

The Boundary Between Marker and Trademark

A Case Study on Descriptive Fair Use vs. Criminal Infringement



Intellectual Property and Commercial
Court, Criminal Judgment 113
Xing-Zhi-Shang-Yi-Zi No. 55.

When does a shipping mark become a crime?



The Claim

- A registered trademark ("Xing and device") protected strictly for domestic seafood products.



The Action

- An exporter marks their dried squid boxes with the first letter of their company name inside a circle.

Is this an intentional infringement of a competitor's brand, or simply a traditional warehouse marking protected by law?

The Contenders: A Contrast in Scale and Scope

	The Plaintiff	The Defendant
Entity	Xing Xing Shark Fin Restaurant Co., Ltd.	Shing Der Frozen Food Co., Ltd.
Establishment Date	March 2001	October 1972
Capitalization	3 Million NTD	28.1 Million NTD
Market Focus	Strictly Domestic Sales	International Export (Dried Squid)

Operating for
29 years before
Plaintiff existed



The Legal Threshold: Intent to Market

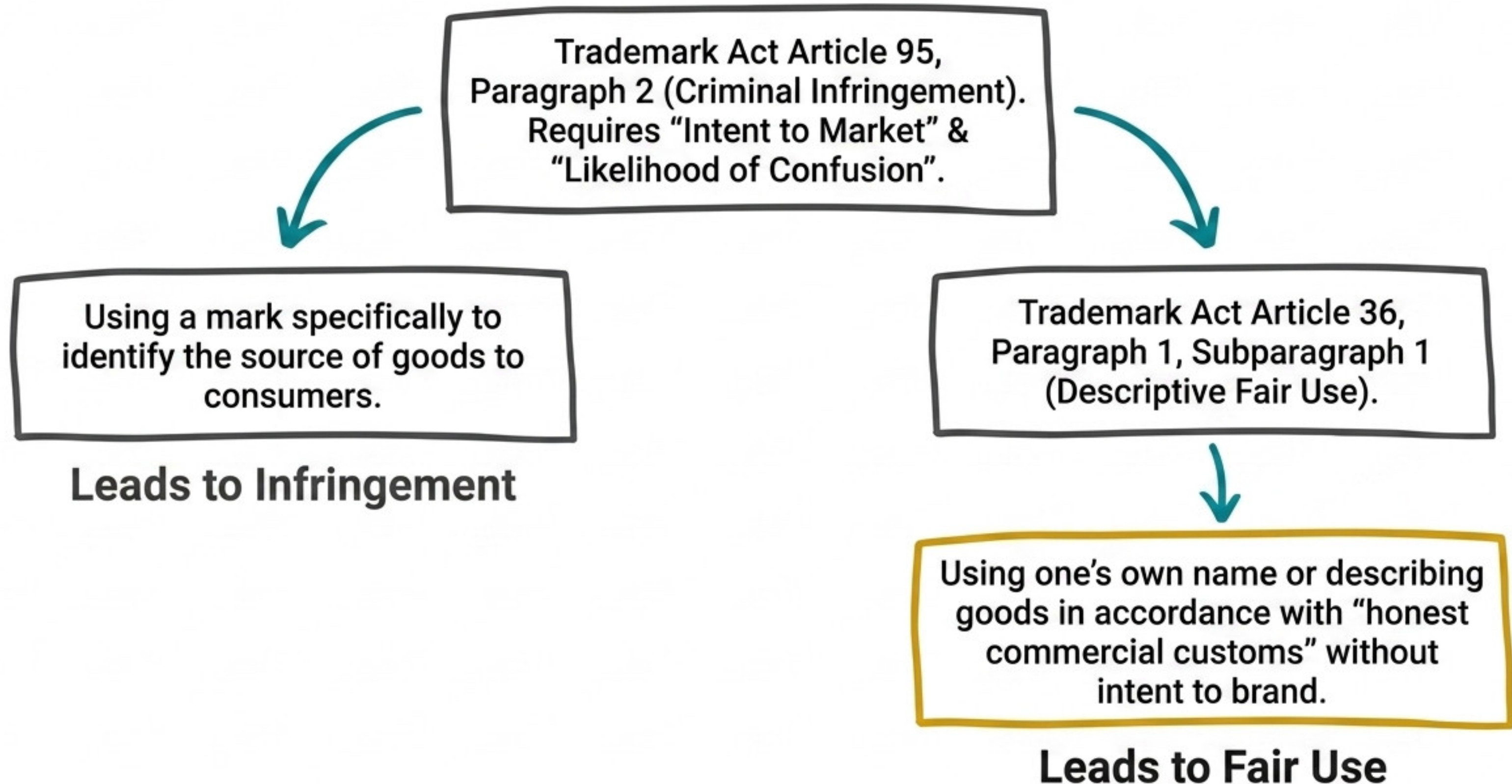


Exhibit A: Anatomy of an Export Box

English Initials.
Represents "Shing Der"
(the Defendant's
company name).

