

THE LINGUISTIC FEATURES OF DISCLAIMERS IN ENGLISH

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Abstract - As Disclaimer is essentially a legal statement that is designed to protect both the company and its customers by informing the customers of terms and extent of the company's services or products, it is clearly and frequently labeled as *Disclaimers*. As a matter of fact, wherever there are rules there will be temptations for people to break them as they lack full understanding of Disclaimers to recognize the importance and legal responsibilities binding with these types of legal texts. This paper is to identify the linguistic features of Disclaimers in English. The author believes in the context of globalization, as long as things are increasingly considered to be in tight connections with rules, awareness of Disclaimers should be raised among Vietnamese people. In addition, once the English Disclaimers with their pragmatic and structural features are brought to light, not only has this knowledge done wonders to those as customers, but also helps businessmen or law trainees in forming a disclaimer on their own.

Key words - Disclaimers; linguistic features; pragmatic and structural features; globalization; legal responsibilities.

1. Introduction

Alongside the development of the society, in many areas of life, language has been simultaneously shaped and honed in a drive to generate ever more attention and persuasive impact. With the insightful progression in Discourse Analysis, niches in language use are no longer a far-reaching goal. As such, Brown G. and Yule G. [1] stated, Discourse analysis could not be restricted to the description of linguistic forms independent of the purposes and functions with those forms that were designed to serve human affairs. Since the analysis of discourse can help answer innumerable questions and by the gains it certainly brings, this article is to make an original contribution to this academic and practical field. The subjects in question are English Disclaimer as a discourse and its linguistic features.

It is not a coincidence that the author comes up with the article topic on English Disclaimers. The urge lies in the significance of the subject in the context of increasingly serious legal issues paralleling the social development as well as the beneficial outcome of the article to the community. As a matter of fact, nowadays, most of the products in any store or online are tied with rules which display a kind of avoidance strategies in the form of Disclaimers. These Disclaimers are associated with frequent guidances which ultimately serve the completion of right and obligation of related people, and in the end, prevent people from crossing beyond their bounds of law. Many Disclaimer writers, hence, stress the importance of this legal text and make it known that the failure of understanding Disclaimers, resulting in the inability to execute a Disclaimer, which can be a costly mistake. However, much as these Disclaimers appear with high frequency nowadays, how many people are aware of them and spare some time to read and see through what they are about; how many people understand these texts and recognize those are sorts of Disclaimers; how many people

possibly resist the temptations in order not to break the rules or Disclaimers which are clearly written down as a form of legal document or statement.

The situation certainly goes more seriously when the victims include those who hardly know or have little knowledge about Disclaimers as well as the legal responsibilities going along with them. The more they are exposed to a wider borderless society with the aid of English language and Internet, the more they are prone to a risk of being labeled deviant to go against the Disclaimers. Sometimes, failure of understanding Disclaimers or inability to execute a Disclaimer consequently entails a serious problem.

The article is aimed at discovering English Disclaimers from the angle of their Linguistic Features, more specifically; their pragmatic and structural features with the purpose of helping Vietnamese people shape an idea of English Disclaimers and avoid any pitiful misunderstanding or legal problems.

2. Theoretical Background

2.1. Discourse and Discourse Analysis (DA)

Discourse is defined in a number of ways, as language use above the level of the sentence; as language use in context and as real language use. Discourse encompasses the use of spoken, written and signed language and multimodal forms of communication and is not restricted to “non-fictional” or verbal materials.

In fact, DA gives us insight into various aspects of language in use: how texts are structured beyond sentence level; how talk follows regular patterns in a wide range of different situations. Moreover, this theory has many practical applications above and beyond knowledge about language for its own sake.

In this article, disclaimer as a discourse will be fully analyzed with a view to opening up a picture of a typical disclaimer with its linguistic as well as structural features. Not only has this knowledge done wonders to those as customers, but it will also help business or law trainees learn how to write a disclaimer. This article casts very basic foundation for them to follow. This is the practical application that will be definitely beneficial for many.

