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This English translation of the Unfair Competition Prevention Act has been prepared (up to the revisions of Act No. 62 of 2011 (Effective December 1, 2011)).

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## Unfair Competition Prevention Act (Act No.47 of 1993)

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### **Chapter I General Provisions**

#### **Article 1 (Purpose)**

The purpose of this Act is to provide for matters such as measures for the prevention of unfair competition and compensation for damages caused by unfair competition, in

order to ensure fair competition among business operators and accurate implementation of international agreements related thereto, and thereby contribute to the sound development of the national economy.

## **Article 2 (Definitions)**

(1) The term “unfair competition” as used in this Act means any of the following:

- (i) acts of creating confusion with another person's goods or business by using an indication of goods or business (which means a name, trade name, trademark, mark, or container or package of goods used in relation to a person's business, or any other indication of a person's goods or business; the same shall apply hereinafter) that is identical or similar to said person's indication of goods or business that is well-known among consumers or other purchasers, or by assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line the goods using such an indication;
- (ii) acts of using as one's own an indication of goods or business that is identical or similar to another person's famous indication of goods or business, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line the goods using such an indication;
- (iii) acts of assigning, leasing, displaying for the purpose of assignment or leasing, exporting or importing goods which imitate the configuration (excluding configuration that is indispensable for ensuring the function of said goods) of another person's goods;
- (iv) acts of acquiring a trade secret by theft, fraud, duress or other wrongful means (hereinafter referred to as "acts of wrongful acquisition"), or the act of using or disclosing a trade secret so acquired (including the act of disclosing such trade secret in confidence to a specific person or persons; the same shall apply hereinafter);
- (v) acts of acquiring a trade secret with the knowledge that such trade secret has been acquired through acts of wrongful acquisition or without the knowledge of such matter due to gross negligence, or acts of using or disclosing a trade secret so acquired;
- (vi) acts of using or disclosing a trade secret after becoming aware or not becoming aware of such matter due to gross negligence; subsequent to its acquisition, that such trade secret was acquired through wrongful acquisition
- (vii) acts of using or disclosing a trade secret, which has been disclosed by the business operator holding such a trade secret (hereinafter referred to as the “holder”), for the purpose of acquiring an illicit gain, or causing injury to such holder;
- (viii) acts of acquiring a trade secret with the knowledge or, without the knowledge due to gross negligence, that there has been an improper disclosure of such trade secret (which means, in the case prescribed in the preceding item, acts of disclosing a trade secret for the purpose prescribed in said item, or acts of disclosing a trade secret in breach of a legal duty to maintain secrecy; the same shall apply hereinafter) or that such trade secret has been acquired through improper disclosure, or acts of using or disclosing

a trade secret so acquired;

**(ix)** acts of using or disclosing an acquired trade secret after becoming aware or not being aware of such matter due to gross negligence, 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;

**(x)** acts of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing (a) devices (including machines incorporating such devices and a set of parts of such a device that can be easily assembled) having the function of enabling the viewing of images or hearing of sounds, the running of programs, or the recording of images, sounds or programs (hereinafter referred to as the "viewing of images, etc." in this item) which are restricted by technological restriction measures that are used in business (excluding technological restriction measures used to restrict all but specific persons from viewing images or hearing sounds, running programs, or recording images, sounds or programs), by obstructing the effect of such technological restriction measures, or (b) data storage media or machines on which programs having such function (including other types of programs combined with such programs) have been recorded, or acts of providing programs having such function through an electric telecommunication line (if such a device or program also has another function than such a function, the acts shall be limited to those in which such a device or program are provided for enabling the viewing of images, etc. by obstructing the effect of such technological restriction measures.);

**(xi)** acts of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing to all but specific persons (a) devices (including machines incorporating such devices and a set of parts of such a device that can be easily assembled) having the function of enabling the viewing of images or hearing of sounds, the running of programs, or the recording of images, sounds or programs (hereinafter referred to as the "viewing of images, etc." in this item) which are restricted by technological restriction measures that are used in business to restrict all but said specific persons from viewing images or hearing sounds, running programs, or recording images, sounds or programs, by obstructing the effect of such technological restriction measures, or (b) data storage media or machines on which programs having such a function (including other types of programs combined with such programs) have been recorded, or the act of providing programs having such function through an electric telecommunication line (if such a device or program also has another function than such function, the acts shall be limited to those in which such a device or program are provided for enabling the viewing of images, etc. by obstructing the effect of such technological restriction measures.);

**(xii)** acts of acquiring or holding a right to use a domain name(s) that is identical or similar to another person's specific indication of goods or services (which means a name,

trade name, trademark, mark, or any other indication of a person's goods or services), or the acts of using any such domain name(s), for the purpose of acquiring an illicit gain or causing injury to another person;

**(xiii)** acts of misrepresenting information on goods or services, or in an advertisement thereof or in a document or correspondence used for a transaction related thereto, in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing process, use or quantity of such goods, or the quality, contents, purpose or quantity of such services, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line, goods with such an indication or providing services with such an indication;

