

A LAYER-BASED GENRE ANALYSIS OF THE SNACK CHANEL CASE

Mami Hiraike Okawara

大河原 眞美

ABSTRACT

This paper proposes a layer-based analysis of the Snack Chanel Case, a trademark dispute between a shabby snack bar named Snack Chanel and the fashion multinational, the Chanel Group. The layer-based genre analysis presents three layers: Layer 1 is the actual dispute; Layer 2 is the courtroom; and lastly Layer 3 is the world. Each layer contains genres and those genres are supposedly governed by the norm of their own layer. It implies that the communicative activities of participants in the layer are prescribed by the norm of the layer. It then follows that different norms could possibly result in some discrepancy among the layers. The layer-based analysis thus offers one possible explanation of some discrepancy between the court ruling and the general public view regarding the case.

I. Introduction

As enterprises have diversified into a range of different products in Japanese industry, courts in Japan have taken a more protective attitude towards well-known trademarks. The basis for their argument is that an act of using the other person's trademark would cause confusion with the merchandises of the other person. It is true that we do have a number of free rider cases such as the Fake Louis Vuitton Case (1997), in which the defendant sold nineteen fake handbags and 110 fake key holders with the trademark of Louis Vuitton. However, even when consumers are unlikely to be confused with the products of the defendant and the product with the well-known trademark, Japanese courts rule in favor of well-known trademark holders based on their legal interpretation of a likelihood of confusion. In this

paper I will propose a layer-based genre analysis and analyse the Snack Chanel Case to grasp the discrepancy between general consumers and the court. First, I will introduce the Snack Chanel Case together with my previous work (Okawara 2002), and then briefly explain the Japanese legal system before I discuss a layer-based genre analysis of the case.

II. The Snack Chanel Case

Snack Chanel was a snack bar of the type, commonly seen on the outskirts of the downtown area. It is located on the second floor of a shabby and old building near the Eastside Entrance of Matsudo Station. Matsudo City, which is situated twenty kilometres east of downtown Tokyo, is considered an unrefined and inexpensive area. The proprietress was a single mother and was able to open the snack bar in 1984 with a sum of three million yen, which she borrowed from her relative. The monthly rent was 123,000 yen. The average yearly sales figure between 1986 and 1997 was 8.7 million yen. The bar covers a space of 32 square meters. The employees were one full-timer and one part-timer. The average number of customers per day was usually less than twenty.

The proprietress innocently named her bar Chanel. Her relative happened to suggest Chanel as one of some possible names. She claimed that she was not aware that Chanel was a company diversifying into a range of different fashion products. The only knowledge that the proprietress had about Chanel at that time was that Chanel produced a famous perfume Chanel Number Five. Outside her bar the proprietress set up four Chanel signboards. The name of the snack bar, Snack Chanel, was written in Japanese 'katakana' alphabets. In the postwar standard Japanese writing system 'katakana' alphabets are mainly used for words or names that are foreign in origin. All the signboards vividly showed black letters against yellow scene. The largest signboard, 140 centimeters long and fifty centimeters broad, which was set up on the roof of the building, was quite conspicuous for its size and the two distinct colour combinations seen from the Eastside Entrance of Matsudo Station.

It is important to note that the Chanel Group does not use Japanese 'katakana' alphabets for their trademark. Their trademark is written in English alphabets with white-colour capital letters against black scene as in CHANEL. All of the proprietress's signboards were quite different from that of the Chanel Group because the signboards were written in Japanese and the word 'snack' is used in the signboards.

In March of 1992 the Chanel Group sued Snack Chanel for a violation of the Unfair Competition Prevention Law [Law No.14, 27 March 1934]¹. In July of 1993 the proprietress

changed one signboard from Chanel to Charel in Japanese 'Katakana' alphabets without consulting her attorney and kept the other three unchanged. The Chanel Group accordingly added 'Charel and other similar names' in their claim. The case went up from Chiba District Court, Tokyo High Court, and finally to the Japanese Supreme Court. In 1998 the Supreme Court ruled in favour of the Chanel Group based on a likelihood of confusion between the two businesses.

