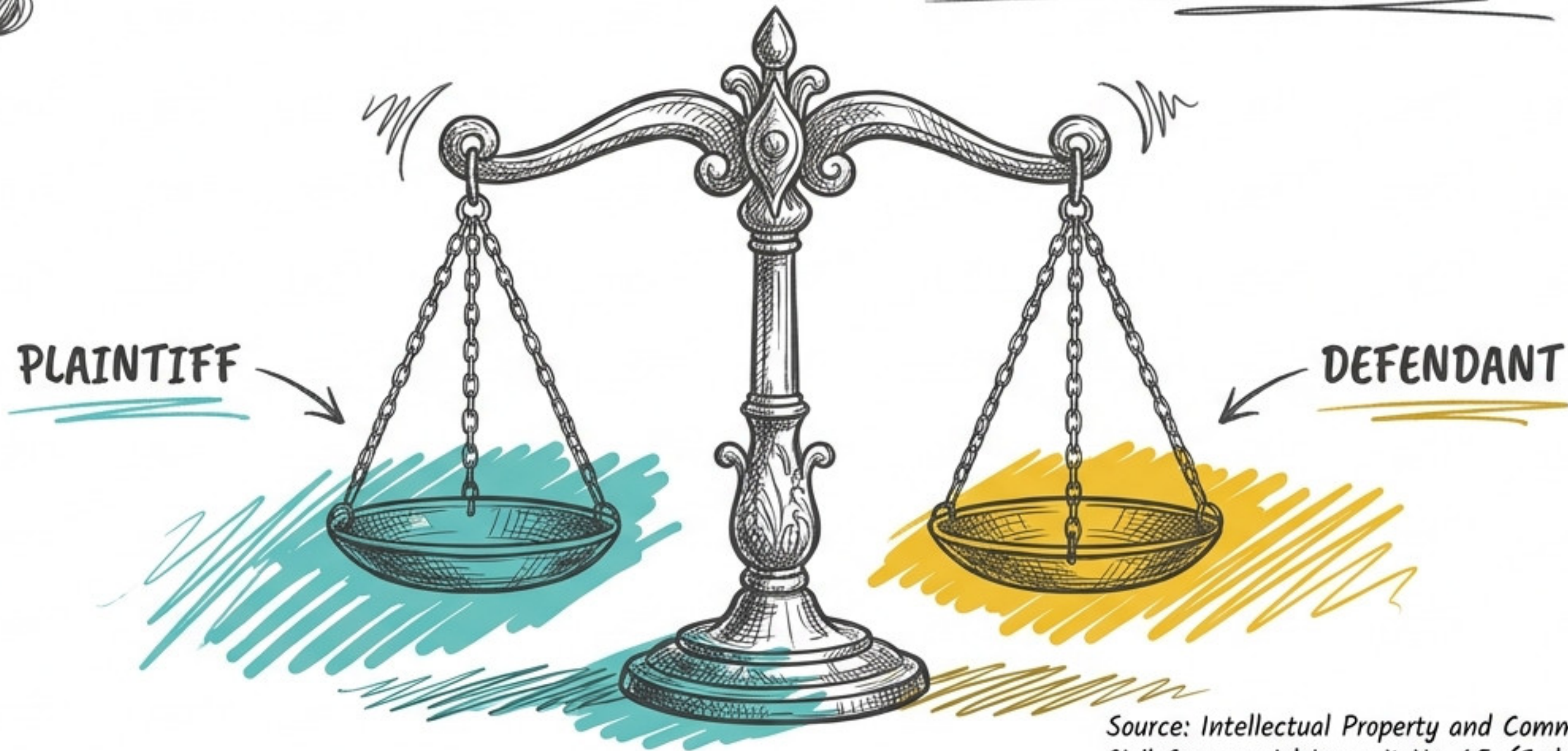


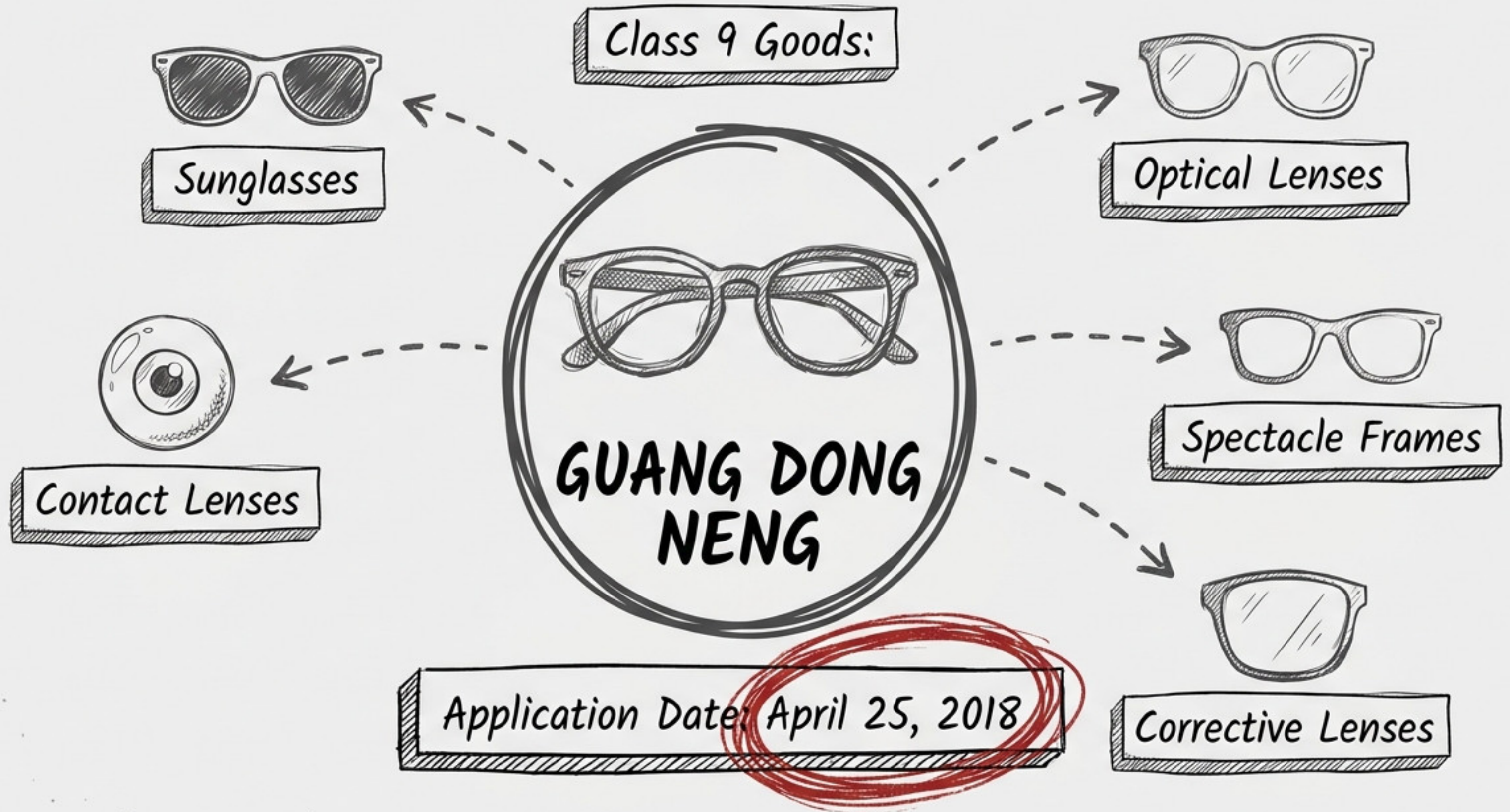
Bona Fide Prior Use in Trademark Law

• The 'GUANG DONG NENG' Trademark Dispute



Source: Intellectual Property and Commercial Court, 2024
Civil Commercial Lawsuit No. 45. (Judgment Date: 2024)

The Disputed Territory: Trademark No. 01950809



The Contenders

The Plaintiff



- The Registered Trademark Owner.
- Claim: Accuses Defendant of unauthorized use on lens packaging, causing consumer confusion.
- Weapon: Trademark Act Article 68(1) & (3) (Infringement).

