

Trademark Law Case Study



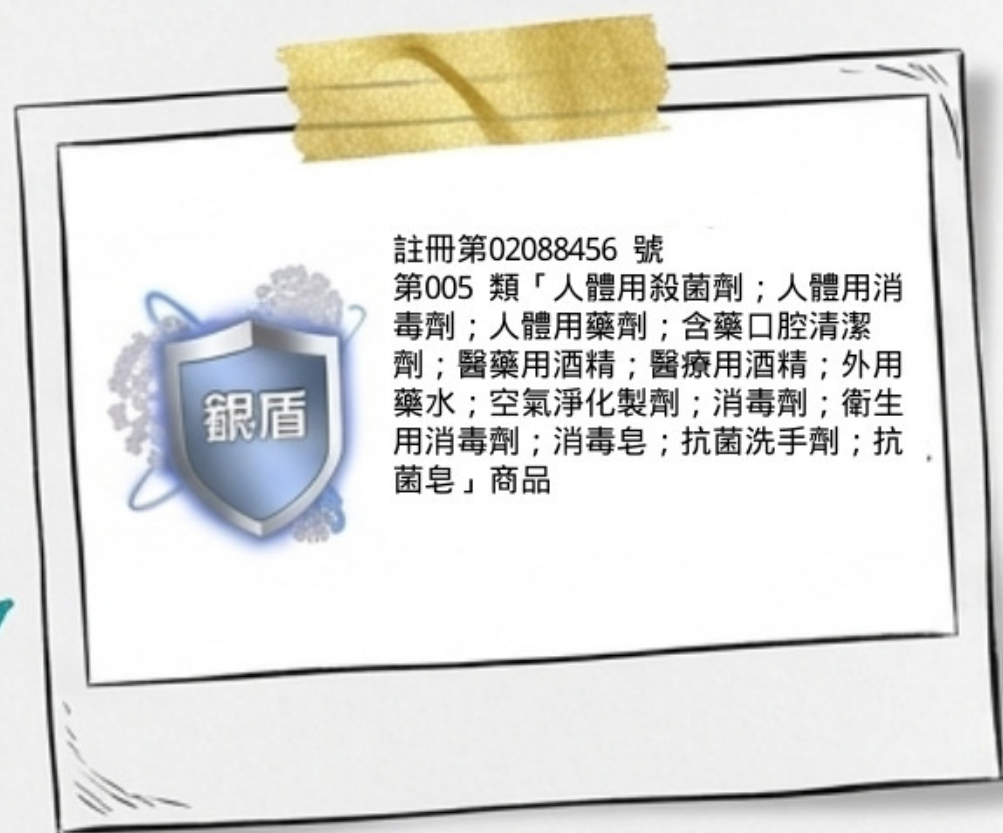
The Silver Shield Trademark Dispute

Deconstructing Subjective Intent in Criminal Infringement

Source: Intellectual Property and Commercial Court
Criminal Judgment: 113-Xing-Zhi-Shang-Yi No. 1
Date: 2024 (R.O.C. 113)

The Complainant

Four Seasons Yangpu Bio-Electromechanical Co., Ltd.



- The Asset: Registered Trademark "Silver Shield" (Registration No. 02088456).
- The Goods: Class 05 (Antibacterial sprays, disinfectants).

The Defendant

Yaowei Biotechnology Co., Ltd.



- The Accusation: Sold antibacterial spray using a highly similar text and shield design.
- The Platform: E-commerce platforms in June/July 2021.

The Legal Framework: Trademark Act Article 95, Paragraph 3

	...uses a trademark that is identical or similar to the registered trademark... and hence there is a likelihood of confusion...
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The Crucial Missing Element

Criminal liability under this article does not punish negligence. It requires strict **Subjective Intent to infringe** upon another's trademark rights.

The Diagnostic Question: Did the defendant knowingly and deliberately copy the Complainant's trademark to confuse consumers?

The Prosecution's Case: The Appearance of Infringement



Deconstructing Intent: The Three Pillars of the Court's Review

The Intellectual Property and Commercial Court examined three critical factors to determine true Subjective Intent:

