

CASE FILE: INTELLECTUAL PROPERTY LAW

THE ARCHER'S DILEMMA

Descriptive Fair Use vs. Trademark Infringement:
An Educational Analysis of Graphic Usage on
Product Packaging

*Source: Intellectual Property and Commercial Court, 2024 Criminal Judgment
Zhi-Shang-Yi-Zi No. 7.*



The Central Dispute: Two Archers, One Conflict

The Plaintiff's Trademark

Registration: No. 01351671 (Human Power & Graphic)

Class 5: Nutritional supplements, capsules.

Visual Element: A hand-drawn male figure drawing a bow.



The Defendant's Product

Product: Prostate Guardian Male Vitality Capsules.

Visual Element: A stylized male figure drawing a bow prominently displayed on the packaging.



VS.

The Legal Question:
Is the Defendant's graphic
an illegal Trademark Use
or a legally protected
Descriptive Fair Use?

The Rules of Engagement: Navigating the Trademark Act



The Standard: Trademark Use (Art. 5)

Using a mark for marketing purposes in a way that causes consumers to **recognize** it as an indicator of the source of the goods.



The Offense: Infringement (Art. 95(1)(3))

Using an identical or similar mark on identical or similar goods without authorization, resulting in consumer confusion regarding the source.



The Defense: Descriptive Fair Use (Art. 36(1)(1))

Using a graphic in accordance with honest commercial practices to describe the characteristics, quality, or usage of the goods. Crucially: Such use is not subject to trademark rights.

Court Finding 1: Analyzing Visual Hierarchy



Primary Identifiers: The brand name (Chang Chun Loho) and product name (Prostate Guardian) clearly dominate the spatial layout. Consumers look here for the brand source.

Secondary Illustration: The archer graphic sits directly beneath the words Male Vitality Capsules.

The Court's Conclusion:

The graphic represents the concept of a male shooter/vitality. It functions merely to describe the nature of the product, not to act as a standalone trademark.

Court Finding 2: The Chain of Custody (Good Faith)

Step 2: The License

Step 1: The Source

Defendant obtained the image from the legitimate commercial stock library, Dreamstime.



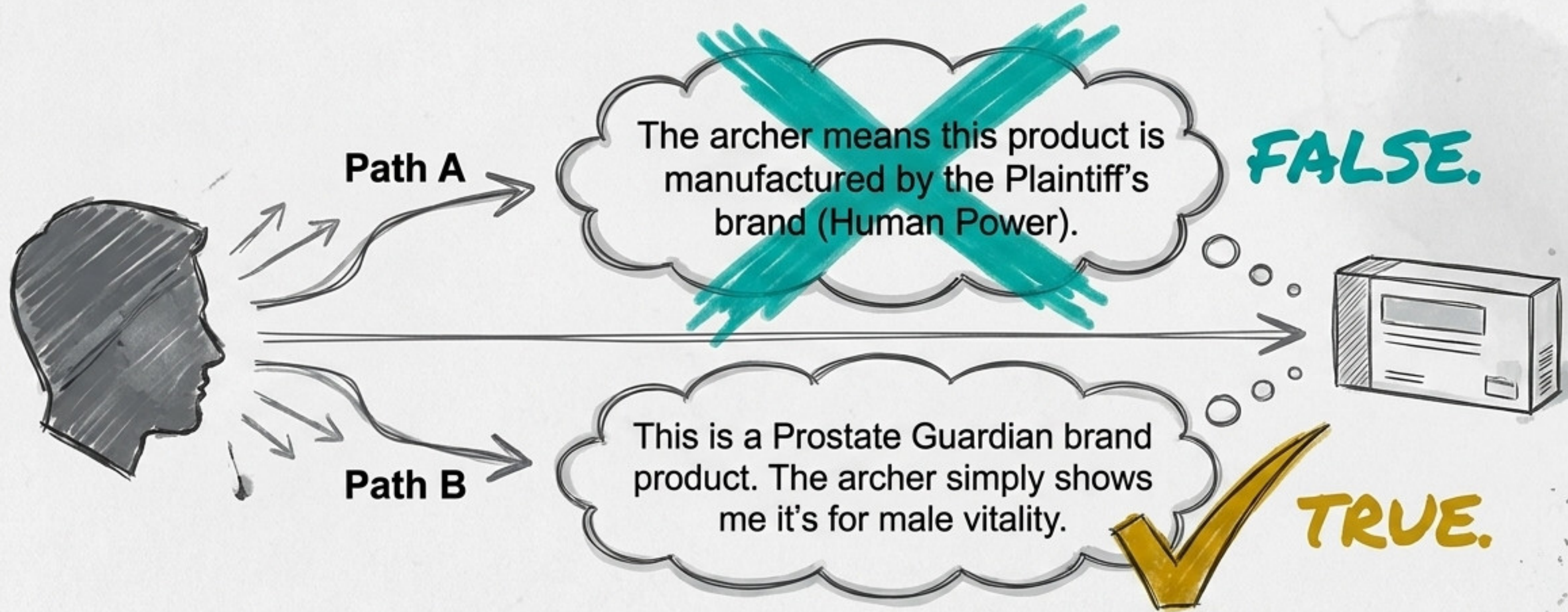
A legally binding permanent buyout authorization was secured through the agency Dianjiang.

