

Unfair Competition Prevention Act

(Act No. 47 of May 19, 1993)

(Purpose)

Article 1 The purpose of this Act is, in order to ensure fair competition among business operators and the proper implementation of international agreements related thereto, to provide measures for the prevention of unfair competition and compensation for damages caused by unfair competition, and thereby contribute to the sound development of the national economy, by

(Definitions)

Article 2 (1) The term "unfair competition" as used in this Act shall mean any of the following:

- (i) creation of confusion with another person's goods or business by use of an indication of goods, etc. (which shall mean a name, trade name, trademark, mark, container or package, or any other indication of goods or trade pertaining to a person's business; the same shall apply hereinafter) that is identical or similar to an indication of goods, etc. well-known among consumers used by said person, or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods bearing the such an indication of goods, etc.;
- (ii) use as one's own of an indication of goods, etc. identical or similar to another person's famous indication of goods, etc., or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods bearing such an indication of goods, etc.;
- (iii) assignment, lease, display for the purpose of assignment or lease, export or import of goods which imitate the form of another person's goods (excluding forms indispensable to ensuring the functioning of said goods);
- (iv) acquisition of a trade secret by theft, fraud, duress or any other wrongful method (hereinafter referred to as "wrongful acquisition"), or use or disclosure of a trade secret acquired through wrongful acquisition (including disclosure of such a trade secret in confidence to a specific person(s); the same shall apply hereinafter);
- (v) acquisition of a trade secret with the knowledge, or without the knowledge due to gross negligence, that wrongful acquisition was involved with such trade secret, or use or disclosure of a trade secret so acquired;
- (vi) use or disclosure of an acquired trade secret, after becoming aware, or

- failing to become aware due to gross negligence, that wrongful acquisition was involved with regard to such trade secret was;
- (vii) use or disclosure of a trade secret disclosed by the business operator holding such trade secret (hereinafter referred to as the "holder") for the purpose of acquiring an illicit gain or causing injury to such holder;
 - (viii) acquisition of a trade secret with the knowledge, or without the knowledge due to gross negligence, that the trade secret is being disclosed through improper disclosure (which means, in the case prescribed in the preceding item, disclosure of the trade secret for one of the purposes prescribed therein, or disclosure of the trade secret in breach of a legal duty to maintain secrecy; the same shall apply hereinafter) or that improper disclosure was involved with regard to such trade secret, or use or disclosure of a trade secret so acquired;
 - (ix) use or disclosure of an acquired trade secret after becoming aware, or failing to become aware due to gross negligence that such trade secret was disclosed through improper disclosure or that improper disclosure was involved with regard to such trade secret;
 - (x) assignment, delivery, display for the purpose of assignment or delivery, export or import of any device (including any equipment incorporating such a device) having the sole function of circumventing technological restriction measures used in business (excluding technological restriction measures used by other person to prevent anyone other than specific persons from viewing images, hearing sounds, running programs, or recording images, sounds or programs) to enable the viewing of images, the hearing of sounds, the running of programs, or the recording of images, sounds or programs restricted by such technological restriction measures, or any data storage medium or equipment on which a program having only such function (including a combination of such a program with another program) has been recorded, or provision of a program having only such a function through a telecommunication line;
 - (xi) assignment, delivery, display for the purpose of assignment or delivery, export to or import from any person other than specific persons of any device (including any equipment incorporating such device) having the sole function of circumventing technological restriction measures used in business to enable the viewing of images, the hearing of sounds, the running of programs, or the recording of images, sounds or programs restricted by such technological restriction measures used by another person in business to prevent any person other than said specific persons from viewing images, hearing sounds, running programs, or recording images, sounds or programs, or any data storage medium or equipment on which a program having only such function (including a combination of such a program with another

- program) has been recorded, or provision of a program having only such function through a telecommunication line;
- (xii) acquisition or holding of a right to use a domain name(s) that is identical or similar to another person's specific indication of goods, etc. (which means a name, trade name, trademark, mark, or any other indication of goods or services pertaining to a person's business), or use of any such domain name(s), for the purpose of acquiring an illicit gain or causing injury to another person;
 - (xiii) indication of information on goods or services or in an advertisement thereof or in a document used in or a communication for a transaction involving said goods or services, in a manner that is likely to mislead the public as to the place of origin, quality, content, manufacturing method, use, or quantity of such goods, or the quality, content, purpose, or quantity of such services, or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods with such an indication or provision of services with such an indication;
 - (xiv) announcement or dissemination of a falsehood that is injurious to the business reputation of a competitor; or
 - (xv) use of a trademark identical or similar to a trademark subject to a right relating to a trademark (such right shall be limited to a right equivalent to a trademark right; hereinafter simply referred to as a "right" in this item) in a contracting state of the Paris Convention (which means the Paris Convention as defined in Article 4, paragraph (1), item (ii) of the Trademark Act (Act No. 127 of 1959)), in a member of the World Trade Organization or in a contracting party to the Trademark Law Treaty, for goods or services identical or similar to those to which such right pertains, or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods identical or similar to the goods to which such right pertains using such trademark, or provision of services identical or similar to the services pertaining to which such right pertains using such a trademark, by an agent, representative, or a person who, within one year preceding the date of the use, was an agent or representative of the owner of such right, without justifiable grounds nor the consent of the owner of such right
- (2) The term "trademark" as used in this Act shall mean a trademark as defined in Article 2, paragraph (1) of the Trademark Act.
 - (3) The term "mark" as used in this Act shall mean a mark as defined in Article 2, paragraph (1) of the Trademark Act.
 - (4) The term "configuration of goods" as used in this Act shall mean the external and internal shape of goods and their associated patterns, color, gloss, and

texture, which may be perceived by users when making ordinary use of the goods.

