

## UNFAIR COMPETITION PREVENTION LAW

Law No. 47, promulgated on May 19, 1993<sup>1</sup> (Amendments by: Law No. 116, of December 14, 1994)

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## (Purpose)

## Article 1. —

The purpose of this Law is, by providing for measures for the prevention of, and compensation for damages from unfair competition, etc. in order to ensure fair competition among entrepreneurs and the full implementation of international agreements related thereto, and thereby to contribute to the wholesome development of the national economy.

## (Definitions)

## Article 2. —

(1) As used in this Law, the term “unfair competition” shall mean any act under the following:

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<sup>1</sup> OLD UNFAIR COMPETITION PREVENTION LAW (No. 14, promulgated on March 27, 1934)  
Amendments by: Law No. 2, of March 8, 1938  
Law No. 90, of April 1, 1950  
Law No. 26, of March 26, 1953  
Law No. 81, of May 24, 1965  
Law No. 46, of June 25, 1975  
as amended up to June 29, 1990 by Law No. 66

(i) The act of using a goods or other indication (as used hereinafter, a “goods or other indication” means name connected with person’s business, tradename, trademark, mark, container or package of goods, or any other indication used for the indication of goods or business) which is identical with, or similar to, another person’s goods or other indication as to be well-known among consumers, or the act of selling, distributing, displaying for the purpose of sell or distribute, exporting or importing goods on which such a goods or other indication is used, and thereby causing confusion with another person’s goods or business;

(ii) The act of using a goods or other indication as one’s own which is identical with, or similar to, another person’s famous goods or other indication, or the act of selling, distributing, displaying for the purpose of sell or distribute, exporting or importing;

(iii) The act of selling, distributing, displaying for the purpose of sell or distribute, exporting or importing goods which imitated the configuration (excluding a configuration which is commonly used for goods of the same kind (or, in the case where it is not the same kind of goods, goods which has an identical or similar function and utility of those of such other person) as that of such other person) of another person’s goods (excluding goods for which three years have elapsed from the date selling thereof first commenced);

(iv) The act of acquiring a trade secret by improper means such as theft, fraud, or coercion, (hereinafter referred to as “improper acquisition of a trade secret” ), or the act of using or disclosing a trade secret so acquired (including the act of disclosing such trade secret confidentially disclosed to a specific person, hereinafter the same shall apply);

(v) The act of acquiring a trade secret while being aware that such trade secret has been acquired through improper acquisition or, through gross negligence, not being aware of such matter; or the act of using or disclosing a tradesecret so acquired;

(vi) The act of using or disclosing a trade secret after becoming aware, subsequent to its acquisition, that such trade secret has been acquired through improper acquisition or, through gross negligence, not becoming aware of such matter;

(vii) The act of using or disclosing a trade secret which has been disclosed by the business entity holding it (hereinafter referred to as the “holder” ), for the purpose of unfair business competition or otherwise acquiring an unfair benefit, or for the purpose of inflicting injury on such holder;

(viii) The act of acquiring a trade secret while being aware or, through gross negligence, not being aware that there has been an improper disclosure of such trade secret (defined, in this case and hereinafter, in the case stipulated in the previous item, as an act of disclosing a trade secret for the purpose stipulated in such item, or an act of disclosing a trade secret in breach of a legal duty to maintain secrecy) or that such trade secret has been acquired through improper disclosure; or the act of using or disclosing a trade secret so acquired;

(ix) The act of using or disclosing an acquired trade secret after becoming aware, subsequent to its acquisition, that there has been improper disclosure of such trade secret or that such trade secret has been acquired through improper disclosure, or, through gross negligence, not being aware of such matter;

(x) The act of indicating on goods or for service, or in an advertisement thereof or in a document or correspondence used for a transaction, which is likely to cause misleading with respect to the place of origin, quality, contents, manufacturing method, use or quantity of such goods or the quality, contents, use or quantity of such service, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods with such an indication or offering a service with such an indication;

(xi) The act of making or circulating a false allegation injurious to the business reputation of another person in a competitive relationship;

(xii) The act of an agent or representative, or a person who, within one year of the date of such act, was an agent or representative of an owner of a right relating to a trademark (such right shall be limited herein to a right equivalent to a trademark right and hereinafter referred to simply as a “right” ) in a state party to the Paris Convention (used herein as defined in Article 4, paragraph 1, item 2 of the Trademark Law (Law No. 127 of 1959)) or a member country of the World Trade Organization, without justifiable reason and without the consent of the owner of such right, using a

trademark which “ is identical or similar to the trademark relating to which the right relates in respect of goods or service identical or similar to those to which such right relates, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using such trademark which is identical or similar to the goods to which the right relates, or offering a service, using such trademark, which is identical or similar to the service to which such right relates.