Step 3: Conceptual Extraction

Defendant cropped the human half of the centaur graphic to perfectly illustrate their specific product concept.

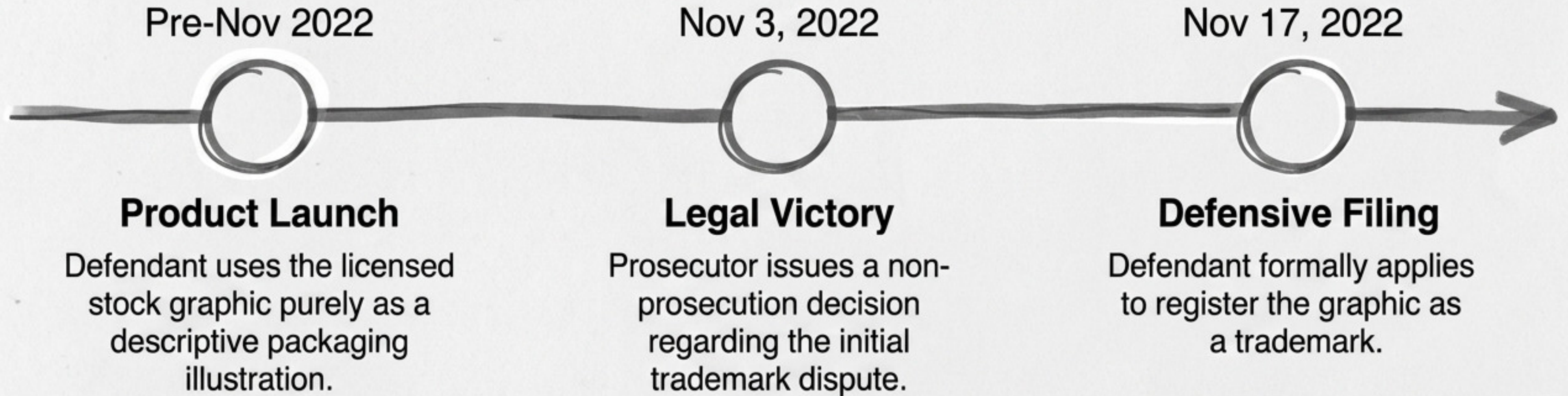
The Court's Conclusion: Procuring a commercial license and cropping a stock photo aligns completely with honest commercial practices. There was zero intent to mimic the Plaintiff's mark.

Court Finding 3: The Consumer Perception Test



Takeaway: The graphic lacks independent distinctiveness on this packaging. Without the Plaintiff's brand name present, an ordinary consumer relying on normal observation would not associate the packaging with the Plaintiff.

Court Finding 4: Timeline Logic vs. Intent



The Court's Logic: Filing a trademark after a legal victory is a legitimate defensive maneuver to protect legal rights. It cannot be retroactively weaponized to prove the Defendant had malicious intent to use it as a trademark during the original product launch.