**(xiv)** acts of making or circulating a false allegation that is injurious to the business reputation of another person in a competitive relationship;

**(xv)** acts by an agent, representative, or a person who was, within one year of the date of the act, an agent or representative of an owner of 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 country of the Union established by the Paris Convention (which means the Paris Convention as defined in Article 4(1)(ii) of the Trademark Act (Act No. 127 of 1959)) or in a Member of the World Trade Organization or in a contracting party to the Trademark Law Treaty, without a legitimate reason and the consent of the owner of such right, using a trademark identical or similar to the trademark relating to such right in respect of goods or services identical or similar to those relating to such right, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line goods using such trademark, which are identical or similar to the goods relating to such right, or providing services using such trademark, which are identical or similar to the services relating to such right.

**(2)** The term "trademark" as used in this Act means a trademark as defined in Article 2(1) of the Trademark Act.

**(3)** The term "mark" as used in this Act means a mark as defined in Article 2(1) of the Trademark Act.

**(4)** The term "configuration of goods" as used in this Act means the external and internal shape of goods and the pattern, color, gloss, and texture combined with such shape, which may be perceived by consumers or other purchasers when making ordinary use of the goods.

**(5)** The term "imitate" as used in this Act means an act of creating goods of practically identical configuration as that of another person's goods, based on the configuration of the goods of said person.

**(6)** The term "trade secret" as used in this Act means technical or business information useful for commercial activities such as manufacturing or marketing methods that is

kept secret and that is not publicly known.

(7) The term “technological restriction measures” as used in this Act means measures which restrict the viewing of images or hearing of sounds, or running of programs, or recording of images, sounds or programs through electromagnetic means (which means electronic means, magnetic means or other means that are imperceptible by humans), and which adopt a method of recording on data storage media or transmitting signals that make machines for viewing and hearing (which means machines 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 along with the images, sounds or programs, or a method of recording on data storage media 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 means instructions given to a computer, combined so as to obtain a certain result.

(9) The term "domain name(s)" as used in this Act means letters, numbers, signs or other symbols or any combination 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 includes computer programs.

## **Chapter II Injunctions and Damages, etc.**

### **Article 3 (Right to seek an injunction)**

(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 infringed 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 pursuant to 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(1)), removal of the equipment used for the act of infringement, or other acts required for suspension or prevention of the infringement.

### **Article 4 (Damages)**

A person who intentionally or negligently infringes on the business interests of another person by unfair competition shall be liable for damages resulting therefrom. However, this Article shall not apply to damages resulting from the use of a trade secret after the rights prescribed in Article 15 have extinguished pursuant to the said Article.

### **Article 5 (Presumption of amount of damages, etc.)**

(1) Where a person whose business interests have been infringed by unfair competition

listed in items 1 to 9 or item 15 of Article 2(1) (with regard to the unfair competition listed in items 4 to 9 of the same paragraph, only unfair competition that involves a technical secret [which means a manufacturing method or other technical information useful for business activities that is kept secret and not publicly known]) (hereinafter referred to as the "infringed person" in this paragraph) claims damages caused by such an infringement from a person who has intentionally or negligently infringed such business interests, and where the infringer has sold or otherwise transferred the articles constituting the act of infringement, the quantity of the articles sold or transferred (hereinafter referred to as the "transferred quantity" in this paragraph) multiplied by the amount of profit per unit of the articles that the infringed person could have sold in the absence of the infringement may be deemed as the amount of damages suffered by the infringed person, provided it does not exceed the amount attainable by the infringed person's capability to sell or conduct other acts concerning said articles. However, 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 transferred 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 caused by a person who intentionally or negligently infringed such business interests and received profits through the act of infringement, the amount of such profits shall be presumed to be the amount of damages suffered by the person whose business interests were infringed.

**(3)** A person whose business interests have been infringed by unfair competition listed in items 1 to 9, item 12, or item 15 of Article 2(1) may claim, from the person who has intentionally or negligently infringed such business interests, an amount equivalent to the amount of money that should be awarded against the acts prescribed respectively in the following items for the classification of unfair competition listed therein, as the amount of damages suffered by the infringed person:

**(i)** unfair competition listed in items 1 or 2 of Article 2(1) – use of an indication of goods or business pertaining to such infringement;

**(ii)** unfair competition listed in item 3 of Article 2(1) – use of a configuration of goods pertaining to such infringement;

**(iii)** unfair competition listed in items 4 to 9 of Article 2(1) – use of a trade secret pertaining to such infringement;

**(iv)** unfair competition listed in item 12 of Article 2(1) – use of a domain name pertaining to such infringement; and

**(v)** unfair competition listed in item 15 of Article 2(1) – use of a trademark pertaining to such infringement.

**(4)** The provisions of the preceding paragraph shall not preclude a claim for damages exceeding the amount prescribed in the 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 this into consideration in determining the amount of damages.

