

**Unfair Competition Prevention and Trade Secret Protection Law****Law No. 911, Promulgated on Dec. 30, 1961
as last Amended by Law No. 6421, Feb. 3, 2001**

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Chapter I General Provisions

Purpose

1. The purpose of this Law is to maintain orderly trade by preventing acts of unfair competition such as improper use of domestically well-known trademarks and trade names, and by preventing infringement of trade secrets.

Definitions

2. The definitions of terms used in this Law shall be as follows:

(1) Acts of unfair competition shall mean any of the following acts regardless of its intention:

(i) an act of causing confusion with another person's goods by using signs identical or similar to another person's name, trade name, trademark, container or package of goods or any other sign which is widely known in Korea as an indication of goods, or by selling, distributing, importing or exporting the goods with such signs;

(ii) an act of causing confusion with another person's commercial facilities or activities by using signs identical or similar to another person's name, trade name, emblem or any other sign which is widely known in Korea as an indication of commerce;

(iii) In addition to the act of causing confusion provided in subparagraph (i) or (ii), an act of doing damage to distinctiveness or reputation attached to another person's sign by using the sign identical or similar to another person's name, trade name, trademark, container or package of goods, or any other sign which is widely known in Korea as an indication of goods or commerce, or by selling, distributing, importing or exporting goods with such signs, without due cause as prescribed by Presidential Decree for instance noncommercial use;

(iv) an act of causing confusion about the source of origin by falsely marking the source of origin on the goods or in any advertisement, on the trade documents communicated to the public or in communications, or by selling, distributing, importing or exporting the goods marked with such a source of origin;

(v) an act of making a mark on goods, advertisements, trade documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with such mark which would mislead the public into believing that the place of production, manufacture, or processing is different from the actual place of production, manufacture or processing;

(vi) an act of falsely assuming another person's goods, or an act of making a mark or advertising in at information useful for business activities which are not publicly known, has independent economic value, and has been maintained and managed as secrets through considerable efforts; or

(vii) an act of using a trademark that is identical or similar to a trademark registered in any Contracting State to the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the “Paris Convention”) or Contracting State to the Trademark Law Treaty by a person who is or was an agent or a representative of the owner of the trademark, within one year prior to the date on which such act was carried out, selling, distributing, importing or exporting the goods with such marks without due cause.

(3) “Infringement of trade secrets” shall mean any of the followings:

(i) acquiring trade secrets by theft, deception, coercion or other improper means (hereinafter referred to as “an act of improper acquisition”), or subsequently using or disclosing the improperly acquired trade secrets (including informing any specific person of the trade secret while under a duty to maintain secrecy; hereinafter, the same shall apply);

(ii) acquiring trade secrets or using or disclosing the trade secrets so acquired with knowledge that an act of improper acquisition has occurred in connection with the trade secrets or lack of such knowledge by gross negligence;

(iii) after acquiring trade secrets, using or disclosing the trade secrets so acquired with knowledge that an act of improper acquisition has occurred in connection with the trade secrets or lack of such knowledge by gross negligence;

(iv) using or disclosing trade secrets for the purpose of obtaining improper benefits or to damage the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;

(v) acquiring trade secrets, or using or disclosing the trade secrets so acquired with knowledge that the trade secrets have been disclosed in the manner provided in subparagraph (iv) above or such disclosure has occurred in connection with the trade secrets or lack of such knowledge by gross negligence;

(vi) after acquiring trade secrets, using or disclosing, the trade secrets so acquired with knowledge that the trade secrets were disclosed in the manner provided in subparagraph (iv) above or such disclosure has occurred in connection with the trade secrets or lack of such knowledge by gross negligence.

Chapter II Prohibition of Unfair Competitive Acts

Prohibition of Use of National Flags and National Emblems, etc.

3.—(1) No person shall use as a trademark a symbol which is identical with or similar to the national flag, emblem or other insignia of any Contracting State to the Paris Convention, a member of the World Trade Organization, or Contracting State to the Trademark Law Treaty, a mark of an international organization unless authorized by the State or international organization concerned.



(2) No person shall use as a trademark a symbol which is identical with or similar to any indication of inspection or certification of the government of any Contracting State to the Paris Convention, a member of the World Trade Organization or Contracting State to the Trademark Law Treaty unless authorized by the government of the State concerned.

Injunction Against Acts of Unfair Competition

4.—(1) A person who that his business interest is injured or threatened by an act of unfair competition may seek a court injunction or preventive order against a person who engages in the act of unfair competition.

(2) A person who deems that his business interest is injured or threatened by an act of unfair competition may additionally demand the destruction of the goods that were involved in the act of unfair competition, removal of facilities used during such act, or other measures necessary to prohibit or prevent such act.

Liability for Compensation of Damages from Acts of Unfair Competition

5. Any person who has intentionally or negligently caused damage to another person's business interest, shall be liable for compensation of damages. However, in the case provided for under 2(1)(iii), this provision shall apply only to the intentional act of unfair competition.