- (5) The term "imitate" as used in this Act shall mean the act of creating, based on the configurations of the goods of another person, goods having practically identical configurations as said goods.
- (6) The term "trade secret" as used in this Act shall mean a production method, sales method, or any other technical or operational information useful for business activities that is controlled as a secret and is not publicly known.
- (7) The term "technological restriction measures" as used in this Act shall mean measures which restrict the viewing of images, the hearing of sounds, the running of programs, and the recording of images, sounds or programs via electromagnetic means (which means electronic means, magnetic means or any other means imperceptible to humans), by recording such images, sounds, and programs, etc. on a data storage medium or by transmitting signals that cause equipment for viewing and hearing (which means equipment used for viewing images or hearing sounds, running programs, or recording images, sounds or programs; the same shall apply hereinafter) react in a specific manner in association with the images, sounds or programs, or a method of recording on a data storage medium or transmitting converted images, sounds or programs which require specific conversion by the machines for viewing and hearing.
- (8) The term "program" as used in this Act shall mean instructions given to a computer which are combined to obtain a certain result.
- (9) The term "domain name" as used in this Act shall mean letters, numbers, signs or any other symbols or any combinations thereof that correspond to the numbers, signs, letters or any combination thereof assigned to identify each computer on the Internet.
- (10) The term "articles" as used in this Act shall include computer programs.

(Right to Seek an Injunction)

- Article 3 (1) A person whose business interests have been infringed or are likely to be infringed by unfair competition may seek an injunction suspending or preventing the infringement against the person that infringes or is likely to infringe such business interests.
- (2) A person whose business interests have been infringed or are likely to be infringed by unfair competition may seek, upon seeking an injunction under the provisions of the preceding paragraph, destruction of the articles that constituted the act of infringement (including articles created by the act of infringement; the same shall apply in Article 5, paragraph (1)), removal of the facility used for the act of infringement, or any other acts required for suspension or prevention of the infringement.

(Damages)

Article 4 A person who intentionally or negligently infringes on the business interests of another person by unfair competition shall be liable to compensate for damages resulting therefrom; provided, however, that this shall not apply to damages resulting from an act of using a trade secret after the rights prescribed in Article 15 have extinguished pursuant to the provisions of the same Article.

(Presumption of Amount of Damages, etc.)

Article 5 (1) Where a person whose business interests have been infringed by any of the acts of unfair competition listed in Article 2, paragraph (1), items (i) through (ix) or item (xv) (with regard to those listed in items (iv) through (ix) of the same paragraph, it shall only be an act of unfair competition that relates to a technical secret (which means a production method or any other technical information useful for business activities that is controlled as a secret and that is not publicly known)) (such person shall hereinafter be referred to as the "infringed person" in this paragraph) claims damages, which he/she has incurred from such infringement, against the person who has intentionally or negligently infringed his/her business interests, and where said person who committed the infringement has assigned articles constituting the act of infringement, the amount obtained by multiplying the quantity of the articles assigned (hereinafter referred to as the "assigned quantity" in this paragraph) by the amount of profit per unit of the articles that the infringed person could have sold in the absence of the act of infringement may be deemed as the amount of damages incurred by the infringed person, to the extent that does not exceed the amount corresponding to the infringed person's capacity to sell or carry out any other acts pertaining to said articles; provided, however, that where there are any circumstances that would have prevented the infringed person from selling the quantity of articles equivalent to all or part of the assigned quantity, an amount corresponding to the quantity relevant to such circumstances shall be deducted.

(2) Where a person whose business interests have been infringed by unfair competition claims damages, which he/she has incurred from such infringement, against the person who has intentionally or negligently infringed his/her business interests and where said person who committed the infringement has received profits through the act of infringement, the amount of such profits shall be presumed to be the amount of damages incurred by the person whose business interests were infringed.

(3) A person whose business interests have been infringed by any of the acts of unfair competition listed in Article 2, paragraph (1), items (i) through (ix), item(xii) or item (xv) may claim, against the person who has intentionally or

negligently infringed his/her business interests, an amount of money equivalent to the amount of money that should be awarded against the acts prescribed in the following items for the respective categories of unfair competition listed in those items, as the amount of damages he/she has incurred:

- (i) unfair competition set forth in Article 2, paragraph (1), item (i) or (ii) use of an indication of goods, etc. pertaining to such infringement;
 - (ii) unfair competition set forth in Article 2, paragraph (1), item (iii) use of a configuration of goods pertaining to such infringement;
 - (iii) unfair competition set forth in Article 2, paragraph (1), items (iv) through (ix) use of a trade secret pertaining to such infringement;
 - (iv) unfair competition set forth in Article 2, paragraph (1), item (xii) use of a domain name pertaining to such infringement; and
 - (v) unfair competition set forth in Article 2, paragraph (1), item (xv) use of a trademark pertaining to such infringement.
- (4) The provisions of the preceding paragraph shall not preclude said person whose business interests have been infringed from claiming damages exceeding the amount prescribed in the same paragraph. In this case, if the person who has infringed said person's business interests has committed the infringement without intent or gross negligence, the court may take such fact into consideration in determining the amount of damages.

(Obligation to Clarify the Specific Conditions of Infringement)

Article 6 In a suit for the infringement of business interests by unfair competition, in order to deny the specific conditions of an article or process that a person alleging that his/her business interests have been infringed or are likely to be infringed by unfair competition asserts as one that constituted the act of infringement, the opponent shall clarify the specific conditions of his/her act; provided, however, that this shall not apply where the opponent has reasonable grounds for not being able to clarify such specific conditions.

(Submission of Documents, etc.)

