

Trademark Use vs. Descriptive Fair Use

Navigating E-Commerce Sales of Genuine Goods

Format: Instructional Case Analysis

Source: Intellectual Property and Commercial Court, 113 Min-Shang-Su-Zi No. 8

Date: 2024

The Plaintiff



- Trademark Owner
- Terminated distribution authorization.
- Claim: Trademark Infringement under Trademark Act §68, §69.



The Defendant

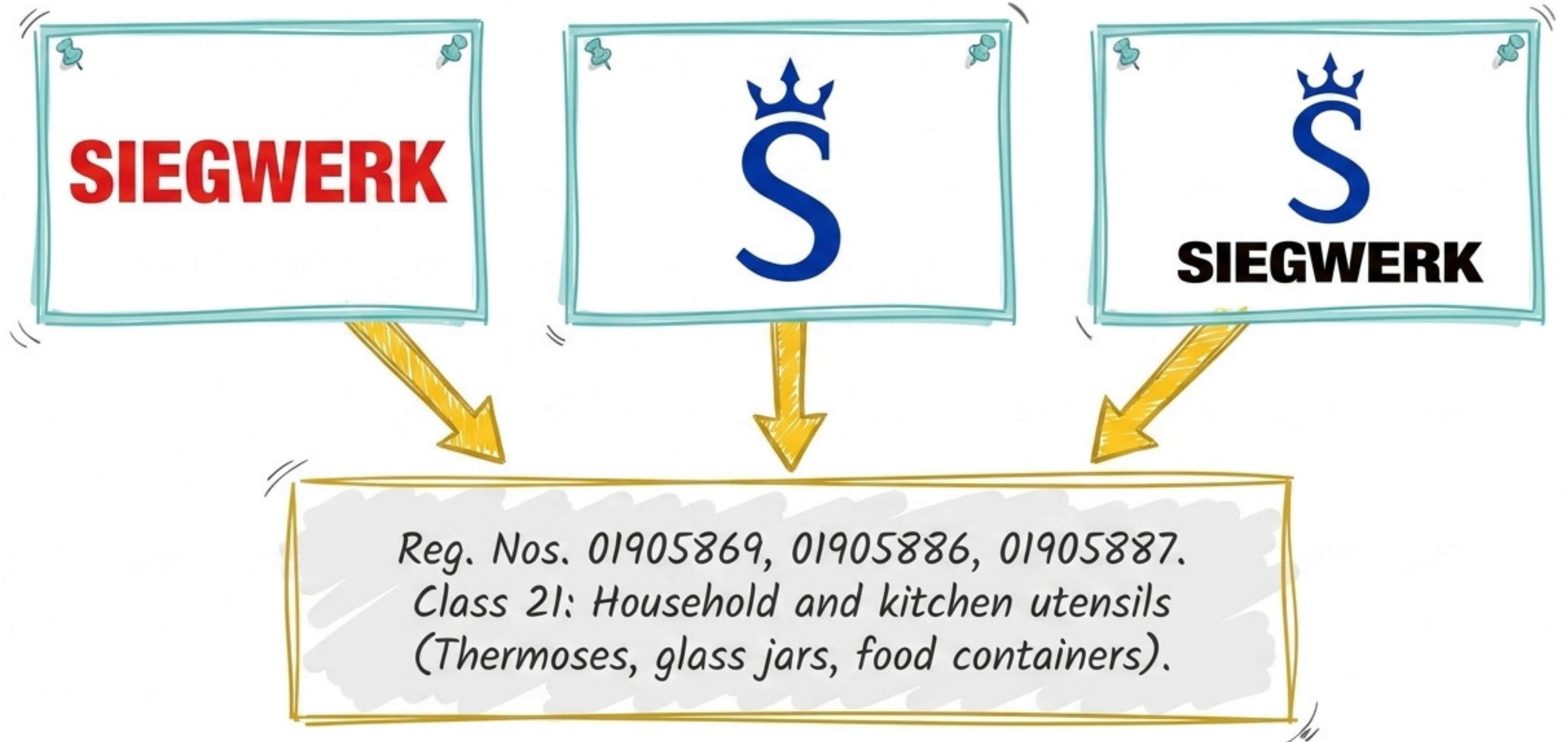


- E-commerce Retailer ("Meeshop")
- Selling remaining inventory of Genuine Goods.

