

# Unfair Competition Prevention Act

(Act No. 47 of May 19, 1993)

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## Chapter I General Provisions

(Purpose)

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

(Definitions)

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

- (i) the act of creating confusion with another person's goods or business by using an indication of goods or business (meaning a name, trade name, trademark, mark, container or packaging for goods which is connected with a person's operations, or any other indication of a person's goods or business; the same shall apply hereinafter) that is identical or similar to an indication of goods or business that is well-known among consumers as that of another person, or by assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through a telecommunications line goods that uses such an indication;
- (ii) the act of using an indication of goods or business that is identical or similar to another person's famous indication of goods or business as one's own, or of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications

- line goods that use such an indication;
- (iii) the act of assigning, leasing, displaying for the purpose of assignment or leasing, exporting or importing goods that imitate the configuration of another person's goods (excluding configuration that is indispensable for ensuring the function of said goods);
  - (iv) the act of acquiring a trade secret by theft, fraud, duress, or other wrongful means (hereinafter referred to as an "act of wrongful acquisition"), or the act of using or disclosing (including the disclosure in confidence to a specific person or persons; the same shall apply hereinafter) a trade secret through an act of wrongful acquisition;
  - (v) the act of acquiring a trade secret with the knowledge, or with gross negligence in not knowing, that there has been an intervening act of wrongful acquisition, or the act of using or disclosing a trade secret so acquired;
  - (vi) the act of using or disclosing an acquired trade secret after having learned, or having been grossly negligent in not learning, subsequent to its acquisition, that there has been an intervening act of wrongful acquisition;
  - (vii) the act of using or disclosing a trade secret that has been disclosed by the business operator that owns said trade secret (hereinafter referred to as the "owner") for the purpose of acquiring a wrongful gain, or causing injury to such owner;
  - (viii) the act of acquiring a trade secret with the knowledge, or with gross negligence in not knowing, that such trade secret's disclosure is an act of improper disclosure (meaning, in the case prescribed in the preceding item, the act of disclosing a trade secret for the purpose prescribed in said item, or the act of disclosing a trade secret in breach of a legal duty to maintain secrecy; the same shall apply hereinafter) or that there has been an intervening act of improper disclosure with regard to such trade secret, or the act of using or disclosing a trade secret so acquired;
  - (ix) the act of using or disclosing an acquired trade secret after having learned, or having been grossly negligent in not learning, subsequent to its acquisition, that such trade secret's disclosure was an act of improper disclosure or that there has been an intervening act of improper disclosure with regard to such trade secret;
  - (x) the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, or importing, a device (including a machine that incorporates such device and a set of parts for such device that can be easily assembled) with a function that makes it possible to view images, hear sound, or run programs, or record images, sound, or programs (hereinafter referred to as "to view images, etc." in this item) which are restricted by technological restriction measures that are used for business purposes (excluding

- technological restriction measures used to restrict all but specific persons from viewing images, hearing sound, or running programs, or recording images, sound, or programs), by interfering with the effectiveness of such technological restriction measures, or a data storage medium or machine on which a program with such function (including a combination of such a program with other programs) has been recorded; or the act of providing a program with such function over a telecommunications line (if such device or program has a combination of functions other than such function, this is limited to an act done in order to provide such a device or program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of such technological restriction measures);
- (xi) the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing, other than to specific persons, a device (including a machine that incorporates such device and a set of parts for such device that can be easily assembled) with a function that makes it possible to view images, hear sound, or run programs, or record images, sound, or programs (hereinafter referred to as "to view images, etc." in this item) which are restricted by technological restriction measures that are used for business purposes to restrict all but specific persons from viewing images, hearing sound, or running programs, or recording images, sound, or programs, by interfering with the effectiveness of such technological restriction measures or a data storage medium or machine on which a program with such function (including a combination of such a program with other programs) has been recorded; or the act of providing a program with such function over a telecommunications line, other than to a specific person (if such device or program has a combination of functions other than such function, this is limited to an act done in order to provide such device or program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of such technological restriction measures);
- (xii) the act of acquiring or holding a right to use a domain name that is identical or similar to another person's specific indication of goods or services (meaning a name, trade name, trademark, mark, or any other indication of goods or services which is connected with a person's operation), or the act of using any such domain name, for the purpose of acquiring a wrongful gain or causing injury to another person;
- (xiii) the act of making an indication on goods or services, or in an advertisement thereof or in trade documents, or correspondence, in a way that is likely to cause a misconception about 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 over a telecommunications line goods so indicated, or the act of providing services so indicated;
- (xiv) the act of making or circulating a false allegation that is injurious to the business reputation of another person with which one is in a competitive relationship;
- (xv) an act by the agent or representative, or a person who was, within one year of the date of the act, an agent or representative, of the owner of a right to a trademark (such right is limited to a right that is 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, paragraph (1), item (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 without the consent of the owner of such right, which constitutes the use of a trademark that is identical or similar to the trademark under such right on goods or services identical or similar to those connected with such right, which constitutes the assignment, delivery, display for the purpose of assignment or delivery, export, import or provision through a telecommunications line of goods that are similar or identical to the goods connected with that right and on which such trademark has been used, , or which constitutes the provision of services that are identical or similar to the services connected with such right, using such trademark.
- (2) The term "trademark" as used in this Act means a trademark as defined in Article 2, paragraph (1) of the Trademark Act.
- (3) The term "mark" as used in this Act means a mark as defined in Article 2, paragraph (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 can be perceived through the human senses by consumers when ordinary use is made of the goods.
- (5) The term "imitate" as used in this Act means the act of creating goods of practically identical configuration to that of another person's goods, based on the configuration of said goods.
- (6) The term "trade secret" as used in this Act means technical or business information useful for business 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 images from being viewed, sound from being heard, or programs from being run, or images, sound, or programs from being recorded, by electromagnetic means (meaning electronic means, magnetic means, or other means that cannot be perceived through the human senses), by a means