Article 7 (1) In a suit for the infringement of business interests by unfair competition, the court may, upon motion of a party, order a party to submit any documents necessary for proving the act of infringement or calculating the amount of damages caused by such act of infringement; provided, however, that this shall not apply when the holder of the documents has justifiable grounds for refusing to submit them.

- (2) Where the court finds it necessary for determining the presence of the justifiable grounds prescribed in the proviso to the preceding paragraph, it may require the holder of the documents to present said documents. In this case, no

person may request disclosure of the presented documents.

- (3) In the case referred to in the preceding paragraph, where the court finds it necessary to hear the opinions of a party, etc. (which means a party (in the case of a juridical person, its representative) or a party's agent (excluding a counsel or an assistant in court), employee, or any other worker; the same shall apply hereinafter), a counsel, or an assistant in court as to whether the justifiable grounds prescribed in the proviso to paragraph (1) are present, by disclosing the documents prescribed in the second sentence of the preceding paragraph, the court may disclose said documents to such person.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the presentation of objects for inspection necessary for proving an act of infringement in a suit regarding the infringement of business interests by unfair competition.

(Expert Opinion for Calculation of Damages)

Article 8 In a suit regarding the infringement of business interests by unfair competition, where the court, upon motion of a party, orders an expert opinion to be given with respect to matters necessary to calculate the damages caused by an act of infringement, the parties shall explain to the expert witness the matters necessary for the rendering of the expert opinion.

(Determination of Reasonable Damages)

Article 9 In a suit regarding the infringement of business interests by unfair competition, where damages were found and it is extremely difficult to prove the facts necessary for proving the amount of damages due to the nature of said facts, the court may determine a reasonable amount of damages based on the overall purport of the oral arguments and the results of the examination of the evidence.

(Protective Order)

Article 10 (1) In a suit for the infringement of business interests by unfair competition, where a prima facie showing is made that a trade secret held by a party of the suit falls under both of the following grounds, the court may, upon motion of the party, issue an order prohibiting a party, etc., a counsel, or an assistant in court from using the trade secret for any purpose other than for the carry out of the suit or from disclosing it to a person other than those who have received the order under the provisions of this paragraph with regard to said trade secret; however, this shall not apply when the party, etc., the counsel, or the assistant in court had already acquired or held the trade secret by means other than the reading of the brief prescribed in item (i) or the examination or disclosure of the evidence prescribed in the same item:

- (i) the trade secret held by the party is stated in a brief that is already submitted or is to be submitted, or included in the contents of evidence that is already examined or is to be examined (including documents disclosed pursuant to the provisions of Article 7, paragraph (3) or a document disclosed pursuant to the provisions of Article 13, paragraph (4)); and
 - (ii) the party's business activities based on the trade secret under the preceding item are likely to be hindered by the use of said trade secret for purposes other than for the carry out of the suit or by its disclosure, wherefore it is necessary to restrict the use or disclosure of the trade secret in order to prevent this.
- (2) A motion for the order under the provisions of the preceding paragraph (hereinafter referred to as the "protective order") shall be filed by way of a document specifying the following matters:
- (i) the person against whom the protective order is to be issued;
 - (ii) facts that are sufficient for identifying the trade secret to be made subject to the protective order; and
 - (iii) facts that fall within the grounds listed in the respective items of the preceding paragraph.
- (3) When issuing a protective order, the court shall serve a written order on the person against whom the protective order was issued.
- (4) A protective order takes effect when a written order is served on the person against whom the protective order was issued.
- (5) A party may lodge an immediate appeal against a judicial decision dismissing a motion for a protective order.

(Revocation of Protective Order)

- Article 11 (1) A person who filed a motion for a protective order or a person against whom a protective order was issued may file a motion for revocation of the protective order with the court which has the case record (if no court has the case record, it shall be the court that has issued the protective order) based on the grounds that the requirement prescribed in paragraph (1) of the preceding Article is not satisfied or is no longer satisfied.
- (2) When a judicial decision on a motion for revocation of a protective order is issued, the written order thereof shall be served on the person who filed the motion for the protective order and the opponent.
 - (3) An immediate appeal may be lodged against a judicial decision on a motion for revocation of a protective order.
 - (4) A judicial decision to revoke a protective order shall not take effect until said judicial decision becomes final and binding.
 - (5) Where a court issues a judicial decision to revoke a protective order, if the court had, during the suit in which the protective order was issued, issued a

protective order pertaining to the trade secret against any person other than the person who filed the motion for revocation of the protective order or the opponent, the court shall immediately notify that person to the effect that a decision to revoke the protective order has been issued.

(Notice, etc. of a Request for Inspection, etc. of the Case Record)

- Article 12 (1) Where a court has issued an order under Article 92, paragraph (1) of the Code of Civil Procedure (Act No. 109 of 1996) with regard to the case record pertaining to a suit in which a protective order has been issued (excluding a suit in which all the protective orders have been revoked), if there is a request from a party for inspection, etc. of the secret part prescribed in the same paragraph, and the person who performed the procedure for such request has not received a protective order in the suit, the court clerk shall, immediately after the request, notify the party who filed the motion under the same paragraph (excluding the person who made said request; the same shall apply in paragraph (3)) to the effect that such a request was made.
- (2) In the case referred to in the preceding paragraph, the court clerk shall not allow the party who performed the procedure for the request under the same paragraph to carry out the inspection, etc. of the secret part set forth in the same paragraph until two weeks have passed since the day on which the request set forth in the same paragraph was made (if a motion for a protective order against the person who performed the procedure for the request was filed on or before such day, it shall be until the time when the judicial decision on the motion becomes final and binding).
- (3) The provisions of the preceding two paragraphs shall not apply when there is the consent of all parties who filed a motion under Article 92, paragraph (1) of the Code of Civil Procedure to allow the party who made the request under paragraph (1) to carry out inspection, etc. of the secret part.

