IP Case Study & Legal Briefing

The Limits of "Implicit Consent"

An Analysis of Trademark Infringement and Corporate Naming

Source: Intellectual Property and Commercial Court
Case: Civil Judgment 113 Min-Shang-Shang-Zi No. 11
Date: April 16, 2024

The Opposing Parties

The Appellee

Mastercard International Inc.

Role: The Trademark Owner

- Assets: Registered Marks for 'MASTERCARD', 'WAN-SHI-DA' (Phonetic Chinese transliteration), and 'WAN-SHI-DA-KA' (Mastercard Card).

The Appellant

Cash Flow Co., Ltd.

(Doing business as 'Taiwan WAN-SHI-DA')

Role: The Alleged Infringer

- Action: Used 'WAN-SHI-DA' in its specific corporate name and service marks without legal authorization.

The Three Legal Battlegrounds

Dispute 01: Trademark Similarity & Service Overlap.

Did the Appellant's usage create a 'Likelihood of Confusion'?

(Trademark Act Art. 68, Item 3)

Dispute 02: The Defense of Acquiescence.

Does ongoing business cooperation equate to "implicit consent' to use an IP asset?

Dispute 03: Corporate Naming.

Did the Appellant infringe upon a famous trademark by registering it as their specific company name?

(Trademark Act Art. 70, Item 2)

Evaluating Visual Similarity

Appellee's Registered Marks (Classes 3 & 36)

MASTERCARD

MASTERCARD

萬事達

"WAN-SHI-DA"/
"WAN-SHI-DA-KA"

Appellant's Actual Use in Market

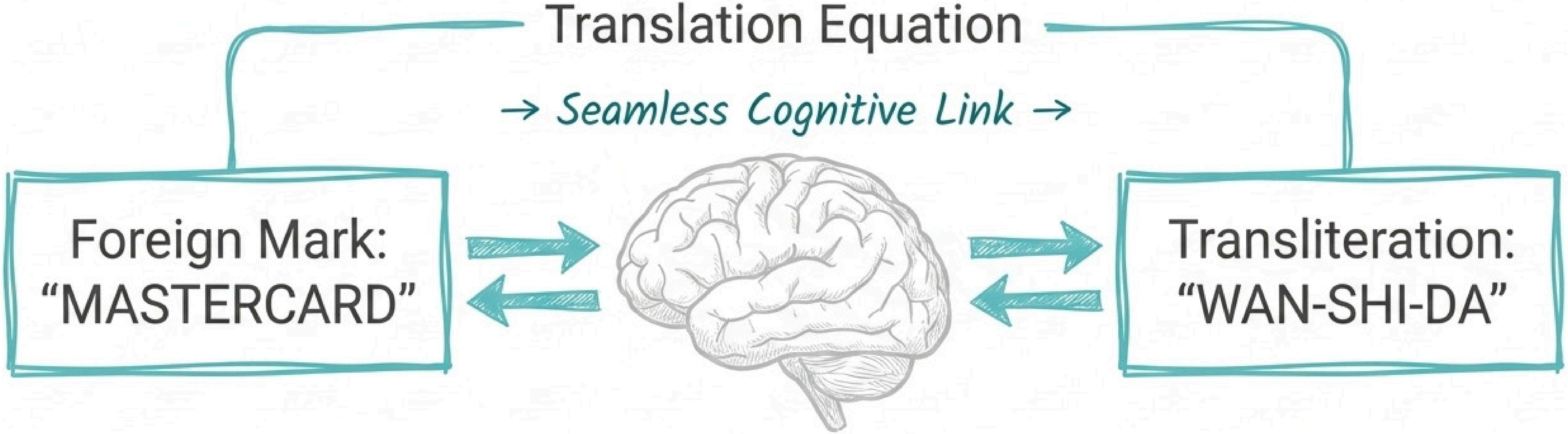
3D Cube Logo with 'TM'

TM 台灣萬事達金流股份有限公司
Cash Flow Co.,Ltd.

Taiwan WAN-SHI-DA
Cash Flow Co., Ltd.

