

UNFAIR COMPETITION PREVENTION AND Q TRADE SECRET Q PROTECTION ACT Q

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Note: This English version of the Unfair Competition Prevention and Trade Secret Protection Act is provided for information purpose only. This English version should neither be relied on either as an authoritative law nor an official translation of the Unfair Competition Prevention and Trade Secret Protection Act of Korea.

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CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Act 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.

Article 2 Definitions

The definitions of terms used in this Act are as follows:

(1) "Acts of unfair competition" means any of the following acts.

(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 widely known in the Republic of Korea as an indication of goods, or by selling, distributing, importing or exporting 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 widely known in the Republic of Korea as an indication of commerce;

(iii) in addition to the act of causing confusion provided in subparagraph (a) or (b) of this Article, 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 widely known in the Republic of 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 goods or in an advertisement, on the trade documents communicated to the public or in communications, or by selling, distributing, importing or exporting goods falsely marked with the 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 a mark that 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 that 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 a country in one of the subparagraphs by a person who is or was an agent or a representative of the owner of the trademark, within the one-year period before the date on which the act was carried out, and including acts of selling, distributing, importing or exporting goods with such marks without due course:

(a) any contracting state to the Paris Convention for the Protection of Industrial Property (referred to as “the Paris Convention”);

(b) a member state of the World Trade Organization; or

(c) a contracting state to the Trademark Law Treaty.

(viii) an act of registering, possessing, transferring or using a domain name by an unlawful holder for any of the following purposes where the domain name is identical or similar to another person's name, trade name, trademark or other mark widely recognized in the Republic of Korea:

(a) selling or assigning a mark, such as a trademark, to an lawful holder or a third party;

(b) preventing a lawful holder from registering or using a domain name;

(c) obtaining any commercial interests;

(ix) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape (referred to as the form, image, color, gloss or any combination of these, including the shape of any test product or product introduction) has been copied from the goods produced by another person. However, this provision does not apply to either of the following acts :

(a) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape has been copied from other goods more than three years after the date on which the shape of the other goods was completed, such as when the prototype was produced;

(b) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape has been copied from other goods that are identical to the goods ordinarily produced by another person (or from other goods whose function or utility is identical or similar to the goods ordinarily produced by another person);

(2) "Trade secret" means information, including a production method, sale method,

useful technical or business information for business activity, that is not known publicly, is the subject of considerable effort to maintain its secrecy and has independent economic value.

(3) "Infringement of trade secrets" means any of the following:

(i) acquiring trade secrets by theft, deception, coercion or other improper means (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);

(ii) acquiring trade secrets or using or disclosing them with the knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;

(iii) after trade secrets have been acquired, using or disclosing the them with knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;

(iv) using or disclosing trade secrets to obtain 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 them with the knowledge that the trade secrets have been disclosed in the manner provided in subparagraph (iv) of this Article or when gross negligence was the cause of the disclosure or the lack of such knowledge;

(vi) after acquiring trade secrets, using or disclosing them with the knowledge that they had been disclosed in a manner provided in subparagraph (iv) of this Article, or when gross negligence was the cause of the disclosure or the lack of such knowledge.

(4) "Domain name" means a number, a letter, or a sign, or any combination of these, that falls under an Internet address composed of numbers.

Article 2bis Business of Unfair Competition Prevention and Trade Secret Protection

The Commissioner of the Korean Intellectual Property Office may conduct research, education and promotion for the prevention of unfair competition, establish and operate an information management system for the prevention of unfair competition, and conduct other businesses as may be prescribed by a Presidential ordinance.

CHAPTER II PROHIBITION OF UNFAIR COMPETITIVE ACTS

Article 3 Prohibited Use of National Flags and National Emblems etc.

(1) A person may not use as a trademark a symbol that is identical 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) A person may not use as a trademark a symbol that is identical 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.

Article 4 Injunction against Acts of Unfair Competition

(1) A person whose 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) When a person seeks legal action under paragraph (1) of this Article, the person may request the following:

- (i) destruction of the goods that promote the act of unfair competition;
- (ii) removal of the facilities used during the act;
- (iii) cancellation of the domain name registration; and
- (iv) other measures necessary for the prevention of unfair competition.