(In Camera Examination of the Parties)

- Article 13 (1) In a suit for the infringement of business interests by unfair competition, where a party, etc. is to be examined as a party himself/herself or a legal representative thereof or as a witness with regard to a matter that serves as the basis for determining the presence or absence of the infringement and that is categorized as a trade secret held by a party, if the court, by the unanimous consent of the judges, finds that the party, etc. is unable to give sufficient statements regarding the matter because it is clear that giving statements regarding the matter in open court will significantly hinder the party's business activities that are based on the trade secret, and finds that, without said statements and with other evidence alone, the court is unable to make an appropriate judicial decision on the presence or absence of

infringement on business interests by unfair competition which should be determined based on said matter, the court may carry out the examination on said matter in camera by an order.

- (2) When issuing the order under the preceding paragraph, the court shall hear the opinion of the party, etc. in advance.
- (3) In the case referred to in the preceding paragraph, where the court finds it necessary, it may have the party, etc. present a document outlining his/her testimony. In this case, no person may request disclosure of the presented document.
- (4) Where the court finds it necessary to hear the opinion of a party, etc., an attorney, or an assistant in court on information disclosed in the document mentioned in the second sentence of the preceding paragraph, the court may disclose the document to such person.
- (5) Where the court carries out an examination on a relevant matter in camera pursuant to the provisions of paragraph (1), it shall announce the in camera examination and the reason for it before having the public leave the courtroom. When the examination on the matter ends, the court shall have the public reenter the courtroom.

(Measures to Restore Business Reputation)

Article 14 The court may order a person who has intentionally or negligently engaged in unfair competition and thereby injured the business reputation of another person to take, upon the request of the person whose business reputation has been so injured, necessary measures to restore the business reputation of that person in lieu of or in addition to compensation for damages.

(Statute of Limitations)

Article 15 Among the acts of unfair competition listed in Article 2, paragraph (1), items (iv) through (ix), the right to seek the suspension of or protection from infringement under the provisions of Article 3, paragraph (1) against use of a trade secret shall be extinguished by prescription if the infringer continues to engage in the infringing act and the holder of the right whose business interests have been infringed or are likely to be infringed by the act does not exercise the right within three years from the time that he/she becomes aware of the infringement. The same shall apply when ten years have elapsed from the time of commencement of the infringing act.

(Prohibition of Commercial Use of Foreign National Flags, etc.)

Article 16 (1) No person shall use, as a trademark, a mark identical or similar to a national flag, national crest, or any other emblem of a foreign state, as specified by Ordinance of the Ministry of Economy, Trade and Industry (such

an emblem shall hereinafter be referred to as a "foreign national flag, etc."; and a mark identical or similar thereto shall hereinafter be referred to as a "mark similar to a foreign national flag, etc."), nor assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line goods using a mark similar to a foreign national flag, etc. as a trademark, nor provide services using a mark similar to a foreign national flag, etc. as a trademark; provided, however, that this shall not apply when permission has been obtained from a government agency of the foreign state with authority to grant permission (including an administrative disposition similar to permission; the same shall apply hereinafter) to use the foreign national flag, etc.

(2) In addition to what is provided for in the preceding paragraph, no person shall use, in a manner that is likely to mislead the public as to the place of origin of goods, a national crest of a foreign state (hereinafter referred to as a "foreign national crest") that is specified by Ordinance of the Ministry of Economy, Trade and Industry under the same paragraph, nor assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods using a foreign national crest, nor provide services using a foreign national crest; provided, however, that this shall not apply when permission has been obtained from a government agency of a foreign state with the authority to grant permission to use the foreign national crest.

(3) No person shall use a mark identical or similar to a seal or a sign of a national or local government of a foreign state used for supervision or certification purposes, which is specified by Ordinance of the Ministry of Economy, Trade and Industry (such seal or sign shall hereinafter be referred to as a "foreign government sign"; and such identical or similar mark shall hereinafter be referred to as a "mark similar to a foreign government sign") as a trademark on goods or for services that are identical or similar to goods or services for which such foreign government sign is used, or shall assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods using a mark similar to a foreign government sign as a trademark, or shall provide services using a mark similar to a foreign government sign as a trademark; provided, however, that this shall not apply when permission has been obtained from the government agency of the foreign state that has the authority to grant permission for use of the foreign government sign.

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

Article 17 No person shall use, in a manner which is likely to mislead the public as to the existence of a relationship with an international organization (which

means an intergovernmental international organization or an equivalent organization specified by Ordinance of the Ministry of Economy, Trade and Industry; hereinafter the same shall apply in this Article), a mark identical or similar to a mark representing an international organization, which is specified by Ordinance of the Ministry of Economy, Trade and Industry (such identical or similar mark shall hereinafter be referred to as a "mark similar to an international organization mark") as a trademark, or shall assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods using a mark similar to an international organization mark as a trademark, or shall provide services using a mark similar to an international organization mark as a trademark; provided, however, that this shall not apply when permission has been obtained from such international organization.

(Prohibition to Provide Illicit Gain, etc. to Foreign Public Officers, etc.)

Article 18 (1) No person shall provide, or offer or promise to provide, any money or any other gain to a foreign public officer, etc. for the purpose of having the foreign public officer, etc. act or refrain from acting in a particular way in relation to his/her duties, or having the foreign public officer, etc. use his/her position to influence another foreign public officer, etc. to act or refrain from acting in a particular way in relation to that officer's duties, in order to acquire an illicit gain in business with regard to international commercial transactions.