In order to examine whether general consumers would confuse the snack bar with the Chanel Group or not, I conducted language attitude tests by using open-questionnaires, semantic differential scaling, and some interviews. The subjects, 394 Japanese university students, found that the use of the Chanel name by the shabby snack bar would not arouse any association with Chanel and a high-class image. I have thus concluded in my previous study that although the Japanese Supreme Court decided that the snack bar would cause confusion with the Chanel group by the use of the name Chanel, my subjects did not confuse the snack bar in Matsudo with the Chanel Group. In order to give supplementary information for the case, I will briefly discuss the Japanese legal system in the next section.

III. The Japanese Legal System

Japan holds a unitary court system for civil, criminal, commercial, and administrative cases with the Supreme Court and inferior courts. The Supreme Court is the head of all the courts in Japan and is therefore given the whole judicial power. Inferior courts are made up of four types: Summary Courts; District Courts; High Courts; and Family Courts. There is no distinction made between civil and criminal courts, or between courts of first or second instances are made in Japanese court.

Summary Courts are the lowest in Japanese court system, which are roughly equivalent to Magistrates Courts or District Courts in the Common Law system. In them legally trained judges and legally less trained people determine civil cases involving claims not exceeding 900,000 yen as well as criminal cases of minor offenses. One District Court and one Family Court are located in every prefecture. District Courts carry out appellate function and also exercise original jurisdiction for cases not under Summary Courts or Family Courts. There are eight High Courts, which are located in major cities. The main function of High Courts is appellate court as the first or second instance. Lastly, the Supreme Court carries out exclusively appellate jurisdiction: an appeal against a first or second instance decision of the High Court, as in the Snack Chanel Case; direct appeal against a first instance of Summary,

District, or Family Court; an appeal to be heard by High Court transferred with the special reason; special appeals against decisions of the High Court as a third instance; extraordinary appeals by the Prosecutor-General; and finally an appeal on a point of procedure where misinterpretation of the constitution is involved. As we have seen the Japanese legal system so far, in the following section we will see how the notions of layer and genre have been developed in linguistics.

IV. Layer

Clark (1996) proposes a concept like theater stages built one on top of another layering, to explain many roles in which participants conduct in language use. By the notion of layering, an apt analysis of jokes, ghostwriters, translators can be conducted. For example, when a speaker tells a hearer a joke, the two people are in Layer 1, the actual world, and the joke itself is in Layer 2, a hypothetical world. Clark compares layering to a theater stage; Layer 1 is at the ground level of a theater, on which Layer 2 is the stage built on top of Layer 1. A theater audience views the performance on the stage, while the performance is to be played on its own, more commonly, without the actual participation of the audience.

Hale and Gibbons (1999) apply Clark's notion of 'layers of action' and analyse courtroom situation by their notion of 'reality'. Courtroom situation is described as two intersecting planes of reality: the courtroom as the reality of here and now, and the world outside the courtroom as the particular events that are the subject of the court's deliberations. Since the world outside the courtroom, the second reality, does not exist in the courtroom, the second plane of reality is represented by way of real evidence and versions through language.

V. Genre

The notion of genre has been traditionally used in literary criticism, where particular types of writings such as a comedy or a tragedy have been distinguished by common characteristics of its own. In rhetorical analysis genre is classified into four discourses: narrative discourse; descriptive discourse; procedural discourse; and persuasive discourse. In the field of language studies the notion of genre has been used by ethnographers, systemic linguists, and other related linguists.