Restoration of Reputation Harmed by Act of Unfair Competition

6. With respect to a person whose business interest is injured by an act of unfair competition, the court may order the person who, intentionally or negligently, caused damages to the business reputation by an act of unfair competition to take necessary measures to restore the business reputation of the owner in lieu of or in addition to compensation for damages provided under Article 5. However, in the case provided for under 2(1) (iii), this provision shall apply only to the intentional act of unfair competition.

Investigation of Unfair Competitive Acts, etc.

7.—(1) If the Commissioner of the Korean Industrial Property Office deems it necessary to confirm an act of unfair competition or to confirm a violation of Article 3, he/she may have public officials enter business or manufacturing facilities and examine related documents or books, products, etc. or collect the least amount of products necessary for testing and inspecting them.

(2) Any public official who conducts an examination under paragraph (1) of this Article shall present a certificate indicating his competence to relevant persons.

Corrective Recommendation to Violations

8. If the Commissioner of the Korean Industrial Property Office deems that an act of unfair competition as defined under Article 2(1), or an act which is, in violation of Article 3,



has been committed by a person, he may issue a corrective recommendation to the person to cease such act or to remove or destroy the mark used in such act within a specific period which shall not exceed thirty days.

Hearing

9. If the Commissioner of the Korean Industrial Property Office deems that it is necessary to issue a corrective recommendation provided under Article 8, he shall hear the position of the party concerned, interested person or witness in accordance with the procedure prescribed by Presidential Decree.

Chapter III Protection of Trade Secrets

Injunction Against Infringement of Trade Secrets, etc.

10.—(1) A person who possesses trade secrets may seek a court prohibition or preventive order against a person who engages in infringement or is likely to engage in infringement of trade secrets, if the business interest of the person who possesses trade secrets is damaged or is likely to be damaged thereby.

(2) If the person who possesses trade secrets files a claim pursuant to Paragraph (1), such person may request the destruction of the goods that were used in the infringement, removal of the facilities used in the infringement or any other measures necessary to prohibit or prevent the act of infringement.

Compensation of Damages for Infringement of Trade Secrets

11. Any person who has caused damage to a person who possesses trade secrets through an intentional or negligent infringement of trade secrets shall be liable for compensation for the damages.

Restoration of Reputation of the Person Possessing Trade Secrets

12. With respect to a person who has caused a person possessing trade secrets to lose business reputation through an intentional or negligent infringement of trade secrets, the person possessing the trade secrets may request the court for necessary measures for the restoration of the business reputation, in lieu of or in addition to compensation for damages under Article 11.

Exception for Bona-Fide Persons

13.—(1) Articles 10 and 11 shall not apply to an act by a person who has properly acquired trade secrets through a transaction or uses or discloses the trade secrets within the scope of the rights he has properly acquired through such transaction.

(2) “The person who has properly acquired trade secrets” in Paragraph (1) above shall mean a person who has acquired the trade secrets without knowledge and without gross negligence that such trade secrets were improperly disclosed or that an act of improper acquisition or of improper disclosure has occurred in connection with the trade secrets at the time of acquisition under Article 2(3), (iii) and (vi).

Statute of Limitations

14. In case the infringement of trade secrets continues, the right to request the prohibition or prevention of the infringement of trade secrets pursuant to the provisions of Article 10 (1) shall expire unless such right is exercised within one year from the date of actual knowledge that the business interest of the person possessing the trade secrets was damaged or threatened to be damaged by an infringing person and of the actual knowledge of the infringing person’s identity. The same shall apply if three years has elapsed from the date when the act of infringement first occurred.

Chapter IV Supplementary Provisions

Presumption, etc., on Amount of Damage

14bis.—(1) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Article 5 or Article 11, damages may be calculated as the transferred amount multiplied by the presumed profit per unit that the person whose business interests have been infringed might have obtained in the absence of infringement during the period in which the infringer transferred the infringing product. Provided that, said compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of units actually sold. However, where a person whose business interests have been infringed was unable to sell his or her product for reasons other than unfair competition or trade secret infringement, a sum calculated according to the number of articles subject to said reasons shall be deducted.

(2) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets, claims compensation for damages under Article 5 or Article 11, the profits gained by the infringer through such act of infringement shall be presumed to be the amount of damages suffered by the person whose business interests were infringed.

(3) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets, claims compensation for damages under Article 5 or Article 11, he may claim the amount of money which he would normally be entitled to receive for the use of a mark applied to goods which was the object of the act of unfair competition or for the use of trade secrets which was the object of the act of unfair competition or for the use of trade secrets which was the object of the infringement as the amount of damages suffered by him.

(4) Where the amount of actual damages, which were suffered from the act of unfair competition or infringement of trade secrets, exceeds the amount referred to in paragraph (3) of this Article, the amount in excess may also be claimed as compensation for damage. In such a case, the court may take into consideration whether there has been either willingness or gross negligence on the part of the person who has infringed on such business interests in determining the amount of compensation for damages.