of recording or onto a data storage medium along with the image, sound, or program or transmitting signals to which a viewing machine, etc. (meaning a machine used for viewing images, hearing sound, or running programs, or recording images, sound, or programs; the same shall apply hereinafter) has a specific reaction, or by a means of converting images, sound, or programs and recording on a data storage device or transmitting them, in a way that requires a specific conversion by the viewing machine, etc.

- (8) The term "program" as used in this Act means a set of instructions to a computer so that a specific result can be obtained.
- (9) The term "domain name" as used in this Act means letters, numbers, signs, or other symbols or combination thereof that correspond to the combination of numbers, signs, letters assigned to identify individual computers on the Internet.
- (10) The term "articles" as used in this Act includes programs.

## **Chapter II Demands for Injunction, Damages, etc.**

(Right to demand an injunction)

Article 3 (1) A person whose business interests have been infringed or are likely to be infringed due to unfair competition may make a demand to suspend or prevent that infringement, against the person that infringed or is likely to infringe such business interests.

- (2) When making the demand under the preceding paragraph, the person whose business interests have been infringed or are likely to be infringed due to unfair competition may demand the destruction of articles that gave rise to the act of infringement (including articles created through the act of infringement; the same shall apply in Article 5 (1)), removal of equipment used for the act of infringement, or other action required for suspending or preventing the infringement.

(Damages)

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

(Presumption of the amount of damage, etc.)

Article 5 (1) When a person whose business interests have been infringed due to the unfair competition listed in Article 2, paragraph (1), items (i) to (ix) or (xv) (with regard to the unfair competition listed in items (iv) to (ix) of the same

paragraph, only unfair competition that involves a technical secret (meaning a manufacturing method or other technical information useful for business activities, which is kept secret and not publicly known)) (hereinafter referred to as the "infringed party" in this paragraph) claims compensation for the damages suffered by it due to such infringement, from a person who has intentionally or negligently infringed such business interests, if the infringer has transferred articles that gave rise to the act of infringement, the quantity of the articles transferred (hereinafter referred to as the "number transferred" in this paragraph) multiplied by the amount of profit per unit of the articles that the infringed party could have sold in the absence of the act of infringement may be fixed as the amount of damages suffered by the infringed party, within the limits of an amount proportionate to the infringed party's ability to sell or conduct other acts concerning said articles; provided, however, that if there are circumstances that would have prevented the infringed party from selling a number of articles equivalent to all or part of the number transferred, an amount proportionate to the number of articles corresponding to such circumstances is deducted.

- (2) When a person whose business interests have been infringed due to unfair competition claims compensation for damages suffered by it from a person who intentionally or negligently infringed such business interests, if such person has earned a profit through the act of infringement, such amount of profit is presumed to be the amount of damages that the person whose business interests were infringed has suffered.
- (3) A person whose business interests have been infringed due to the unfair competition listed in Article 2, paragraph (1), items (i) to (ix), (xii) or (xv) may claim compensation against a person who has intentionally or negligently infringed such business interests, in an amount equivalent to the amount of money that the infringed party should have been entitled to receive for the act prescribed in the relevant of the following items for the classification of unfair competition listed therein, as the amount of damages suffered by the infringed party:
  - (i) unfair competition listed in Article 2, paragraph (1), items (i) or (ii) - use of an indication of goods or services pertaining to such infringement;
  - (ii) unfair competition listed in Article 2, paragraph (1), item (iii) - use of a configuration of goods pertaining to such infringement;
  - (iii) unfair competition listed in Article 2, paragraph (1), items (iv) to (ix) - use of a trade secret pertaining to such infringement;
  - (iv) unfair competition listed in Article 2, paragraph (1), item (xii) - use of a domain name pertaining to such infringement; and
  - (v) unfair competition listed in Article 2, paragraph (1), item (xv) - use of a trademark pertaining to such infringement.