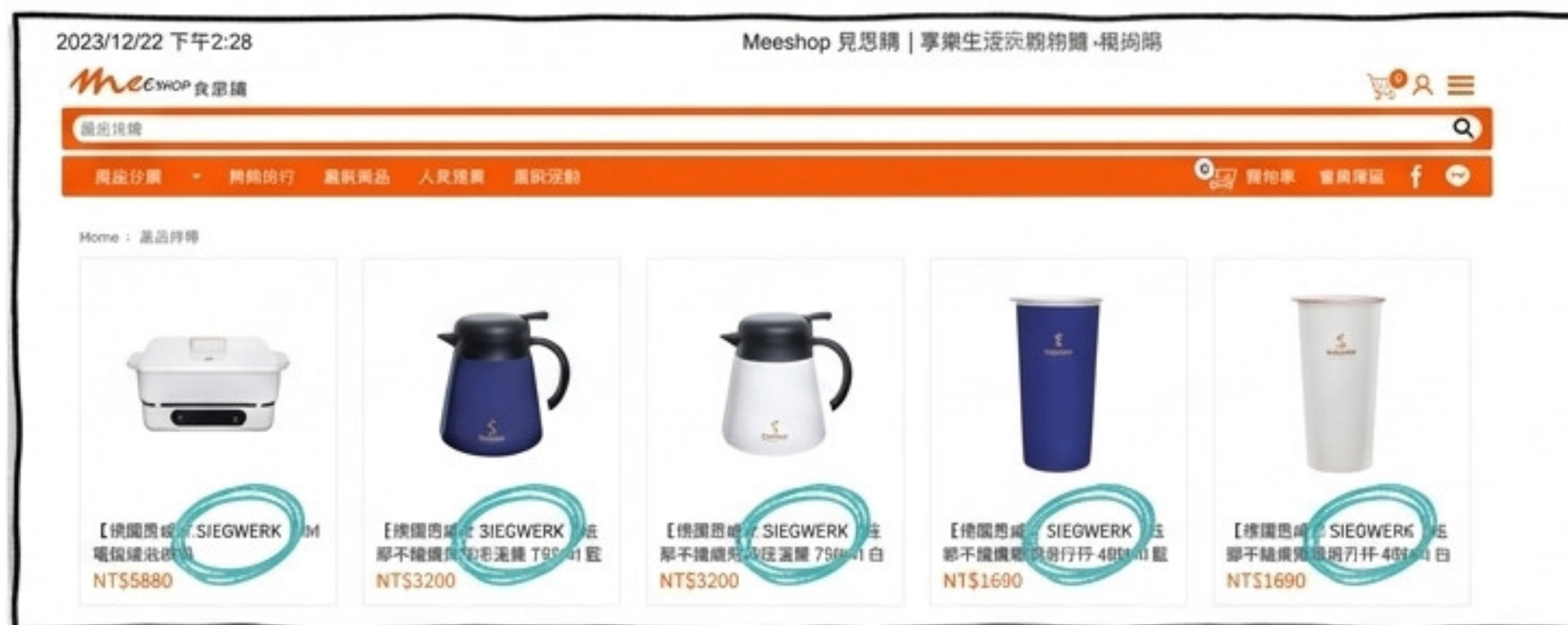


The Central Question:
Does writing a registered brand name in a product listing to sell genuine inventory constitute actionable 'Trademark Use'?

