



Trademark Infringement Analysis

Unpacking Subjective Intent
& The Absorption Principle

Focus: Trademark Act Article 95 & Article 97

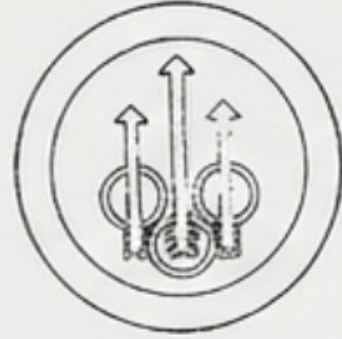
Source Citation: Intellectual Property and Commercial Court,
Criminal Judgment 113 Zhi-Shang-Yi-Zi No. 14 (Date: 2024)

Case Overview

- The Offense: Unauthorized use of registered trademarks on airsoft and toy guns at a public exhibition.
- The Defense: Claimed lack of subjective intent; argued infringing items were “accidentally included” from old inventory.
- The Court’s Stance: Deliberate physical concealment of trademarks on products objectively proves the subjective intent to infringe.
- The Verdict: Original Not-Guilty judgment Reversed. Defendant found guilty under Trademark Act Article 95.

The Registered Trademarks

BERETTA



BERETTA & Three-Arrow Logo

Protection: Classes 13 (Firearms), 28 (Toy Guns)

Heckler & Koch

Heckler & Koch

Protection: Classes 8 (Portable Weapons), 13 (Air Pistols), 28 (Toy Weapons)

HK

HK

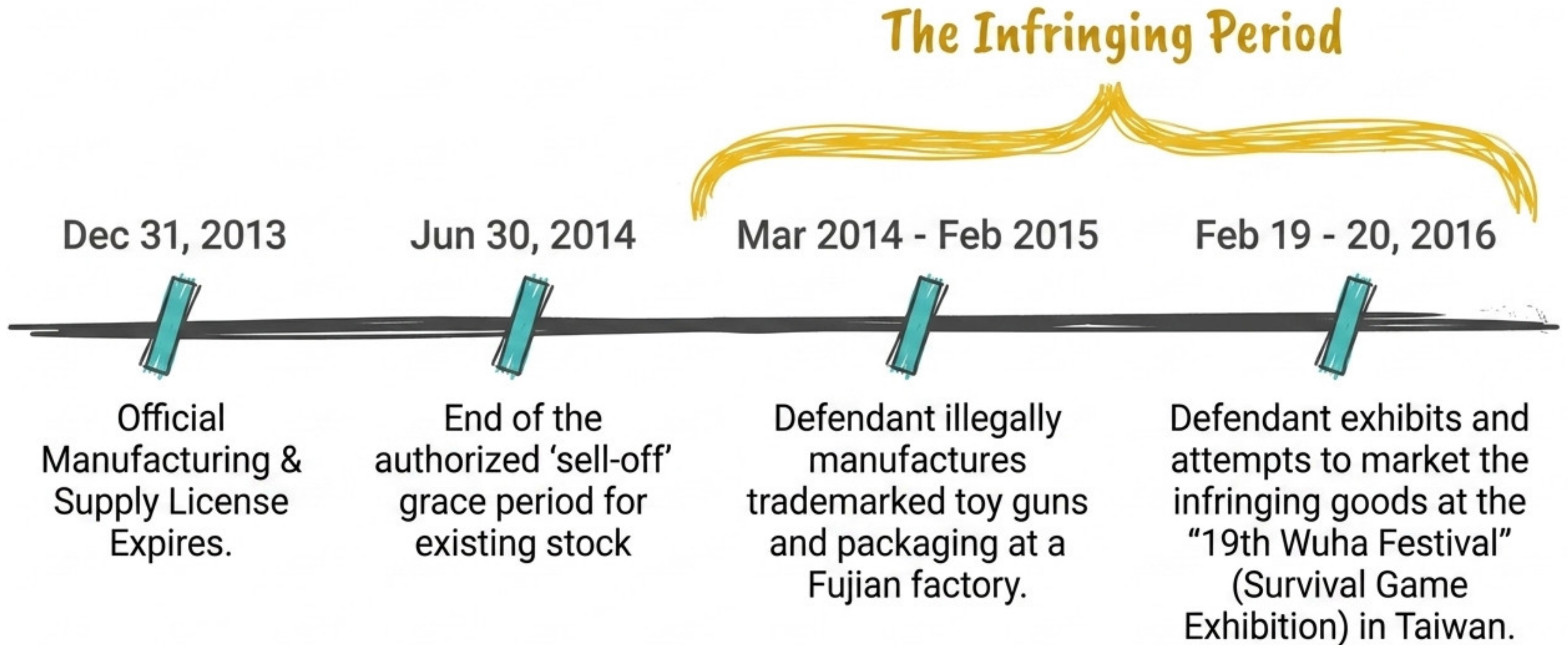
Protection: Classes 13 (Firearms), 28 (Toy Air Guns)