2.2. Critical Discourse Analysis (CDA)

Being one of specific theoretical perspective and analytical approaches used in linguistic Discourse analysis, CDA is characterized not merely as a particular research method, but a way of approaching and thinking about a problem critically. However, the significant difference between DA and CDA lies in the constructive problem – oriented, *interdisciplinary* and *multi-methodical* of the latter. CDA not only looks at the available discourse but

asks how and why ideologies are circulating in the workplace discussion, what is being naturalized and who benefit [5].

Critical Discourse Analysis as Methodology

The use of *Critical Discourse Analysis* as a research method is not necessarily synonymous with given methodological steps for gathering, transcribing and analyzing data. As critical discourse analysis has made the study of language interdisciplinary, many different approaches to analyzing the social, critical effects of language can fall under its rubric. Some forms of critical discourse analysis are deeply influenced by linguistics and analyze a text's "syntactic and lexicon, its grammar, morphology phonology" [11]. Examining these methods means raising questions of the role of disclaimer as a legal written text currently used in a wide range of fields. Given that, a CDA approach is ideal for a topic on linguistic features of Disclaimers.

2.3. Speech act

The function of speech acts has illuminated the ability of language to do other things than just describe reality. According to Searle [11], the theory of speech act starts with the assumption that the minimal unit of human communication is not a sentence, or other expression, but rather the performance of certain kinds of acts, such as making statements, asking questions, giving orders, describing explaining, apologizing, thanking, congratulating, etc... Characteristically, a speaker performs one or more of these acts by uttering a sentence or sentences, but the act itself is not confused with a sentence or other expression uttered in its performance. Such types of acts as those exemplified above are called illocutionary acts. In contrast with locutionary acts which are a description of what the speaker says, illocutionary acts focus on what the speaker does in uttering a sentence. Searle attempted to classify illocutionary acts into the following types: *Representative, Directive, Question, Commissive, Expressive, and Declaration*.

An utterance in context executes an act. In order to explore more about a particular act being performed via an utterance is to assume that underlying every utterance (U) there is a clause containing a **performative verb** (Vp) which makes the illocutionary explicit and accounts for the **illocutionary force**. This is known as **performative hypothesis** and the basic format of the underlying clause is shown below:

- (a) I (hereby) Vp you (that) U;
- (b) I *confess* that I stole the family jewels;
- (c) I *warn* you to stop teasing your sister;
- (d) I *promise* I will come to your birthday party....

In this clause, the subject must be first person singular ("I"), followed by the adverb "hereby", indicating that the utterance "counts as" an action by being uttered. There is also a performative verb (Vp) in present tense and an indirect object in second person singular ("you"). In order for a performative verb to have its **performative sense**, that means to actually perform the illocutionary act its names,

it must (i) be positive, (ii) be present tense, (iii) have a first-person agent (performer of the action of the verb), and (iv) refer to a specific event.

View points of linguists in terms of speech acts up to now have not reached absolute agreement. Austin's classification of speech acts is best seen as an attempt to give a general picture of illocutionary acts: what types of illocutionary act one can generally perform in uttering a sentence. John Searle inherits his ideas from Austin and elaborates on some of them, but develops the theory in his own fashion: the essence of it being that to perform an illocutionary act is to express an illocutionary intention [10]. While each of these speech act theories has some merit, this article follows Searle's as his theory itself as well as its classification of speech acts best serve the aim of the study in revealing the pragmatic features of Disclaimer. Especially, how English Disclaimers function, what acts employed, whether the message is explicitly conveyed... are the questions need answering in the article.

3. Methods and Procedures

To discover the two dimensions in linguistic analysis of English Disclaimers: *the pragmatic and structural interpretations*, CDA allows this article to employ such different research methodological approaches as deductive, inductive, qualitative, quantitative, descriptive, synthetic and analytic methods. 100 samples of English Disclaimers are collected to serve this purpose.

Subject Selection was managed under three considerations: the field of the study, the availability of material and the feasibility of conducting the analysis.