(2) As used in this Law, the term “trademark” shall mean trademark as defined Article 2 (1) of the Trademark Law.

(3) As used in this Law, the term “mark” shall mean mark as defined Article 2 (1) of the Trademark Law.

(4) As used in this Law, the term “trade secret” shall mean technical or business information useful in commercial activities, such as manufacturing or marketing methods, which is kept secret and not publicly known.

(Right to Request an Injunction)

Article 3. —

(1) A person whose business interests are infringed or are likely to be infringed by unfair competition, is entitled to request an injunction preventing or suspending such infringement against the person who is infringing such business interests or is likely to do so.

(2) A person whose business interests are infringed or are likely to be infringed by unfair competition, is entitled, at the time of the request referred to in the above paragraph, to request the destruction of the objects which constitute the act of infringement (including objects created by the act of infringement) or any other acts necessary to prevent or suspend the infringement.

(Claim for Damages)

Article 4. —

A person who intentionally or negligently infringes on the business interests of another person through unfair competition, shall be liable to compensate for damages which result therefrom; provided however, that this shall not apply to damages which arise from use of a trade secret after the rights described in Article 8 below are extinguished in accordance with that said Article.

(Presumption of Amount of Damages, etc.)

Article 5. —

(1) In the case where a person, whose business interests have been infringed by unfair competition, has made a claim for compensation for damages suffered by himself, against a person who intentionally or negligently infringed such business interests, and where the infringer receives the profits through such act of infringement, such amount of profits shall be presumed to be the amount of damages caused to the person whose business interests were infringed.

(2) A person whose business interests are infringed by unfair competition in any of the manners described in Article 2 (1) items 1 to 9 and 12 is entitled to claim, against a person who intentionally or negligently has infringed such business interests, compensation for damages suffered by himself in an amount equivalent to the amount which normally ought to be awarded as compensation, in accordance with the type of unfair competition described in each item below, for the act described in such item:

(i) unfair competition as described in Article 2 (1) item 1 or 2: the use of a goods or other indication relating to said infringement;

(ii) unfair competition as described in Article 2 (1) item 3: the use of a configuration of goods relating to said infringement;

(iii) unfair competition as described in Article 2 (1) items 4 to 9: the use of a trade secret relating to the said infringement;

(iv) unfair competition as described in Article 2 (1) item 12: the use of a trademark relating to the said infringement.

(3) The provisions in the above paragraph (2) do not prevent a claim being made for compensation for damages in excess of the amount indicated in such paragraph. In such a case, if the person who infringed such business interests did not do so intentionally or through gross negligence, the court may take that into consideration in determining the amount of compensation for damages.

(Submission of Documents)

Article 6. —

In an action related to infringement of business interests through unfair competition, the court may order, in response to an application of a party to the action, the other party to submit the any document necessary to calculate the amount of damages caused by the said infringement; provided however, that this does not apply in the case where the person who holds such a document refuses to submit it having a justifiable reason for so refusing.

(Measures to Restore a Business Reputation)

Article 7. —

The court may order a person who intentionally or negligently has committed an unfair competition and thereby injured the business reputation of another person to take those measures necessary to restore the business reputation of that person in lieu of compensation for damages or in addition to such damages, upon the request of the person whose business reputation was so injured.

(Negative Prescription)

Article 8. —

Pursuant to the provisions of Article 3 (1), the right to request an injunction to suspend or prevent an infringement caused by commission, using a trade secret, of the acts described in Article 2 (1) items 4 to 9 shall be extinguished by prescription in the case where the person who commits such act continues it and the holder whose business interests have been infringed or are likely to be infringed by such act does not exercise such right within three years from the time that such holder becomes aware of such facts and of the person committing such act. The same extinguishment shall apply, in any event, when ten years have elapsed from the time of commencement of such act.

