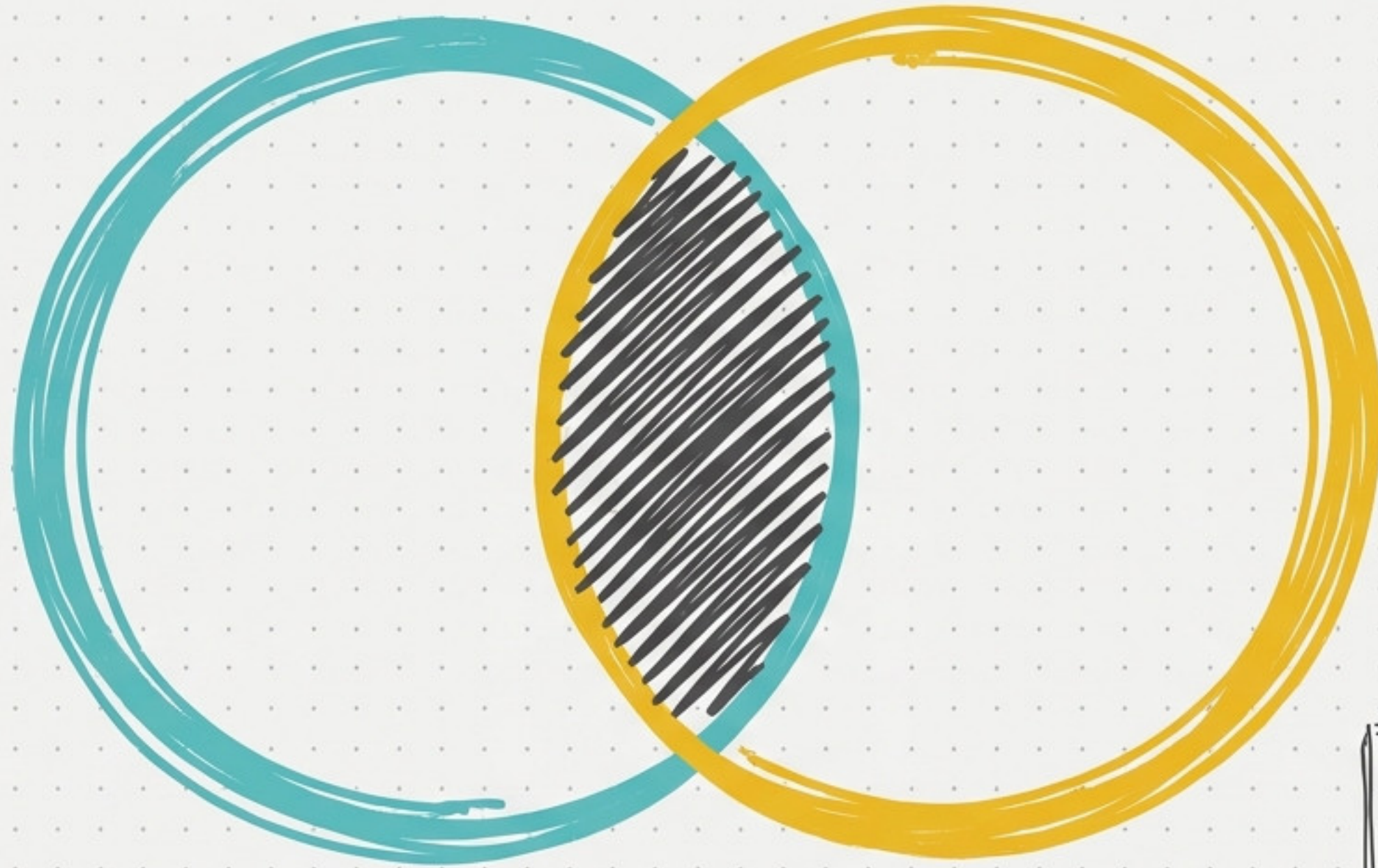


THE MATSU KAOLIANG DISPUTE

A Visual Case Study on Likelihood of Confusion and Disclaimers



Source: Intellectual Property and
Commercial Court 2023
Administrative Trademark Suit
No. 22
Date of Judgment: 2023