(2) The term "foreign public officer, etc." as used in the preceding paragraph means any of the following:

- (i) a person who engages in public services of a national or local government of a foreign state;
- (ii) a person who engages in the affairs of an entity established under a special law or regulation of a foreign state to carry out specific affairs in the public interest;
- (iii) a person who engages in the affairs of a business operator, where one or more national or local governments of a foreign state(s) directly own the number of voting shares or the amount of capital subscription exceeding 50 percent of said business operator's total issued voting shares or total amount of subscribed capital, or have appointed or designated a majority of said business operator's officers (which means directors, auditors, inspectors, and liquidators and other persons engaged in management of the business) and where a national or local government(s) of a foreign state(s) has granted special rights and interests to said business operator for performance of its business, or a person specified by Cabinet Order as an equivalent person;
- (iv) a person who engages in public services of an international organization (which means an international organization constituted by governments or

intergovernmental international organizations; the same shall apply in the following item); or

- (v) a person who engages in the affairs under the authority of a national or local government of a foreign state or an international organization, which have been delegated by such organization.

(Exclusion from Application, etc.)

Article 19 (1) The provisions of Articles 3 through 15, Article 21 (excluding the part pertaining to paragraph (2), item (vi)) and Article 22 shall not apply to the acts prescribed in the following items for the respective categories of acts of unfair competition listed in those items:

- (i) unfair competition set forth in Article 2, paragraph (1), items (i), (ii), (xiii) and (xv) an act of using or indicating in a normally used manner a common name for goods or business (excluding the name of a place of origin of goods made from grapes or using grapes, which has become a common name) or an indication of goods, etc. that is commonly used for identical or similar goods or business (hereinafter collectively referred to as a "common name, etc."), or an act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through a telecommunications line, goods using or indicating a common name, etc. in a normally used manner (including an act of providing services indicating or using a common name, etc. in a normally used manner, in the case of unfair competition set forth in items (xiii) and (xv) of the same paragraph);
- (ii) unfair competition set forth in Article 2, paragraph (1), items (i), (ii) and (xv) an act of using one's own name without a wrongful purpose (which means a purpose of acquiring an illicit gain, a purpose of causing injury to another person, or any other wrongful purpose; the same shall apply hereinafter), or an act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through a telecommunications line, goods using one's own name without a wrongful purpose (including an act of providing services using one's own name without a wrongful purpose, in the case of unfair competition set forth in item (xv));
- (iii) unfair competition set forth in Article 2, paragraph (1), item (i) use by a person of an indication of goods, etc. that is not yet well-known among consumers, or by a successor to a business using an indication of goods, etc., that is identical or similar to another person's indication of goods, etc. without a wrongful purpose, or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods using such an indication of goods, etc. without a wrongful purpose;
- (iv) unfair competition set forth in Article 2, paragraph (1), item (ii) use by a

person of an indication of goods, etc. that is not yet famous among consumers or succession to a business using an indication of goods, etc. without a wrongful purpose, or assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods using such an indication of goods, etc. without a wrongful purpose;

(v) unfair competition set forth in Article 2, paragraph (1), item (iii) any of the following:

(a) assignment, lease, display for the purpose of assignment or lease, export or import of goods that imitate the configuration of goods for which three years have elapsed from the day on which they were first sold in Japan; or

(b) assignment, lease, display for the purpose of assignment or lease, export or import of goods that imitate the configuration of another person's goods (with no knowledge or lack of knowledge due to gross negligence that the goods imitated the configuration of another person's goods at the time of the assignment);

(vi) unfair competition set forth in Article 2, paragraph (1), items (iv) through (ix) an act of a person, who has acquired a trade secret through a transaction (limited to a person who, at the time of the acquisition, had no knowledge that the trade secret was being disclosed through an act of improper disclosure or that an act of wrongful acquisition or improper disclosure was involved with regard to such trade secret, and such lack of knowledge was not based on gross negligence), using or disclosing the trade secret within the scope of authority acquired through such transaction; and

(vii) unfair competition set forth in Article 2, paragraph (1), items (x) and (xi) an act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing the device prescribed in Article 2, paragraph (1), items (x) and (xi) or the data storage medium or equipment on which a program has been recorded prescribed in these items that is used for experiment or research of technological restriction measures, or an act of providing said program through a telecommunications line.

(2) A person whose business interests have been infringed or are likely to be infringed by any of the acts set forth in item (ii) or (iii) of the preceding paragraph may request the persons specified in the following items for the respective categories of acts listed in those items to attach an appropriate indication for preventing confusion with his/her goods or business:

(i) an act set forth in item (ii) of the preceding paragraph a person using his/her own name (including a person who directly assigns, delivers, displays for the purpose of assignment or delivery, exports, imports or provides through a telecommunications line, goods using his/her own name); or

(ii) an act set forth in item (iii) of the preceding paragraph a person using an

indication of goods, etc. identical or similar to another person's indication of goods, etc., and a person who succeeds to a business pertaining to such indication of goods, etc. (including a person who directly assigns, delivers, displays for the purpose of assignment or delivery, exports, imports or provides through a telecommunications line, goods using such indication of goods, etc.).

(Transitional Measures)

Article 20 In the case of enacting, revising, or abolishing a Cabinet Order or an Ordinance of the Ministry of Economy, Trade and Industry based on the provisions of this Act, such order or ordinance may, to the extent deemed reasonably necessary for such enactment, revision or abolition, specify required transitional measures (including transitional measures concerning penal provisions).