(Prohibition of Commercial Use of a State Emblem of a Foreign State)

Article 9. —

(1) No one may use, as a trademark, a mark identical to the national flag or coat of arms of a foreign state or any other insignia which is prescribed by an ordinance of the Ministry of International Trade and Industry (all such insignias hereinafter referred to as a “national emblem” ) or a mark similar to a national emblem (such identical or similar emblem hereinafter referred to as a “quasi-emblem” ), or may assign, deliver, display for the purpose of assignment or delivery, export or import goods using a quasi-emblem as a trademark, or offer a service using a quasi-emblem as a trademark; provided, however, that this does not apply in the case where permission has been obtained from the government agency of the foreign state which is vested with the authority to grant permission (including, in this case and hereinafter, administrative measures similar to permission) for use of the national emblem of that state.

(2) In addition to the provisions stipulated in the above paragraph, no one may use, in a manner which is likely to cause misleading of the place of origin of goods, the coat of arms of a foreign state prescribed by an ordinance of the Ministry of International Trade and Industry referred to in the above paragraph (hereinafter referred to as a “coat of arms” ), or may assign, deliver, display for the purpose of assignment or delivery, export or import goods using a coat of arms, or offer a service using a coat of arms; provided, however, that this does not apply in the case where permission has been obtained from the

government agency of the foreign state which is vested with the authority to grant permission to use the coat of arms of that state.

(3) No one may use a mark identical to a seal or sign of a foreign state or regional public entity used for certification or inspection purposes, which is prescribed by an ordinance of the Ministry of International Trade and Industry (hereinafter referred to as a “government sign”) or a similar mark (such identical or similar mark hereinafter referred to as a “quasi-governmental sign”) as a trademark on goods or for a service identical or similar to goods or service for which such government sign is used, or may assign, deliver, display for the purpose of assignment or delivery, export or import goods using a quasi-governmental sign as a trademark, or offer a service using a quasi-governmental sign as a trademark; provided, however, that this does not apply in the case where permission has been obtained from the government agency of the foreign state which is vested with the authority to grant permission to use the government sign of that state.

(Prohibition of Commercial Use of a Mark of an International Organization)

Article 10. —

No one may use, in a manner which is likely to cause misleading a relationship with any international organization (in this case and hereinafter defined as an international organization of governments or any organization proportionate thereto prescribed as such by an ordinance of the Ministry of International Trade and Industry), a mark identical to a mark representing an international organization which mark is prescribed by an ordinance of the Ministry of International Trade and Industry or a mark similar to such (such identical or similar mark hereinafter referred to as a “quasi-organizational mark”), as a trademark, or may assign, deliver, display for the purpose of assignment or delivery, export or import goods using a quasi-organizational mark, as a trademark, or offer services using a quasi-organizational symbol as a trademark; provided, however, that this does not apply in the case where permission of such international organization has been obtained.

(Exemptions)

Article 11. —

(1) The provisions of Articles 3 to 8, 13 (excluding those portions concerning item 3 thereof) and 14 do not apply to those acts which are stipulated in the items below which fall within the type of unfair competition described for such item:

(i) unfair competition as described in Article 2 (1) item 1, 2, 10 and 12:

the act of using or indicating in a normally-used manner a common name of goods or business (excluding the name of a place of origin of goods which is made from grapes or uses grapes as an ingredient, and has become a common name) or a goods or other indication that is commonly-used for identical or similar goods or business (hereinafter such a common name or commonly-used indication, together referred to as a “common name”), or the act of assigning delivering, displaying for the purpose of assignment delivery, exporting or importing goods using or indicating common name in a normally-used manner (including, in the case of unfair competition as described in items 10 or 12 of the same paragraph, an act of offering a service using or indicating, in a normally-used manner, a common name);

(ii) unfair competition as described in Article 2 (1) item 1, 2 and 12:

the act of using one’s own personal name, for no unfair purpose (“unfair purpose” hereby defined and hereinafter used as a purpose to obtain an unfair profits, a purpose to cause injury to an other person or any other unfair purpose), or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using, for no unfair purpose, one’s own personal name (including, in the case of unfair competition as described in any of the above-cited items, an act of offering a service using, for no unfair purpose, one’s own personal name);

(iii) unfair competition as described in Article 2 (1) item 1:

the act of a person's using, for no unfair purpose, a goods or other indication identical or similar to a well-known goods or other indication of another person, if such person had used such indication before it became well-known or had succeeded to a business related to such indication, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods which uses, for no unfair purpose, such indication;