(1) Ethnography

Hymes (1972), from the ethnographic perspective, indicates that the notion of genre could well identify formal characteristics of speech and that the number of explicit formal characteristics decides the type of genres. For example, sermon has obviously more formal markers than causal speech. Although Hymes sees that genres and speech events share common features, he states that genres are different from speech events because speech events refer to more concrete activities of speech. Hymes (1991) proposes two types of genres: elementary or minimal genres, and complex genres. Elementary or minimal genres, which are often called minor genres, include riddles, proverbs, prayers, couplets, greetings etc. Complex genres are more complex groupings which modes and structures are entered into. If a court case is a complete genre, oral proceedings, examination of evidence, rendition of judgement are elementary or minimal genres with written and spoken mode of legal styles. Saville-Troike (1993) also views from the perspective of ethnography of communication that a genre is a type of events, more concretely, a particular class of speech events which is considered by the speech community as being of the same type.

(2) Systemic linguistics

Systemic linguists also use the notion of genre to describe how people use language. Martin (1984:25) defines genre as a staged, goal-oriented, purposeful activity in which speakers engage as members of our culture. Martin indicates that one of the principal responsibilities of genre is to constrain the possible combinations of three variables used by a given culture: people doing things with their lives (field); interacting with other people (tenor); and making use of one or another channel of communication and abstraction (mode). Genre represents strategies used to accomplish social purposes of many kinds at an abstract level. These strategies are basically understood as stages, which are used to realise a genre. Briefly, a genre has a beginning-middle-end structure. A genre itself thus constitutes a schematic structure, which varies among cultures.²

(3) Legal setting

By the use of the notion of genre Gibbons (forthcoming) elaborates the analysis of legal setting. Gibbons states that legal setting is a composite of genre structures that underlie intersecting planes of three realities. The first reality is the interaction of the legal process such as events in courtroom, the police station, i.e. the reality of here and now in the legal process. The second reality originally used in Hale and Gibbons (1999) is here divided into the

second and the third realities. The second reality indicates disputed events, which have caused legal action, whereas the third reality is the law itself. Gibbons states that the first reality as staged processes and all these realities are described through genres. Since the second reality is not the actual events happening in the legal process, this reality is reconstructed through genres. In other words, the function of genres is not only to comprehend discourse but also to construct discourse. Genre is a composite of several layers of genre types: macro-genre; genre; genre stage. If a macro genre is a trial, then a spoken discourse of a judge can be a genre and a conclusion of the trial is a genre stage. Different types of genres thus interweave on different planes of realities in a complex manner to form a macro genre of a trial.

In this study I use a slightly modified Martin's definition of genre. A genre is a staged, goal oriented, purposeful activity in which participants, not speakers only, engage as members of their culture. A culture here indicates a particular layer which a particular group of participants belongs to. Each layer supposedly holds the norm to prescribe its genres, i.e. purposeful activities. My layer-based model is expressed schematically in Figure 1 and 2. In the next section a more detailed analysis of the Snack Chanel Case will be presented.