Article 5 Liability for Compensation of Damages from Acts of Unfair Competition

A person who intentionally or negligently causes damage to another person's business interest is liable for compensation of damages. However, Article 2(i)(c) of this Act only applies to intentional acts of unfair competition

Article 6 Restoration of Reputation Harmed by Acts of Unfair Competition

The court may order a person who intentionally or negligently damages the business reputation of a person by an act of unfair competition to take the necessary measures to restore the business reputation of the owner in lieu of or in addition to compensation for

damages under Article 5. However, under Article 2(i) of this Act, this provision applies only to an intentional act of unfair competition.

Article 7 Investigation of Unfair Competitive Acts etc.

(1) Where the Commissioner of the Korean Intellectual Property Office considers that confirming an act of unfair competition under Article 2(i)(a) to (g) of this Act or a violation of Article 3 of this Act is necessary, the Commissioner may order public officials to enter a business or manufacturing facilities to examine related documents, books, products and so on, or to collect the least amount of products necessary for testing and inspecting them.

(2) Public officials who conduct an examination under paragraph (1) of this Article shall present a certificate indicating their competence to relevant persons.

Article 8 Corrective Recommendation to Violations

Where the Commissioner of the Korean Intellectual Property Office considers that an act of unfair competition as defined under Article 2(i)(a) to (g) of this Act or an act that violates Article 3 of this Act has been committed by a person, the Commissioner may issue a corrective recommendation to the person to cease the act or to remove or destroy the mark used in the act within a specific period not exceeding thirty days.

Article 9 Hearings

Where the Commissioner of the Korean Intellectual Property Office considers that issuing a corrective recommendation provided under Article 8 of this Act is necessary, the Commissioner shall hear the position of the party concerned, interested persons or witnesses in accordance with the procedure prescribed by Presidential Decree.

CHAPTER III PROTECTION OF TRADE SECRETS

Article 10 Injunction against Infringement of Trade Secrets etc.

(1) A person who possesses trade secrets may seek a court prohibition or preventive order against a person who infringes or is likely to infringe trade secrets, if the business interest of the person who possesses the trade secrets is damaged or is likely to be damaged by the infringement.

(2) If a person who possesses trade secrets files a claim under paragraph (1) of this Article, the person may request the destruction of goods used in the infringement, the removal of facilities used in the infringement or any other measures necessary to prohibit or prevent the infringement.

Article 11 Liability for Damages for Infringement of Trade Secrets

A person who damages a person who possesses trade secrets through an intentional or negligent infringement of trade secrets is liable for compensation for the damages.

Article 12 Restoration of Reputation of the Person Possessing Trade Secrets

For a person who damages the business reputation of a person possessing trade secrets through an intentional or negligent infringement of trade secrets, the person possessing the trade secrets may request the court for necessary measures to restore the business reputation in lieu of or in addition to compensation for damages under Article 11 of this Act.

Article 13 Exception for Bona Fide Persons

(1) Articles 10 and 12 of this Act do 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 the person has properly acquired through the transaction.

(2) The phrase "a person who has properly acquired trade secrets" in paragraph (1) of this Article means a person who has acquired trade secrets without the knowledge and without gross negligence that the trade secrets were improperly disclosed or that an act of improper acquisition or of improper disclosure of the trade secrets occurred when acquired under Article 2(iii)(c) or (f) of this Act.

Article 14 Statute of Limitations

When an infringement of trade secrets continues, the right to request the prohibition or prevention of the infringement of trade secrets under Article 10(1) of this Act expires unless the right is exercised within three years of 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 applies if ten years have elapsed after the date on which the act of infringement first occurred.