- (iv) unfair competition as described in Article 2 (1) item 2:

the act of a person's using, for no unfair purpose, a goods or other indication identical or similar to a well-known goods or other indication of another person, if such person had used such indication before it became well-known or had succeeded to a business related to such indication, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods which uses, for no unfair purpose, such indication;

- (v) unfair competition as described in Article 2 (1) item 3:

the act of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods, done by a person, who has obtained by assignment such goods that, as described in the item, imitate the configuration of another person's goods (provided that such person, at the time of obtaining such goods by assignment was unaware that such goods imitated the configuration of another person's goods and was, not through gross negligence, unaware of such matter);

- (vi) unfair competition as described in Article 2 (1) item 4 to 9:

the act of using or disclosing a trade secret within the scope of the legal title acquired through a transaction done by a person, who has acquired the trade secret through such transaction (provided that such person, at the time of such acquisition, was not aware that there had been an improper disclosure of such trade secret or that such trade secret had been acquired through an improper disclosure or improper acquisition and was, not through gross negligence, unaware of such matter).

(2) A person who suffers or is likely to suffer an infringement to its business interests through one of the acts described in item 2 or 3 of the previous paragraph is entitled to request, in accordance with the type of unfair competition described in the following item, against any person who falls into such a said item, that an appropriate indication be used to prevent confusion with goods or business of such person:

- (i) an act described in item 2 of the previous paragraph

a person using his own personal name (including a person who assigns, delivers, displays for the purpose of assignment or delivery, exports or imports, by himself goods which uses his own personal name);

- (ii) an act described in item 3 of the previous paragraph

a person using a goods or other indication identical or similar to that of another person and a person who succeeds to a business related to such an indication (including a person who assigns, delivers, displays for the purpose of assignment or delivery, exports or imports, by himself goods using such an indication).

(Transitional Measures)

Article 12. —

In the case where an ordinance of the Ministry of International Trade and Industry is to be enacted, amended or abolished in accordance with the provisions of this Law, such ordinance may prescribe, within the limits judged to be reasonably necessary for such enactment, amendment or abolition, necessary transitional measures (including transitional measures concerning penal provisions).

(Penal Provisions)

Article 13. —

Any person who falls under any of the following items shall be sentenced to imprisonment for a term not exceeding three years or fined an amount not exceeding ¥3,000,000:

(i) a person who commits, for an unfair purpose, any act of unfair competition described in Article 2 (1) item 1 or 10;

(ii) a person (excluding a person described in the preceding item) who indicates a falsehood on goods or for service, or in an advertisement or in a document or correspondence used for a transaction, which is likely to cause misleading, with respect to the place of origin, quality, contents, manufacturing method, use or quantity of such goods or the quality, contents, use or quantity of such service;

(iii) a person who violates any provision of Article 9 or Article 10.

(Juridical Persons)

Article 14. —

In the case where a representative of a juridical person or an agent, servant or other employee of a juridical person or a natural person has committed, in connection with the business of such juridical or natural person, any of the violations described in the preceding article, in addition to the violator being penalized, such a juridical person shall be fined an amount not exceeding ¥100,000,000 and such a natural person shall be liable to the same fine described in the preceding article.

## Supplementary Provisions

(Date of Enforcement)<sup>2</sup>

Article 1. —

This Law shall come into force on the date fixed by Cabinet Order within one year from the date of its promulgation.

(Transitory Measures)

Article 2. —

The provisions of the amended Unfair Competition Prevention Law (hereinafter referred to a “the new Law” ), unless otherwise provided, shall also apply to the matters occurred before the enforcement of this Law. Provided that, this shall not prejudice the effect of the Unfair Competition Prevention Law before amendment (hereinafter referred to as “the previous Law” ).

Article 3. —

The provisions of Articles 3 to 5 of the new Law shall not apply to acts of continuing the acts which are stipulated below:

(i) those relevant to the acts as described in Article 2 (1) item (i) of the new Law (excluding those relevant to the acts described in Article 2 (1) thereof);

(ii) those relevant to the acts as described in Article 2 (1) item (iii) of the new Law;

(iii) those relevant to the acts of indication, on goods or for service, or in advertisement thereof or in document or any other correspondence used for a transaction, which way cause misleading with respect to quality, contents, way of use or quantity of such goods, or the acts of providing service with such an indication, which shall be described in Article 2 (1) item (x) of the new Law.

