

**UNFAIR COMPETITION
PREVENTION AND TRADE SECRET PROTECTION ACT**

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to maintain the order of sound transactions by preventing unfair competitive acts, such as unjust use of another person's trademark, trade name, etc., known to the public in Korea, and any act infringing on another person's trade secret.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 2 (Definitions)

The definitions of terms used in this Act shall be as follows:

1. The term "unfair competitive act" means any act falling under any of the following items:

(a) Creating confusion between one's own goods and any other person's goods, by using any one identical with or similar to a name, trade name, trademark, container or package of goods of the other person, or a mark indicating the other person's goods, known to the public in Korea, or by selling, distributing, importing or exporting goods using any of the above enumerated manners;

(b) Creating confusion with any other person's business facilities or activities by using any one identical with or similar to the other person's name, trade name, or emblem, or other mark indicating the other person's business which is known to the public in Korea;

(c) Other than creating confusion under items (a) and (b), damaging the identity of mark or the fame of any other person, by using any one identical with or similar to a name, trade name, trademark, or container and package of goods of the other person, or other mark indicating the other person's goods or business, known to the public in Korea, without any justifiable grounds prescribed by Presidential Decree, such as non-commercial uses, or by selling, distributing, importing or exporting goods using any of the above enumerated manners;

(d) Misleading the public to understand the place of origin of any goods either by falsely marking that place on any commercial document or communication, in said goods or any advertisement thereof or in any manner of misleading the general public, or by selling, distributing, importing or exporting goods bearing such false mark;

(e) Making a mark misleading people to understand as if any goods were produced or processed in an area other than the place where said goods are produced, manufactured or processed, on any commercial document or communication, in said goods or any advertisement thereof, or in any manner of misleading the general public, or selling, distributing, importing or exporting goods bearing such mark;

(f) Assuming any other person's goods, or publicizing any goods or making a mark in any manner of leading the public to misunderstand their quality, contents, manufacturing process, use, or quantity, in latter goods or advertisement thereof, or selling, distributing, importing or exporting goods using such method or mark;

(g) Using the relevant trademark, without any justifiable grounds, on the goods identical with or similar to the designated goods of the trademark, or selling, distributing, exporting, or importing the goods that use the trademark by an agent or a representative of a holder of the right to a trademark registered in any of the following countries or to a similar trademark, or by a person who was an agent or a representative one year before such act was conducted:

(i) Any party to the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the "Paris Convention");

(ii) Any member state of the World Trade Organization;

(iii) Any signatory state of the Trademark Law Treaty;

(h) Registering, holding, transferring or using the domain name identical with or similar to the name, firm name, trademark, or other mark of any other person, which is widely known in Korea by any person who holds no justifiable title to do so for any of the following purposes:

(i) The purpose of selling or renting marks, including trademarks, to any person who holds a justifiable title thereto or any third party;

(ii) The purpose of impeding the registration and use of the domain name by any person who holds the justifiable title therefor;

(iii) Other purpose of making commercial profits;

(i) Transferring, renting, exhibiting, importing or exporting goods manufactured by counterfeiting the form (referring to the shape, appearance, color and gloss or the combined one of them, including the form of test products and the form in goods brochure; hereinafter the same shall apply) of goods manufactured by other person: Provided, That any of the following acts shall be excluded here from:

(i) Transferring, renting, exhibiting, importing or exporting goods manufactured by counterfeiting the form of goods for which three years elapse from the date on which the form of the goods, including test products, takes shape;

(ii) Transferring, renting, exhibiting, importing or exporting goods manufactured by counterfeiting the common form of goods identical to goods manufactured by any other person (where the goods of the same kind are non-existent, referring to the goods identical or similar to other goods in terms of function and efficiency);

2. The term "trade secret" means any technical or operational information useful for any production and sale methods and other business activities, which is not known to the public, has an independent economic value, and has been maintained in secret by considerable effort;

3. The term "act of infringing on trade secret" means any of the following acts:

(a) Obtaining any trade secret by a larceny, fraud, menace, or other unfair means (hereinafter referred to as "unfair obtaining act"), or using trade secret so obtained or disclosing it to the public (including informing any specific person thereof while keeping it undisclosed; hereinafter the same shall apply);

(b) Obtaining any trade secret with knowing the fact that any unfair obtaining act was involved, or without knowing such fact by gross negligence, or using trade secret so obtained or disclosing it to the public;