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 14^{bis} Presumption etc. on the Amount of Damages

(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 of this Act, damages may be calculated as the amount of subparagraph (i) multiplied by the amount of subparagraph (ii). However, the 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. If a person whose business interests have been infringed was unable to sell the product for reasons other than unfair competition or trade secret infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(i) the amount of goods transferred;

(ii) the profit per unit that the person whose business interests have been infringed could have been able to sell had the infringement not taken place. (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 Articles 5 or 11 of this Act, the profits gained by the infringer through the infringement are 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 of this Act, the person may claim as damages the amount of money that the person would normally be entitled to receive for using a mark applied to goods if the mark was the object of an act of unfair competition, or for using trade secrets that were the object of an act of unfair competition, or for using trade secrets that were the object of the infringement.

(4) Where the amount of actual damages caused by an act of unfair competition or infringement of trade secrets exceeds the amount referred to in paragraph (3) of this Article, the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who caused the infringement was willful or grossly negligent.

(5) Notwithstanding paragraphs (1) to (4) of this Article, in litigation related to an act of unfair competition or infringement of trade secrets where the court, owing to the nature of the case, recognizes the difficulty of proving the amount of damage that has occurred, the court may determine a reasonable amount after examining the evidence and reviewing all the arguments.

Article 14^{ter} Submission of Materials

In litigation related 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, unless the person possessing the materials has a justifiable reason for refusing to submit them

Article 15 Relationship with Other Acts

(1) If any provision of Articles 2 to 6 and 18(3) of this Act is inconsistent with the Patent Act, the Utility Model Act, the Industrial Design Protection Act or the Trademark Act, this Act does not apply.

(2) If any provision of Articles 2(i)(d) to (f), 3 to 6 and 18(3) of this Act is inconsistent with the Monopoly Regulation and Fair Trade Act, the Fair Trade and Advertising Act or the Criminal Act related to national flags and national emblems, this Act does not apply.

Article 16 Deleted

Article 17 Delegation of Authority and Entrustment of Business

(1) The authority of the Commissioner of the Korean Intellectual Property Office provided under this Act may be partly delegated to the mayor of the city of Seoul, mayors of the metropolitan cities, or the governors of the provinces or mayors of special independent provinces (referred to as “mayors or governors”) as prescribed by Presidential Decree.

(2) The Commissioner of the Korean Intellectual Property Office may entrust the business of research, education, promotion, and the establishment and operation of the information management system under Article 2*bis* to a legal entity or association designated by a Presidential ordinance (referred to as “special organization”) related to the protection of industrial property or the business of unfair competition prevention

(3) Where necessary for conducting the delegation under Article 1, mayors or governors may receive assistance from a special organization.

(4) Article 7(2) applies *mutatis mutandis* with regard to a person in the delegated business under paragraph (1) or the assistance duty under paragraph (3).

(5) The Commissioner of the Korean Intellectual Property Organization may subsidize a part or whole of the cost for the entrusted business under paragraph (2) and the assistance duty under paragraph (3).

Article 17bis Presumption as Public Official in the Application of Penalty

A person in the business of assistance under Article 17(3) shall be deemed a public official in applying penalties under Article 127 and Articles 129 to 132 of the Criminal Act.

Article 18 Penal Provision

(1) Any person who use the trade secret useful to a company in a foreign country or disclose the trade secret to a third party knowing it will be used in the foreign country for the purpose of obtaining improper benefits or damaging the company is liable to imprisonment with labor not exceeding ten years or to a fine exceeding twice of pecuniary profit to not exceeding ten times of it.

(2) Any person who acquire or use the trade secret useful to a company or disclose the trade secret to a third party for the purpose of obtaining improper benefits or damaging the company is liable to imprisonment with labor not exceeding five years or to a fine exceeding twice of pecuniary profit to not exceeding ten times of it.

(3) A person falling under either of the following subparagraphs is 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 under Article 2(i) (excluding (h) and (i)) of this Act;

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

(a) the national flag, national emblem or other insignia of any contracting state to the Paris Convention or a member of the World Trade Organization.

(b) an indication of an International Organization;

(c) 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 imprisonment and fine referred to in paragraphs (1) and (2) of this Article may be imposed concurrently.

(5) Deleted

Article 18bis Attempted Crime

Any person who attempts to commit a crime under Article 18(1) and (2) of this Act may be punished.