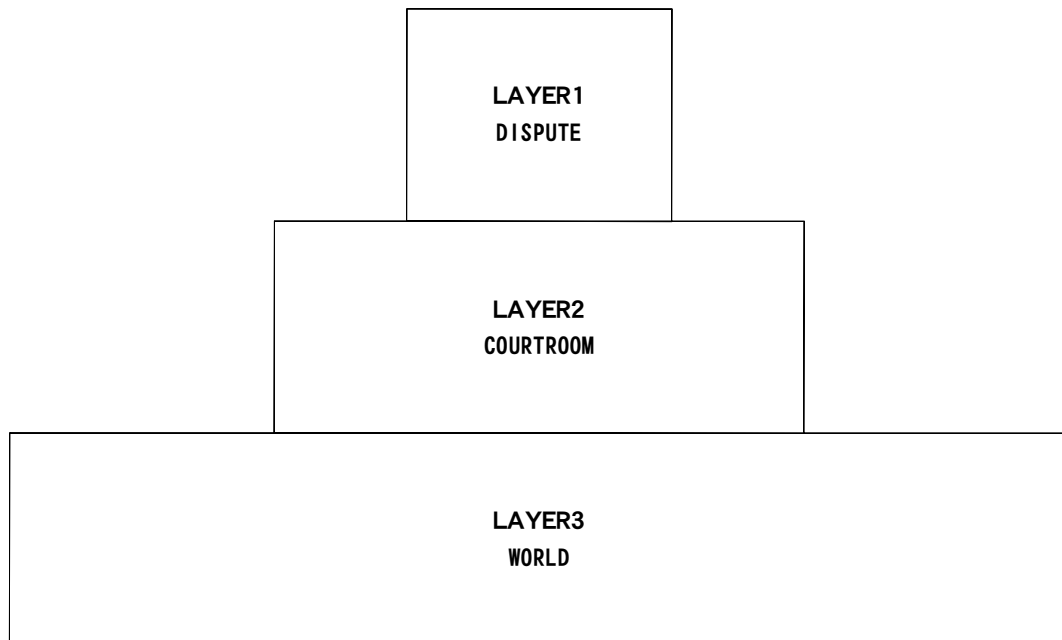


Figure 1

A LAYER-BASED GENRE ANALYSIS OF THE SNACK CHANEL CASE

LAYER 1 (Dispute)

Genre: issues

LAYER 2 (Courtroom)

Norm : law (written)

Genre: written complaint (written)

Genre: documentary evidence (written)

Genre: preliminary pleading (written)

Genre: ruling (written)

LAYER 3 (the world)

Norm : common sense

Genre: news program (oral)

Genre: news story (written)

Genre: public opinion

Figure 2

VI. The Layer-Based Genre Analysis of The Snack Chanel Case

The Snack Chanel Case is made up of three layers. Layer 1 is the actual trademark dispute between the Chanel Group and the proprietress; Layer 2 is the courtroom situation; and finally, Layer 3 is the world in which the public are located. Each layer consists of genres. Layer 2 contains law as its norm, while common sense is the norm of Layer 3. On the other hand, Layer 1 exists without its norm. The most plausible explanation for the absence of the norm is that Layer 1 is seeking the norm to settle the dispute.

Let me consider here the three layers respectively. Layer 1 is the actual dispute regarding the signboards of the Snack Chanel. The participants of Layer 1 are the Chanel Group and the proprietress. The Chanel Group noticed that their tradename was used on the signboards of the snack bar without their consent. The corporation attorneys of the Chanel Group promptly raised a lawsuit. The Snack Chanel Case is only one of many cases initiated by the Chanel Group for an act of using their trademark. One snack bar named Chanel in Tokyo was sued for its name by the Chanel Group and reached an out-of-court settlement by paying one million yen. Another Chanel case is the Love Hotel Chanel Case. Because of the use of Chanel as its hotel name the Chanel Group sued the love hotel in Kobe. In 1987 Kobe District Court acknowledged that the use of the trademark Chanel caused confusion between the love hotel

and the Chanel Group. In 1992 Osaka District Court ruled against a rental oshibori (a wet towel) dealer named as Chanel in the same interpretation. A very similar Snack Chanel Case occurred in Tokyo in 1994. The Chanel Group sued a snack bar named 'Kayo Snack Chanel' (Japanese Songs and Ballads Snack Bar Chanel) located under an elevated railway near Nakameguro station and demanded 68 million yen for damages. Both Tokyo District Court and its appeal court, Tokyo High Court, acknowledged a likelihood of confusion between the two and ruled in favor of the Chanel Group. However, both courts found the damage was limited and the damage amount was thus reduced to 800,000 yen. For now let me return to the Snack Chanel Case. The Chanel Group did not make a direct complaint against the proprietress; instead, they raised a lawsuit in their usual way. The fact that both parties had no opportunity to have a direct contact means that there was no channel for communication between the two parties. The issue itself is here considered as the genres of Layer 1. As mentioned before, there does not exist the norm to govern the issue-genres in Layer 1.

Layer 2 is the courtroom: Chiba District Court; Tokyo High Court; and the Japanese Supreme Court. The following illustrates the procedure of the Snack Chanel Case. The procedure of Chiba District Court is described in detail, whereas the procedures of Tokyo High Court and the Supreme Court are rather briefly mentioned. This is because the procedures of civil cases basically share the common procedures.