Firstly, in order to serve the purpose of finding out the general linguistic features of English Disclaimers, stretches of Disclaimers of all fields and legal aspects were reached. Secondly, in regard to the availability of material, although English Disclaimers potentially prove their appearance in numerous areas and thus on many means of mass media, books, musical albums, CD, software, websites,..., the access to these means are relatively infeasible in Vietnam where, according to the researcher's first realization, their occurrence is relatively rare. Therefore, the selection of English Disclaimers is mostly done online. As this article is not a contrastive analysis of English and Vietnamese Disclaimers since there is not an equivalent frequency of existence of English and Vietnamese Disclaimers, just English Disclaimers are put in focus.

4. Results

4.1. The Discourse of Disclaimer

4.1.1. General Characteristics of English Disclaimers

The sample of 100 Disclaimers eventually gives us an insight into Disclaimers. First of all, an initial look into Disclaimers with its general features is necessary.

A **disclaimer** is generally any statement intended to *specify or limit the scope of rights and obligations* that may be exercised and enforced by parties in a legally-recognized relationship. In contrast to other terms for legally operative language, the term "disclaimer" usually

implies situations that involve some level of uncertainty, waiver, or risk [14]. Here is an example of a Disclaimer.

Disclaimer: *The materials are provided "as is" without any express or implied warranty of any kind including warranties of merchantability, noninfringement of intellectual property, or fitness for any particular purpose. In no event shall btw USA or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of profits, business interruption, loss of information) arising out of the use of or inability to use the materials, even if btw usa has been advised of the possibility of such damages. Because some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.*

A disclaimer may specify mutually-agreed and privately-arranged terms and conditions as part of a contract; or may specify warnings or expectations to the general public (or some other class of persons) in order to fulfill a duty of care owed to prevent unreasonable risk of harm or injury. Some disclaimers are intended to limit exposure to damages after a case of harm or injury has already been suffered. Additionally, some kinds of disclaimers may represent a voluntary waiver of a right or obligation that may be owed to the disclaimant.

There are many cases wherein *Disclaimers stand alone* and they are easy to be recognized. However, cases in which *Disclaimer is just one single content among other legal information* are the most likely to cause confusion. Therefore, the labeling of Disclaimers helps customers to distinguish between Disclaimers and many other important legal parts located in the surrounding whereabouts such as Terms and Conditions, Limitation of Liability, Agreement of License...

Disclaimer is not limited in terms of length. It is noticing that 70% of Disclaimers are single paragraph while the others cover more than two communicating terms and extent of the services or products to the readers. Depends on the complication and the risk relating to the product provided, more information is added to the Disclaimer to protect the company from legal prosecution should the customers misuse the product or service.

Table 1. Length and Sentence Number in Disclaimers

Words		
Longest Disclaimer	Shortest Disclaimer	Average Disclaimer
684	30	96
Number of sentences		
Biggest No. of Sentences	Smallest No. of Sentences	Average No. of Sentences
18	3	5

As seen in Table 1, the length of Disclaimer varies considerably from disclaimer to disclaimer, ranging from 684 words in the longest one to 30 words in the shortest with the average disclaimer length of 96 words. The Disclaimers also vary in the number of sentences, from the

highest number of 18 sentences to the lowest of 3. Besides, Disclaimers' *font size* is clearly readable to an average person. The most frequent verb tense in a disclaimer is *present tense* while *active* and *passive voices* are both employed in different contexts.

4.1.2. Pragmatic features of English Disclaimers

The study of pragmatics as mentioned helps make the picture of Disclaimers in English become more vivid and colorful as it highlights the ways in which context contributes to meaning rather than just merely focus on the transmission of meaning depending on the linguistic knowledge such as grammar or lexicon etc. In the big umbrella of pragmatics, *speech acts* specifically is considered as the main thread that runs through the analysis of these Disclaimers.

According to the statistics, the distribution of speech acts employed in English Disclaimers is as follows. Three types of illocutionary acts strongly presented here are: *Representative, Directive* and *Declaration* (Table 2).