**Article 6 (Obligation to clarify the specific conditions (of infringement))**

In a lawsuit for the infringement of business interests by unfair competition, where a person alleging that his/her business interests have been infringed or are likely to be infringed by unfair competition asserts that the act of infringement was constituted by specific conditions of article or process, the adverse party must, in order to deny this allegation, clarify the specific conditions of his/her own act. However, this does not apply when the adverse party has reasonable grounds for not being able to disclose such information.

**Article 7 (Production of documents, etc.)**

(1) In a lawsuit for the infringement of business interests by unfair competition, the court may, upon motion of a party, order a party to produce any documents necessary for proving the act of infringement or assessing the amount of damages caused by such act of infringement. However, this does not apply when the holder of the documents has justifiable grounds for refusing to produce them.

(2) Where the court finds it necessary for determining the presence of a justifiable reason prescribed in the proviso to the preceding paragraph, it may require the holder of the documents to produce said documents. In such a case, no person may request disclosure of the produced documents.

(3) In the case of the preceding paragraph, where the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph and to hear the opinions of a party, etc. (which means a party [in the case of a juridical person, its representative], an agent [excluding a counsel or an assistant], an employee, or other workers of a party; the same shall apply hereinafter), it may disclose said documents to the party, etc.

(4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the production of the objects of inspection necessary for proving the alleged act of infringement in a lawsuit for the infringement of business interests by unfair competition.

**Article 8 (Expert opinion for calculation of damages)**

In a lawsuit for 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 the matters necessary for calculating the damages caused by the act of infringement, the parties shall explain to the expert witness the matters necessary for giving the expert opinion.

**Article 9 (Determination of reasonable damages)**

In a lawsuit for 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 evidence.

**Article 10 (Protective order)**

(1) In a lawsuit for the infringement of business interests by unfair competition, where there is prima facie evidence showing that a trade secret held by a party of the lawsuit falls under both of the following grounds, the court may, upon motion of the party and by means of a ruling, order a party, etc., a counsel, or an assistant not to use the trade secret for any purpose other than pursuing the lawsuit or to disclose it to a person other than those who have received the order prescribed in this paragraph with regard to said trade secret; however, this does not apply when the party, etc., the counsel, or the assistant had already acquired or held the trade secret by means other than the reading of the brief prescribed in item 1 or the examination or disclosure of evidence prescribed in the same item:

(i) the trade secret held by the party is written in an already-produced or a to-be-produced brief, or included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to Article 7(3) or a document disclosed pursuant to Article 13(4)); and

(ii) the party's business activities based on the trade secret under the preceding item are likely to become hindered by the use of said trade secret for purposes other than pursuing the lawsuit or its disclosure, and it is necessary to restrict the use or disclosure of the trade secret in order to prevent this.

(2) A motion for the order prescribed in the preceding paragraph (hereinafter referred to as the "protective order") shall be made in writing and include the following matters:

(i) the person to whom the protective order is to be issued;

(ii) facts that are sufficient for identifying the trade secret to be made the subject of 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 decision letter on the person to whom the protective order was issued.

(4) A protective order takes effect when a decision letter is served on the person to whom the protective order was issued.

(5) When the court dismisses a motion for a protective order, the party may lodge an immediate appeal against the decision.

**Article 11 (Rescission of protective order)**



- (1) A movant for a protective order or a person to whom a protective order was issued may file a motion for rescission of the protective order with the court where the case record kept (when no such court exists, the court that issued the protective order) on the ground that the requirement prescribed in the preceding Article 1 is not met or is no longer met.
- (2) When the court makes a decision on a motion for rescission of a protective order, it shall serve a decision letter on the movant and the adverse party.
- (3) An immediate appeal may be lodged against a decision on the motion for rescission of a protective order.
- (4) A decision to rescind a protective order shall not take effect until the decision becomes final and binding.
- (5) Where a court has made a decision to rescind a protective order, if the court had, during the same lawsuit in which the protective order was issued, issued a protective order for the protection of the trade secret against any person other than the movant for rescission of the protective order or the adverse party, it shall immediately notify that person of the decision to rescind the protective order.

**Article 12 (Notice, etc. of a request for inspection, etc. of the case record)**

- (1) Where a court has made a ruling under Article 92(1) of the Code of Civil Procedure (Act No. 109 of 1996) with regard to the case record pertaining to the lawsuit in which a protective order has been issued (excluding a lawsuit in which all the protective orders have been rescinded), if there was a request for inspection, etc. of the portion of the record that represents the secret prescribed in the same paragraph by a party, and the person who performed the procedure for such request has not been issued a protective order in the lawsuit, the court clerk shall, immediately after the request, notify the party who filed the motion under the same paragraph (excluding the requester; the same shall apply in paragraph 3) of the fact that such a request was made.
- (2) In the case of the preceding paragraph, the court clerk must not allow the party who performed the procedure for the request under the same paragraph to conduct inspection, etc. of the portion of the record that represents the secret until two weeks have passed since the date of the request (if a motion for a protective order against the person who performed the procedure for the request was filed on or before such date, until the date when the decision on the motion becomes final and binding).
- (3) The provisions of the preceding two paragraphs shall not apply when there is consent among all parties who filed a motion under Article 92(1) of the Code of Civil Procedure to allow the party who made the request under paragraph 1 to conduct inspection, etc. of the portion of the record that represents the secret.