- (4) The provisions of the preceding paragraph do not preclude a claim for compensation of damages exceeding the amount prescribed in that 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 to be compensated.

(Duty to clarify specific circumstances)

Article 6 In litigation involving the infringement of business interests through unfair competition, if the opponent denies the specific circumstances of the article or process which is being asserted, by the person alleging that his/her business interests have been infringed or are likely to be infringed by unfair competition, to have given rise to an act of infringement, the opponent must clarify the specific circumstances of his/her own actions; provided, however, that this does not apply when the opponent has reasonable grounds for not being able to clarify this.

(Submission of documents, etc.)

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

- (2) If the court finds it necessary for determining the presence of the justifiable grounds prescribed in the proviso to the preceding paragraph, it may require the holder of the documents to present said documents. In such a case, no person may request disclosure of the presented documents.
- (3) In a case under the preceding paragraph, if the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph and to hear opinions with regard to whether the justifiable grounds set forth in the proviso to paragraph (1) are present, the court may disclose said documents to the parties, etc. (meaning the parties (or if a party is a corporation, its representative) or the parties' agents (excluding counsel or assistants in court), employees, or other workers; the same shall apply hereinafter), their counsel, or their assistants in court.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the presentation of the object of any observation that is necessary for proving the relevant act of infringement in litigation involving the infringement of business interests due to unfair competition.

(Expert opinion for calculation of damages)

Article 8 In litigation involving the infringement of business interests due to unfair competition, if the court, at the motion of a party, orders an expert opinion on the matters necessary for calculating the damages caused by the act of infringement, the parties shall explain the matters necessary for forming an expert opinion to the expert witness.

(Determination of reasonable damages)

Article 9 In litigation involving the infringement of business interests due to unfair competition, if it is found that damage has been suffered but it is extremely difficult to prove the facts necessary for proving the amount of damage due to the nature of said facts, the court may determine a reasonable amount of damage based on the entire import of oral argument and the results of the examination of evidence.

(Protective orders)

Article 10 (1) In litigation involving the infringement of business interests due to unfair competition, if a prima facie showing has been made that a trade secret held by a party to the litigation falls under both of the following grounds, the court may, at the motion of the party and by means of a ruling, order a party, etc., counsel, or an assistant in court not to use the trade secret for any purpose other than in conducting the litigation, nor to disclose it to a person other than a person subject to the order under this paragraph which involves said trade secret; provided, however, that this does not apply if the party, etc., counsel, or assistant in court had already acquired or held the trade secret by means other than the reading of the brief prescribed in item (i) or the examination or disclosure of evidence prescribed in the same item:

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

(ii) the party's business activities that are 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 conducting the litigation or by its disclosure, and it is necessary to restrict the use or disclosure of said 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") must be made in writing and include the following matters:

(i) the person against whom the protective order would be issued;

(ii) facts that are sufficient for identifying the trade secret that would 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 written ruling on the person against whom the protective order has been issued.
- (4) A protective order takes effect when a written ruling is served on the person against whom the protective order has been issued.
- (5) If the court dismisses a motion for a protective order, the party may lodge an immediate appeal against the judicial decision.

(Rescission of a protective order)

- Article 11 (1) A person who filed a motion for a protective order or a person against whom a protective order has been issued may file a motion to rescind the protective order with the court where the case record is kept (when no such court exists, the court that issued the protective order) on the grounds that a requirement prescribed in the preceding Article, paragraph (1) has not been met or is no longer being met.
- (2) When the court makes a judicial decision on a motion to rescind a protective order, it shall serve a written ruling on the person who filed the motion and the opponent.
- (3) An immediate appeal may be lodged against a judicial decision on the motion to rescind a protective order.
- (4) A judicial decision to rescind a protective order does not take effect until it becomes final and binding.
- (5) If a court has made a judicial decision rescinding a protective order, and, during the same litigation in which the protective order was issued, a protective order for the protection of the same trade secret was issued against any person other than the person who filed the motion for the rescission of the protective order or the opponent, the court shall immediately notify that person of the judicial decision rescinding the protective order.

(Notice, etc. of a request to inspect, etc. the case record)

- Article 12 (1) If a court has made a ruling under Article 92, paragraph (1) of the Code of Civil Procedure (Act No. 109 of 1996) with regard to the case record in litigation in which a protective order has been issued (excluding litigation in which all the protective orders have been rescinded), and a party has requested to inspect, etc. a portion of the record that contains the secret prescribed in the same paragraph, if the person who followed the procedures for making such request has not had a protective order issued against him/her in the litigation, the court clerk shall, immediately after the request has been made, notify the party who filed the motion under the same paragraph (excluding the person

making said request; the same shall apply in paragraph 3) of the fact that such a request has been made.