The Registered Trademarks

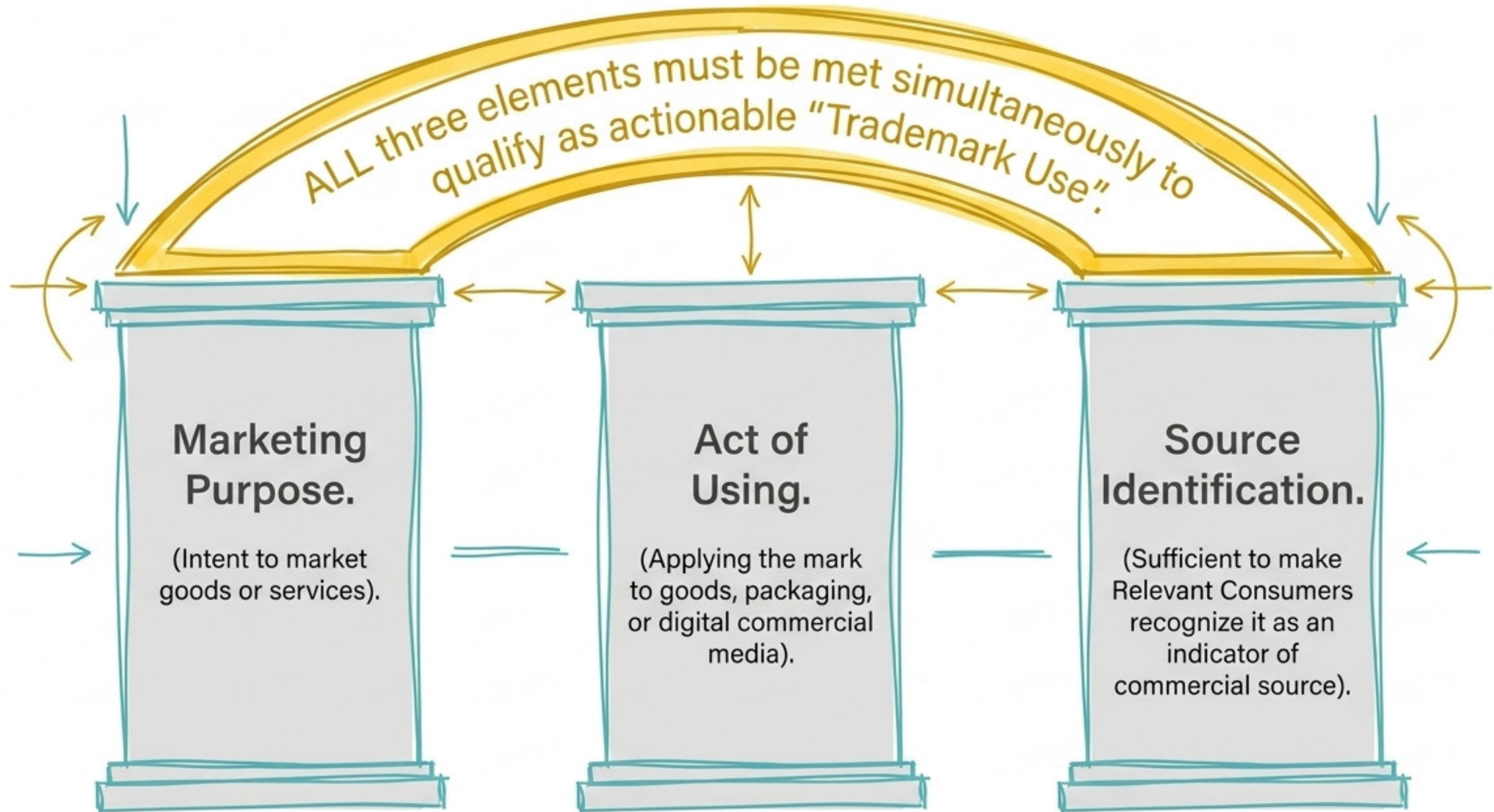


The Retail Environment

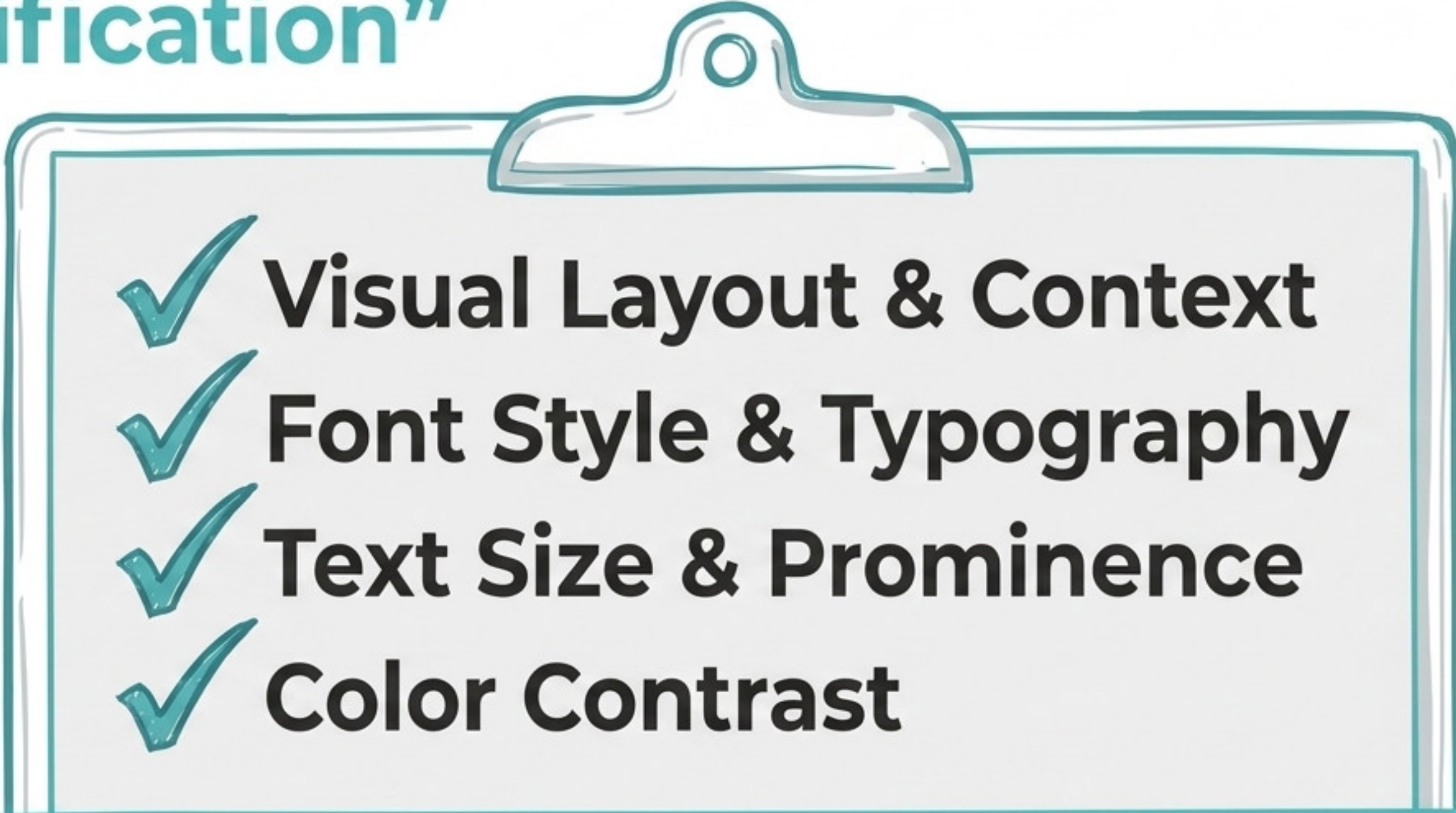


- Observation 1:
Defendant lists products on the 'Meeshop' platform.
- Observation 2:
The protected word mark appears in the product title strings.
- Plaintiff's Argument:
Unauthorized use of a registered trademark on a commercial website creates a Likelihood of Confusion.