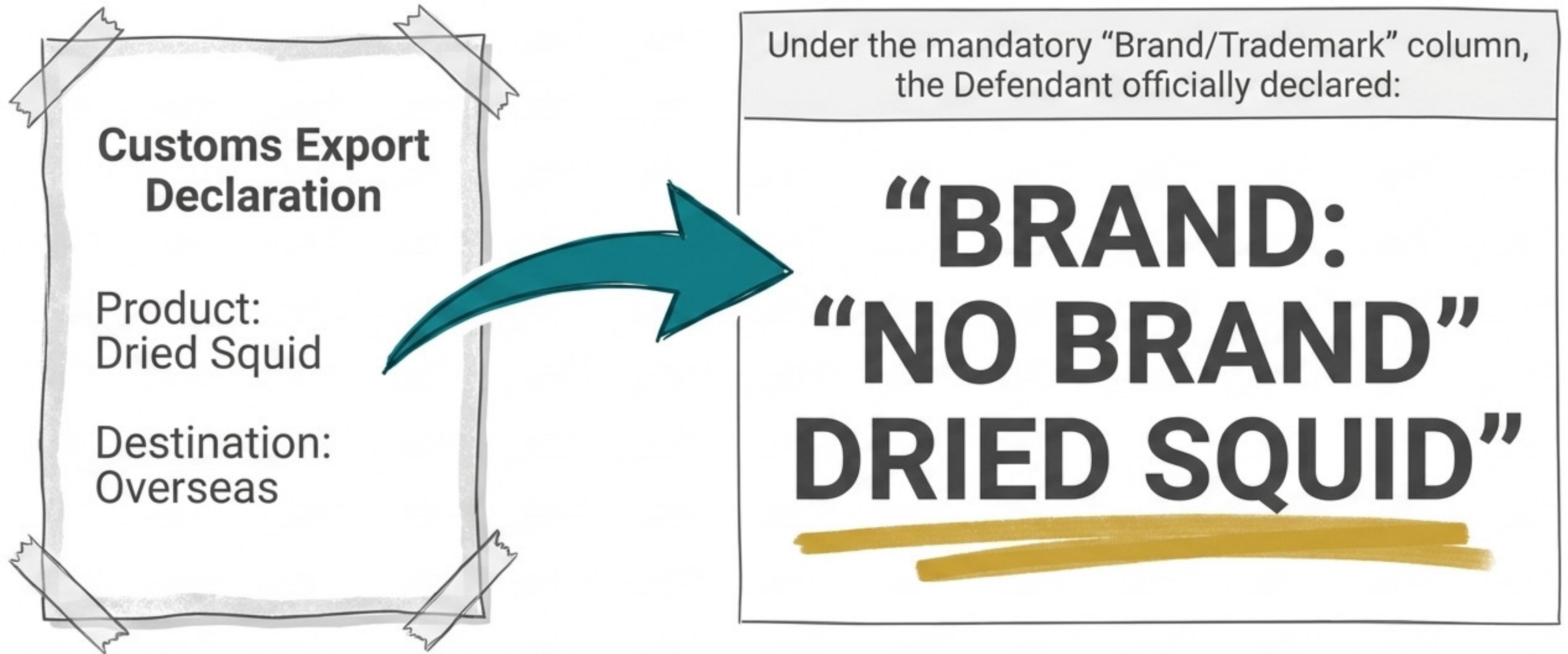


The "Warehouse Rule".
Circling the first character
of a company name is an
established industry custom
for quick identification in
crowded export warehouses.



Spatial Disconnect. The
mark is purposefully NOT
placed next to the product
name ("Argentine Dried Squid"),
proving it is not meant to
brand the product itself.

Exhibit B: The Official Declaration



Takeaway: An entity attempting to exploit a competitor's trademark does not officially declare their goods as "unbranded" to international customs.

Exhibit C: The Retroactive Trap

Point 1: Time of Export

Action: Boxes shipped with warehouse marks.
Intent: Logistical identification.

Point 2: Customs Intervention

Action: Customs flags potential infringement of Plaintiff's mark.

