# Basic Case Law
# Japan Supreme Court Decision
# "Similarity of goods"

【 Case No. 】1958(O)1104
【 Date of decision 】Jun 27, 1961
【 Kind of the case 】An appeal against the JPO's decision on the refusal of registration
【Summary】We should not decide the similarity based on the goods themselves. But we should decided based on whether or not consumer will understand that the goods are made by the same manufacture if the same distinctive mark was used. Based on this,
Japanese Sake(rice wine) and Shochu(distilled sprit) is similar.

Sake 

Shochu 

# Supreme Court's decision

Filed Trademark:

Tachibana Masamune

**Similar**

Prior registered trademark:

Tachibana Shochu

- "Masamune" is one of a common name of Japanese Sake(Rice wine).
- "Shochu" is a general name of distilled sprit.
- Therefore, both trademarks are similar.

# Supreme Court's decision

Filed Trademark:

Tachibana Masamune

**Similar**

Prior registered trademark:

Tachibana Shochu

The same manufacturers are obtaining a license to produce both Japanese sake and Shochu. Therefore, "Japanese Sake" and "Shochu" is similar product because consumer will consider that they are made by the same manufacture if the same distinctive mark was used.

# General comment

- The supreme court's decision seems to be a bit tricky because we have to decide whether the trademarks are similar or not before arguing the similarity of goods.
- As for the current practice at the JPO, they decide the similarity of goods and trademarks separately, which seems to be easy understanding.
- But the JPO's practice and the case law of the supreme court do not have substantial conflict because the JPO consider the actual business situation such as the same manufactures or distributers, and so on.

Sake 

Shochu 

BEER 

They are similar !