- (2) In a case referred to in the preceding paragraph, the court clerk must not allow the party who followed the procedures for making the request under the same paragraph to inspect, etc. the portion of the record that contains the secret under the same paragraph until two weeks have passed since the date of the request (if a motion is filed for a protective order against the person who followed the procedures for making the request on or before such date, until the date on which the judicial 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 have filed a motion under Article 92, paragraph (1) of the Code of Civil Procedure to allow the party who has made the request under paragraph (1) to inspect, etc. the portion of the record that contains the secret.

(Suspension of the open examination of the parties)

Article 13 (1) In litigation involving the infringement of business interests due to unfair competition, if a party, etc. is to be examined as a party to the case, statutory agent, or 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 if the court, by the unanimous consent of the judges, finds that the party, etc. is unable to give a sufficient statement regarding the matter because it is clear that giving a statement regarding the matter in open court would significantly hinder the party's business activities that are based on the trade secret, and that, without said statement by the party, etc., the court will be unable to make the appropriate judicial decision from other evidence only on the presence or absence of infringement of business interests due to unfair competition which should be made based on the determination of said matter, the court may, by ruling, conduct a public examination on the matter without opening it to the public.

- (2) The court shall hear the opinions of the parties, etc. before making the ruling under the preceding paragraph.
- (3) In a case under the preceding paragraph, if the court finds it necessary, it may order a party, etc. to present a document that outlines the matters to be stated. In such a case, no person may request disclosure of the presented document.
- (4) If the court finds it necessary to disclose the documents under the second sentence of the preceding paragraph and to hear the opinions of the parties, etc., the counsel, or the assistant in court, the court may disclose the document to such person.

(5) If the court will conduct an examination on a matter without opening it to the public pursuant to the provisions of paragraph (1), it shall make a statement to that effect along with the reason therefor to the members of the public before having them leave the courtroom. When the examination on the matter ends, the court shall allow the members of the public to reenter the courtroom.

(Measures to restore business reputation)

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

(Extinctive prescription)

Article 15 The right to demand the suspension or prevention of infringement under the provisions of Article 3, paragraph (1), against an act of unfair competition listed in Article 2, paragraph (1), items (iv) to (ix) which involves the act of using a trade secret, is extinguished by prescription if the person committing such an act commits such act continuously and the holder of such right whose business interests have been infringed or are likely to be infringed by such act does not exercise this right within three years of learning of such fact and learning of the person committing such act. The same shall apply when ten years have elapsed from the time such act began.

### **Chapter III Acts Prohibited pursuant to International Agreement**

(Prohibition on the commercial use of a foreign state's national flag, etc.)

Article 16 (1) No person shall use, as a trademark, anything that is identical or similar to a foreign state's national flag, armorial bearing, or any other emblem specified by Ordinance of the Ministry of Economy, Trade and Industry (hereinafter referred to as a "foreign state's national flag, etc.") (such identical or similar thing is hereinafter referred to as an "emblem similar to a foreign state's national flag, etc."), nor shall any person assign, deliver, display for the purpose of assignment or delivery, export, import, or provide through a telecommunications line goods that use an insignia similar to a foreign state's national flag, etc. as their trademark, or provide services while using an emblem similar to a foreign state's national flag, etc. as a trademark; provided, however, that 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; the same shall apply hereinafter) for use of the foreign state's national flag, etc.

- (2) In addition to what is prescribed in the preceding paragraph, no person shall use the foreign state's national armorial bearings specified by Ordinance of the Ministry of Economy, Trade and Industry which is referred to in the preceding paragraph (hereinafter referred to as the "armorial bearings of a foreign state") in a manner that is likely to cause a misconception as to the place of origin of goods, nor shall any person assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods that use the armorial bearings of a foreign state or provide services while using the armorial bearings of a foreign state in such manner; provided, 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 armorial bearings of a foreign state.
- (3) No person shall use anything that is identical or similar to the seal or sign that the national or local government of a foreign state uses for control or certification purposes which is specified by Ordinance of the Ministry of Economy, Trade and Industry (hereinafter referred to as the "sign of a foreign national government, etc.") (such identical or similar thing is hereinafter referred to as a "sign similar to that of a foreign national government, etc.") as a trademark on goods or for services that are identical or similar to goods or services for which such sign of a foreign national government, etc. is used, nor assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods that use a sign similar to that of a foreign national government, etc. as their trademark or provide services while using a sign similar to that of a foreign national government, etc. as a trademark; provided, however, that 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 sign of a foreign national government, etc.

