

Use of hashtags may constitute trademark infringement in Japan

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In Japan, the Osaka District Court has recently held that use of Plaintiff's brand name as a hashtag constitutes trademark infringement. See the Osaka District Court judgement on September 27, 2021 (*#charmantsac* Case, *Wisteria Kyoto v. P1*, [2020\(Wa\)8061](#) (in Japanese)).

Plaintiff's brand "charmantsac" is known for its popular ladies' bags using textile. Defendant, a housewife and part-time worker, had sold her handmade bags at the largest online flea market platform called Mercari, and used a hashtag "#charmantsac (in Katakana)" along with other hashtags such as "#dotted bags" in its product description page. At the end of these hashtags, there was a description in Japanese meaning "for those who like them."

Defendant denied trademark infringement based on its defense that the hashtag was not used as a trademark, i.e., not used in a manner that consumers would believe that it was used to indicate the origin of goods.

The Osaka District Court rejected Defendant's argument and found that the hashtag was used as a trademark and constituted trademark infringement. The Court recognized that the purpose of the use of the hashtag "#charmantsac" by Defendant was to guide the Mercari users who searched for "charmantsac" to Defendant's webpage and promote sales of Defendant's handmade bags. The Court noted that the recognition of the users should naturally include that the products listed in Defendant's webpage had a brand or product name of "charmantsac", while there may also be an understanding that the products are recommended for those who are interested in items such as "charmantsac" or "dotted bags".

This case is considered to be the first case for trademark infringement by hashtags in Japan, but there had been other cases for metatags and keyword-search advertising such as AdWords. For metatags, the Court had recognized trademark infringement for use of descriptive metatags which are shown in the search results and visible by consumers¹, while it denied trademark infringement for use of keyword metatags which are used as a reference by a search engine and not shown on webpages². Similarly, the Court denied trademark infringement by AdWords in a case where the purchased keyword was not shown in the search result³. On the other hand, the Court recognized a possibility of trademark infringement in a case where a major online market platform called Rakuten used certain AdWords, guiding consumers to a list of online stores at Rakuten market⁴.

In summary, there are possibilities of trademark infringement for use of hashtags, metatags and AdWords, in a case where a brand name is visible to consumers and the purpose of use is to promote sale of infringer's own product, i.e., advertisement.

This Osaka District Court decision in the hashtag case was received as showing the Court's attitude to promote brand protection, although it could be a little bit harsh for Defendant, a housewife selling handmade bags at the online flea market. Mercari, the platformer, is now required to take measures to prevent use of hashtags of brand names for non-genuine items by their 20 million users.

¹ Osaka District Court judgement on December 8, 2005 (Chuko-sha 110 Ban case, *P1 v. K1 et al.*, [2004\(Wa\)12032](#) (in Japanese))

² Osaka District Court judgement on January 19, 2017 (Bike Lifter case, *Atlas v. World Walk*, [2015\(Wa\)547](#) (in Japanese))

³ Osaka District Court judgement on September 13, 2007 (Carica Celapi case, *Saïdo v. Onrado*, [2006\(Wa\)7458](#))

⁴ Osaka High Court judgement on April 20, 2017 (Sekken Hyakka case, *Life Science v. Rakuten*, [2016\(Ne\)1737](#) (in Japanese))

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