G36

G36

Protection: Classes 13 (Firearms), 28 (Toy Guns)

The Chronology of Events



The Dual Legal Issues



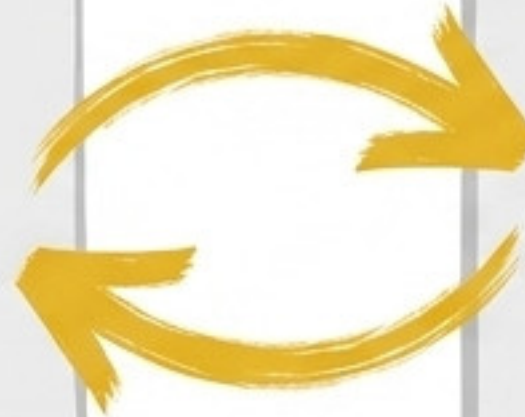
Issue 1 - Mens Rea (Subjective Intent)

Question: Did the defendant possess the subjective intent to use identical/similar registered trademarks for marketing purposes under Trademark Act Article 95?

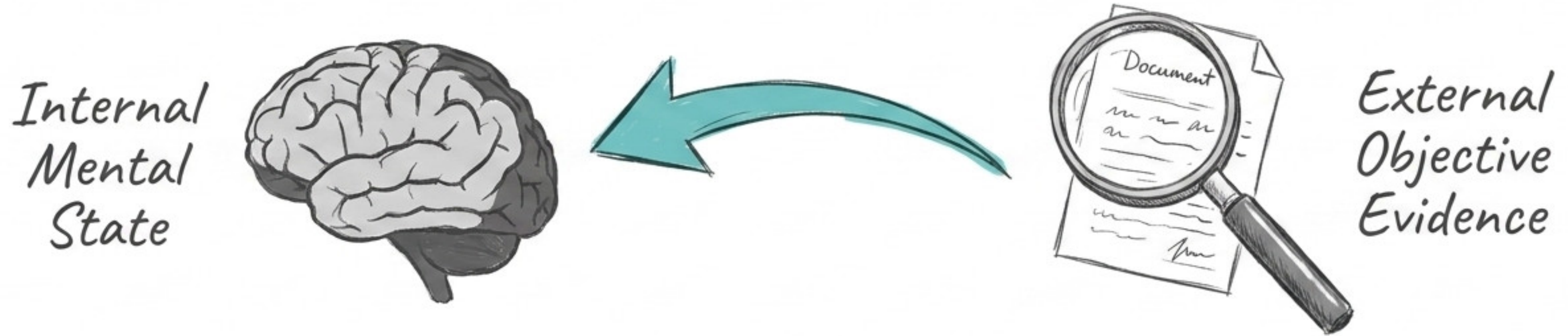


Issue 2 - Statutory Application

Question: Should the defendant be penalized separately for 'Displaying for Sale' under Article 97, in addition to 'Use' under Article 95?



The Judicial Approach to Mens Rea



The Challenge: Criminal intent is a hidden psychological state. Direct evidence of internal thought processes is rarely available.

The Court's Standard: When direct evidence is lacking, courts must evaluate the defendant's external behaviors and objective circumstances.