Article 18ter Criminal Intent and Conspiracy

(1) A person who intends or conspires to commit a crime under Article 18(1) is liable to imprisonment with labor not exceeding three years or a fine not exceeding 20 million won.

(2) A person who intends or conspires to commit a crime under Article 18(2) of this Act is liable to imprisonment with labor not exceeding two years or a fine not exceeding 10 million won

Article 19 Dual Liability

Where a representative of a legal entity or an agent, an employee or any other servant of a legal or natural person commits an act under Articles 18(1) to (3) with regard to the business of the legal or natural person, the legal person, in addition to the offender, is liable to a fine as prescribed in relevant provision. However, this provision shall not apply where the legal or natural person exercised reasonable care and supervision with regard to the business to prevent the acts of violation.

Article 20 Administrative Fine

(1) A person who refuses, interferes with or evades investigation on the collection of products by a public official concerned under Article 7(1) of this Act is liable to an administrative fine not exceeding 20 million won.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) of this Article may lodge a protest with the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Upon receipt of a protest under paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(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 Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

ADDENDUM <No. 3897, December 31, 1986>

This Act enters into force on January 1, 1987.

ADDENDUM <No. 4478, December 31, 1991>

Article 1 Date of Entry into Force

This Act enters into force within a year of its promulgation on a date determined by Presidential Decree. (Presidential Decree No. 13781, which was signed on December 14, 1992, enters into force on December 15, 1992.)

Article 2 Transitional Measures on the Infringement of Trade Secrets before the

Enforcement of this Act Amended Articles 10 to 12 and 18(1)(iii) of this Act do not apply to infringements of trade secrets before this Act enters into force. The same applies when a person who acquired or used a trade secret before this Act entered into force uses the trade secret after this Act enters into force.

ADDENDUM (Amendment of the Architecture Act and Other Acts Following the Change of the Names of the Government Ministries)
<No. 5454, December 13, 1997>

This Act enters into force on January 1, 1998. (Proviso deleted.)

ADDENDUM <No. 5621, December 31, 1998>

Article 1 Date of Entry into Force

This Act enters into force on January 1, 1999.

Article 2 Transitional Measures on Penal Provisions

The previous provisions govern the application of penal provisions to acts that infringe trade secrets before this Act enters into force.

Article 3 Transitional Measures on Extinctive Prescription

Notwithstanding amended Article 14 of this Act, the previous provisions apply to the extinctive prescription of the right to discontinue or refrain an act of trade secret infringement before this Act enters into force.

ADDENDUM (Fair Labeling and Advertising Act) <No. 5814, February 5, 1999>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 1999.

Articles 2 and 3 Deleted

Article 4 Amendment of Other Acts

(1) Deleted.

(2) The following provision under the Unfair Competition Prevention and Trade Secret Protection Act is amended as follows:

In Article 15, "the Monopoly Regulation and Fair Trade Act" reads "the Monopoly Regulation and Fair Trade Act and Fair Labeling and Advertising Act".

Article 5 Deleted

ADDENDUM <No. 6421, February 3, 2001>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2001.

Article 2 Exception on Penal Provision

Notwithstanding Article 18(3) of this Act, a person who engages in an act of unfair competition under Article 2(1)(iii) and (vii) of this Act is only liable to the punishment under Article 18(3) of this Act on or after December 31, 2001.

ADDENDUM <No. 7095, January 20, 2004>

Article 1 Date of Entry into Force

This Act enters into force six months after the date of promulgation.

Article 2 Transitional Measures

Any person who violates Article 18(1) and (2) of this Act before the revision of this Act enters into force is subject to the previous provisions.

ADDENDUM (Design Protection Act) <No. 7289, December 31, 2004>

Article 1 Date of Entry into Force

This Act enters into force six months after the date of promulgation.

Articles 2 to 4 Deleted

Article 5 Amendment of Other Acts

(1) to (7) Deleted.

(8) The following provisions of the Unfair Competition Prevention and Trade Secret Protection Act are amended as follows.

In Article 15(1), "the Design [uijiang] Act" reads "the Design [dizain] Protection Act".

(9) to (17) Deleted.