(Penal Provisions)

Article 21 (1) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than ten years, a fine of not more than ten million yen, or both:

- (i) a person who has acquired a trade secret by an act of fraud, etc. (which means an act of deceiving, assaulting, or intimidating a person; hereinafter the same shall apply in this Article) or an act of violating control (which means an act of stealing property, trespassing on a facility, gaining unauthorized access (which means the act of unauthorized access prescribed in Article 3 of the Act on the Prohibition of Unauthorized Computer Access (Act No. 128 of 1999)), or otherwise violating the holder's control; hereinafter the same shall apply in this Article) for the purpose of acquiring an illicit gain or causing injury to the holder;
- (ii) a person who has used or disclosed a trade secret that was acquired by an act of fraud, etc. or an act of violating control for the purpose of acquiring an illicit gain or causing injury to the holder;
- (iii) a person to whom a trade secret has been disclosed by its holder, and who has, for the purpose of acquiring an illicit gain or causing injury to the holder, obtained the trade secret by any of the following methods in breach of his/her duty pertaining to control of said trade secret:
 - (a) embezzling a medium containing the trade secret (which means a document, a picture, or a data storage medium containing a trade secret; hereinafter the same shall apply in this item) or property embodying the trade secret;
 - (b) making a reproduction of information contained in a medium containing the trade secret or of the property embodying the trade secret; or

- (c) not deleting any information contained in a medium containing the trade secret which is to be deleted, and making it appear that such information has been deleted;
 - (iv) a person to whom a trade secret has been disclosed by its holder, and who has, for the purpose of acquiring an illicit gain or causing injury to the holder, used or disclosed, in breach of his/her duty pertaining to control of said trade secret, the trade secret obtained by any of the methods listed in (a) through (c) of the preceding item in breach of his/her duty pertaining to control of said trade secret;
 - (v) a person who is an officer (which means a director, executive officer, partner executing business, inspector, auditor, or a person equivalent thereto; the same shall apply in the following item) or an employee of the holder of a trade secret and to whom a trade secret has been disclosed by said holder, and who has, for the purpose of acquiring an illicit gain or causing injury to the holder, used or disclosed said trade secret in breach of his/her duty pertaining to control of said trade secret (except for a person prescribed in the preceding item);
 - (vi) a person who had been an officer or an employee of the holder of a trade secret and to whom a trade secret had been disclosed by said holder, and who had, for the purpose of acquiring an illicit gain or causing injury to the holder, offered to disclose said trade secret in breach of his/her duty pertaining to control of said trade secret or received a request to use or disclose said trade secret while still working for said holder, and has used or disclosed the trade secret after leaving the job (except for a person prescribed in item (iv)); or
 - (vii) a person who has, for the purpose of acquiring an illicit gain or causing injury to the holder, used or disclosed a trade secret that was acquired by disclosure which is categorized as any of the offences prescribed in item (ii) or the preceding three items;
- (2) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.
- (i) a person who has, for a wrongful purpose, committed the act of unfair competition set forth in Articles 2, paragraph (1), item (i) or (xiii);
 - (ii) a person who has committed the act of unfair competition set forth in Article 2, paragraph (1), item (ii) for the purpose of acquiring an illicit gain through the use of the reputation or fame of another person's famous indication of goods, etc. or for the purpose of injuring said reputation or fame;
 - (iii) a person who has committed an act of unfair competition set forth in Article 2, paragraph (1), item (iii) for the purpose of acquiring an illicit gain.

- (iv) a person who has misrepresented information on goods or with respect to services, or in an advertisement thereof or in a document used in or a communication related to a transaction thereof, in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing method, use, or quantity of such goods, or the quality, contents, purpose, or quantity of such services (except for a person prescribed in item (i));
 - (v) a person who has violated a protective order; or
 - (xi) a person who has violated the provisions of Article 16 or 17, or Article 18, paragraph (1).
- (3) The offenses prescribed in paragraph (1), and item (v) of the preceding paragraph may not be prosecuted without a complaint.
- (4) The offenses prescribed in paragraph (1), item (ii) or items (iv) through (vii) shall also apply to a person who commits said offenses outside Japan with regard to trade secrets controlled from within Japan at the time of the fraud, etc., or the act of violating control, or at the time the trade secret was disclosed by its holder.
- (5) The offense prescribed in paragraph (2), item (v) shall also apply to a person who commits said offense outside Japan.
- (6) The offense prescribed in paragraph (2), item (vi) (limited to the part pertaining to Article 18, paragraph (1)) shall be governed by Article 3 of the Penal Code (Act No. 45 of 1907).
- (7) The provisions of paragraphs (1) and (2) shall not preclude application of the Penal Code or any other penal provisions.

Article 22 (1) When a representative of a juridical person, or an agent, employee or any other worker of a juridical person or an individual has committed a violation prescribed in any of the provisions of paragraph (1), item (i), (ii) or (vii) of the preceding Article or paragraph (2) of the same Article with regard to the business of said juridical person or said individual, not only the offender but also said juridical person shall be punished by a fine of not more than three hundred million yen, or said individual shall be punished by the fine prescribed in the relevant Article:

- (2) In the case referred to in the preceding paragraph, the complaint set forth in paragraph (3) of the preceding Article pertaining to an offense prescribed in paragraph (1), items (i), (ii) and (vii) of the same Article and paragraph (2), item (v) of the same Article that is filed against the offender shall also be effective against the juridical person or the individual, and a complaint filed against the juridical person or the individual shall also be effective against said offender.
- (3) The period of prescription of a penalty of fine to be imposed on a judicial person or individual pursuant to the provisions of paragraph (1) in regard to an

act of violation set forth in paragraph (1), item (i), (ii) or (vii) of the preceding Article or paragraph (2) of the same Article shall be the same as that for the offenses prescribed in these provisions.