Table 2. Types of Illocutionary acts employed by the English Disclaimers

Type	Number of instances
Representative	520
Directive	481
Question	0
Commissive	20
Expressive	0
Declaration	257

Of the three acts frequently employed, disclaimers' language is inclined to the description of some states of affair by carrying out acts of stating, notifying... (*Representatives* – 520). Verbs which are used with significant frequency in **Representatives** are *to be, believe, contain, reserve* as in (4.1 and (4.2). Instead of employing the direct verb of denial such as “deny” or “refuse” which are described as *performative verbs* normally indicating a voluntary act, Disclaimers' sentences borrow the negative verb form for non-explicit statement of a matter. The preferable choices of negative verb form in these representatives of Disclaimers hence fail to meet the criteria for explicit performative (*positive, present tense, first-person agent*). Eventually, as Representatives, all of these sentences of these types cannot fulfill the performative sense to strongly perform the illocutionary act, but merely stop at the description of some state of affairs instead.

E.g. (4.1) Ebook Nook **believes** the information provided on this website to be accurate but is not responsible for typographical or other errors. EbookNook, our hosts, our Internet provider, and our affiliates, **are not** liable for any direct, indirect, incidental, or consequential damages as a result of your use of this site, or for our inability to access the site.

(4.2) Neither Adobe nor its suppliers **shall be** liable to you or any third party for any indirect, special, incidental, punitive, cover or consequential damages ...

Table 3. Demonstration of the Explicitness and Nonexplicitness of the Representatives in Disclaimers

Sentences	Verb	Performative Verb			Explicit/ Nonexplicit Performative
		Positive	Present Tense	First-person agent	
(4.1)	are not	-	+	+	Nonexplicit Performative
(4.2)	shall not be	-	-	+	

Directives account for 481 instances, without doubt, being another important speech act which is also employed with high majority in Disclaimers. Those **directives** are functioned to get the reader to do something that is good for their own sake. Using the imperative syntactic form for most of **Directives**, the speech act presented seems to uphold more force on the readers. However, in the disguise of nonexplicit performative, the verbs are not as forceful as they seem to be. Examples (4.3), (4.4) and (4.5) clearly describe Directive act.

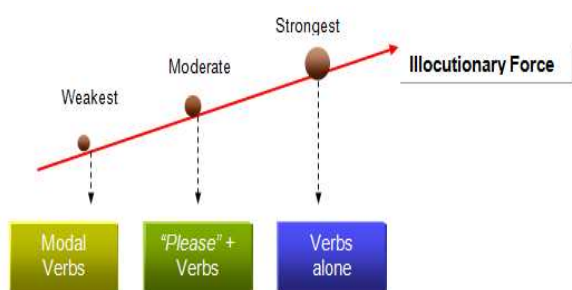
E.g. (4.3) *You **should not use** the service for emergency purposes or to **seek** or **provide** diagnosis or treatment of medical, psychological or other problems or difficulties or as a substitute for professional advice.*

(4.4) *You **may not** otherwise **copy, distribute, display, download, modify, repost, transmit** or **use** all or part of any material without my prior written permission.*

(4.5) *If you have any questions or comments regarding this Disclaimer, **please email** us at essay.Disclaimer@statementpurpose.com.*

Table 4. Demonstration of the Explicitness and Nonexplicitness of the Directives in Disclaimers

Sentences	Verb	Performative Verb			Explicit/ Nonexplicit Performative
		Positive	Present Tense	First-person agent	
(4.5)	seek	+	+	+	Explicit
(4.6)	should not use	-	-	+	Nonexplicit
(4.7)	may not copy, distribute, display, download, notify, report, transmit or use	-	-	+	Nonexplicit
(4.8)	please email	+	+	+	Explicit

**Figure 1.** Description of the illocutionary force in Directives

Although some **Declarations** such as examples (4.6)

and (4.7) use the passive form of the verb, they still keep the prerequisite to be *explicit performative*, presenting a high level of imposed force. However, this poses a question of why the use is passive voice but not active. While any single use of the passive voice is not technically incorrect, the repeated use of passive voice produces a sluggish, ponderous text. However, in the limited number of situations of declaration of Disclaimers, using passive voice is preferable. The reason for that may lie in the Disclaimer writer's intention in using the passive voice, that is to make the utterance more forceful, subject-aimed but very persuasive. On the contrary, the use of active voice can help address the "doer" but possibly creates an offensive feeling among users if all the sentences are directly put this way: "I prohibit you from..." This would create a very forceful, powerful *performative sense* but fail to maintain the respect, politeness towards users.