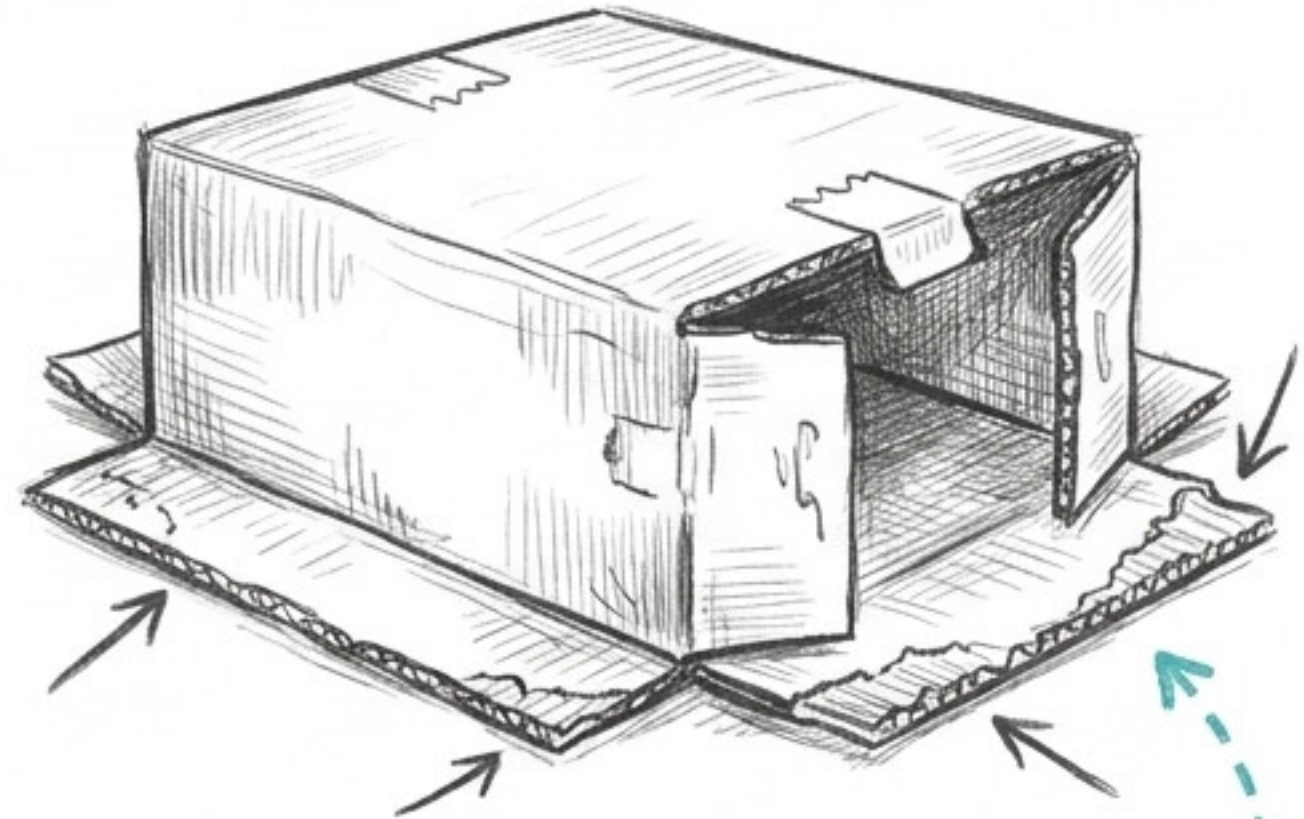
The Rule of Thumb: Apply empirical rules and logical reasoning to indirect evidence to confidently deduce subjective intent.

Physical Concealment as Proof of Intent



Callout 1 (The Gun): Trademarks on the gun bodies were deliberately covered with removable stickers.

- ▶ **Witness Testimony:** The defendant explicitly ordered the stickers applied because they intended to sell the guns under a different brand ("S&T").



Callout 2 (The Packaging): Outer packaging boxes were folded inside-out to actively hide the "BERETTA" marks.

Court's Deduction: If the defendant truly believed they had legal rights to the marks, there would be no logical reason to actively conceal the identifying logos.

Dismantling the 'Accidental Inclusion' Defense

Defendant's Claim: The infringing item (BERETTA Mod.12s) was a **single mistake**—accidentally mixed into the exhibition cargo.

The Contradictory Evidence:

- Email trails and **warehouse inventory lists** confirmed the exact models and quantities were pre-approved for the exhibition.
- The defendant was copied on these emails and personally attended the exhibition for 10-20 minutes, giving them visual confirmation of the booth.