(c) Using any trade secret or disclosing it to the public with knowing the fact that any unfair obtaining act was involved after obtaining it, or without knowing such fact by gross negligence;

(d) An act that a person obliged to keep any trade secret undisclosed owing to any contractual duty or otherwise, uses or discloses it to the public with the intention to obtain any unfair profit or to inflict any damage on the person holding it;

(e) Obtaining any trade secret with knowing the fact that it is disclosed to the public in such manner as provided for in item (d) above or the fact that such disclosing act was involved, or without knowing such fact by gross negligence, or using said trade secret so obtained or disclosing it to the public;

(f) Using any trade secret or disclosing it to the public with knowing the fact that it is disclosed to the public in such manner as provided for in item (d) or the fact that such disclosing act was involved after obtaining it, or without knowing such fact by gross negligence;

4. The term "domain name" means figures, letters, signs or the combined ones of them that are equivalent to digitalized addresses on the Internet.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 2-2 (Business for Unfair Competition Prevention and Trade Secret Protection)

The Commissioner of the Korean Intellectual Property Office may, for prevention of unfair competitive act and protection of trade secret, engage in research, education and public relations,

construction and operation of an information management system for unfair competition prevention, and other business prescribed by Presidential Decree.

[This Article Newly Inserted by Act No. 9537, Mar. 25, 2009]

CHAPTER II PROHIBITION, ETC. OF UNFAIR COMPETITIVE ACTS

Article 3 (Prohibition of Use of National Flag or Emblem, etc.)

(1) Nothing identical with or similar to the national flag or emblem or other badges of a party to the Paris Convention, a member state of the World Trade Organization, or a signatory state of the Trademark Law Treaty, or a mark of any international organization, may be used as trademark: Provided, That the same shall not apply where such use is permitted by the relevant state or international organization.

(2) Nothing identical with or similar to any mark for a control or certification which is used by the government of a party to the Paris Convention, a member state of the World Trade Organization, or a signatory state of the Trademark Law Treaty, may be used as trademark: Provided, That the same shall not apply where such use is permitted by the government of the relevant state.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 4 (Claim for Prohibition of Unfair Competitive Act)

(1) Any person whose business profit is or might be infringed by any un- fair competitive act, may file a claim before a court for the prohibition or prevention of such unfair competitive act against a person committing or attempting to do such act.

(2) When the person files the claim referred to in paragraph (1), he/she may also file a claim for the measures in the following subparagraphs:

1. Disuse of goods that have constituted unfair competitive acts;
2. Removal of facilities that are used for unfair competitive acts;
3. Cancellation of registration of the domain name which became the object of unfair competitive acts;
4. Other measures necessary to prohibit or prevent unfair competitive acts.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 5 (Liability for Damages Caused by Unfair Competitive Act)

Any person who infringes on another person's business profit and inflicts any damage on another person by an unfair competitive act committed intentionally or by negligence (referring exclusively to the unfair competitive acts committed intentionally in cases of subparagraph 1 (c) of Article 2), shall be liable to compensate such damage.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 6 (Restoration of Credit Lost by Unfair Competitive Act)

A court may, upon receiving a claim from a person whose business profit is infringed on by an unfair competitive act, order a person who has intentionally or negligently downgraded another person's business credit by the unfair competitive act (referring exclusively to the unfair competitive acts committed intentionally in cases of subparagraph 1 (c) of Article 2), to take any measures necessary for restoring the business credit in addition to or in lieu of compensation for damage as prescribed in Article 5.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 7 (Investigation, etc. into Unfair Competitive Act)

(1) Where the Commissioner of the Korean Intellectual Property Office deems it necessary to confirm the unfair competitive acts provided for in subparagraph 1 (a) through (g) of Article 2 or a violation of the provisions of Article 3, he/she may have the relevant public official enter the business facilities or manufacturing facilities to investigate into the relevant documents, books, or products or collect and examine the minimum amount of products necessary for investigation.

(2) A public official who conducts investigation, etc. under paragraph (1) shall carry a certificate indicating his/her authority and show it to interested parties.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 8 (Recommendation on Correction of Violations)

If the Commissioner of the Korean Intellectual Property Office deems that there is an unfair competitive act provided for in subparagraph 1 (a) through (g) of Article 2 or a violation of the provisions of Article 3, he/she may make to the violator any recommendation necessary for correcting it, such as discontinuance of said act, removal or disuse of the relevant mark and so forth, with a prescribed period of up to 30 days.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 9 (Hearing of Opinion)

If it is deemed necessary for recommending the correction as prescribed in Article 8, the Commissioner of the Korean Intellectual Property Office shall hear the opinion of the relevant party, interested person or witness as prescribed by Presidential Decree.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

CHAPTER III PROTECTION OF TRADE SECRET

Article 10 (Claim for Prohibition of Act Infringing on Trade Secret)

(1) If any business profit is or might be infringed on by any act infringing on the trade secret, the person who holds said secret may file an claim before the court for prohibition or prevention of said act against the person who infringed or intends to infringe on the trade secret.