Supplementary Provisions [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of the day specified by Cabinet Order within a period not exceeding one year from the day of promulgation. (Entered into force on May 1, 1994, by Cabinet Order No. 44 of 1994)

(Transitional Measures)

Article 2 Except as otherwise provided, the provisions of the Unfair Competition Prevention Act as revised (hereinafter referred to as the "New Act") shall apply to the matters that arose before the enforcement of this Act; provided, however, that this shall not preclude the effects that had arisen from the Unfair Competition Prevention Act before the revision (hereinafter referred to as the "Former Act").

Article 3 The provisions of Article 3, the main clause of Article 4, and Article 5 of the New Act shall not apply to continuation of any of the following acts that were commenced before the enforcement of this Act:

- (i) an act that falls under Article 2, paragraph (1), item (ii) of the New Act (excluding an act that falls under item (i) of the same paragraph); or
- (ii) among the acts listed in Article 2, paragraph (1), item (xiii) of the New Act, the act of misrepresenting information with respect to services, or in an advertisement thereof, or in a document used in or a communication for a transaction thereof, in a manner that is likely to mislead the public as to the quality, contents, purpose, or quantity of such services, or the act of providing services with such an indication.

Article 4 The provisions of Articles 3 through 5, Article 14, and Article 15 of the New Act shall not apply to acts of unfair competition listed in Article 2, paragraph (1), items (iv) through (vi), (viii) and (ix) of the New Act pertaining to the act of wrongful acquisition prescribed in item (iv) of the same paragraph or the act of improper disclosure prescribed in item (viii) of the same paragraph that took place before June 15, 1991, if such acts of unfair competition are committed after such date (excluding acts listed in the following items), or to continuation of an act of using a trade secret prescribed in item (vii) of the same paragraph that was commenced before such date:

- (i) an act of disclosing a trade secret prescribed in Article 2, paragraph (1),

items (iv) through (vi), (viii) and (ix) of the New Act; or
(ii) an act of acquiring a trade secret prescribed in Article 2, paragraph (1), items (v) and (viii) of the New Act, and an act of using a trade secret that was acquired through such act.

Article 5 The provisions of Article 7 of the New Act shall apply to suits filed after the enforcement of this Act, and with regard to suits filed before the enforcement of this Act, the provisions then in force shall remain applicable.

Article 6 The provisions of Article 14 of the New Act shall not apply to continuation of an act that falls under Article 2, paragraph (1), item (ii) or (xiii) of the New Act that was commenced before the enforcement of the Act (excluding an act that falls under item (i) of the same paragraph).

Article 7 A person who had already obtained the permission prescribed in Article 4, paragraphs (1) through (3) or Article 4-2 of the Former Act at the time of enforcement of this Act is deemed to have obtained the permission prescribed in the provisos to Article 16, paragraphs (1) through (3) or the proviso to Article 17 of the New Act.

Article 8 The provisions of Article 16 of the New Act shall not apply to a person who had already obtained the permission prescribed in Article 4, paragraph (4) of the Former Act at the time of enforcement of this Act.

Article 9 The provisions of Article 17 of the New Act shall not apply to continuation of an act that is categorized as an act of using a mark similar to an international organization mark (excluding a mark identical or similar to a crest, a flag, or other emblem, abbreviation, or name of an intergovernmental international organization that is designated by the competent minister as prescribed in Article 4-2 of the Former Act; hereinafter referred to as a "mark similar to a private international organization mark") as a trademark, or assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through a telecommunications line, goods using a mark similar to a private international organization mark as a trademark, or providing services using a mark similar to a private international organization mark as a trademark, which is prescribed in Article 17 of the New Act, if such an act is commenced before the enforcement of this Act.

Article 10 The provisions of Article 21 (excluding the part pertaining to paragraph (2), item (vi)) and Article 22 of the New Act shall not apply to

continuation of an act that falls under Article 3, item (ii) of the Supplementary Provisions, if such an act was commenced before the enforcement of this Act.

Article 11 With regard to the request prescribed in Article 3 of the Former Act by a foreign national prescribed in the same Article against an act that was committed before the enforcement of this Act, the provisions then in force shall remain applicable.

(Transitional Measures for Application of Penal Provisions)

Article 13 With regard to application of the penal provisions to an act that was committed before the enforcement of this Act, the provisions then in force shall remain applicable.

(Delegation to Cabinet Order)

Article 14 In addition to the matters provided for in Articles 2 through 11 and Article 13 of the Supplementary Provisions, transitional measures necessary for enforcement of this Act shall be specified by Cabinet Order.

Supplementary Provisions [Act No. 116 of December 14, 1994] [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of July 1, 1995; provided, however, that the provisions listed in the following items shall come into effect as of the dates specified in those items, respectively:

- (i) the provisions of Article 1 of this Act revising Article 30, paragraph (3) of the Patent Act, the provisions of Article 5 of this Act (excluding the provisions revising Article 10, paragraph (3), Article 13, paragraph (1), Article 44, paragraph (2) and Article 63-2 of the Trademark Act), and the provisions of Article 9 of this Act July 1, 1995 or the day on which the Marrakech Agreement Establishing the World Trade Organization takes effect in Japan (hereinafter referred to as the "Effective Date"), whichever is later.

(Transitional Measures for Application of Penal Provisions)

Article 13 With regard to application of the penal provisions to an act that was committed before the enforcement of the respective revising provisions in this Act or an act that is committed after the enforcement of the respective revising provisions in this Act but pertains to matters to which the provisions then in force shall remain applicable pursuant to these Supplementary Provisions, the respective provisions then in force shall remain applicable.

(Delegation to Cabinet Order)

Article 14 In addition to the matters provided for in Articles 2 through 13 of the Supplementary Provisions, the transitional measures necessary for enforcement of this Act shall be specified by Cabinet Order.