**Article 13 (In camera examination of the parties)**

- (1) In a lawsuit for the infringement of business interests by unfair competition, where

a party, etc. is to be examined as a party itself or a legal representative or as a witness with regard to a matter that serves as the basis for determining the presence or absence of the infringement and falls under a trade secret held by the party, and when 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 that, without said statements by the party, the court is unable to make an appropriate decision on the presence or absence of infringement on business interests by unfair competition which should be made based on the determination of said matter, it may conduct the examination on the matter in camera by means of a ruling.

(2) The court shall hear the opinion of the party, etc. before making the ruling under the preceding paragraph.

(3) In the case of the preceding paragraph, the court may order the party, etc. to produce a document that outlines the matters to be stated. In such a case, no person may request disclosure of the produced document.

(4) Where the court finds it necessary to disclose the document under the second sentence of the preceding paragraph and to hear the opinion of the party, etc., the counsel, or the assistant, it may disclose the document to such person.

(5) Where the court will conduct examination on a matter in camera pursuant to the provision of paragraph 1, it shall render a judgment to that effect and the reason thereof to the members of the public present before making them leave the courtroom. When the examination on the matter ends, the court shall have the members of the public reenter the courtroom.

#### **Article 14 (Measures to restore business reputation)**

The court may order a person who has intentionally or negligently committed an act of 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 for restoring the business reputation of that person in lieu of or in addition to compensation for damages.

#### **Article 15 (Statute of limitations)**

The right to seek, pursuant to the provision of Article 3(1), suspension or prevention of infringement committed through an act of using a trade secret among the acts of unfair competition listed in Articles 2(1)(iv) to (ix) shall be extinguished by prescription when the person who commits such an act continues the act and the right-holder whose business interests have been infringed or are likely to be infringed by such act does not exercise the right within three years from the time that the right-holder becomes aware of such fact and of the person committing such act. The same shall apply when ten years

have elapsed from the time of commencement of such act.

### **Chapter III Prohibited Acts based on International Agreement**

#### **Article 16 (Prohibition of commercial use of foreign national flags, etc.)**

(1) No person shall use, as a trademark, a mark identical to a flag, aarmorial bearing, or other emblem of a foreign state, which is specified by an Ordinance of the Ministry of Economy, Trade and Industry (such emblem is hereinafter referred to as a "state emblem of a foreign state") or a mark similar to a state emblem (such identical or similar mark is hereinafter referred to as a "mark similar to a state emblem of a foreign state"), or shall sell or otherwise transfer, deliver, display for the purpose of assignment or delivery, export, import or provide through an electronic telecommunication line goods using a mark similar to a state emblem of a foreign state as a trademark, or shall provide services using a mark similar to a state emblem of a foreign state as a trademark. However, this shall not apply when permission has been obtained from the government agency of the foreign state that is authorized to grant permission (including an administrative disposition similar to permission) for use of the state emblem of a foreign state.

(2) In addition to the provision of 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 state emblem of a foreign state that is specified by an Ordinance of the Ministry of Economy, Trade and Industry under the preceding paragraph (hereinafter referred to as a "foreign state emblem"), or shall sell or otherwise transfer, deliver, display for the purpose of assignment or delivery, export, import or provide through an electronic telecommunication line, goods using a foreign state emblem, or shall provide services using a foreign state emblem. However, this shall not apply when permission has been obtained from the government agency of the foreign state that is authorized to grant permission to use the foreign state emblem.

(3) No person shall use a mark identical to a seal or a sign of a foreign, state, or local government used for supervision or certification purposes, which is specified by an Ordinance of the Ministry of Economy, Trade and Industry (such a seal or a sign is hereinafter referred to as a "foreign government sign") or a mark similar to a foreign government sign (such identical or similar mark is hereinafter 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 sell or otherwise transfer, deliver, display for the purpose of assignment or delivery, export, import or provide through an electronic telecommunication line, goods using a foreign government sign as a trademark, or shall provide services using a foreign government sign as a trademark. However, this shall not apply when permission has been obtained from the government agency of the foreign state that is authorized to

grant permission for use of the foreign government sign.

**Article 17 (Prohibition of commercial use of a mark of an international organization)**

No person shall use, in a manner which is likely to mislead the public as to the existence of a relationship with any international organization (which means an intergovernmental international organization or an equivalent organization specified by an Ordinance of the Ministry of Economy, Trade and Industry; hereinafter the same shall apply in Article), a mark identical or similar to a mark representing an international organization, which is specified by an Ordinance of the Ministry of Economy, Trade and Industry (such identical or similar mark is hereinafter referred to as a "mark similar to an international organization mark") as a trademark, or shall sell or otherwise transfer, deliver, display for the purpose of assignment or delivery, export, import or provide through an electronic telecommunication 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. However, this shall not apply when the permission of such international organization has been obtained.