(Prohibition of commercial use of the mark of an international organization)  
Article 17 No person shall use anything that is identical or similar to a mark representing an international organization (meaning an intergovernmental international organization or an equivalent organization specified by Ordinance of the Ministry of Economy, Trade and Industry; the same shall apply hereinafter in this Article) which is specified by Ordinance of the Ministry of Economy, Trade and Industry (such identical or similar thing is hereinafter referred to as a "mark similar to that of an international organization") as a trademark, in a manner which is likely to cause a misconception as to the existence of a relationship with that international organization, nor assign, deliver, display for the purpose of assignment or delivery, export, import or provide through a telecommunications line, goods

that use a mark similar to that of an international organization as their trademark or provide services while using a mark similar to that of an international organization as a trademark, in such a manner; provided, however, that this shall not apply when the permission of such international organization has been obtained.

(Prohibition against wrongfully benefitting, etc. a foreign public officer, etc.)

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

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

- (i) a person engaged in public service for the national or local government of a foreign state;
- (ii) a person engaged in the business affairs of an entity established under a special foreign law to carry out specific business affairs in the public interest;
- (iii) a person engaged in the business affairs of an enterprise in which one or more of the national or local governments of foreign states directly owns a number of voting shares or an amount of capital subscription that exceeds 50 percent of that enterprise's total issued voting shares or total amount of subscribed capital, or in which the majority of the officers (meaning directors, auditors, council members, inspectors, liquidators, and other persons engaged in management of the business) are appointed or designated by one or more of the national or local governments of the foreign states, and to which special rights and interests are granted by the national or local government of the foreign states for performance of its business, or a person specified by a Cabinet Order as an equivalent person;
- (iv) a person engaged in public service for an international organization (meaning an international organization formed by governments or intergovernmental international organizations); or
- (v) a person engaged in the business affairs under the authority of the national or local government of a foreign state or an international organization, which have been delegated to such person by such organization.

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

(Exclusion from application, etc.)

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

- (i) unfair competition listed in Article 2, paragraph (1), items (i), (ii), (xiii), and (xv): the act of using or indicating a generic term 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 generic term) or an indication of goods or business that is in common usage for identical or similar goods or business (hereinafter collectively referred to as a "generic term, etc.") in the way that this is normally done, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications line, goods that use or indicate a generic name in the way that this is normally done (including the act of providing services while indicating or using a generic term, etc. in the way that this is normally done, in the case of unfair competition listed in items (xiii) and (xv) of the same paragraph);
- (ii) unfair competition listed in Article 2, paragraph (1), items (i), (ii), and (xv): the act of using one's own name with no wrongful purpose (meaning the purpose of acquiring a wrongful gain, the purpose of causing damage to others, or any other wrongful purpose; the same shall apply hereinafter), or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications line goods that use one's own name with no wrongful purpose (including an act of providing services while using one's own name with no wrongful purpose, in the case of unfair competition listed in the same item);
- (iii) unfair competition listed in Article 2, paragraph (1), item (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, since before said other person's indication of goods or business became well-known among consumers, or of a person who has succeeded to a business connected with such indication of goods or business, in using such indication of goods or business with no wrongful purpose, or in assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications line goods that use such indication of goods or business with no wrongful purpose;
- (iv) unfair competition listed in Article 2, paragraph (1), item (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, since before said

other person's indication of goods or business became famous, or of a person who has succeeded to a business connected with such indication of goods or business, in using such indication of goods or business with no wrongful purpose, or in assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications line goods that use such indication of goods or business with no wrongful purpose;

(v) unfair competition listed in Article 2, paragraph (1), item (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 since 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 assignment (limited to a person who, at the time of receiving such goods by assignment, was without knowledge that the goods imitated the configuration of another person's goods, and was without gross negligence in not knowing this) in assigning, leasing, displaying for the purpose of assignment or lease, exporting, or importing such goods;

(vi) unfair competition listed in Article 2, paragraph (1), item (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, was without knowledge that the disclosure of the trade secret was an act of improper disclosure or that there had been an intervening act of wrongful acquisition or act of improper disclosure with regard to that trade secret, and was without gross negligence in not knowing this), in using or disclosing the trade secret within the scope of authority acquired through such transaction;

(vii) unfair competition listed in Article 2, paragraph (1), item (x) and (xi) - the act of assigning, delivering, displaying, exporting, importing or providing through a telecommunications line, a device prescribed in Article 2, paragraph (1), item (x) and (xi) or data storage medium or machine on which a program prescribed in the same items has been recorded, which is used for testing or research in technological restriction measures,.