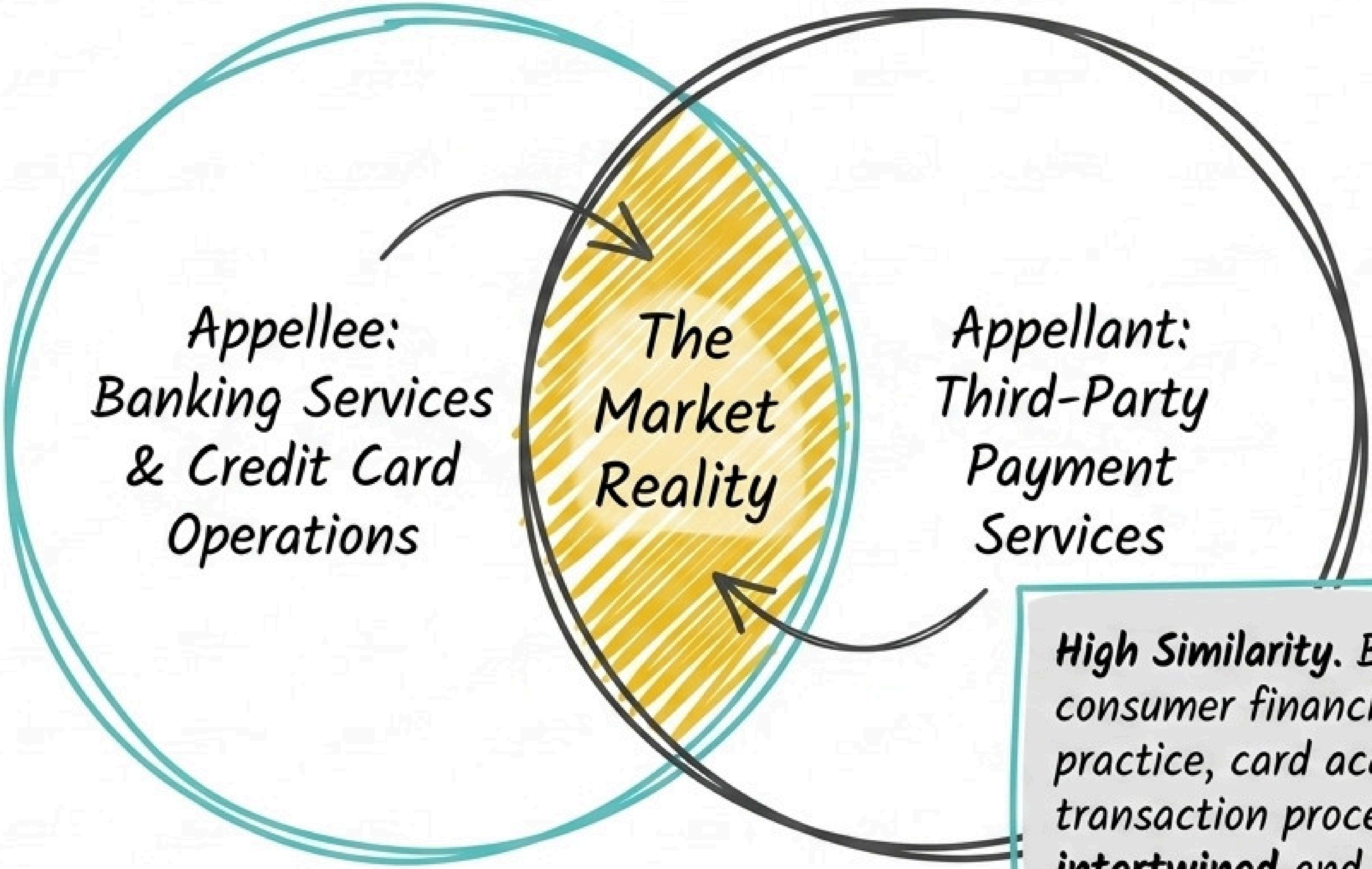
> * The Court's Observation: The similarity in appearance, layout, and textual sequence is significantly high, creating immediate visual alignment.

The Phonetic Connection



During transactions, relevant consumers vocally and conceptually connect the foreign word directly to its phonetic translation. The court ruled that the overall similarity is highly elevated because there is no alternative meaning—it directly points to the source brand.

The Intersection of Services



High Similarity. Both aim to facilitate consumer financial transactions. In practice, card acquiring and transaction processing are deeply **intertwined** and frequently provided by the exact same market entities.

Establishing Likelihood of Confusion

High Trademark Similarity (Visual & Phonetic)

Hand innotation

+

High Service Similarity (Financial Transactions)

+

High Trademark Distinctiveness (Strong Brand Identity)

=

Crgnet badary

Severe Consumer Confusion. Consumers might assume the services originate from the same source, affiliated enterprises, or a franchise relationship.

Legal Finding: Violation of Trademark Act Article 68, Item 3.

The "Implicit Consent" Argument

2015 – Appellee allegedly becomes aware of Appellant's specific business name.

2015 to Present – Parties engage in ongoing, routine business cooperation.

Ongoing – Appellee collects registration fees, processing fees, and service provider authorization fees from Appellant.

"By knowing our name, taking our operational fees, and not officially objecting for years, you have implicitly consented to our use of the trademark."