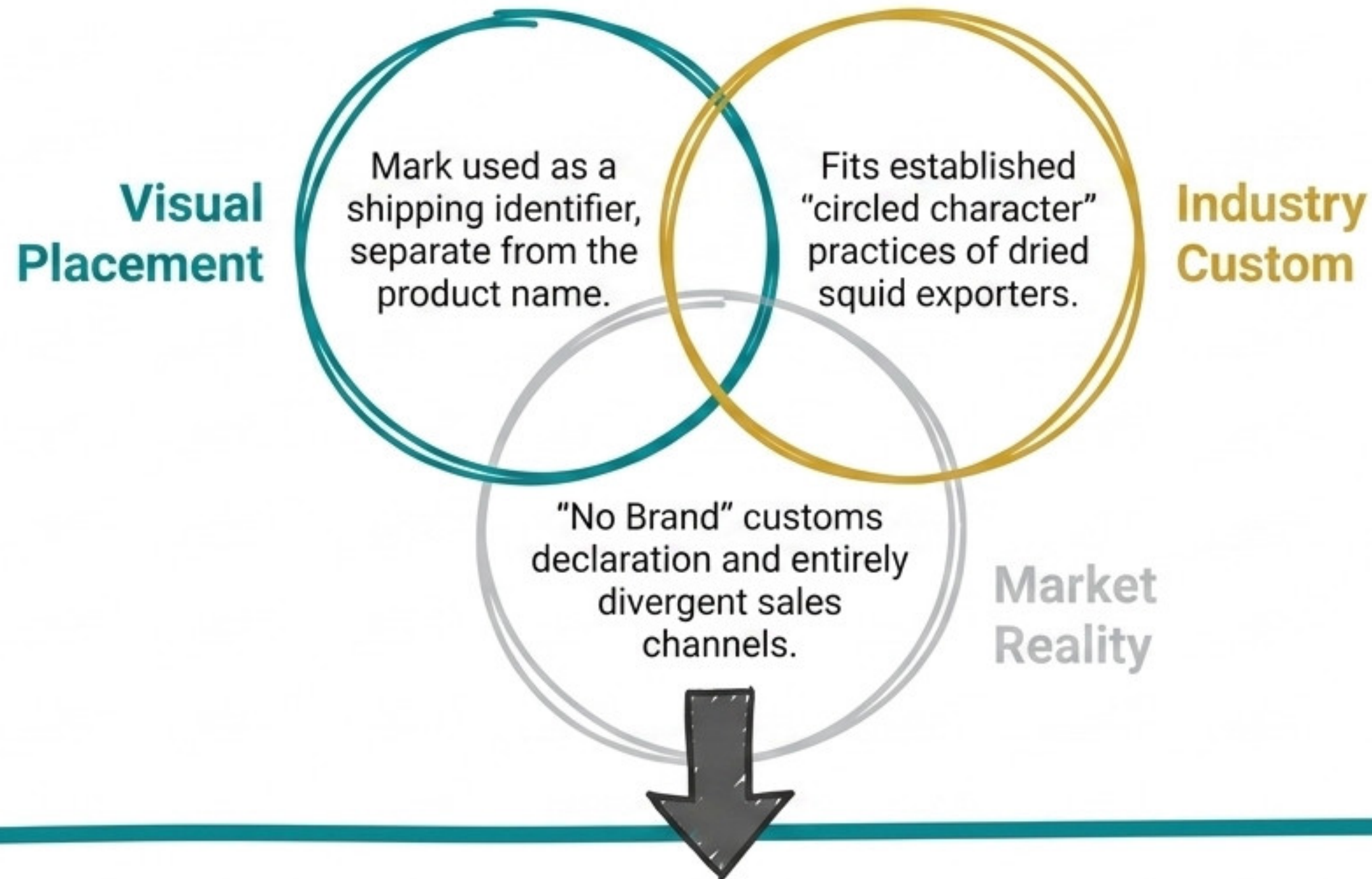
Point 3: Trademark Application

Action: Defendant applies for legal clearance.



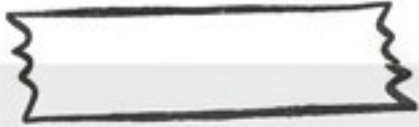
The Judge's Rationale: Subsequent actions taken to legalize a process after a warning cannot be retroactively applied to prove malicious intent at the time of the original export.

Synthesis: Why Context Defeats Confusion



Not Guilty. The usage constitutes "Descriptive Fair Use" under Article 36.1.1, lacking any subjective intent to market or confuse.

Key Takeaways & Industry Implications



Function over Form

A logo's physical resemblance to a trademark is not enough for criminal infringement; the functional intent (marketing vs. logistics) is paramount.



Custom as a Shield

Demonstrating that a marking practice is a standard 'honest commercial custom' within a specific industry is a vital defense for Descriptive Fair Use.



The Power of Paperwork

Clear administrative documentation (like a 'No Brand' customs declaration) provides an impenetrable defense against claims of subjective marketing intent.

Source: Intellectual Property and Commercial Court, Criminal Judgment 113 Xing-Zhi-Shang-Yi-Zi No. 55.