(2) A person whose business interests have been infringed or are likely to be infringed through any of the acts listed in item (ii) or (iii) of the preceding paragraph may request the person specified in each of the following items for the classification of acts listed in the relevant item, to use an appropriate indication in order to prevent confusion with his/her goods or business:

(i) acts listed in item (ii) of the preceding paragraph: the person using his/her own name (including the person who personally assigns, delivers, displays

- such goods for the purpose of assignment or delivery, exports such goods, imports such goods, or provides such goods through a telecommunications line goods that use his/her own name); or
- (ii) acts listed in item (iii) of the preceding paragraph: the person using the indication of goods or business that is identical or similar to the other person's indication of goods or business, and the person who has succeeded to a business connected to such indication of goods or business (including the person who personally assigns, delivers, displays for the purpose of assignment or delivery, exports, imports or provides through a telecommunications line, goods that use such indication of goods or business).

(Transitional measures)

Article 20 If a Cabinet Order or an Ordinance of the Ministry of Economy, Trade and Industry pursuant to the provisions of this Act is enacted, revised, or abolished, 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**

(Penal Provisions)

- Article 21 (1) A 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 through an act of fraud, etc. (meaning the act of deceiving, assaulting, or intimidating a person; the same shall apply hereinafter in this Article) or through the usurpation of control (meaning the act of stealing property, trespassing on a facility, making unauthorized access (meaning the act of unauthorized access prescribed in Article 3 of the Unauthorized Computer Access Act (Act No. 128 of 1999)), or in any other way prejudicing the control that the owner of a trade secret maintains; the same shall apply hereinafter in this Article) for the purpose of acquiring a wrongful gain or causing injury to such owner;
- (ii) a person who uses or discloses a trade secret acquired through an act of fraud, etc. or through the usurpation of control, for the purpose of acquiring a wrongful gain or causing injury to such owner;
- (iii) a person to whom the owner of a trade secret has revealed the trade secret, and who, for the purpose of acquiring a wrongful gain or causing injury to such owner, obtains the trade secret by any of the following means, in breach of the duty pertaining to the control of the trade secret:



- (a) embezzling a medium containing a trade secret, etc. (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 that represents a trade secret;
  - (b) reproducing a description or a record from a medium containing a trade secret, etc., or a property that represents a trade secret;
  - (c) not deleting a description or a record that should be deleted from a medium containing a trade secret, etc., and disguising this act as if the description or record in the medium containing the trade secret, etc. had been deleted.
  - (iv) a person to whom the owner of a trade secret has revealed such trade secret and who, for the purpose of acquiring a wrongful gain or causing injury to such owner, uses or discloses a trade secret obtained through the means set forth in "a" to "c" of the preceding item, in breach of the duty pertaining to the control of the trade secret
  - (v) a person who is the officer (meaning a council member, director, executive officer, executive member, inspector or auditor, or other equivalent person; the same shall apply in the following item) or employee of the owner of a trade secret, to whom the owner has revealed the trade secret and who, for the purpose of acquiring a wrongful gain or causing injury to such owner, uses or discloses such trade secret, in breach of the duty pertaining to the control of the trade secret (other than a person prescribed in the preceding item);
  - (vi) a person who is the officer or employee of the owner of a trade secret, to whom the owner has revealed the trade secret and who, for the purpose of acquiring a wrongful gain or causing injury to such owner, offers to disclose such trade secret, or receives a request to use or disclose such trade secret while at that job in breach of the duty pertaining to the control of the trade secret, and uses or discloses it after leaving that job (other than a person prescribed in item (iv))
  - (vii) a person who, for the purpose of acquiring a wrongful gain or causing injury to such owner, uses or discloses a trade secret acquired by a disclosure that constitutes an offence prescribed in item (ii) or the preceding three items
- (2) A 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 Article 2, paragraph (1), item (i) or (xiii);
  - (ii) a person who, for the purpose of acquiring a wrongful gain through the use of the reputation or fame of another person's famous indication of goods or