(2) The person holding the trade secret may, in filing a claim as referred to in paragraph (1), additionally claim a disuse of anything constituting the infringing act, removal of facilities used for said act, or any measures required for its prohibition or prevention.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 11 (Liability for Damage Caused by Infringement on Trade Secret)

Any person who has inflicted any damage on a person holding a trade secret by infringing on any business profit through an act intentionally or negligently infringing on such trade secret, shall be liable to compensate such damage.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 12 (Restoration of Credit of Person Holding Trade Secret)

A court may, upon a request of a person holding a trade secret, order a person who has intentionally or negligently downgraded such business credit of a person holding a trade secret by any act infringing on said secret, to take measures required for restoring such business credit, in addition to or in lieu of the compensation for damages as prescribed in Article 11.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 13 (Special Cases on Bona Fide Person)

(1) The provisions of Articles 10 through 12 shall not apply to using or disclosing by a person who has lawfully obtained a trade secret through a transaction, within the limit allowed owing to said transaction.

(2) For the purpose of paragraph (1), the term "person who has lawfully obtained a trade secret" means a person who has obtained such secret without knowing, by no gross negligence, the fact that the trade secret was unfairly disclosed, or the fact that any unfair obtaining or disclosing act was involved, at the time when he/she has obtained it as prescribed in subparagraph 3 (c) or (f) of Article 2.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 14 (Prescription)

The right to file a claim for prohibition or prevention of an act infringing on any trade secret as prescribed in Article 10 (1), shall be extinguished by prescription, if it is not exercised for three years after the person holding said secret comes to know the fact that where an act infringing on said secret continues, his/her business profit is or might be infringed by such act, and the person who has committed such act. The same shall also apply where ten years have passed since such infringing act began.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 14-2 (Presumption of Damages)

(1) Where any person whose business profits are infringed by an unfair competitive act or an act of infringing on trade secrets requests the compensation of damage under Article 5 or 11, and where the person who has infringed on the business profits transfers the goods causing the unfair competitive act or the act of infringing on trade secrets, the amount obtained by multiplying the quantity in subparagraph 1 by the profit per unit quantity in subparagraph 2, may be made as the damages of the person whose business profits are infringed. In such cases, the damages shall be limited to the amount obtained by multiplying the quantity, calculated by deducting the volume of actual sales from the volume of possible production by the person whose business profits are infringed, by the profit amount per unit quantity: Provided, That where the person whose business profits are infringed faces the situation under which he/she is unable to sell due to other reasons than the unfair competitive act or the act of infringing on trade secrets, the amount conforming to the unsold quantity due to other reasons than the unfair competitive act or the act of infringing on trade secrets, shall be deducted:

1. Quantity of goods that have been transferred;
2. Profit per unit quantity of the goods, which the person whose business profits are infringed would have been able to sell if there had not been unfair competitive acts or acts of infringing on trade secrets.

(2) Where a person whose business profit is infringed by an unfair competitive act or an act of infringing on trade secrets requests compensation for damages under Article 5 or 11, if the person who infringes the profit gets any gain by such offense, the amount of such gain shall be presumed to be the amount of damage sustained by the person whose business profit is infringed.

(3) Where a person whose business profit is infringed by an unfair competitive act or an act of infringing on trade secrets requests compensation for damages under Article 5 or 11, he/she may request compensation for damages by considering the amount equivalent to that which he/she

may usually receive for the use of a mark, such as a trademark, put on the goods, etc. subjected to the unfair competitive act or for the use of the trade secrets infringed, as the amount of damage which he/she sustains.

(4) Where the amount of damage which is sustained by an unfair competitive act or an act of infringing on trade secrets exceeds the amount under paragraph (3), the request for damages may be made even to the excess. In such cases, if the offense against the business profit is committed with no intent or gross negligence by the person who infringed on the trade secret, a court may take this into account in calculating the amount of damage.