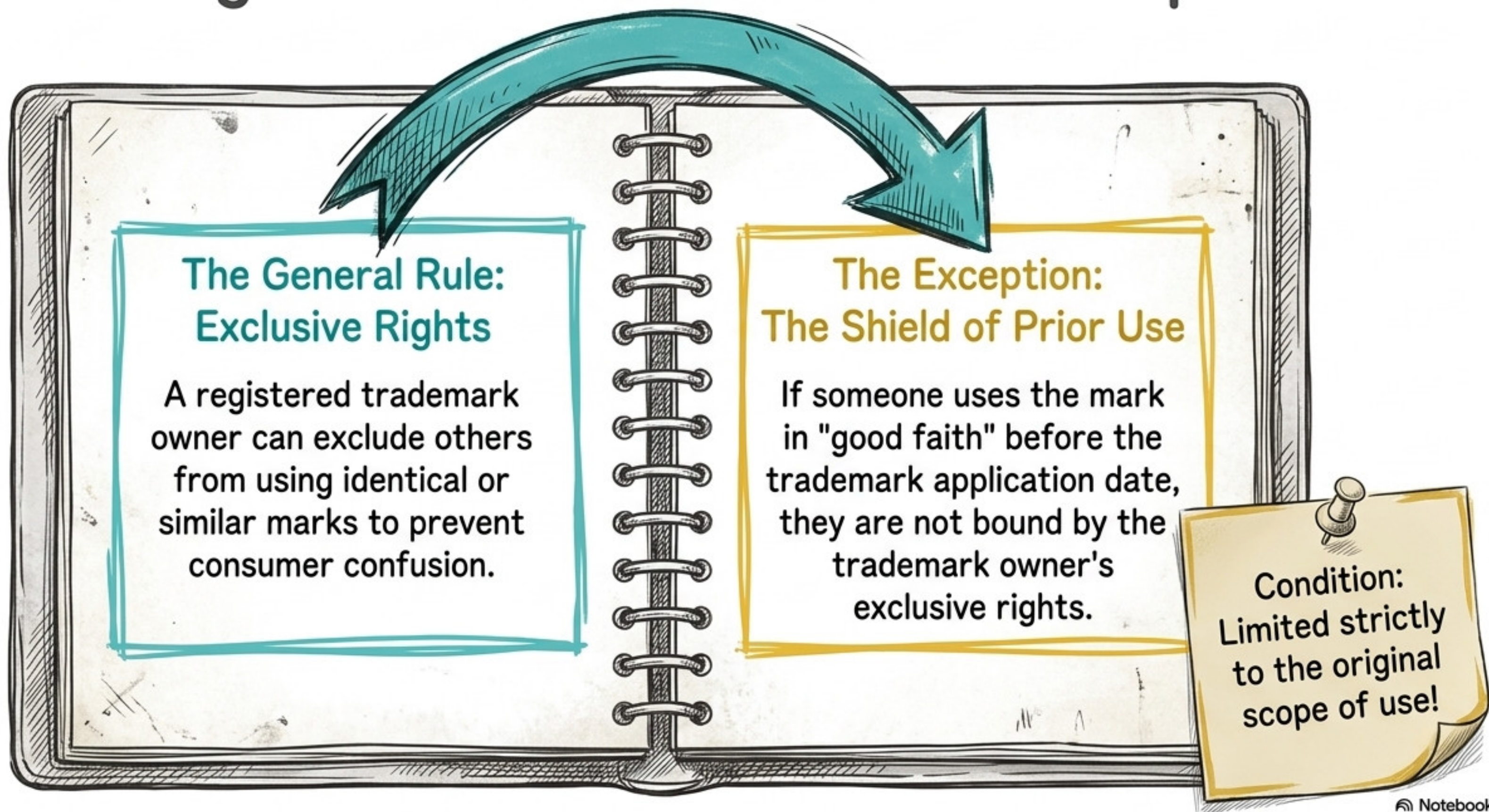


The Defendant

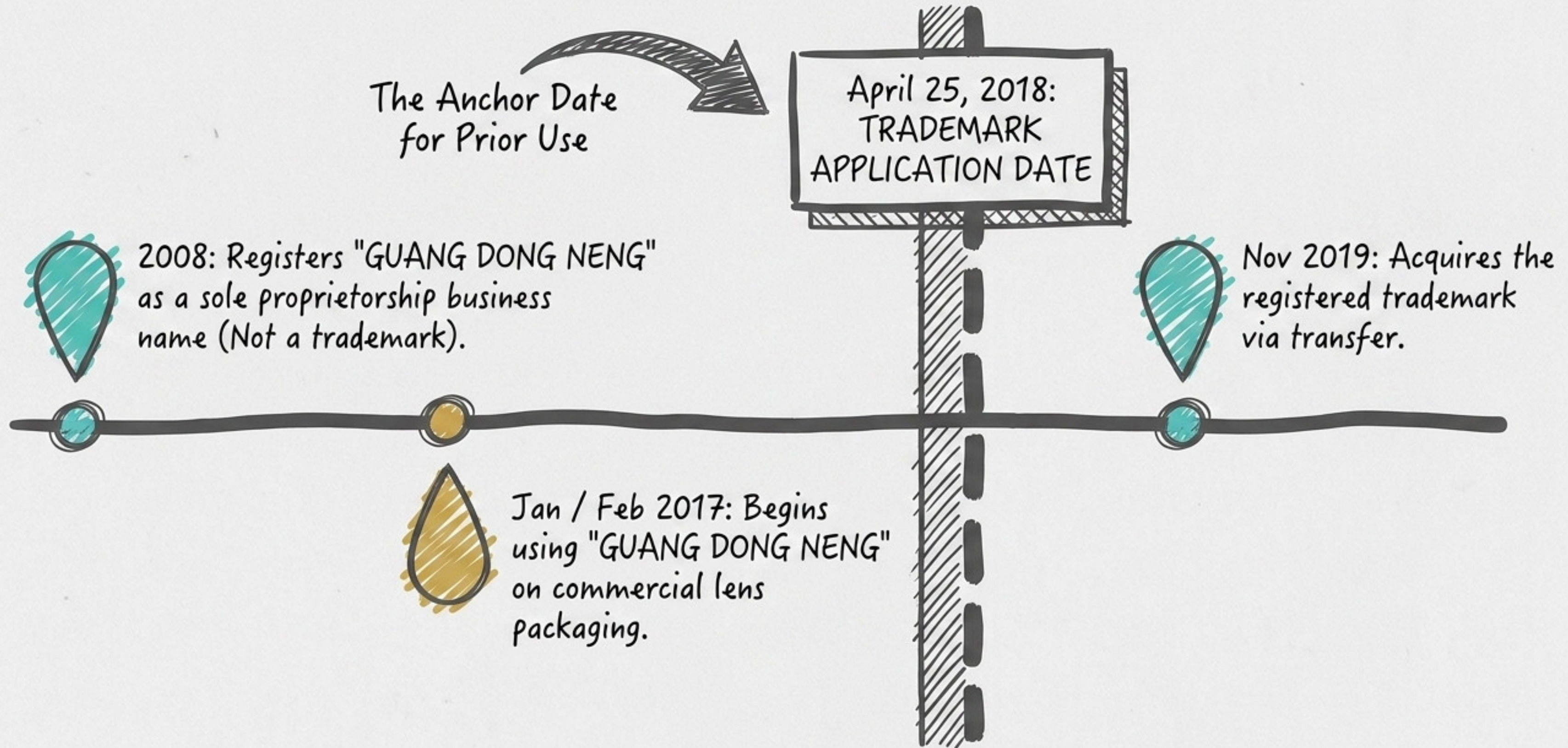


- The Prior User.
- Defense: Used the exact term on lens packaging before the Plaintiff applied for the trademark.
- Shield: Trademark Act Article 36(1)(4) (Bona Fide Prior Use).

The Legal Framework: Rule vs. Exception



The Crucial Timeline: The Race to April 2018



The Counter-Attack: Defining “Good Faith”



The Plaintiff's Argument

The Defendant lacks “Good Faith.” We had a business relationship (Distributor Agreement) in October 2013. They knew our business name! They are free-riding on our reputation.

The Legal Reality Check

“Good Faith” for prior use is judged strictly against the Trademark Application Date (April 2018).



The Verdict: Rationale and Resolution



→ Rationale 1: Business Name vs. Trademark

Plaintiff's 2008 use was a business registration. Before trademark approval, they possessed no legal right to exclude others from using the term.