- business or for the purpose of injuring said reputation or fame, commits any act of unfair competition listed in Article 2, paragraph (1), item (ii);
- (iii) a person who, for the purpose of acquiring a wrongful gain, commits any act of unfair competition listed in Article 2, paragraph (1), item (iii);
- (iv) a person who, for the purpose of acquiring a wrongful gain or for the purpose of inflicting a loss on another person who is using technological restriction measures in his/her business, commits any act of unfair competition listed in Article 2, paragraph (1), item (x) or (xi);
- (v) a person who makes a false representation on goods or services or in an advertisement thereof or in trade documents, or correspondence, that is likely to cause a misconception 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 (other than a person prescribed in item (i));
- (vi) a person who violates a protective order; or
- (vii) a person who violates any provision of Articles 16, 17, or 18, paragraph (1).
- (3) The offenses prescribed in paragraph (1) and item 6 of the preceding paragraph may not be prosecuted without a complaint.
- (4) The offenses prescribed in paragraph (1), item (ii) and (iv) to (vii) shall also apply to a person who has committed such offense outside Japan in connection with a trade secret that was under control within Japan at the time of the act of fraud, etc. or the usurpation of control, or at the time the trade secret was revealed by its owner.
- (5) The offense prescribed in paragraph (2), item (vi) shall also apply to a person who has committed such offense outside Japan.
- (6) The offense prescribed in paragraph (2), item (vii) (limited to the part pertaining to Article 18, paragraph (1)) shall be governed by Article 3 of the Penal Code (Act No. 45 of 1907).
- (7) The provisions of paragraphs (1) and (2) shall not preclude application of penal provisions under the Penal Code or any other Act.

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

- (2) In a case referred to in the preceding paragraph, a complaint filed against the offender for an offense prescribed in paragraph (1), item (i), (ii), or (vii) or

paragraph (2), item (vi) of the preceding Article is also effective against the juridical person or the individual, and a complaint filed against the juridical person or the individual is also effective against said offender.

- (3) The period of prescription for the punishment by fine to which a judicial person or individual is subject pursuant to the provisions of paragraph (1) in regard to an act of violation under paragraph 1, item (i), (ii), or (vii) or paragraph 2 of the preceding Article is the same as that for the offenses prescribed in the provisions of the preceding Article.

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

(Protective rulings for trade secrets, etc.)

- Article 23 (1) When the court is handling a case involving a crime prescribed in Article 21, paragraph (1) or a crime prescribed in paragraph (1) of the preceding Article (limited to the part pertaining to Article 21, paragraph (1), item (i), (ii), and (vii)), and the victim, the victim's statutory agent, or the attorney entrusted by either of these persons files a petition not to reveal a matter in open court that would allow the identification of all or part of the information that constitutes the trade secret pertaining to the case, if the court finds it to be appropriate upon hearing the opinions of the accused or defense counsel, the court may set the scope for this, and rule that such matters will not be revealed in open court.
- (2) The petition referred to in the preceding paragraph must be made to the public prosecutor in advance. In such case, the public prosecutor shall notify the court of this, together with the prosecutor's opinion.
  - (3) When the court is handling a case prescribed in paragraph (1) and the public prosecutor, the accused, or defense counsel files a petition not to reveal a matter in open court that would allow all or part of the information that constitutes a trade secret held by the accused or other persons to be identified, if the court finds that the matter is indispensable as proof of the offense or for the defense of the accused but that there is a risk that revealing the matter in open court would significantly hinder the accused's or other persons' business activities that are based on the trade secret, and if the court finds it to be appropriate upon hearing the opinions of the opponent, the court may set the scope for this, and rule that such matters will not be revealed in open court.
  - (4) If the court has made a ruling prescribed in paragraph (1) or the preceding paragraph (hereinafter referred to as a "protective ruling"), and the court finds it to be necessary, upon hearing the opinions of the public prosecutor and the accused or defense counsel, the court may decide, in a ruling, on a term of address or other expression to use in lieu of the name or other expression for the matter that allows the constituent information of a trade secret to be

identified ("matter that allows the constituent information of a trade secret to be identified" means a matter that allows all or part of the information that constitutes a trade secret to be identified, which will not be revealed in open court pursuant to a protective ruling; the same shall apply hereinafter).

- (5) If the court has issued a protective ruling but has come to find that it is inappropriate for the matter that allows the constituent information of a trade secret to be identified not to be revealed in open court, or the case has ceased to be a 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), the court shall rescind, in a ruling, the whole or part of the protective ruling and the whole or part of the ruling prescribed in the preceding paragraph (hereinafter referred to as a "ruling on a term of address, etc.") pertaining to such protective ruling.

(Special provisions on the manner of reading out the charging sheet)

Article 24 If a protective ruling has been issued, the charging sheet must be read out under Article 291, paragraph (1) of the Code of Criminal Procedure in a manner that does not reveal the matter that allows the constituent information of a trade secret to be identified. In this case, the public prosecutor shall show the charge sheet to the accused.

(Limiting examinations, etc.)

Article 25 (1) If a protective ruling has been issued and examinations or statements by persons concerned in the case include the matter that allows the constituent information of a trade secret to be identified, unless limiting such examinations or statements could materially interfere with proof of the offense or could be substantially detrimental to the defense of the accused, the presiding judge may limit such questions or statements. The same shall apply to questions for the accused by persons concerned in the case.

- (2) The provisions of Article 295, paragraphs (4) and (5) of the Code of Criminal Procedure shall apply mutatis mutandis when the public prosecutor or attorney-at-law defense counsel has failed to obey an order pursuant to the provisions of the preceding paragraph.