(5) In litigation relating to an act of unfair competition or infringement of trade secrets, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount on the basis of an examination of the evidence and a review of all the arguments.

Submission of Materials

14ter. In litigation relating to the infringement of business interests through an act of unfair competition or infringement of trade secrets, the court may, upon the request of either party, order the other party to submit materials necessary for the assessment of damages caused by the infringement. However, this provision shall not apply when the person possessing the materials has a justifiable reason for refusing to submit them.

Relationship with other Laws

15.—(1) If any provision of Articles 2 to 6 and Article 18(3) is inconsistent with the provisions of the Patent Law, Utility Model Law, Industrial Design Law, Trademark Law, the provisions of the Unfair Competition Prevention and Trade Secrets Protection Law shall not be applied.

(2) If any provisions of Article 2(1)(iv) to (vi), Articles 3 to 6, and Article 18(3) is inconsistent with the provisions of the Monopoly Regulation and Fair Trade Law, or Criminal Law relating to national flags and national emblems, the provisions of Unfair Competition Prevention and Trade Secrets Protection Law shall not be applied.

16. Deleted.

Delegation of Authority

17. The authority of the Commissioner of the Korean Industrial Property Office provided under the Unfair Competition Prevention Law may be partly delegated to the Mayor

of the City of Seoul, Mayors of the Metropolitan cities or the Governors of the Provinces in accordance with the provisions prescribed by Presidential Decree.

Penal Provision

18.—(1) A person falling under any of the following provisions shall be liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million Won:

1. A person who, as an employee or officer of a company, uses in a foreign country or discloses to a third person knowing that this will be used in the foreign country, trade secrets regarding useful technology of the company without any justifiable reason.

2. A person who was as an employee or officer of a company and uses in a foreign country or discloses to a third person knowing that this will be used in the foreign country, trade secrets regarding useful technology of the company for the purpose of gaining improper benefits or causing damage to the company in violation of the obligation to maintain secrecy of the trade secrets under a contractual or other duty.

(2) A person falling under any of the following provisions shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million Won:

1. A person who, as an employee or officer of a company, discloses trade secrets regarding useful technology of the company to a third person without any justifiable reason.

2. A person who was an employee or officer of a company and discloses trade secrets regarding useful technology of the company to a third person for the purpose of gaining improper benefits or causing damage to the company in violation of the obligation to maintain secrecy of the trade secrets under a contractual or other duty.

(3) A person falling under any of the following provisions shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 30 million Won:

(i) A person who engages in an act of unfair competition provided under Article 2(1).

(ii) A person who uses as a trademark a symbol that is identical or similar to the insignia or indication of the following in violation of Article 3.

1. The national flag, national emblem or other insignia of any Contracting State to the Paris Convention or a member of the World Trade Organization.

2. An indication of an International Organization.

3. An indication of inspection or certification of any Contracting State to the Paris Convention, a member of the World Trade Organization or an indication of inspection or certification to Trademark Law Treaty.

(4) The punishments of imprisonment and fine as referred to in paragraphs (1) and (2) of this Article may be imposed concurrently.



(5) Prosecution for the crimes under paragraphs (1) and, (2) of this Article shall be made only if the damaged person files a complaint, except when it is necessary for national security and important public welfare.

Dual Liability

19. If a representative of a legal person or an agent, employee or any other employees of a legal or natural person commits a violation that falls under Article 18(3) in connection with the business of the legal or natural person, the penalty for fines under such subparagraphs shall be imposed on the legal or natural person, in addition to the violator.

Administrative Fine

20.—(1) A person who refuses, interferes with or evades investigation on the collection of products by a public official concerned under Article 7(1), shall be subject to an administrative fine not exceeding 20 million Won.

(2) The administrative fine referred to in paragraph (1) of this Article shall be imposed and collected by the Commissioner of the Korean Industrial Property Office as prescribed by the Presidential Decree.

(3) Any person who objects to the imposition of an administrative fine under paragraph (2) of this Article may lodge a protest to the Commissioner of the Korean Industrial Property Office within thirty days from the date of notification of the imposition.

(4) The Commissioner of the Korean Industrial Property Office shall, upon receipt of a protest under paragraph (3) of this Article, notify a competent court without delay, which shall then adjudicate the case of the administrative fine according to the provisions of the Act on Non-Contentious Procedures.

(5) Where no objection has been raised within the period prescribed in paragraph (3) of this Article and where the fine has not been paid, the Commissioner of the Korean Industrial Property Office shall collect it in accordance with the rules concerning collection of national taxes in arrears through the head of the competent tax office.

Addendum

Date of Entry into Force

1. This Law shall be effective from July 1, 2001.



Exception on Penal Provisions

2. Notwithstanding Article 18(3), a person who engages in an act of unfair competition provided under Articles 2(1)(iii) and (VII) shall not be subject to the punishment under Article 18(3) until December 31, 2001.