Statutory Requirements (Trademark Act §5)



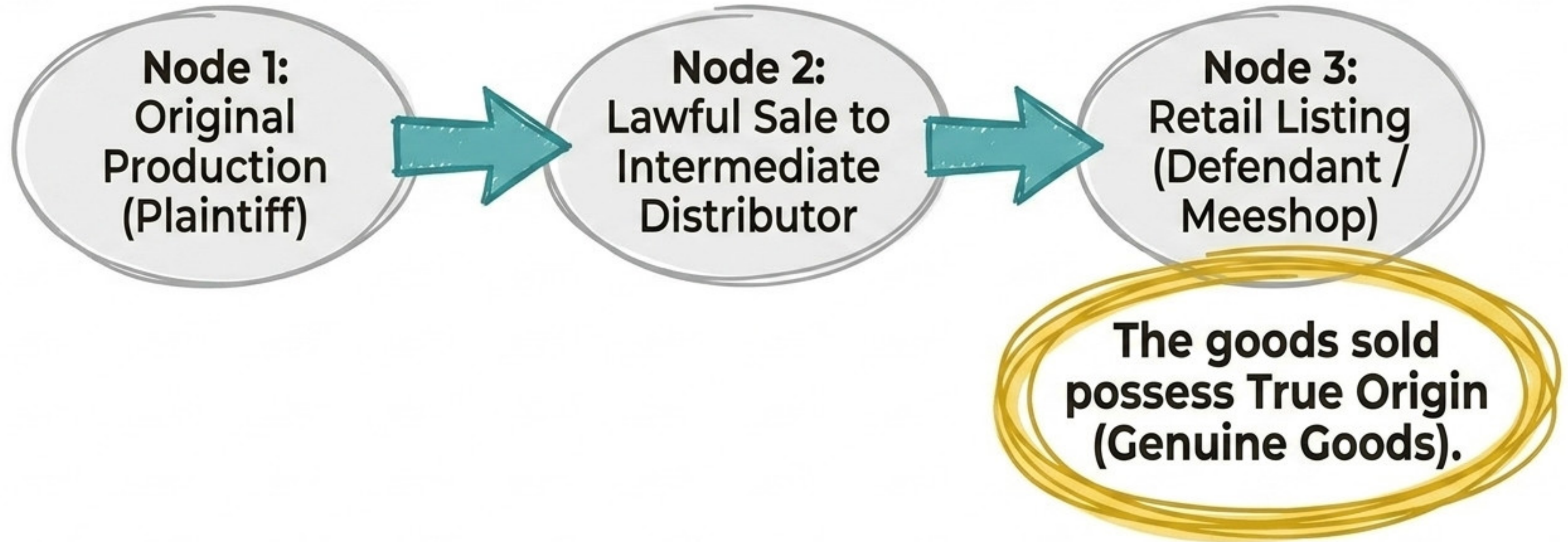
Judicial Criteria for “Source Identification”

- 
- ✓ **Visual Layout & Context**
 - ✓ **Font Style & Typography**
 - ✓ **Text Size & Prominence**
 - ✓ **Color Contrast**