**Article 18 (Prohibition of provision of illicit profit, etc. to foreign public officials, etc.)**

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

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

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

means an international organization constituted by governments or intergovernmental international organizations); or

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

#### **Chapter IV Miscellaneous Provisions**

##### **Article 19 (Exclusion from application, etc.)**

(1) The provisions of Articles 3 to 15, Article 21 (excluding the part pertaining Article 21(2)(vii)) and Article 22 shall not apply to the acts prescribed respectively in the following items for the classification of unfair competition listed therein:

(i) unfair competition listed in Article 2(1)(i), (ii), (xiii) and (xv) – the 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 as an ingredient, which has become a common name) or an indication of goods or business that is commonly used for identical or similar goods or business (hereinafter collectively referred to as a "common name, etc."), or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electronic telecommunication line, goods using or indicating a common name, etc. in a normally used manner (including an act of providing services using or indicating a common name, etc. in a normally used manner, in the case of unfair competition listed in items (xiii) and (xv) of the same paragraph);

(ii) unfair competition listed in Article 2(1)(i), (ii) and (xv) – the act of using one's own name without a wrongful purpose (which means a purpose of acquiring an illicit gain, a purpose of causing damages to others, or any other wrongful purpose; hereinafter the same shall apply), or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electronic telecommunication 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 listed in the same items);

(iii) unfair competition listed in Article 2(1)(i) – the act of a person, who has used an indication of goods or business that is identical or similar to another person's indication of goods or business before said person's indication became well-known among consumers and other purchasers or who has succeeded to a business pertaining to said person's indication, using such indication of goods or business without a wrongful purpose, or the act of said person assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electronic telecommunication line, goods using such indication of goods or business without a wrongful purpose;

(iv) unfair competition listed in Article 2(1)(ii) – the act of a person, who has used an

indication of goods or business that is identical or similar to another person's indication of goods or business before said person's indication became famous among consumers and other purchasers or who has succeeded to a business pertaining to said person's indication, using such indication of goods or business without a wrongful purpose, or the act of said person assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electronic telecommunication line, goods using such indication of goods or business without a wrongful purpose:

**(v)** unfair competition listed in Article 2(1)(iii) – any of the following acts:

**(a)** the act of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods that imitate the configuration of goods for which three years have elapsed from the date they were first sold in Japan; or

**(b)** the act of a person who has received goods that imitate the configuration of another person's goods by transfer (limited to a person who, at the time of receiving such goods by transfer, had no knowledge that the goods imitated the configuration of another person's goods, and such lack of knowledge was not based on gross negligence) assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing such goods;

**(vi)** unfair competition listed in Article 2(1)(iv) to (ix) – the act of a person, who has acquired a trade secret through a transaction (limited to a person who, at the time of acquiring such trade secret, had no knowledge that there had been an improper disclosure of such trade secret or that such trade secret had been acquired through wrongful acquisition or improper disclosure, 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;

**(vii)** unfair competition listed in Article 2(1)(x) and (xi) – the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing devices prescribed in Article 2(1)(x) and (xi) or data storage media or machines on which programs have been recorded prescribed in the same items that are used for experiment or research of technological restriction measures, or the act of providing said program through an electronic telecommunication means.

**(2)** A person whose business interests have been infringed or are likely to be infringed through any of the acts listed in items 2 or 3 of the preceding paragraph may request a person, who is specified respectively in the following items for the classification of acts listed therein, to use an appropriate indication for preventing confusion with his/her goods or business:

**(i)** acts listed in item 2 of the preceding paragraph – a person using his/her own name (including a person who personally sells or otherwise transfers, delivers, displays for the purpose of assignment or delivery, exports, imports or provides through an electronic telecommunication line, goods using his/her own name); or

**(ii)** acts listed in item 3 of the preceding paragraph – a person using an indication of

goods or business identical or similar to another person's indication of goods or business, and a person who succeeds to a business pertaining to such an indication of goods or business (including a person who personally sells or otherwise transfers, delivers, displays for the purpose of assignment or delivery, exports, imports or provides through an electronic telecommunication line, goods using such an indication of goods or business).

#### **Article 20 (Transitional measures)**

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).

### **Chapter V Penal Provisions**

#### **Article 21 (Penal Provisions)**

(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 acquires a trade secret by an act of fraud or others (which means an act of deceiving, assaulting, or intimidating a person; the same shall apply hereinafter in this Article) or an act violating control obligations (which means an act of stealing property, trespassing on a facility, making an unauthorized access [an act of unauthorized access prescribed in Article 3 of the Unauthorized Computer Access Act (Act No. 128 of 1999)], or violating the control of a trade secret maintained by its holder in any other way; the same shall apply hereinafter in this Article) for the purpose of acquiring an illicit gain or inflicting a loss to its holder.

(ii) a person who uses or discloses a trade secret acquired by an act of fraud or others, or an act violating control obligations for a purpose of acquiring an illicit gain or inflicting a loss to its holder.