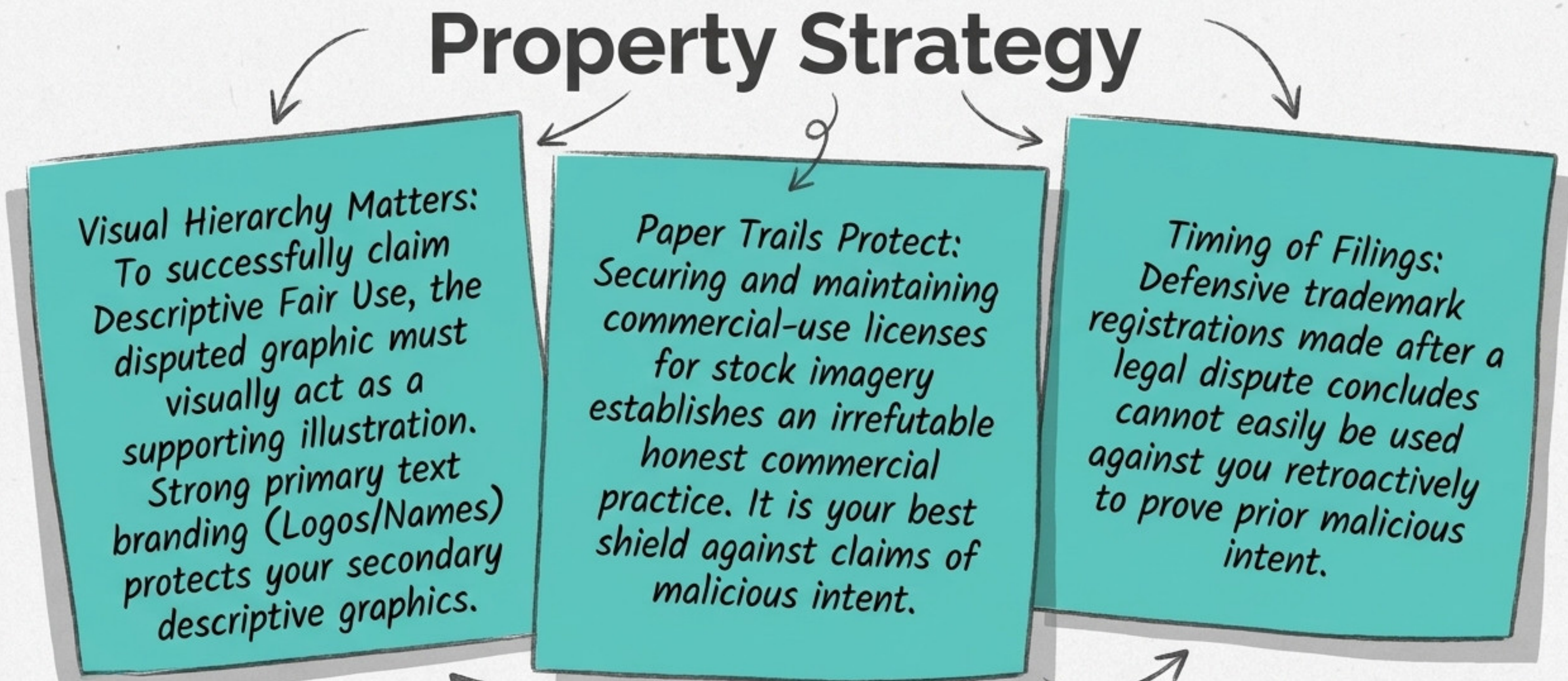
The Final Verdict: Matrix of the Judgment

<u>Dimension</u>	<u>Plaintiff's Claim</u>	<u>The Court's Reality (Defendant)</u>
Nature of Use	Used as a distinct Trademark	Descriptive Illustration of Goods
Source Identity	Causes Consumer Confusion	Consumers rely on primary text branding
Commercial Intent	Infringing and Malicious	Good faith stock image license

Ruling: Defendants are Not Guilty. The graphic usage flawlessly meets the requirements of **Descriptive Fair Use** (Trademark Act Art. 36(1)(1)) and is **immune to the Plaintiff's** trademark rights.

APPEAL DISMISSED

Key Lessons for Intellectual Property Strategy



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graph TD; A[Key Lessons for Intellectual Property Strategy] --> B[Visual Hierarchy Matters]; A --> C[Paper Trails Protect]; A --> D[Timing of Filings]; B --> C; C --> D; D --> B;
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Visual Hierarchy Matters:
To successfully claim Descriptive Fair Use, the disputed graphic must visually act as a supporting illustration. Strong primary text branding (Logos/Names) protects your secondary descriptive graphics.

Paper Trails Protect:
Securing and maintaining commercial-use licenses for stock imagery establishes an irrefutable honest commercial practice. It is your best shield against claims of malicious intent.

Timing of Filings:
Defensive trademark registrations made after a legal dispute concludes cannot easily be used against you retroactively to prove prior malicious intent.