

Trademark Use vs. Ceremonial Naming

An Educational Anatomy of Intellectual Property and Commercial Court Civil Judgment
(114 Min-Shang-Su-Zi No. 12)

Core Issue: Does naming a religious ceremonial vessel constitute trademark infringement?

Statutory Focus:
Taiwan Trademark Act
§5, §33, §68, §69



Non-commercial use?

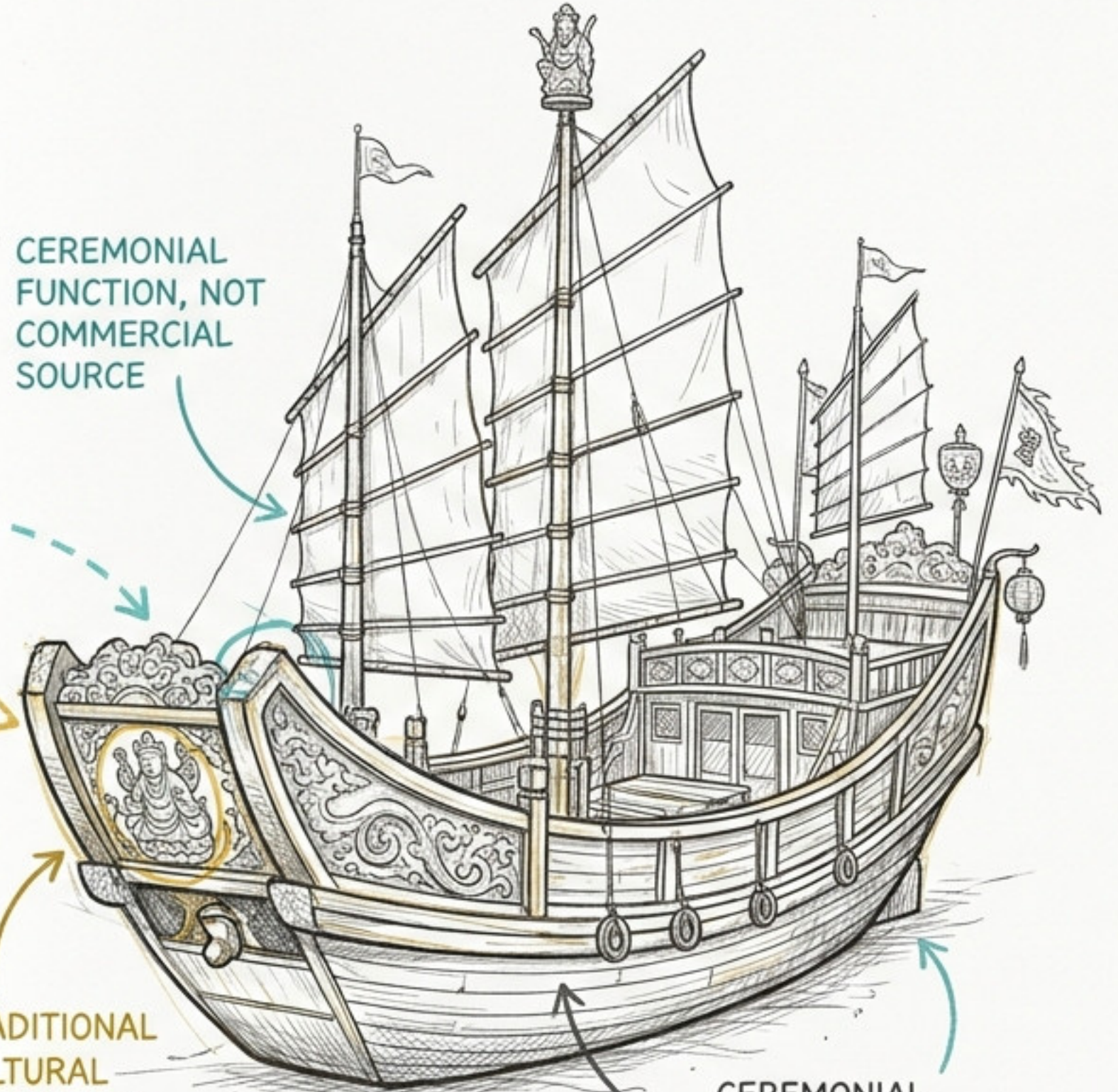


Fair Use? Public Order?

CEREMONIAL
FUNCTION, NOT
COMMERCIAL
SOURCE

TRADITIONAL
CULTURAL
EXPRESSION,
NOT BRAND IDENTIFIER

CEREMONIAL
FUNCTION, NOT
COMMERCIAL SOURCE



Source: Taiwan Intellectual Property and Commercial Court |
114 Min-Shang-Su-Zi No. 12 (2024/2025)

The Parties Involved: A Conflict of Domains

The Plaintiff

Role: Trademark Rights Holder

Asset: Registered Trademark Jin Shun An & Device (Reg. No. 02403877)

Protected Service: Class 045 (Planning religious gatherings, arranging religious services, conducting religious ceremonies)



VS

The Defendant

Role: Xialin Bilong Temple & Representatives

Action: Constructed a physical ceremonial Wang Boat named Jin Shun An for their 60th-anniversary Jiao Festival. Name was chosen via Divine Lots.