(5) Where it is extremely difficult to establish the facts to prove the amount of damage in view of the nature of relevant facts, while it is recognized that the damage has been incurred, in the lawsuit for the unfair competitive act or the act of infringing on trade secrets, the court may recognize a reasonable amount of damage on the basis of the entire tenor of oral proceedings and the results of evidence investigations, notwithstanding paragraphs (1) through (4).
[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 14-3 (Submission of Data)

In a lawsuit alleging the infringement of business profits by an unfair competitive act or an act of infringing on trade secrets, a court may, upon the request of a party, order the other party to submit such data as may be necessary to calculate the amount of damage incurred by the offense: Provided, That the same shall not apply where the holder of the data has a good reason for the refusal of the submission thereof.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 15 (Relation to other Acts)

(1) If there are any provisions of the Patent Act, the Utility Model Act, the Design Protection Act, or the Trademark Act which are different from those of Articles 2 through 6 and 18 (3) of this Act, such provisions of the relevant Acts shall preferentially apply.

(2) If there are any provisions of the national flag or emblem of the Monopoly Regulation and Fair Trade Act, the Act on Fair Indication and Advertisement, or the Criminal Act which are different from those of subparagraph 1 (d) through (f) of Article 2 and Articles 3 through 6 and 18 (3) of this Act, such provisions of the relevant Acts shall preferentially apply.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 16 Deleted. <by Act No. 5621, Dec. 31, 1998>

Article 17 (Delegation of Authority and Entrustment of Duties)

(1) The authority of the Commissioner of the Korean Intellectual Property Office, which is prescribed by this Act, may be delegated partially to the Special Metropolitan City Mayor, a Metropolitan City Mayor, a Do Governor, or the Governor of a Special Self-Governing Province (hereinafter referred to as the "Mayor/Do Governor") as prescribed by Presidential Decree.
<Amended by Act No. 9537, Mar. 25, 2009>

(2) The Commissioner of the Korean Intellectual Property Office may entrust the duties of research, education and public relations and construction and operation of the information management system provided for in Article 2-2 to any juristic person or an organization (hereafter referred to as the "specialized organization" in this Article) related to the duties of

protection of industrial property rights or prevention of unfair competition prescribed by Presidential Decree. <Newly Inserted by Act No. 9537, Mar. 25, 2009>

(3) The Mayor/Do Governor may receive support from the specialized organization where it is necessary for performing the entrusted duties provided for in paragraph (1). <Newly Inserted by Act No. 9537, Mar. 25, 2009>

(4) Article 7 (2) shall apply mutatis mutandis to those who engage in the entrusted duties provided for in paragraph (1) and the support duties provided for in paragraph (3). <Newly Inserted by Act No. 9537, Mar. 25, 2009>

(5) The Commissioner of the Korean Intellectual Property Office may subsidize the expenses, in whole or in part, to be involved in the entrusted duties provided for in paragraph (2) and the support duties provided for in paragraph (3) within budgetary limits. <Newly Inserted by Act No. 9537, Mar. 25, 2009>

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 17-2 (Legal Fiction as Public Officials in Application of Penal Provisions)

Those who engage in the support duties provided for in Article 17 (3) shall be deemed to be public officials in application of penal provisions under Articles 127 and 129 through 132 of the Criminal Act.

[This Article Newly Inserted by Act No. 9537, Mar. 25, 2009]

Article 18 (Penal Provisions)

(1) Any person who has made an illegal profit or used useful trade secrets of any enterprise abroad for the purpose of causing damage to such enterprise or acquired, used, or leaked such trade secrets to any third party knowing that they are used or will be used overseas shall be punished by imprisonment with prison labor for not more than ten years or by a fine equivalent to the amount ranging from not less than two times to not more than ten times the amount of the profit in property. <Amended by Act No. 9895, Dec. 30, 2009>

(2) Any person who has acquired and used useful trade secrets of any enterprise for the purpose of making an illegal profit or causing damage to the enterprise or leaked the trade secrets to any third party shall be punished by imprisonment with prison labor for not more than five years or by a fine equivalent to the amount ranging from not less than two times to not more than ten times the amount of the profit in property.

(3) Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than three years or by a fine of not exceeding 30 million won:

1. Any person who commits an unfair competitive act under subparagraph 1 of Article 2 (excluding items (h) and (i));

2. Any person who uses as trademark, in contravention of the provisions of Article 3, any one identical with or similar to the badges or marks falling under any of the following items:

(a) The national flag, emblem or other badges of a party to the Paris Convention, a member state of the World Trade Organization, or a signatory state of the Trademark Law Treaty;

(b) The mark of an international organization;

(c) The mark for supervision or certification which is used by the government of a party to the Paris Convention, a member state of the World Trade Organization, or a signatory state of the Trademark Law Treaty.