CHIBA DISTRICT COURT

- (1) The plaintiff served a written complaint to the District Court. The complaint was to forbid the snack bar to use the signboard and to seek compensation for damage for the sum of ten million yen.
- (2) The Court served the written complaint to the defendant.
- (3) The Court notified the date of the oral proceedings of both the plaintiff and the defendant.
- (4) The plaintiff made the statement of the written complaint, whereas the defendant made the statement of the written answer at the first oral proceeding.
- (5) The Court examined the documentary evidence.
- (6) Both the plaintiff and the defendant made the statements of preliminary pleading.
- (7) The judge concluded the trial. The judge gave judgement against the Snack Chanel. The Snack bar should not use the trademark Chanel, and pay two million yen instead of ten million yen. The district court ruled that general consumers would misunderstand the snack bar for a business arm of the Chanel Group due to the recent trend of diversified business activity, based on a broad interpretation of a likelihood of confusion used in the

A LAYER-BASED GENRE ANALYSIS OF THE SNACK CHANEL CASE

Supreme Court decision of the National Football League Properties Case (1983).

- (8) The plaintiff appealed to the High Court.

TOKYO HIGH COURT

- (9) The High Court rejected the claim of the Chanel Group, reversed the former decision and ordered the Chanel Group to pay the court costs. The High Court acknowledged that general consumers would not misconceive that the snack bar had a business relation with the Chanel Group in light of the small-scale business size of the snack bar.
- (10) The plaintiff appealed to the Supreme Court.

JAPANESE SUPREME COURT

- (11) The Supreme Court reversed the decision of Tokyo High Court and referred the case back to Tokyo High Court for the amount of damage. The Chanel Group and the proprietress reached a settlement that Snack Chanel pay 500,000 yen for damage and the court cost, which is much lower than the Chanel Group originally sought, and still lower than the district court ruled. Although the Supreme Court acknowledged that the snack bar was quite different from the Chanel Group in terms of its business type and size, the court stated that general consumers would misconceive the bar as associated with the Chanel Group due to the Chanel's widely known trademark and the fashion industry's diversified business activities.

It is interesting to note that the exchange of written documents rather than the actual oral exchange occurs more commonly in the oral proceedings of Japanese civil cases. In the oral proceedings the attorneys on both sides exchange the written complaint for the written answer, or make an exchange of preliminary pleadings, by simply saying, 'I am making the statement.' The judge then tells a court clerk that the plaintiff has made the statement and the defendant has made the statement as well. This means that proceedings require only five or ten minutes in the courtroom. Although a large number of legal experts consider a mere shell of the oral proceedings as absurd, they accept this form of the proceedings due to necessity to expedite the trial. However, Japanese 'oral' proceedings without actual oral arguments certainly pose linguistically interesting features. More concretely, written documents predominate at civil cases. In other words, genres in Layer 2 are basically written. As lawyers never fail to refer to laws in the process of the preparation of the legal documents, we can assert that all these written genres are governed by the norm of law.

Although the trial is open to the public, the audience cannot figure out what is going on in the courtroom in many civil cases. It implies that Layer 2 is more thoroughly separated from Layer 3 in Japanese civil cases than that of the Common Law countries where the jury system is in action.³ On the other hand, it is theoretically possible to interpret that Layer 1 is a part of Layer 2 in Japanese legal system because the plaintiff can file a lawsuit and the defendant can respond to the claim without the assistance of lawyers. As a matter of fact, litigation without legal representative occurred partially in the Snack Chanel Case. After the Supreme Court decision neither Tokyo High Court nor the proprietress was able to locate the attorney of the snack bar; consequently, the proprietress by herself negotiated the amount of damage with the attorneys of the Chanel Group. From these observations it can be concluded that participants of each layer are able to transgress the boarder and enter another layer, though not very common.

