

A Linguistic Analysis of Some Japanese Trademark Cases

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DECLARATION

Except where otherwise indicated
this thesis is my own work

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Abstract

There has been dissatisfaction over some court rulings among lay people in Japan. In this thesis I propose a model to explain the discrepancies between legal experts and lay people.

Chapter 1 presents the purpose of this thesis, and an overview of the model called the Linguistic Legal Model. Chapter 2 shows the Japanese legal system including a new lay-participation system, the mixed court system. Chapter 3 provides background information on Japanese trademark issues.

In Chapter 4 and 5, the Linguistic Legal Model is explored with Layer Analysis and Register Analysis. For Layer Analysis in Chapter 4, the notion of layering is presented from a linguistic perspective whereas legal reasoning is discussed from the notion of different modes of thought. Register Analysis in Chapter 5 is discussed in terms of genre and register. Japanese legal language is examined together with English legal language.

In Chapter 6 and 7 I examine trademark cases. The Golden Horse case in Chapter 6 presents court's judgment of the likelihood of confusion which is in common with that of lay people. However, it is argued that the thought process in the legal judgment court was not convincing. In Chapter 7, the Snack Chanel case portrays a judgment characteristic of the legal layer, which is quite different from the common sense of lay people. This discrepancy is explained from the perspective of different layers and different modes of thought.

Chapter 8 concludes with a brief summary of this thesis.

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To Hideki-san and Gin-chan

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