(iii) a person to whom a trade secret was disclosed by its holder, and who, for the purpose of acquiring an illicit gain or inflicting a loss to its holder, obtains the trade secret by any of the following methods, in breach of the duty to keep safe custody of the trade secret:

(a) embezzling a medium containing a trade secret (meaning a document, a drawing or a data storage medium in which a trade secret is described or recorded; the same shall apply hereinafter in this item) or a property which represents a trade secret

(b) reproducing a description or a record contained in a medium containing a trade secret, or a property which represents a trade secret

**(c)** not deleting a description or a record contained in a medium containing a trade secret which should be deleted, and disguising this act as if the description or record contained in the medium containing the trade secret had been deleted

**(iv)** a person to whom a trade secret was disclosed by its holder, and who, for the purpose of acquiring an illicit gain or inflicting a loss to its holder, uses or discloses in breach of the duty to keep safe custody of the trade secret the trade secret that was obtained through the methods posted in “a” to “c” in the item above in breach of the duty to keep safe custody of the trade secret

**(v)** a person who is an officer (which means a director, operating officer, managing partner, secretary, auditor, or an equivalent person to them; the same shall apply in the following item) or an employee of a trade secret holder from whom the trade secret has been disclosed, and, for the purpose of acquiring an illicit gain or inflicting a loss to its holder, uses or discloses it in breach of the duty to keep safe custody of the trade secret (except for a person prescribed in the preceding item);

**(vi)** a person who is an officer or an employee of a trade secret holder from whom a trade secret has been disclosed, and, for a purpose of acquiring an illicit gain or inflicting a loss to its holder, offers to disclose it in breach of the duty to keep safe custody of the trade secret or receives a request to use or disclose it while in office, and uses or discloses it after leaving the job (except for a person prescribed in item 4)

**(vii)** a person who, for the purpose of acquiring an illicit gain or inflicting a loss to its holder, uses or discloses a trade secret acquired by disclosure which is an offence prescribed in item 2 or the previous 3 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, a fine of not more than five million yen, or both:

**(i)** a person who, for a wrongful purpose, commits any act of unfair competition listed in Articles 2(1)(i) or (xiii);

**(ii)** a person who, for a purpose of acquiring an illicit gain through the use of reputation or fame pertaining to another person’s famous indication of goods or business or for injuring said reputation or fame, commits any act of unfair competition listed in Article 2(1)(ii);

**(iii)** a person who, for the purpose of acquiring an illicit gain, commits any act of unfair competition listed in Article 2(1)(iii);

**(iv)** a person who, for a purpose of acquiring an illicit gain or for a purpose of inflicting a loss to another person who is using technological restriction measures for business, commits any act of unfair competition listed in Articles 2(1)(x) or (xi);

**(v)** a person who misrepresents information on goods or with respect to services, or in an advertisement thereof or in a document or correspondence used for a transaction related thereto, in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing process, use, or quantity of such goods, or the quality,



contents, purpose, or quantity of such services (except for a person prescribed in item 1);

(vi) a person who violates a protective order; or

(vii) a person who violates any provision of Articles 16, 17, or 18(1).

(3) The offenses prescribed in paragraph 1, item 6 of the preceding paragraph may not be prosecuted without a complaint.

(4) The offenses prescribed in item 2 or items 4 to 7 of paragraph 1 shall also apply to a person who committed them outside Japan for a trade secret that had been kept within Japan at the time of the act of fraud or others or the act violating control obligations, or at the time the trade secret was disclosed by its holder.

(5) The offense prescribed in item 6 of paragraph 2 shall also apply to a person who committed it outside Japan.

(6) The offense prescribed in item 7 of paragraph 2 (limited to the part pertaining to Article 18(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 penal provisions under the Penal Code or any other acts.

## **Article 22**

(1) When a representative of a juridical person, or an agent, employee or any other of a juridical person or an individual has committed a violation prescribed in any of the provisions of items 1, 2 or 7 of paragraph 1, or paragraph 2 of the preceding 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, a complaint filed against said offender pertaining to an offense prescribed in items 1, 2, and 7 of paragraph 1, and item 6 of paragraph 2 of the preceding Article 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 a judicial person or individual pursuant to the provisions of paragraph 1 in regard to an act of violation of items 1, 2 or 7 of paragraph 1 or paragraph 2 of the preceding Article shall be the same as that for the offenses prescribed in the provisions of the preceding Article.

## **Chapter VI Special Measures for Criminal Litigation Proceedings**

### **Article 23 (Protective Rulings of trade secret, etc.)**

(1) The court may, where it handles cases pertaining to the crimes prescribed in Article 21(1) or the crimes prescribed in the preceding Article (1) (limited to the part related to Article 21(1)(i), (ii) and (vii)), when the victim or a legal representative of said victim, or

lawyer who has been delegated by these persons requests that matters specifying the whole of or part of the information that constitutes the trade secret of the case shall not be revealed in an open court, when the court believes it to be appropriate upon hearing the opinions of the accused or his/her counsel, with determining the scope, decide, that the matters shall not be revealed in an open court.