PLAINTIFF:
Matsu Liquor
Corporation



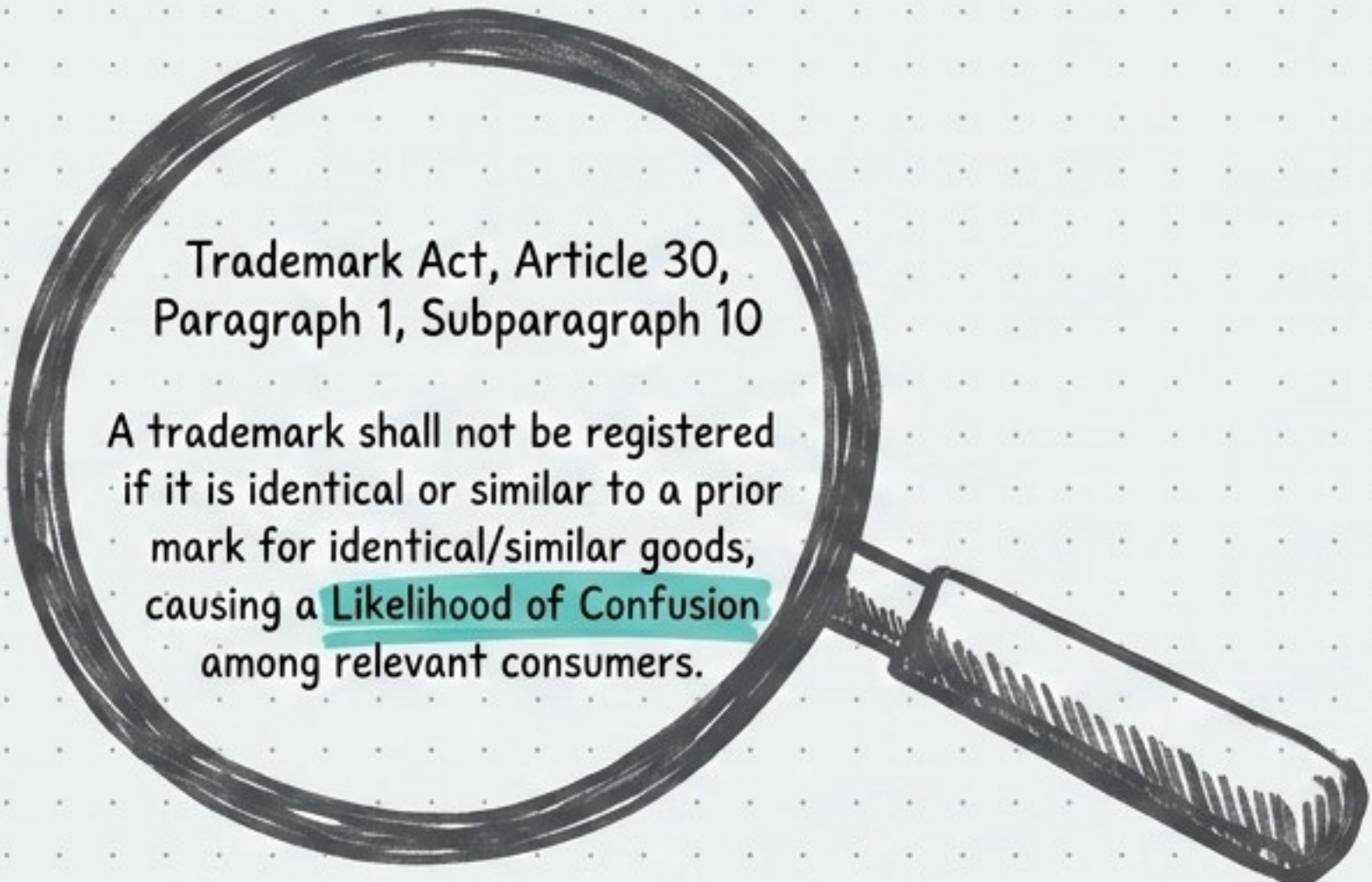
- Prior Registered Trademarks (Registered 15+ years prior)
- Designated Goods: Class 33 (Liquor, Kaoliang Liquor)
- Context: One of Taiwan's three major Kaoliang producers. The established, top-tier incumbent.

INTERVENOR:
Lin (Local Tour Guide)



馬祖高粱啤酒

- Disputed Trademark (Filed in 2021)
- Designated Goods: Class 32 (Beer, Non-alcoholic Beer)
- Context: A challenger entering the beverage market with no prior brewery footprint.



Trademark Act, Article 30,
Paragraph 1, Subparagraph 10

A trademark shall not be registered
if it is identical or similar to a prior
mark for identical/similar goods,
causing a **Likelihood of Confusion**
among relevant consumers.