Supplementary Provisions [Act No. 68 of June 12, 1996] [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of April 1, 1997; provided, however, that the provisions listed in the following items shall come into effect as of the dates specified respectively in those items:

- (i) the provisions of Article 1 of this Act revising Article 4, paragraph (1), items (ii) and (v) of the Trademark Act, revising Article 9, paragraph (1) of the same Act, adding a heading before Article 9-2 of the same Act, adding an Article after Article 9-2 of the same Act, revising Article 13, paragraph (1) of the same Act, and revising Article 53-2 of the same Act, and the provisions of Article 6 of this Act the day on which the Trademark Law Treaty takes effect in Japan.

(Delegation to Cabinet Order)

Article 21 In addition to the matters provided for in Articles 2 through 20 of the Supplementary Provisions, the transitional measures necessary for enforcement of this Act shall be specified by Cabinet Order.

Supplementary Provisions [Act No. 111 of September 28, 1998]

This Act shall come into effect as of the day on which the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions takes effect in Japan.

Supplementary Provisions [Act No. 33 of April 23, 1999] [Extract]

This Act shall come into effect as of October 1, 1999.

Supplementary Provisions [Act No. 51 of May 26, 2004]

This Act shall come into effect as of January 1, 2005.

Supplementary Provisions [Act No. 120 of June 18, 2004] [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of April 1, 2005.

(Principle of Transitional Measures)

Article 2 Except as otherwise provided for in these Supplementary Provisions, the provisions (excluding the penal provisions) of the Court Act, the Code of Civil Procedure, the Act on Costs of Civil Procedure, the Patent Act, the Utility Model Act, the Design Act, the Trademark Act, the Unfair Competition Prevention Act, and the Copyright Act as revised by this Act shall also apply to the matters that arose before the enforcement of this Act; provided, however, that this shall not preclude the effects that have arisen from the provisions of these Acts before the revision by this Act.

Supplementary Provisions [Act No. 75 of June 29, 2005] [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of the day specified by Cabinet Order within a period not exceeding one year from the day of promulgation; provided, however, that the provisions of Articles 3, 13, and 14 of the Supplementary Provisions shall come into effect as of the day on which the Act for Partial Revision of the Penal Code to Respond to an Increase in International and Organized Crimes and Advancement of Information Processing (Act No. of 2005) comes into effect or the day on which this Act comes into effect, whichever is later.

(Transitional Measures)

Article 2 The provisions of Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act as revised by the provisions of Article 1 of this Act shall apply to the acts listed in the same item that were committed after the enforcement of this Act, and with regard to the acts listed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act before the revision by the provisions of Article 1 of this Act that were committed before the enforcement of this Act, the provisions then in force shall remain applicable.

Article 3 The provisions of Article 9, paragraphs (1) through (3), Article 10, and Article 11 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds (Act No. 136 of 1999; hereinafter referred to as the "Organized Crime Punishment Act") shall also apply to an act committed after the enforcement of this Act with regard to assets arising from or acquired through a criminal act constituting any of the offenses listed in the following provisions (including an act committed outside Japan, which would constitute any of these offenses if

it were committed in Japan and which constitutes an offense under the laws and regulations of the place of the act) that was committed before the enforcement of this Act in order to acquire an illicit gain in terms of property, or property acquired as a reward for said criminal act: Article 14, paragraph (1), items (i) through (vi)-2, or (vii) of the Unfair Competition Prevention Act (excluding the part pertaining to Article 11, paragraph (1) of the same Act) before the revision by the provision of Article 1 of this Act; Article 200-2, paragraph (1) of the Patent Act before the revision by the provisions of Article 2 of this Act; Article 60-2, paragraph (1) of the Utility Model Act before the revision by the provisions of Article 3 of this Act; Article 73-2, paragraph (1) of the Design Act before the revision by the provisions of Article 4 of this Act; Article 81-2, paragraph (1) of the Trademark Act before the revision by the provisions of Article 5 of this Act; Article 122-2 of the Copyright Act before the revision by the provisions of Article 6 of this Act; or Article 60-2, paragraph (1) of the Utility Model Act before the revision by the provisions of Article 3 of the Act for Partial Revision of the Patent Act, etc. (Act No. 26 of 2003) before the revision by the provisions of Article 6 of the Supplementary Provisions of this Act where said provisions of Article 3 are to remain applicable pursuant to the provisions of Article 4, paragraph (1) of the Supplementary Provisions of the Act for Partial Revision of the Patent Act, etc. (such Utility Model Act shall be referred to as the "Former Utility Model Act of 1992" in Article 6 of the Supplementary Provisions of this Act). In this case, said property shall be deemed as criminal gains under Article 2, paragraph (2), item (i) of the Organized Crime Punishment Act.

Article 4 Where the day of enforcement of the Act for Partial Revision of the Penal Code to Respond to an Increase in International and Organized Crimes and Advancement of Information Processing comes after the day of enforcement of this Act, when applying the provisions of Article 2, paragraph (2), item (iii) of the Organized Crime Punishment Act during the period from the day of enforcement of this Act until the day before the day of enforcement of the Act for Partial Revision of the Penal Code to Respond to an Increase in International and Organized Crimes and Advancement of Information Processing, the phrase "Article 11, paragraph (1)" in the same shall be deemed to be replaced with "Article 18, paragraph (1)" and the phrase "Article 14, paragraph (1), item (vii)" in the same item shall be deemed to be replaced with "Article 21, paragraph (1), item (xi)."

(Delegation to Cabinet Order)

Article 5 In addition to the matters provided for in the preceding three Articles, transitional measures necessary for enforcement of this Act shall be specified

by Cabinet Order.