The most crucial part of Layer 2 is how the judge leads the judgement. The judge deliberates the case based on the documents, the evidence presented, and most importantly the relevant laws, i.e. the norm of Layer 2. The judge then writes up the ruling, with a mind to the appellant court judge and the executor. This results in the fact that some judges make a broad interpretation of a likelihood of confusion in the law even though the judges themselves do not actually 'confuse' the snack bar with the Chanel Group. What the Supreme Court judges aimed for was to oppress the free riders of well-known trademarks in ongoing trademark litigation. If the Supreme Court had ruled in favor of the snack bar based on a likelihood of confusion which is actually perceived in the world, they might have allowed free riders to use well-known trademarks. It is therefore likely that they felt that they needed the broad interpretation of a likelihood of confusion. Vague terms like 'confusion' often used in the law thus provide some way of 'escape' for unforeseen situations. An English legal term, 'reasonable' has also used as a convenient flexible term. Tiersma (1999:79) states that what is 'reasonable' in any particular situation may not be capable of precise articulation in advance. It seems that judges have a tendency to mention that they have reached the ruling based on legal judgement even when they have actually weighed the public opinion against the legal reasoning (Ito: 2002). It is therefore likely that the Supreme Court judges gave the decision weighing the norm of Layer 2 together with the norm of Layer 3 and that they mentioned only the norm of Layer 2. I would like to restate here that the proprietress eventually paid a much smaller amount of money than the Chanel Group had claimed on their initial litigation; the amount she paid is still less than the amount Chiba District Court ruled in the decision. Although the Supreme Court decision appears absurd from the perspective of lay people, the ruling turned to

be a generous decision for the proprietress.

Lastly, Layer 3 is the world outside the courtroom. As mentioned before, the public are not aware of individual civil case rulings unless one is involved. However, the media read the judgement and then construct the story of the case. When the media find the ruling newsworthy, they present the story of their version to the public by means of television news or newspaper articles. Since the media have thorough knowledge of common sense, otherwise they cannot survive, which the public share, i.e. the norm of Layer 3, their version of the story is easily understandable in the outside-court-world. In the case of the Snack Chanel Case the media considered the Supreme Court decision as absurd and reported in such a way⁴. Consequently, the public have strengthened their view that the judges lack some common sense which the general public share.

VII. Conclusion

This paper re-analyses the Snack Chanel Case by the layer-based genre analysis: Layer 1 as the dispute, Layer 2 as the courtroom, and Layer 3 as the world outside the courtroom. All these layers contain genres respectively. Layer 3 is at the ground level, on which Layer 2 is the stage built. Layer 1 is placed on top of the Layer 2. The dispute in Layer 1 is re-constructed on Layer 2 by legal experts. The judgement given in Layer 2 is evaluated by the media and then through the media by the public. Layer 1 is the dispute itself without its own norm. However, the genres of Layer 2 are controlled by law, the norm of Layer 2. Similarly the genres of Layer 3 are governed by common sense, the norm of Layer 3. As different types of participants in each layer experience or reconstruct the dispute under the influence of different norms, their interpretations of the dispute vary among layers. However, it does not necessarily imply that each layer is rigidly fixed without the interchange of the participants. Some participants might transgress the boarder; they may not be aware of the their transgression. Other participants might not acknowledge their transgression due to their expected role in the layer, as we have surmised in the Supreme Court ruling of the Snack Chanel Case. The complexity of the Supreme Court judgement of the Snack Chanel Case could be analysed with the notion of layers and genres. In conclusion, the Layer-based Genre analysis could provide one possible explanation of the discrepancy between different layers, i.e. the ruling and the public opinion.

An earlier version of this paper was read at the Joint Meetings of Law and Society Association and the Canadian Law and Society Association held at Vancouver, Canada on 7 June 2002.

Also, I would like to note that the travelling expenses to this conference was supported by the Takasaki City University of Economics Grant Program.