E.g. (4.6) ***You are prohibited** from posting on or transmitting through *Made-in-China.com* any material that violates or infringes upon the rights of others.*

(4.7) ***It is prohibited to** capture, reproduce or reuse the contents of this site for commercial purposes.*

4.1.3. Structural interpretation of English Disclaimers

According to Swales [12], "Move analysis" is by far the most common example of such a specific genre-level analysis. Move analysis was developed as a top-down approach (where the focus is on meaning and ideas) to analyze the discourse structure of texts from a genre; the text is described as a sequence of 'moves', where each move represents a stretch of text serving a particular communicative (that is, semantic) function. As the organization of discourse is one of the central issues of critical discourse analysis, the article hereby follows the analytical framework of "move analysis" by identifying each move or information of Disclaimers to reveal the overall structure or organization of English Disclaimers. (*Move and sub-information of a disclaimer hereafter can be used interchangeably*).

Following the "Move analysis", there is a collection of necessary information to form a disclaimer and these sorts of information are tied with each other in a single text. All of the moves are not presented in a fixed order. The overall structure or organization of English disclaimers is revealed after each move or information of Disclaimers is identified. Regardless of the variations in length in Disclaimers, **the fullest version of a disclaimer** should cover terms of use regarding the following information illustrated in Table 4.4. Each piece of information/ move appears with different frequency in Disclaimers.

Table 5. The fullest version of an English Disclaimer

Moves	Content	%
1	The quality (of the information/content)	50
2	The availability of services offered to certain groups of people or geographical locations	10
3	(No) Endorsement of recommended information elsewhere	20

4	The information provided is for informational/educational purposes only and not intended to constitute professional advice as circumstances will vary from person to person	60
5	Others using the products cannot hold the company responsible for any loss or damages arising from supplying material	59
6	The company is not liable for the actions of users. That the user should know that he or she is using the product or service at their own discretion and responsibility . Accordingly, the company is released from accepting any responsibility.	79
7	The company's limited responsibilities and free of warranty on a number of matters.	85
8	Prohibitive Rules	45
9	The company is able to reserve the right to discontinue or modify its services at any time. The company reserves the right to alter, amend or change its information at any time	25
10	Readers to contact the company directly via email should they wish for the company to remove any content that they have identified as being sensitive, harmful, or unnecessary	20
11	The Law under which the Disclaimer is subjected to. This includes a legal statement referring to any applicable laws and or regulations pertaining to the country in which the company is based	20

The findings indicate that the structure of a typical disclaimer is related to its overall purpose and function, not an arbitrary one. Disclaimers exhibit certain features that mark a text out as a disclaimer. After samples of English Disclaimers are chopped down into pieces of information element constituting to a big picture of an English Disclaimer, it is revealed that the fullest structure of an English disclaimer will contain certain types of information. Some are core information and occur with high frequency, leading to the fact that they are essential elements which make up a legal text as Disclaimer.

5. Conclusion

By studying the linguistic feature, two areas of investigation - the pragmatic features and the structural features of English disclaimers are clearly revealed. Particularly, English Disclaimers are characterized by such speech acts as Representative, Directives and Representatives

which appear respectively with high frequency. For each of the acts, illocutionary force is expressed with a different level of strength, just to fulfill the targeted acts. However, this inclination is surprisingly presented in a systematic manner in which some particular information or cluster of information is tied with particular acts, or in other words, it can be said that some speech acts goes in correspondence with certain sorts of information, which makes up the distinctive characteristics of the language in disclaimers.

More significantly, the knowledge of Disclaimers with its linguistic features and structural organization will definitely assist the daily worldwide commercial transaction in which both the products/service providers and users totally understand their scope of rights and obligations. Besides, the article is believed to be very beneficial for the teaching of ESP to Vietnamese undergraduates majoring in business who are lately expected to have a greater involvement in law or legal terms.

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