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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This thesis would not have been possible without those people around me. First of all, John Gibbons showed me how academically stimulating the analysis of legal language is. I was planning to write the thesis on a different topic and was not interested in the characteristics of legal language at that time. John laid the foundation of this thesis. Completing a thesis is certainly a long and lonely journey. As my full-time job involves administration, I have less time for writing the thesis. In such a situation Margaret van Naerssen really helped me out of the difficulty. She not only corrected the English on the draft but gave me very inspiring feedbacks, though she herself was extremely busy with her job, her grant project and her family. Without her, I would not have completed this thesis yet. Michael Walsh also helped me out tremendously pushing me to the goal, though my thesis does not deal with any indigenous languages. As I also have several Chinese students in my teaching, I understand how time-consuming it is to guide a nonnative speaker in the studies. I am deeply grateful to Roger Shuy for his invaluable comments on the linguistic analysis of the Golden Horse case. I also thank Shugo Hotta for his valuable ideas. Finally, Jane Simpson constantly helped me regarding a variety of enquires from me.

My special thanks go to the members of the plain judicial process project. The discussion really helped me build the notion of the paradigmatic mode in Japanese legal arena. I would like to name Satoru Shinomiya, Takafumi Hayano, Gen Nishiguchi, Susumu Yamaguchi, Tadahiro Fujikawa, Tetsuo Ohashi, Masahiro Fujita and Keiko Tanaka. It is interesting to note that my comments, particularly in the beginning, reflect the narrative mode, which often surprised my legal-oriented colleagues.

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To Hideki-san and Gin-chan
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