→ Rationale 2: Timing of Good Faith

Defendant actively used the term on packaging by early 2017, predating the April 2018 trademark application. A 2013 business contract does not legally constitute "bad faith" trademark infringement.

Lawsuit Dismissed. Defendant is fully protected under the Bona Fide Prior Use exception.

Key Takeaways: Strategy & Implications



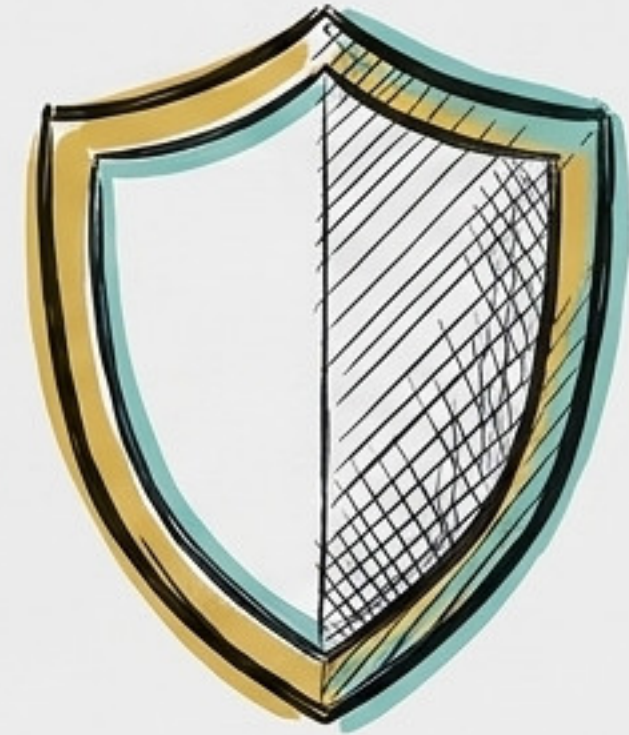
Timing is the Ultimate Metric

Prior use defenses are anchored entirely to the opposing party's trademark application date, not the date they acquired the trademark or started their business.



Business Name ≠ Trademark

Registering a sole proprietorship or company name provides administrative identity, but it does NOT grant the exclusionary power of a registered trademark.



The Power of Bona Fide Use

Genuine, continuous use of a term in the market before a competitor files for a trademark acts as an absolute shield against infringement claims.