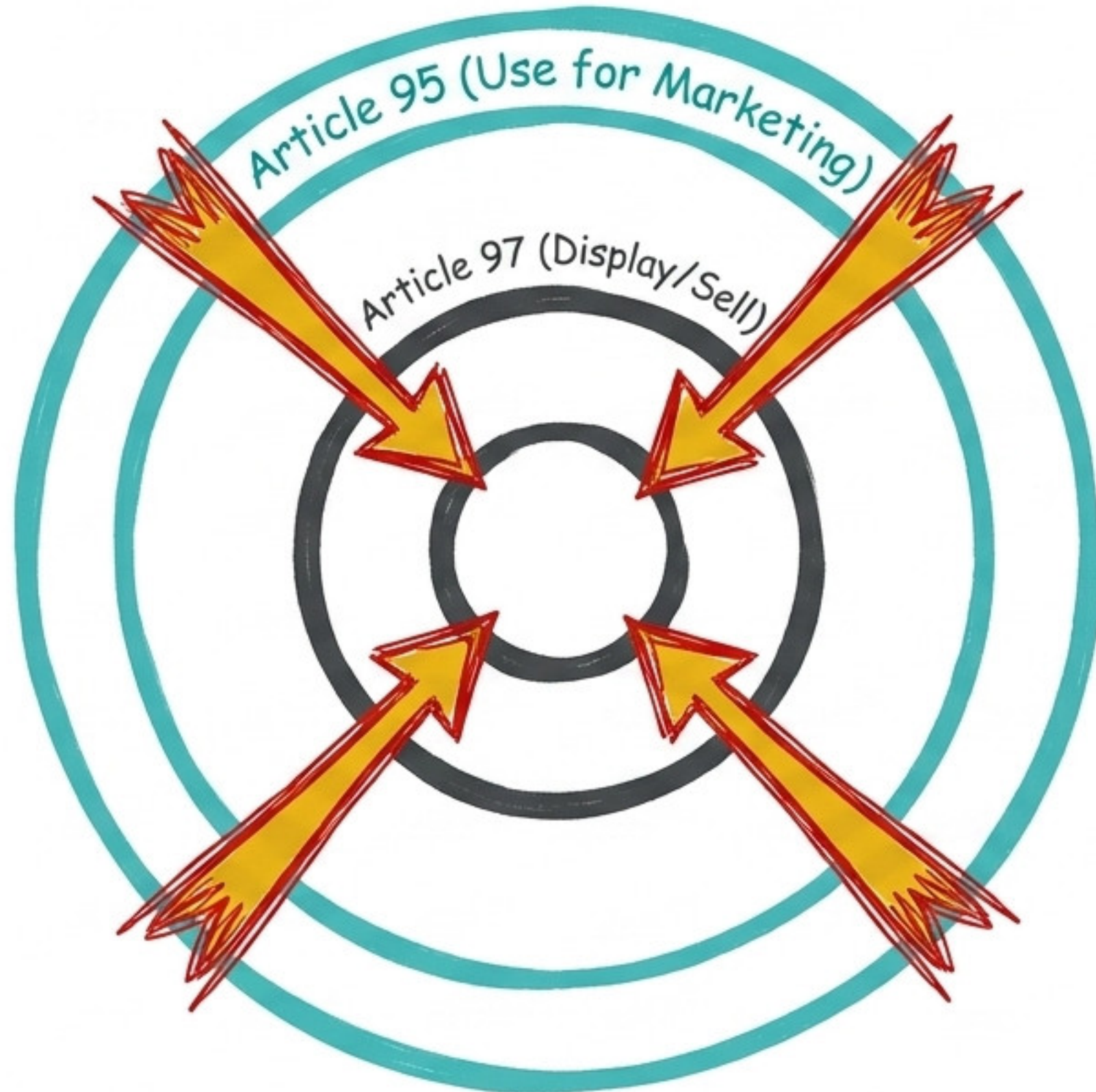
Conclusion: The presence of the infringing goods was deliberate and curated, not a logistical accident.

*Included in
Inventory
List!*

Statutory Clash: Use vs. Display

Trademark Act Article 95	Trademark Act Article 97
Action: Unauthorized Use of Trademark.	Action: Displaying, selling, or possessing.
Purpose: For marketing purposes.	Target: "Other actors" (Downstream sellers, distributors).
Target: The primary offender (Manufacturer/Brand).	Prosecutorial Claim: Defendant also violated Article 97 by displaying the guns at the exhibition.

The Absorption Principle



- **The Logic:** The core purpose of “using” a trademark (Article 95) is inherently to market goods.
- **The Consequence:** Marketing inevitably requires subsequent, secondary actions such as holding, displaying, or selling the goods (Article 97).
- **The Legal Outcome:** The unlawful nature of “displaying” is entirely absorbed by the primary offense of “using.” The defendant cannot be punished twice for the same continuous operational intent.



THE FINAL JUDGMENT

Judgment: The original Not-Guilty verdict is officially revoked.

Conviction: Defendant is guilty of infringing trademark rights under Trademark Act Article 95, Subparagraph 1.

Sentence: 6 months imprisonment (commutable to a fine).

Confiscation: All 34 seized toy guns and 1 advertising canvas are permanently confiscated by the state.

Key Learnings for IP Practice



Objective Proof of Intent

Courts will aggressively utilize external, physical actions (like hiding logos with stickers or folding boxes) to confirm internal knowledge of infringement.



License Expirations are Absolute

Continued manufacturing or display after the precise end of a “sell-off” clause transitions immediately into criminal liability. There is no grey area.



Offense Absorption

Prosecutors do not need to stack secondary downstream offenses (displaying) if the primary upstream offense (marketing use) is successfully proven.