(4) The punishment of imprisonment and fines under paragraphs (1) and (2) may be concurrently imposed.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 18-2 (Attempted Crime)

Any person who has attempted a crime provided for in Article 18 (1) and (2) shall be punished.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 18-3 (Preparation and Plot)

(1) Any person who has prepared or plotted for the purpose of committing the crime provided for in Article 18 (1) shall be punished by imprisonment with prison labor for not more than three years or by a fine of not exceeding 20 million won.

(2) Any person who has prepared or plotted for the purpose of committing the crime provided for in Article 18 (2) shall be punished by imprisonment with prison labor for not more than two years or by a fine of not exceeding ten million won.

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

Article 19 (Joint Penal Provisions)

If a representative of a juristic person or an agent, employee or servant of a juristic person or an individual commits an offense falling under Article 18 (1) through (3) in connection with the activities of such juristic person or individual, not only shall such offender be punished accordingly, but the corporation or the individual shall also be punished by the fine prescribed in the relevant Articles: Provided, That this shall not apply where a juristic person or an individual is not negligent in paying a considerable attention to and supervising the relevant activities to prevent such offense.

[This Article Wholly Amended by Act No. 9225, Dec. 26, 2008]

Article 20 (Fines for Negligence)

(1) A person who refuses, interferes with, or evades the investigation or collection by the relevant public official under Article 7 (1) shall be punished by a fine for negligence of not exceeding 20 million won.

(2) Fines for negligence referred to in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office as prescribed by Presidential Decree.

(3) through (5) Deleted. <by Act No. 9895, Dec. 30, 2009>

[This Article Wholly Amended by Act No. 8767, Dec. 21, 2007]

ADDENDUM

This Act shall enter into force on January 1, 1987.

ADDENDA <Act No. 4478, Dec. 31, 1991>

(1) (Enforcement Date) This Act shall enter into force on the date determined by Presidential Decree within one year after the date of its promulgation.

[This Act shall enter into force on December 15, 1992 under the Presidential Decree No. 13781, December 14, 1992]

(2) (Transitional Measures concerning Act, etc. of Infringing on Trade Secret prior to Enforcement of this Act) The amended provisions of Articles 10 through 12, and 18 (1) 3 shall not apply to any act of infringing on a trade secret, which has been committed before this Act enters into force. The same shall also apply where any person who has obtained or used a trade secret before this Act enters into force uses such trade secret after this Act enters into force.

ADDENDUM <Act No. 5454, Dec. 13, 1997>

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDA <Act No. 5621, Dec. 31, 1998>

(1) (Enforcement Date) This Act shall enter into force on January 1, 1999.

(2) (Transitional Measures concerning Penal Provisions) In the application of penal provisions to a violation of trade secrets which has been committed before this Act enters into force, the former provisions shall apply.

(3) (Transitional Measures concerning Extinctive Prescription) Notwithstanding the amended provisions of Article 14, with respect to the extinctive prescription of the right to file a claim for prohibition or prevention of a violation of trade secrets which has been committed before this Act enters into force, the former provisions shall apply.

ADDENDA <Act No. 5814, Feb. 5, 1999>

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 1999.

Articles 2 through 5 Omitted.

ADDENDA <Act No. 6421, Feb. 3, 2001>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2001.

(2) (Special Cases concerning Application of Penal Provisions) With respect to the persons who have committed the unfair competitive acts under the amendments to subparagraph 1 (c) and (g) of Article 2, notwithstanding the provisions of Article 18 (3), the penal provisions under the same paragraph of the same Article shall not apply not later than December 31, 2001.

ADDENDA <Act No. 7095, Jan. 20, 2004>

(1) (Enforcement Date) This Act shall enter into force six months after the date of its promulgation.

(2) (Transitional Measures) Any person who has violated the former provisions of Article 18 (1) and (2) before this Act enters into force shall be governed by the former provisions.

ADDENDA <Act No. 7289, Dec. 31, 2004>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Articles 2 through 5 Omitted.

ADDENDUM <Act No. 8767, Dec. 21, 2007>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 9225, Dec. 26, 2008>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 9537, Mar. 25, 2009>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 9895, Dec. 30, 2009>

This Act shall enter into force three months after the date of its promulgation.