Digital Footprint: Documented the construction and ceremonies heavily on Instagram and Facebook.



The Visual Conflict: Registered vs. Applied Marks

Plaintiff's Registered Mark

Status: Officially registered and active.



Defendant's Pending Applications

Status: Filed subsequently on Oct 11, 2024 (App Nos. 113070827, 113070828).



Plaintiff's Core Argument: The Temple's usage of Jin Shun An and their subsequent trademark applications cause consumer confusion under Trademark Act §68(3).

The Timeline Rule (Trademark Act §33)

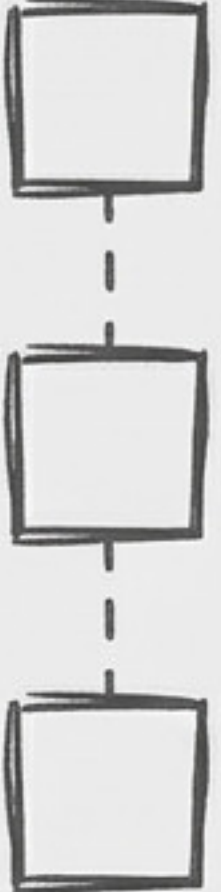
Rights commence upon publication, not before.



The Court's First Conclusion: Any ceremonial or promotional actions taken by the Temple **before September 16, 2024**, inherently cannot constitute infringement. The Plaintiff's legal rights did not **yet exist**.

The Legal Framework: What is Trademark Use?

Under Trademark Act §5, three conditions must be satisfied simultaneously:



Marketing Purpose: Used for the explicit purpose of marketing goods or services.

Act of Usage: Applied to products, packaging, commercial documents, or advertisements.

Consumer Recognition: Objectively sufficient to make relevant consumers recognize it as a brand identifying a commercial source.



The Court's Diagnostic Question: Did the Temple use Jin Shun An to identify the commercial source of a service (Class 045), or simply to describe a physical cultural object?

Evidence Analysis: Contextual Text (Social Media)



- **Grammar & Flow:** Jin Shun An is used strictly as a proper noun to name the physical Wang Boat (a name chosen by Divine Lots).
- **Formatting:** The font, size, and color of the term are entirely uniform with the surrounding text describing the Jiao Festival schedule.
- **Verdict on Use:** This is a descriptive narrative of a religious event. It fails the Consumer Recognition test because it does not stand out as an isolated commercial brand identifier.

Evidence Analysis: Visual Prominence on Physical Objects



The Court's Assessment:

- Direct Application: The text was applied directly to lanterns, flags, and the boat hull to denote the identity of the specific vessel, not the provider of a service.
- Lack of Distinctiveness: The text visually blends into the traditional, highly decorative elements of the ceremonial boat. It does not pop as a commercial logo.
- Consumer Perception: Devotees and attendees view this as standard religious naming tradition, entirely unrelated to commercial Class 045 services.

Diagnostic Matrix: Trademark Use vs. Ceremonial Naming

Dimension	Trademark Use (Infringement)	Ceremonial Use (Defendant)
Primary Intent	To market and distinguish commercial services.	To describe the specific name of a vessel assigned by divine lots.
Visual Formatting	Stylized, prominent, deliberately distinct from surrounding text.	Uniform font, size, and color; fully integrated into descriptive paragraphs or physical object decor.
Consumer Perception	Recognized as a brand or commercial service source indicator.	Recognized as a traditional religious artifact name or a detail of an event schedule.

Addressing the Plaintiff's Rebuttals



The Revenue Argument

Plaintiff Claim: The Temple collected money (e.g., Wang Boat Supplies Sponsorship: 300 NTD; Jiao Festival Sponsorship: 1000 NTD), proving commercial marketing.

Court's Reality Check: These are traditional religious donations/sponsorships for a specific cultural festival. They are not retail prices for a Jin Shun An product. Revenue collection does not automatically equate to marketing under Trademark Act §5.



The Application Argument

Plaintiff Claim: The Temple applied for their own trademarks on Oct 11, proving they intended to use the name commercially all along.

Court's Reality Check: The legal standard for applying for a trademark is fundamentally different from the factual test for prior usage. Post-facto applications do not retroactively transform historical, descriptive text into active trademark use.

Judgment Summary & Strategic Implications



Timing is Absolute

Trademark rights are strictly prospective (Trademark Act §33). Claims cannot be retroactively applied to actions predating official registration publication.



Context Overrides Text

Simply typing a registered trademark string does not constitute infringement. If formatting is uniform and acts purely to narrate an event or name a physical object, it fails the Trademark Use test (§5).



Cultural Practices as Descriptive Use

Religious naming conventions (e.g., casting divine lots) and temple sponsorships are recognized by courts as descriptive, non-commercial activities, provided they do not attempt to identify a distinct service source to consumers.

Final Verdict: Plaintiff's claims for exclusion and prevention of infringement were dismissed in full. All litigation costs are to be borne by the Plaintiff.