(2) A request prescribed in the preceding paragraph shall be made to the public prosecutor in advance. In such case, the public prosecutor shall notify as such to the court together with the prosecutor's opinion.

(3) The court may, where it handles cases prescribed in paragraph 1, when the public prosecutor or the accused or his/her counsel requests that matters specifying the whole of or part of the information that constitutes a trade secret held by the accused or other persons shall not be revealed in an open court, when the court finds that the matters are indispensable for proving the case or the defense of the accused and that there is a risk that revealing the matters in an open court will significantly hinder the business activities of the accused or other persons that are based on the trade secret and when the court believes it to be appropriate upon hearing the opinions of the opponent, with determining the scope, decide, that the matters shall not be revealed in an open court.

(4) The court may, where it has made a ruling prescribed in paragraph 1 or the preceding paragraph (hereinafter referred to as "protective rulings"), when the court deems it necessary, upon hearing the opinions of the public prosecutor and the accused or his/her counsel, determine, on a ruling, a provisional name or other expression in lieu of the name or other expression pertaining to the matters specifying constituent information of a trade secret ("matters specifying the constituent information of a trade secret" mean matters specifying whole or part of information that constitutes a trade secret which shall not be revealed in an open court pursuant to the protective rulings; the same shall apply hereinafter).

(5) The court shall, where it has made a protective ruling, when the court has found that it is inappropriate that the matters specifying the constituent information of a trade secret shall not be revealed in an open court or when the case has ceased to be the case prescribed in paragraph 1 because applicable penal statutes have been withdrawn or altered pursuant to Article 312 of the Code of Criminal Procedure (Act No. 131 of 1948), rescind, on a ruling, the whole or part of the protective rulings and the whole or part of a ruling prescribed in the preceding paragraph (hereinafter referred to as "ruling on a provisional name, etc.") pertaining to the protective rulings.

#### **Article 24 (Special Measures of reading out the charging sheet)**

Where a protective ruling has been given, reading out the charging sheet under Article 291(1) of the Code of Criminal Procedure shall be conducted by a measure which does not reveal the matters specifying constituent information of a trade secret. In this case, the public prosecutor shall show the charge sheet to the accused.

**Article 25 (Limitation on questions, etc.)**

(1) The presiding judge may, where a protective ruling has been given, when questions or statements by persons concerned with the trial include the matters specifying constituent information of a trade secret, except when limitations on such questions or statements may interfere considerably with proving the case or may substantially harm the defense of the accused, limit such questions or statements. The same shall apply questions for the accused by persons concerned in the trial.

(2) The provisions of Article 295(4) and (5) of the Code of Criminal Procedure shall apply mutatis mutandis to cases in which the public prosecutor or the counsel who is a lawyer has failed to obey an order pursuant to the provision of the preceding paragraph.

**Article 26 (Examination of the witness and others on a day other than the trial date)**

(1) The court may, where it has made a protective ruling, or when it examines a witness, an interpreter or a translator or when the accused makes a statement voluntarily, upon hearing the opinions of the public prosecutor and the accused or his/her counsel, when the court finds that there is a risk that examinations or statements of the witness, the expert witness, the interpreter or the translator, or questions for the accused or statements of the accused include the matters specifying constituent information of trade secret and revealing such matters in an open court will significantly hinder the business activities of the victim, the accused or other persons that are based on the trade secret, and it is avoidable in order to prevent such risk, conduct the examination or the procedure of asking the accused questions provided in Article 311(2) and (3) of the Code of Criminal Procedure on a day other than the trial date.

(2) The provisions of Article 157(1) and (2), Article 158(2) and (3), Article 159(1), Article 273(2), Article 274 and Article 303 of the Code of Criminal Procedure shall apply mutatis mutandis to the procedure of asking the accused questions pursuant to the provision of the preceding paragraph. In this case, "the accused or his/her counsel" in Article 157(1), Article 158(3) and Article 159(1) of the Code of Criminal Procedure shall be read as "the counsel, the co-defendants or his/her counsel"; "the accused and his/her counsel" in Article 158(2) of said Code shall be read as "the counsel, the co-defendants and his/her counsel"; "the trial date" in Article 273(2) of said Code shall be read as "the date of the procedure of asking the accused questions pursuant to the provision of Article 26(1) of the Unfair Competition Prevention Act"; "the trial date" in Article 274 of said Code shall be read as "the date, time and location of the procedure of asking the accused questions pursuant to the provision of Article 26(1) of the Unfair Competition Prevention Act"; "documents which contain the results of the examination of witnesses or other persons, results of inspections, search or seizure, and objects seized" in Article 303 of said Code shall be read as "documents which contain the results of the procedure of asking the accused questions pursuant to the provision of Article 26(1) of the Unfair Competition

Prevention Act"; and "documentary or material evidence" in the same Article shall be read as the "documentary evidence".

**Article 27 (Order to produce or show a document that outlines the matters of questions, etc.)**

When the court deems it necessary in making a ruling on a provisional name, etc. or in determining that the examination or the procedure of asking the accused questions shall be conducted on a day other than the trial date pursuant to the provision of the preceding Article (1), the court may order for the public prosecutor and the accused or his/her counsel to show a document that outlines of the matters to be questioned or stated or asked to the accused by persons concerned in the trial.