NOTES

1. In 1993 the Unfair Competition Prevention Law was revised to impose a more thorough protection of well-known trademark. The Revised Law is referred as Law No. 47, 19 May 1993.
2. Martin furthermore elaborates the model of language in terms of the relationship between genre and register. However, I do not delve in the notion of register in this study because the purpose of this paper is to propose a basic model of Japanese litigation.
3. The jury system for criminal cases was adopted in 1928 in Japan, but it has been suspended since the middle of the Second World War.
4. Asahi Shimbun, "Snack Chanel Yappari Dame: Saikousai ga Tenmei Kinshi (Turned Out To Be No Good Snack Chanel Name Again: Supreme Court Prohibits Snackbar's Name)" 11 September 1998, 12 ed. Daini Shakai:38.

BIBLIOGRAPHY

- Clark, Herbert H. 1997. *Using Language*. Cambridge: Cambridge University Press. [1996].
- Gibbons, John. Forthcoming. *Forensic Linguistics*. Blackwell.
- Hale, Sandra, and John Gibbons. 1999. Varying Realities Patterned Changes in the Interpreter's Representation of Courtroom and External Realities. *Applied Linguistics*, 20(2), 203-220.
- Hymes, Dell. 1972. Models of the Interaction of Language and Social Life. *Directions in Sociolinguistics: The Ethnography of Communication*. Eds. John J. Gumpertz & Dell Hymes. Holt, Rinehart and Winston. pp. 35-71.
- Hymes, Dell. 1991. Way of Speaking. *Explorations in the Ethnography of Speaking*. Eds. Richard Bauman & Joel Sherzer. Cambridge, New York, and Melbourne: Cambridge University Press. pp.433-451. 2nd ed. [1974,1989]
- Ito, Shigeo. 2002. Minji Saibankan no Handan no Tokuchou. [The Characteristics of Civil Case Judgement. Paper read at the 2002 Annual Conference of Nihon Ho-Shakai Gakkai (the Japanese Association of Sociology of Law).
- Martin, James R. 1984. Language, Register and Genre. *Children Writing: Reader*. Ed. F. Christie. Geelong, Vic: Deakin University Press. pp. 21-29.
- Okawara, Mami Hiraike. 2002. Ruiji Shouhyou Saiban no Gengogakuteki Bunseki [A Linguistic Analysis of a Japanese Trademark Dispute - The Snack Chanel Case]. *Studies of Regional Policy* 4 (3): 29-40.
- Saville-Troike, Muriel. 1993. *The Ethnography of Communication: An Introduction*. Oxford UK & Cambridge USA: Blackwell Publishers. 2nd ed. [1982 and 1989]
- Tiersma, Peter M. 1999. *Legal Language*. Chicago, IL: The University of Chicago Press.

LAW REPORTS

- Chanel v. A Love Hotel [Kobe District Court (25 March 1987)] Muteishuu vol. 19 no.1 p.72.
- Chanel v. A Oshibori Dealer [Osaka District Court (29 October 1992)] Tokki Senrei Kaisetsushuu (Registration Precedent Commentary) no. 290 p.65.
- Chanel v. Kayo Snack Chanel [Tokyo District Court (27 April 1994); Tokyo High Court (1 March 1995)] Tokkyo to Kigyoo (Patent and Enterprise) no.315 p.46-9.
- Chanel v. Snack Chanel [Chiba District Court (26 January 1994); Tokyo High Court (29 September 1994)]

A LAYER-BASED GENRE ANALYSIS OF THE SNACK CHANEL CASE

Chiteki Zaisanken Kanren Minji Gyousei Saibanreishuu (Intellectual Property Right Civil Administrative Court Cases) vol.26 no.3 p.1132 [Japanese Supreme Court (10 September 1998)] Hanrei Jihou (Precedent Review) no. 1655 p.160.

Louis Vuitton v. Fake Vuitton [Tokyo District Court (9 July 1997)] Hanketsu Sokuhou (Court Reports) vol.268, 7647.

National Football League Properties v. Marutake Shoji [Japanese Supreme Court (29 May (1983)] Saikoo Saibansho Hanreishuu Minshuu (The Supreme Court Precedent Civil Cases) vol.38, no.7, p.1082.