1

Priority of Creation

*Who actually designed
the visual asset first?*

2

Market Motive

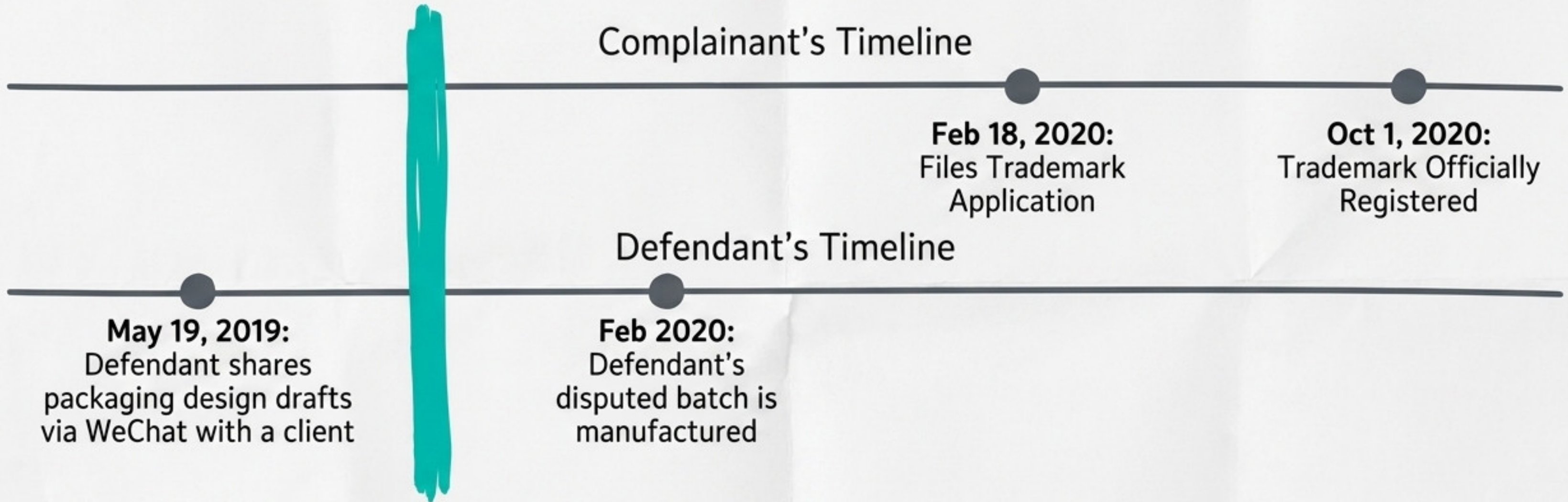
*Did the Defendant
need to rely on the
Complainant's brand?*

3

National Brand Awareness

*Was the Complainant's
mark famous enough
that ignorance was
impossible?*

Pillar 1: The Battle of Timelines (Priority of Creation)



The Conclusion: It is impossible to copy a registered trademark that did not yet exist.

The 2019 Design Drafts Unveiled



201905
Design Version



- **The Evidence:** WeChat chat logs with a Guangdong client (May 2019) proved the Defendant finalized the 'Silver Shield' text and shield logo 9 months before the Complainant sought IP protection.
- **Court's Finding:** Because the Defendant's design predated the Complainant's application, there was zero possibility of referencing or copying the registered mark.

Pillar 2: Market Motive & Prior Success

Why copy a brand? Usually, to ride the coattails of success. Did the Defendant need to do this?

Defendant's Prior Track Record:

- **Product:** 'Silver Kill Bacteria' (Nano Silver active ingredient).
- **Status:** A top-selling item on e-commerce platforms, officially recommended by momo.

Complainant's Product:

- A newly registered trademark attempting to establish initial market presence.



Court's Finding: The Defendant was already a market leader in this specific niche with an established reputation. They had zero commercial motive to climb onto the Complainant's new brand to boost sales.

Pillar 3: National Brand Awareness

The Prosecution's Argument:

The Defendant must have known about the Complainant's mark due to media coverage in April 2020.



The Complainant's 'Fame' Analyzed:

- **Event:** A charity donation to local kindergartens in Guiren District.
- **Media Coverage:** Posted on the local district office website and one specialized financial newspaper (Economic Daily News).
- **Marketing Spend:** No evidence of nationwide, widespread advertising via TV or major internet campaigns.



**Localized news
does not equal
national notoriety.**



The Court's Finding:

The Complainant's marketing was highly localized and targeted at niche financial readers. The trademark did not possess sufficient general market fame to assume a competitor would automatically know of its existence.

Key Distinction:

Selling old inventory (produced in Feb 2020) in 2021 does not retroactively create criminal intent.

The Final Judgment

Status: Appeal Dismissed. The original Not Guilty verdict is upheld.



Summary:

- ✓ While the goods were identical and marks confusingly similar, the Prosecution failed to prove **Subjective Intent**.
- ✓ The Defendant created the design first.
- ✓ The Defendant had no financial motive to copy.
- ✓ The Defendant could not be reasonably expected to know of the Complainant's localized trademark.

Judgment Insights & Actionable Takeaways (1/2)



1. 'Similarity' is Not Enough for Criminal Charges

Civil trademark infringement may be easier to establish, but criminal liability (Art 95.3) demands a high burden of proof regarding the defendant's mindset. Coincidental similarity is not a crime.



2. The Ultimate Power of Archiving

The Defendant won because they preserved routine business records—WeChat logs and dated design files from 2019.



Implication: Always timestamp and digitally archive your creative development process.

Judgment Insights & Actionable Takeaways (2/2)

3. Race to the Registry

The Complainant suffered because another entity independently created a similar mark before they applied. Implication: Register trademarks **before launching a product**, not during or after.

4. The 'Fame' Threshold is High

Do not assume PR translates to legal “well-known” status. Courts will not presume competitors know your brand without data showing massive, nationwide marketing spend.

Final Thought: Criminal IP litigation requires bulletproof evidence of subjective intent. When in doubt, civil remedies or proactive registration are a brand's best shields.