**Article 28 (Special Measures of reading out the documentary evidence)**

Where a protective ruling has been given, reading out the documentary evidence pursuant to the provision of Article 305(1) or (2) of the Code of Criminal Procedure shall be conducted by a method which does not reveal the matters specifying constituent information of trade secret.

**Article 29 (Ruling in the pretrial arrangement proceeding, etc.)**

The following actions may be taken in the pretrial arrangement proceeding and the inter-trial arrangement proceeding:

- (i) **Protective** rulings or ruling on a provisional name, etc., or ruling to rescind these rulings; or
- (ii) Determining that the examination or the procedure of asking the accused questions shall be conducted on a day other than the trial date pursuant to the provision of Article 26(1).

**Article 30 (Request of secrecy of trade secret in the disclosure of evidence)**

(1) The public prosecutor and the counsel may, in providing the opportunity to inspect documents or articles of evidence pursuant to the provision of Article 299(1) of the Code of Criminal Procedure with regard to cases prescribed in Article 23(1), when they find that there is a risk that revealing the matters specifying constituent information of a trade secret prescribed in Article 23(1) or (3) in an open court will significantly hinder the business activities of the victim, the accused or other persons that are based on the trade secret, notify the opponent of such risk and request particular care to be taken so that such matters are not disclosed to those concerned (including the accused), unless such matters are necessary for proving the case or the criminal investigation, or for the defense of the accused; provided, however, that with regard to requesting particular care to be taken so that such matters are not disclosed to the accused, this shall apply only to such matters other than those written in the charging sheet.

(2) The provision of the preceding paragraph shall apply mutatis mutandis to cases in which the public prosecutor or the counsel discloses evidence pursuant to the provisions of Part II, Chapter III, Section 2, Subsection 1, Division 2 of the Code of Criminal Procedure (including cases to which these provisions apply pursuant to the provision of Article 316-28(2) of said Code).

### **Article 31 (Delegation to a Rules of the Supreme Court of Criminal Procedure)**

In addition to what is provided for in this Act, necessary matters concerning the enforcement of the provisions of Articles 23 to the preceding Article shall be specified by the Supreme Court Rules of Criminal Procedure.

### **Supplementary Provisions** (*Extract*)

#### **Article 1 (Entry into force)**

This Act shall enter into force on the day specified by a 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)

#### **Article 2 (Transitional measures)**

Except as otherwise provided, the provisions of the Unfair Competition Prevention Act (hereinafter referred to as the “New Act”) as revised by this Act shall apply to the matters that arose before the enforcement of this Act. However, this does 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 provision 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(1)(ii) of the New Act (excluding an act that falls under Item 1 of the same paragraph); or

(ii) among the acts listed in Article 2(1)(xiii) of the New Act, the act of misrepresenting information with respect to services, or in an advertisement thereof, or in a document or correspondence used for a transaction related thereto, 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 to 5, Article 14, and Article 15 of the New Act shall not

apply to acts of unfair competition listed in Article 2(1)(iv) to (vi), (viii) and (ix) of the New Act pertaining to wrongful acquisition prescribed in Item 4 of the same paragraph or improper disclosure prescribed in Item 8 of the same paragraph that took place before June 15, 1991, when such acts of 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 7 of the same paragraph that was commenced before such date:

- (i) the act of disclosing a trade secret prescribed in Article 2(1)(iv) to (vi), (viii) and (ix) of the New Act; or
- (ii) the act of acquiring a trade secret prescribed in Article 2(1)(v) and (viii) of the New Act, and the 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 lawsuits filed after the enforcement of this Act, and with regard to lawsuits 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(1)(ii) or (xiii) of the New Act that was commenced before the enforcement of the Act (excluding an act that falls under Item 1 of the same paragraph).

#### **Article 7**

A person who has obtained the permission prescribed in Article 4(1) to (3) or Article 4-2 of the Former Act before the enforcement of this Act is deemed to have obtained the permission respectively prescribed in the provisos to Article 16(1) to (3) or the proviso to Article 17 of the New Act.

#### **Article 8**

The provision of Article 16 of the New Act shall not apply to a person who has obtained the permission prescribed in Article 4(4) of the Former Act before the enforcement of this Act.

#### **Article 9**

The provision of Article 17 of the New Act shall not apply to continuation of an act that falls under the 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 international intergovernmental 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 an electronic telecommunication 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 provision of Article 21 (excluding the part pertaining to Article 21(2)(vi)) and Article 22 of the New Act shall not apply to continuation of an act that falls under Article 3(ii) of the Supplementary Provisions of this Act, when such an act was commenced before the enforcement of this Act.

**Article 11**

With regard to a request prescribed in Article 3 of the Former Act made 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.

**Article 13 (Transitional measures for application of penal provisions)**

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.

**Article 14 (Delegation to a Cabinet Order)**

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