

The culture of fragrances and the legal protection

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This research is exploring the legal protection of fragrances while paying attention to the cultural background of fragrances. The legal protection of fragrances under the Patent Law, the Trademark Law, the Copyright Law, and the Unfair Competition Prevention Law would be conceivable. Among of them, the legal protection by the Patent Law or the Unfair Competition Prevention Law is restrictive and insufficient, whereas, regarding to the legal protection by the Trademark Law, it was expected trademark applications of fragrances would increase when the requirement of graphical representability of the Community Trademark Regulation and Directive was discarded. However, the EUIPO still keeps the status not allowing fragrances to be registered as a trademark. Nevertheless, analyzing the component of fragrances would be possible technically, so there is a possibility that expressing fragrances objectively and clearly is not so difficult technically. If such objectivity and clarity are ensured, the legal protection of fragrances under the Trademark Law seems to be worth considering.

On the other hand, the legal protection of fragrances under the Copyright Law is sometimes emphasized from the cultural aspect. In France, fragrances are valued traditionally focusing on perfume, and considered to be a perfumer's creation. In Japan, the traditional culture of Kodo (Japanese incense) can be evaluated to have a cultural aspect of fragrances. However, even in France, the legal protection of fragrances under the Copyright Law is claimed by masking the industrial aspect of fragrances with the cultural aspect. Then, we should consider an approach to protection from the industrial aspect, not from the cultural aspect. Therefore, it seems that the legal protection of fragrances under the Trademark Law should be aimed.

In any case, it is strange that the legal protection of fragrances hasn't been so appealed in Japan, despite that the cultural and industrial importance of fragrances are well recognized. These points are for further study.