Article 4. —

The provisions of Article 3 to 5, 7 and 8 of the new Law shall not apply to the unfair acquisition stipulated in Article 2 (1) item (iv) of the new Law, which has been done before June 15, 1991, the unfair

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<sup>2</sup> This Law came into force on June 1, 1994. (Cabinet Order No. 44, of March 16, 1994)

competition described in Article 2 (1) item (iv) to (vi), item (viii) or item (ix) of the new Law concerning the act of unfair acquiring stipulated in Article 2 (1) item (viii) of the new Law, which has been done before June 15, 1991 (excluding those relevant to acts which are described below), and act of continuing to use the trade secret stipulated in Article 2 (1) item (vii) of the new Law, which has been commenced before June 15, 1991:

(i) the acts of disclosing the trade secret stipulated in Article 2 (1) item (iv) to (vi), (8) and (9) of the new Law;

(ii) the acts of acquiring the trade secret stipulated in Article 2 (1) item (iv) of the new Law and using such trade secret so acquired, which is stipulated in Article 2 (1) item (viii) of the new Law.

Article 5. —

The provision of Article 6 of the new Law shall apply to a case for which a suit will be instituted after the enforcement of the new Law, the former examples shall still be followed as to application of a case for which a suit has been instituted before the enforcement of the new Law.

Article 6. —

The provision of Article 7 of the new Law shall not apply to acts of continuing the acts as described in Article 2 (1) item (ii), (iii) or (x) of the new Law (excluding those relevant to the acts described in Article 2 (1) item (i) of the new Law).

Article 7. —

A person who has obtained the permission stipulated in Article 4 (1) to (3) or Article bis at the time of the enforcement of the previous Law shall be deemed obtained the permission stipulated in Article 9 (1) subsection, (2) subsection, (3) subsection or Article 10 subsection of the new Law.

Article 8. —

The provision of Article 9 of the new Law shall not apply to anyone who has obtained the permission stipulated in Article 4 (4) of the previous Law at the time of the enforcement of the new Law.

Article 9. —

The provisions of Article 10 of the new Law shall not apply to acts of continuing the acts of using the quasi-organization mark as trademark stipulated in Article 10 of the new Law, which has been commenced before the enforcement of the new Law (excluding a mark identical to or similar to a coat of arms, a flag mark, other emblem, abbreviation, or name of the international organization, which are designated by the Ministry of International Trade and Industry. All such marks are hereinafter referred to as the “private quasi-organization mark”), the acts of assigning, delivering, displaying for the purpose of assignment or delivery, export or import goods using the private quasi-organization mark, or the acts of providing service using the private quasi-organization mark as trademark.

Article 10. —

The provisions of Article 13 (excluding those portions concerning item 3 thereof) and 14 of the new Law shall not apply to acts of continuing those relevant to the acts described in Article 3 (3) of this Supplementary Provision, which have been done before the enforcement of the new Law.

Article 11. —

The former examples shall still be followed as to the claim stipulated in Article 3 of the previous Law and instituted by a foreigner against the acts done before the enforcement of the new Law.

(Partial Amendments of the Law for Partial Amendments to the Trademark Law)

Article 12. —

The Law for Partial Amendments to the Trademark Law (Law No. 65 of 1991) shall be partial amended as follows.



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(Transitory Measures: penal provisions)

Article 13. —

The penal provisions of the previous Law before amendment shall still apply to acts made before the enforcement of the new Law.

(Delegation to Cabinet Order)

Article 14. —

In addition to the provisions of Articles 2 to 11 and those provided in the preceding Article 13, necessary transitory measures for the implementation of the new Law shall be prescribed by Cabinet Order.

### Supplementary Provisions (Extract) (Law No. 116, of 1994)

(Date of Enforcement)<sup>3</sup>

Article 1. —

This Law shall enter into force on July 1, 1995, with the following exceptions:

(i) The amended provision under Section 30 (3) of the Patent law, which is stipulated in Article 1 thereof, the provisions of Article 5 of this Law (excluding the amended provisions of Article 10 (3), 13 (1), 44 (2) and 63 (3) of the Trademark Law ) and the provision of Article 9 thereof shall enter into force on July 1, 1995 or the day on which Marrakesh Agreement Establishing the World Trade Organization become effective in Japan, whichever earlier.

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<sup>3</sup> This Law came into force on July 1, 1995.