A linguistic analysis of some Japanese trademark cases

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This thesis proposes a model which is intended to explain the discrepancy between legal experts and lay people. The model, called the Linguistic Legal Model, is a combination of Layer Analysis and Register Analysis. Layer Analysis frames a theatre-type concept (Clark 1996) to indicate that different types of perception are affected by a variety of norms in differing layers. Register Analysis aims to identify the linguistic characteristics of legal language. Layer Analysis elucidates the structure of law and society, while Register Analysis examines the structure of legal language.

Layer Analysis is grounded in two contexts, based on the notion of two intersecting planes of reality in the courtroom situation developed in Hale and Gibbons (1999); Layer 1 is the courtroom and Layer 2 is the world. Many disputes regularly arise and are settled in Layer 2. However, when disputes cannot
be solved in Layer 2, they are deliberated in Layer 1. Each layer is characterised by its respective norms (Bruner 1986, Conley and O’Barr 1990, Heffer 2005); the norm of law for Layer 1 and the norm of common sense for Layer 2. In Layer 1 legal experts are trained to acquire the paradigmatic mode, which is the logical and abstract way of thinking. On the other hand, those in Layer 2 use the narrative mode, which is typical of human beings and is a concrete way of perceiving things in the world. The different modes of thought between Layer 1 and Layer 2 cause discrepancy between legal experts and lay people.

Register Analysis accounts for linguistic characteristics of judgments in terms of organisation, lexicon, and syntax. The distinctive discourse organisation of judgments characterises them as a specific genre (Maley 1985). On the other hand, a special set of vocabulary, distinctive grammatical constructions, and cohesion and stylistic characteristics of discourse are regarded as creating the register of the judgment (Mellinkoff 1963, Crystal and Davy 1969, Danet 1985, Bhatia 1993, Tiersma 1999, Gibbons 2003).

Using the Linguistic Legal Model, two trademark cases are analysed. The first is the Golden Horse case, in which a Scottish distiller, ‘White Horses Distillers’ sued a small Japanese distiller for using the business identification of ‘Golden Horse’. The Scotch distiller claimed that there was a likelihood of confusion between ‘Golden Horse’ and their own trademark ‘White Horse’. The Japanese court, however, did not acknowledge such a confusion, which was also shared by the perception of lay people. In other words, Japanese courts at that time did not prescribe to the language use of Layer 2 by protecting well-known foreign trademarks.

In Register Analysis the legal reasoning is traced down from the characteristics of legal language used in the judgment. In the Golden Horse judgment, lengthy sentences did not necessarily mean incomprehensibility of legal language. It is layers of embedding that make a legal sentence appear longer and more difficult to parse. In the Japanese language, Subject comes first and the sentence ends with Verb, and the other components are placed between Subject and Verb. In such an SOV language, layers of embedded structures severely impair comprehension for lay people. Legal experts, however, are trained to sift through ‘old’ information such as conventional expressions and ‘new’ information regarding the case. For those in Layer 1 legal language is a piece of comprehensible writing.

The second trademark case analysed within the thesis is the Snack Chanel case. ‘Snack Chanel’, a run-down snack bar located in an unrefined and inexpensive area, was sued by The Chanel Group for the use of ‘Chanel’, claiming a likelihood of confusion between the two businesses. Although legal experts were aware that the run-down snack bar would never have been taken to have a relationship with the Chanel group, they acknowledged the
confusion. In other words, the legal profession ‘twisted’ the interpretation to suit their expected conclusion by the industry and thereby prescribed to the language use of Layer 2.

The paradigmatic mode of Layer 1 reflects registers of legal language. The fear of causing an unexpected interpretation leads to long sentences in judgments containing many layers of embedded clauses. To facilitate the understanding of a lengthy and self-embedded sentence, Layer 1 has its own grammatical form. In order to avoid an unpredictable contest from the other party, legal experts use set phrases for safety. As they are more concerned with the trial itself rather than the actual people involved in the case, their use of language becomes dehumanised.

The gap between Layer 1 and Layer 2 opens up when legal experts solely rely on the method of the paradigmatic mode rather than on the perception of lay people in the narrative mode. The more strained the solution legal experts manage to find in search of a logically acceptable interpretation, the more distant and impersonal lay people feel toward legal experts. Such a thought process of legal experts is represented in the characteristics of discourse organisation, vocabulary, grammar, and discourse of judgment.

Cases cited


References


