

**KENNETH L. PORT, *Japanese Trademark Jurisprudence.***  
Kluwer Law International (London 1998) 183 S.; ca. DM 144,-

This work on Japanese trade mark jurisprudence marks a timely, thoroughly researched and highly useful new arrival to the small number of works on Japanese law in a western language.

To write this book, the author has ploughed his way through more than 150 Japanese decisions and, if the bibliography is anything to go by, piles of Japanese literature on the subject. This is no mean feat given the fact that Japanese court cases hardly read like Lord Denning's decisions on cricket, and that Japanese academic writings more often than not do more to puzzle the reader than to enlighten him.

Appropriately, the book begins with some introductory remarks on the Japanese legal system and perception of law in general. This is helpful to readers unfamiliar with the Japanese legal system, and particularly those who are weary of the Japanese intellectual property system working to the disadvantage of foreigners. The following chapter gives a charming narration of the history of Japanese trade mark law from the saintly days of yore to the present.

Chapters 3 to 8 give a detailed account on what the Japanese would refer to as their trade mark system: a system of registered rights capable of indicating an origin. The questions of acquisition and validity of trade mark rights are meticulously outlined, and the case law developed thereon by the Patent Office and the courts. The author convincingly argues that the courts seem to be unable or unwilling to properly adjudicate cases of conflicts between registered and unregistered rights because of their hesitation to order the cancellation of a trade mark once it is registered. More often than not, this leaves prior users or owners of foreign, well-known marks between the devil and the deep blue sea when arguing their cases in Japan. Belief in registered rights also seems to render the courts blind when it comes to bad faith registrations. The unsystematic, case-by-case method of deciding the similarity or dissimilarity of marks makes it very difficult for Port to describe Japanese jurisdiction in this respect. Still, he might have gone into some more detail about one of the leading Supreme Court cases in this matter (*Daishinrin/Kirinmori*, September 22, 1992), which is mentioned only in passing. The foreign reader may also have wished to learn more about the repercussions of the different Japanese writing styles and somewhat peculiar pronunciation of foreign names concerning registrability, determination of similarity and use requirements. Often, registration of a word mark in Latin letters may not help against registration of the same mark in hiragana or katakana, as the company Nina Ricci was recently forced to find out when contesting the misappropriation of its "L'Air du Temps" trade mark (Tokyo High Court, May 28, 1998).

Most helpfully, in chapter 9 of the book, the details of the 1996 Trade Mark Revision are highlighted, which brought about some important changes in the framework of Japanese trade mark protection, *e.g.* the abolition of the system of associated marks and the conversion to the international classification system. A translation of the Japanese Trade Mark Act included in the book conveniently highlights the 1996 revisions. This makes it easier for the reader to follow the extent and details of the changes as explained in chapter 9.

The book, which is refreshingly short and to the point, proves sometimes a bit too concise. With respect to the 1996 Amendment, it would have been interesting to know why, after the abolition of associated marks, “similar marks can now be registered by the same applicant” (p. 107). The law as such does not indicate such a change. Furthermore, practitioners might have been interested to know more about the conversion of old trade mark rights to the Nice classification system and the difficulties this may cause. Apart from the respective filing fees (perhaps a chart would have been helpful), users of the Japanese trade mark system would also be most interested in the charges of patent attorneys, which, as the author aptly observes, are quite expensive. Also here, a fee chart might have been helpful.

While the main part of the book is concerned with the acquisition and maintenance of trade mark rights, the comments on enforcement procedures and mechanisms in chapter 7 are very much to the point.

The scholarly use of the work is increased by his exact citations of Japanese academic works both with the Japanese original title and the translation thereof. A crisp and concise writing style enhances readability and helps one to follow the drift of a topic that is not always easy to comprehend.

Kenneth Port’s book was written during a research stay at Tokyo University. May Japanese hospitality and the generosity of his sponsors enable him to return and write more books which, like this one, are both academically precise and of practical use. Far too few have been written hitherto.

*Christopher Heath*