THE COURT'S DIAGNOSTIC TEST

To determine confusion, the court evaluates four interdependent factors:

① Similarity of Trademarks

② Similarity of Goods

③ Acquired Distinctiveness

④ Bad Faith of the Applicant

THE DILEMMA OF THE DISCLAIMER

The Intervenor filed a Disclaimer for the text
“Matsu Kaoliang Beer,” admitting it is merely
a descriptive product name.

How does this affect the analysis?

DEFENDANT (TIPO)

Argument: Because the text is generic and covered by a Disclaimer, it loses its source-identifying function. Therefore, it should be excluded from similarity comparisons. No confusion.

THE COURT

Ruling: A Disclaimer only limits future enforcement. During an opposition, we must evaluate the Disputed Trademark as a complete whole. You cannot mathematically subtract the disclaimed text to artificially avoid a similarity comparison.

FACTOR 1: SIMILARITY OF TRADEMARKS



Visual Differences (The Graphics)



馬祖高粱啤酒

馬祖高粱酒

- Disputed Trademark: Hand gesture with a sphere.
 - Prior Registered Trademarks: Calligraphy, wheat ears, or a leaping horse.
- Court's View: Consumers rely on text, not graphics, to 'call out' a brand when purchasing.



Phonetic Similarity (The Text)

- Taiwanese consumers use text for brand recognition.
- 'Matsu Kaoliang Beer' vs. 'Matsu Kaoliang Liquor' (Only one character difference in Chinese).

Result: High degree of Similarity of Trademarks. The textual dominance overrides minor graphic variations.

FACTOR 2: SIMILARITY OF GOODS

Class 32 (Disputed Trademark)

Class 33 (Prior Registered Trademarks)

Beer, Stout,
Draft Beer,
Non-alcoholic Beer

- The Commercial Reality:**
- Both are alcoholic beverages.
 - Identical retail shelves and distribution channels.
 - Highly overlapping target consumer demographics.

Liquor,
Distilled Spirits,
Kaoliang

Result: The goods are highly similar in commercial nature, escalating the risk of confusion.

FACTOR 3: ACQUIRED DISTINCTIVENESS

Can a geographic name ('Matsu') be monopolized?



The Baseline Challenge:
'Matsu' is a geographical location. Generally, geographic names lack inherent distinctiveness.

The Transformation:

- Decades of extensive marketing and sales by the Plaintiff.
- Widespread media coverage.
- One of only three major Kaoliang producers in the region.



Secondary Meaning:

Result: The mark has achieved Acquired Distinctiveness. Consumers now recognize 'Matsu Kaoliang' as an indicator of the Plaintiff's specific commercial source, not merely an island's name.

FACTOR 4: BAD FAITH OF THE APPLICANT

Was the filing executed in Good Faith?

The Intervenor's Profile:

A local tour guide,
not a brewery
manufacturer.
Highly likely to be
aware of the famous
local liquor brand.



1. Filed for
"Education Info"
(Class 41)



2. Filed Disputed
Trademark for Beer
(Class 32)



3. Later filed for
"Vinegar"
(Class 30)

Result: A clear pattern of intentional imitation targeting the Plaintiff's brand equity. The application was filed in Bad Faith.



THE VERDICT

Intellectual Property and Commercial Court Judgment

Original Decision Overturned:

The Court found TIPO's original dismissal of the opposition to be legally flawed.

The Rationale:

Even if 'Matsu Kaoliang Beer' describes product ingredients, consumers are highly likely to perceive it as a line extension—a Kaoliang-flavored beer produced by the Plaintiff.

The Order:

TIPO is ordered to issue a decision of Opposition
Valid and fully revoke the registration of the Disputed Trademark.

KEY TAKEAWAYS & IMPLICATIONS

How this judgment shapes future trademark strategy:

1

A Disclaimer is Not an Invisibility Cloak

You cannot copy a competitor's famous text, add a random graphic, file a Disclaimer, and claim there is no similarity. The mark must be judged in its holistic entirety.

2

Geographic Names Can Become Untouchable

Through long-term, intensive market use, geographical indications can achieve Acquired Distinctiveness, granting them powerful protection against free-riders.

3

Likelihood of Confusion is a Reality Check

The Court doesn't just look at side-by-side images; it looks at market reality. High similarity of goods, phonetic dominance of text, and the Bad Faith of the applicant will always tip the scales.