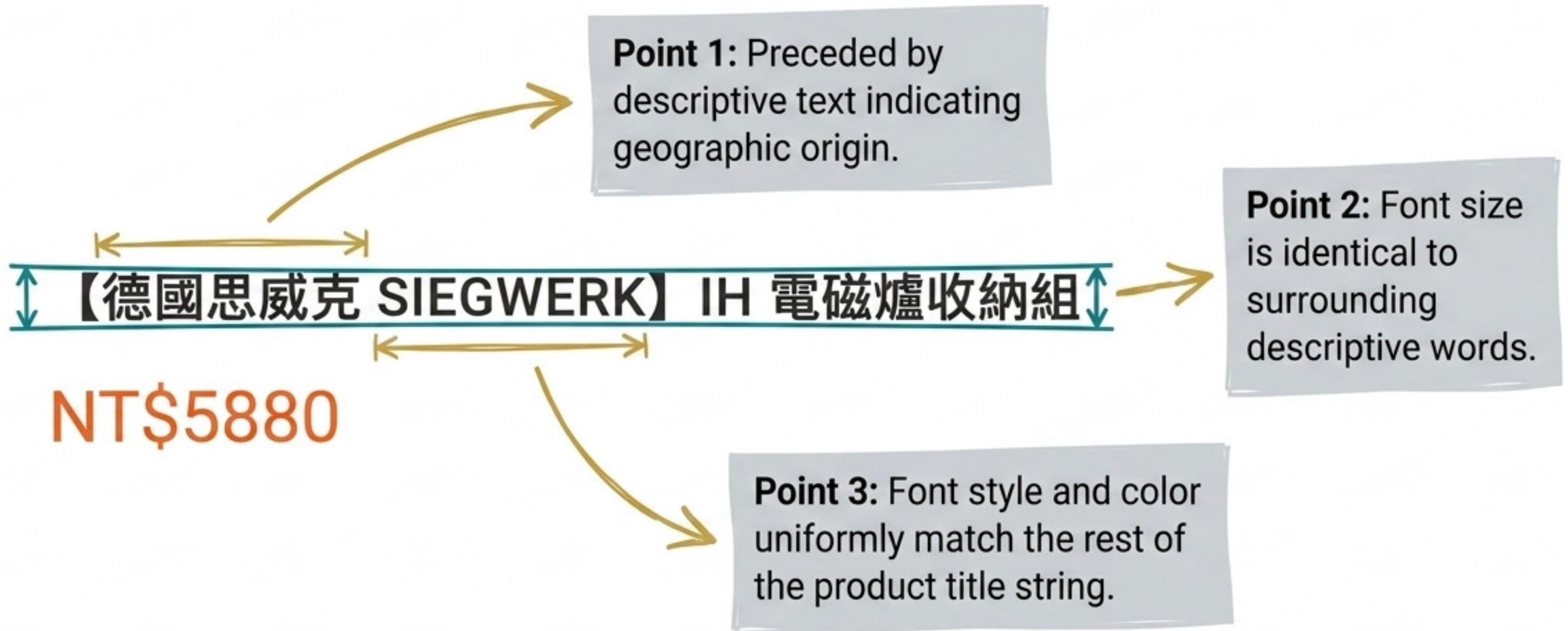
The Intent Factor: Does the use merely describe the product, or does it attempt to free-ride on the Trademark Owner's goodwill?

Application Part I: The “Genuine Goods” Factor



Impact: Using the brand name is an accurate factual description of the inventory, not a deceptive claim of affiliation.

Application Part II: Visual Deconstruction



The presentation lacks the visual prominence required to act as a standalone Source Identifier.

Judgment: Case Dismissed



The Defendant's actions do NOT constitute "Trademark Use" under Trademark Act §5.

Consequently, there is no Trademark Infringement under Trademark Act §68.

The text was used merely to inform consumers of the brand identity of the Genuine Goods. It served a **purely descriptive function** rather than a trademark function.

Diagnostic Framework: Trademark Use vs. Descriptive Use

	Trademark Use (Infringement) 	Descriptive Use (Lawful) 
Visual Presentation	Large, stylized, <u>standalone</u> logo prominently displayed	<u>Standard text</u> , uniform size/color, integrated into descriptive sentences
Product Nature	<u>Counterfeit</u> , unauthorized, or unrelated goods	<u>Genuine Goods</u> originating directly from the rights holder
Primary Function	Indicating the seller's distinct commercial identity	Factual explanation of the product's original brand or specifications

Key Takeaways for E-Commerce Retailers

Retailers possess the legal right to factually describe the Genuine Goods they are selling in their inventory.

Avoid extracting, enlarging, or stylizing the brand's protected logo in a way that implies official sponsorship or partnership.

Courts evaluate the entirety of the webpage layout, typography, and color palette—not just the isolated presence of a protected word.