



Trademark Use vs. Descriptive Fair Use

A Visual Analysis of Good Faith in
Cosmetic Branding

Source: Intellectual Property and Commercial Court,
Case No. 113-Xing-Zhi-Shang-Yi-63 (Date: 2024)

The Plaintiff: Registered Trademark

賦活奇肌

Reg. No. 01802919.
Class 3: Cosmetics.
Registered Term:
Revitalizing Miracle Skin.

The Defendant: Accused Products



Features the phrases:
2.0 Laser Revitalizing Miracle Skin &
Revitalizing Miracle Skin Magic Water.

The Legal Question: Is the defendant's usage an act of
Trademark Infringement or Descriptive Fair Use?

①

Trademark Use (Sec. 5)

Using a mark specifically to identify the source of goods to consumers.

②

Distinctiveness

The inherent ability of a mark to distinguish goods from those of competitors.

③

Good Faith

Acting honestly, aligning with standard commercial practices without intent to deceive.

④

Descriptive Fair Use (Sec. 36(1)(1))

Using terms purely to describe product quality, nature, or efficacy—not as a source identifier.



Court Analysis: Physical Packaging Layout

①

Brand Identification

The CREND logo is placed at the top, occupying the largest and most prominent visual space.

②

Uniform Typography

The accused phrase is not isolated. Font size, shape, and color precisely match the surrounding text.

③

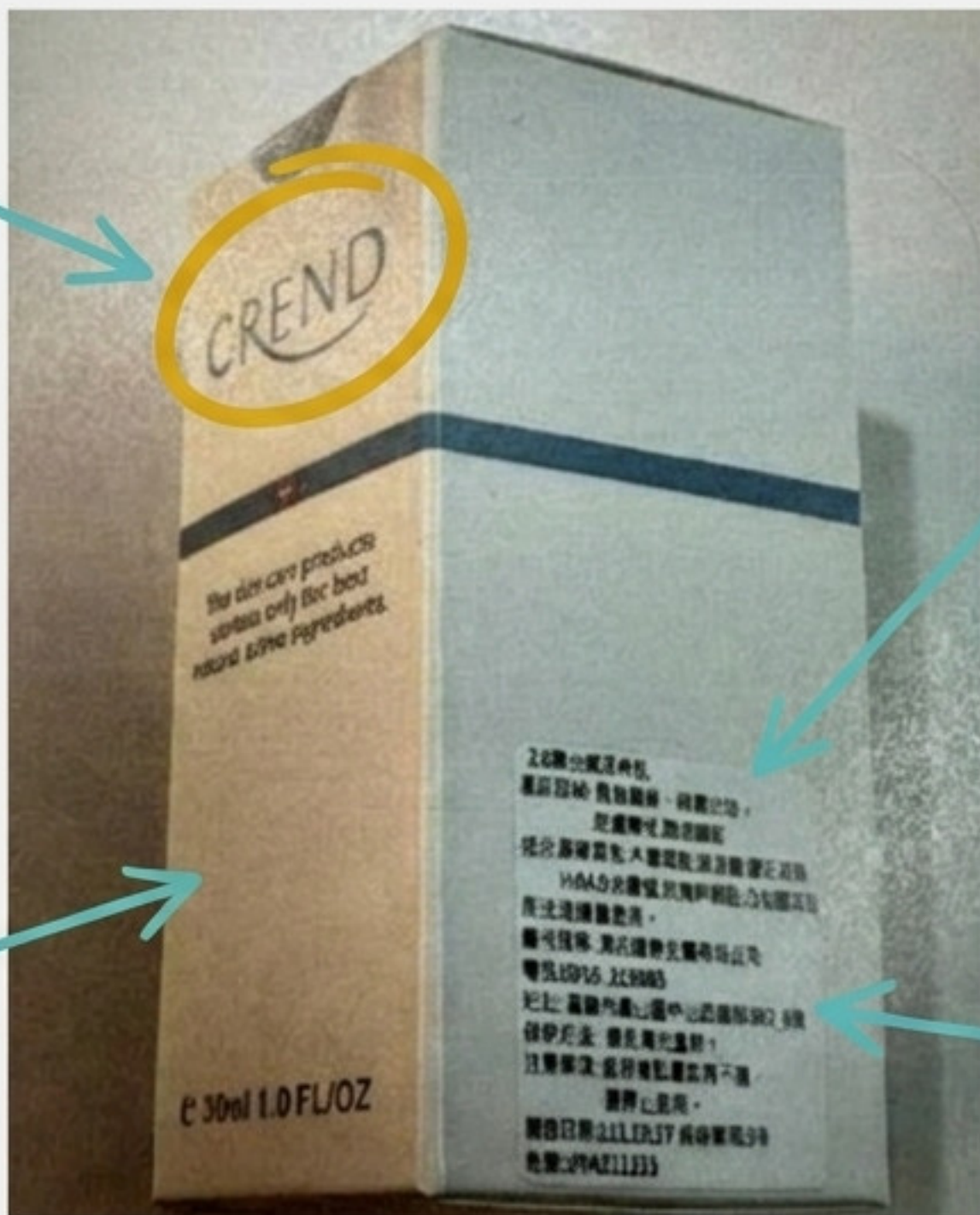
Lack of Emphasis

No special colors, stylized fonts, or visual breaks are used to make the term stand out as a brand asset.

④

Descriptive Context

The phrase merges seamlessly with standard product instructions and ingredient lists.



Court Analysis: Digital Marketing Space

①

Header Prominence

The true trademark dictates the top visual hierarchy of the storefront.

②

Integrated Phrasing

The words are embedded in longer marketing sentences rather than standalone brand tags.

③

Product Centric

Lifestyle imagery features the physical product prominently bearing the true mark.

④

Non-Trademark Intent

The visual layout demonstrates a clear intent to explain product efficacy, avoiding source-confusion.



Linguistic Deconstruction

“Revitalize” + “Miracle Skin” = Common Industry Vernacular”

The court recognized these terms as standard vocabulary for describing skincare efficacy.



Good Faith Practice

Because these words inherently describe the product's function, combining them without unique visual emphasis aligns completely with standard, honest commercial practices.

Final Judgment: Appeal Dismissed

1. The accused usage constitutes Descriptive Fair Use.
2. The text conveys product function, entirely lacking source identification intent.
3. The prominent, consistent display of the defendant's own mark negates any likelihood of confusion.

The IP Lesson: Words matter, but visual context dictates legal intent. Typography, placement, and size transform a registered trademark into permissible descriptive text.