(Appellant's Claim)

The Court's Rebuttal: Knowledge ≠ Consent

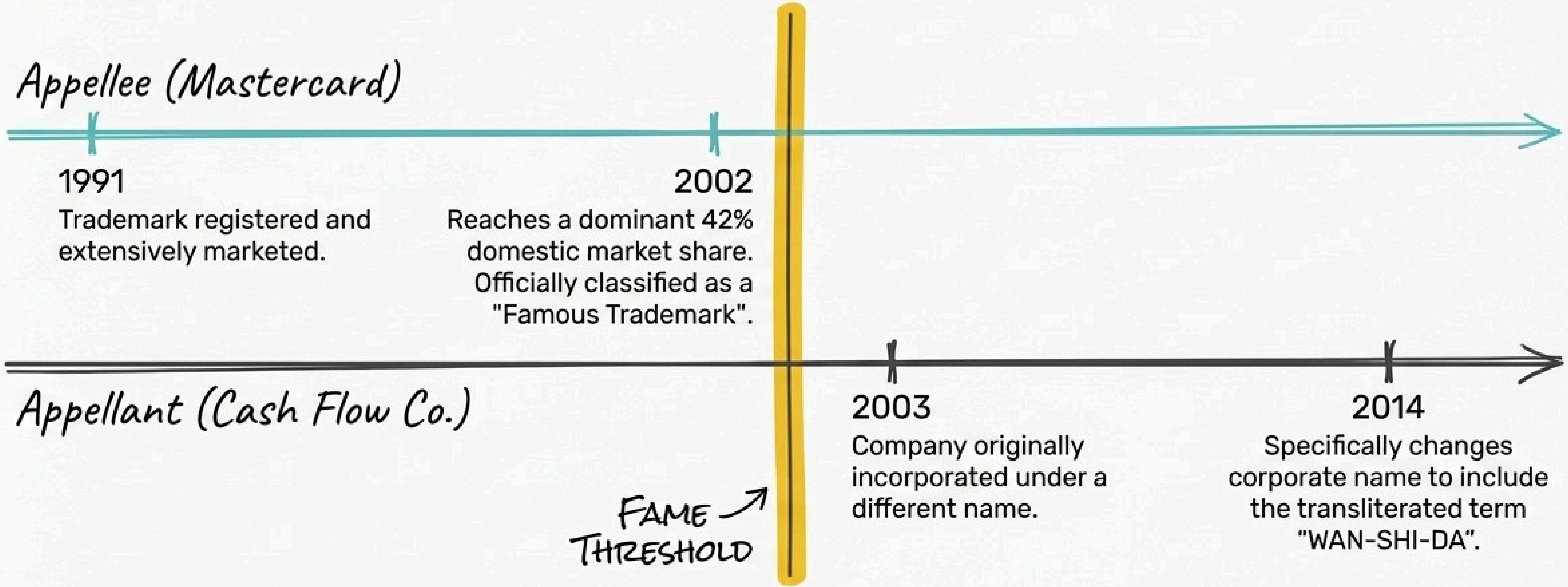
Knowing about a vendor's business operation and legal name.

≠

Legally consenting to the use of a registered trademark.

The Court's Logic: A commercial partnership or vendor relationship is entirely separate from Intellectual Property authorization. The mere existence of business cooperation is insufficient to legally deduce "implicit consent" regarding trademark rights.

Establishing Famous Trademark Status



The Appelee’s marks were undeniably famous for over a decade before the Appellant adopted the infringing nomenclature.

Dilution and Corporate Identity

Diagnostic Criteria - Trademark Act Art. 70(2)

- **Criteria 1**: Is the registered mark famous? -> YES (Achieved in 2002).
- **Criteria 2**: Is the mark used in the specific part of a company name? -> YES (Adopted in 2014).
- **Criteria 3:** Does it cause confusion regarding the business entity? -> YES (Highly similar financial services).

Legal Finding: The Appellant's use of the trademark as its corporate name is deemed an explicit infringement of trademark rights under Article 70, Item 2.

Judgment Promulgated

1. The Appeal is Dismissed.
2. The Appellant shall jointly bear the litigation costs of the second instance.

The court fully upheld the rights of the trademark owner, reinforcing strict protections against both service mark confusion and corporate naming infringement within the financial sector.

Executive Takeaways & IP Strategy

Insight 1: Transliteration Matters

Phonetic translations of foreign marks carry the exact same legal weight as the original text if consumers conceptually link them in the market.

Insight 2: The 'Vendor' Trap

Do not assume that doing business with a trademark owner implies legal consent to use their IP. Always secure explicit, written licensing agreements.

Insight 3: Corporate Naming is Vulnerable

Changing a company name to include a pre-existing famous trademark, especially in overlapping industries, is a direct violation of Article 70(2).