(Examination of witnesses, etc. on a day other than a trial date)

Article 26 (1) When the court has issued a protective ruling, if the court examines a witness, expert witness, interpreter, or translator, or if the accused makes a statement voluntarily, and, upon hearing the opinions of the public prosecutor and the accused or defense counsel, 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 will include a matter that allows the constituent information of a trade secret to be identified and that revealing such matter in open court would significantly hinder the victim's, accused's, or other persons' business activities that are based on the trade secret, and the court finds that doing so is unavoidable in order to prevent such risk, the court may conduct the examination or the proceedings for asking the accused questions provided in Article 311 (2) and (3) of the Code of Criminal Procedure on a day other than a trial date.

(2) The provisions of Article 157, paragraphs (1) and (2), Article 158, paragraphs (2) and (3), Article 159, paragraph (1), Article 273, paragraph (2), Article 274 and Article 303 of the Code of Criminal Procedure shall apply mutatis mutandis to the proceedings for asking the statement of the accused's pursuant to the provisions of the preceding paragraph. In this case, the phrase "the accused or defense counsel" in Article 157, paragraph (1), Article 158, paragraph (3) and Article 159, paragraph (1) of the Code of Criminal Procedure is deemed to be replaced with "defense counsel, the co-defendants, or their defense counsel"; "the accused and defense counsel" in Article 158, paragraph (2) of said Code is deemed to be replaced with "defense counsel, the co-defendants, and their defense counsel"; "the trial date" in Article 273, paragraph (2) of said Code is deemed to be replaced with "the date of the proceedings for asking the statement of the accused pursuant to the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; "the trial date" in Article 274 of said Code is deemed to be replaced with "the date, time, and location of the proceedings for asking the statement of the accused pursuant to the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; "documents which contain the results of the examination of witnesses or other persons, inspections, seizure or search, and objects seized" in Article 303 of said Code is deemed to be replaced with "documents which contain the results of the proceedings for asking the statement of the accused pursuant to the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; and "documentary or material evidence" in the same Article is deemed to be replaced with the "documentary evidence".

(Order to produce or show a document that outlines the matters for examining, etc.)

Article 27 If the court finds it to be necessary in issuing a ruling on a term of address, etc. or in deciding that the examination or the proceedings for asking the statement of the accused will be conducted on a day other than a trial date pursuant to the provisions of the preceding Article, paragraph (1), the court may order the public prosecutor and the accused or defense counsel to produce

a document that outlines the matters involved in the examining or statements to be made by the persons concerned in the case or the statement the accused will be asked to give.

(Special provisions on the manner of reading out documentary evidence)

Article 28 If a protective ruling has been issued, the documentary evidence must be read out as under the provisions of Article 305 paragraph (1) or (2) of the Code of Criminal Procedure in a manner that does not reveal a matter that allows the constituent information of a trade secret to be identified.

(Rulings in pretrial conference procedures, etc.)

Article 29 The following actions may be taken in pretrial conference procedures and the interim conference procedures:

- (i) A protective ruling, a ruling on a term of address, etc., or a ruling rescinding these rulings; or
- (ii) A determination that the examination or the proceedings for asking the statement of the accused will be conducted on a day other than a trial date pursuant to the provisions of Article 26, paragraph (1).

(Request for protective handling of a trade secret in the disclosure of evidence)

Article 30 (1) If the public prosecutor or defense counsel finds that, in providing an opportunity to inspect documents or articles of evidence pursuant to the provisions of Article 299, paragraph (1) of the Code of Criminal Procedure in a case prescribed in Article 23, paragraph (1), there is a risk that revealing a matter that allows all or part of the information that constitutes a trade secret to be identified as prescribed in Article 23, paragraph (1) or (3) would significantly hinder the victim's, accused's, or other persons' business activities that are based on the trade secret, the public prosecutor or defense counsel may notify the opponent of this risk and request that the opportunity be provided in such a way that the parties concerned (including the accused) do not learn of such matters, unless such matters are necessary for proving the offense or investigating the offense, or for the defense of the accused; provided, however, that for a request that the opportunity be provided in such a way that the accused does not learn of such matters, this is limited solely to matters that are not written in the charging sheet.

(2) The provisions of the preceding paragraph shall apply mutatis mutandis when the public prosecutor or defense 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 as applied mutatis mutandis pursuant to the provisions of Article 316-28, paragraph (2) of said Code).

(Delegation to Supreme Court Rules)

Article 31 Beyond 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 Supreme Court Rules.

### **Supplementary Provisions [Extract] [Extract]**

(Effective date)

Article 1 This Act shall come into effect on the day specified by Cabinet Order, within a period not exceeding one year from the day of its promulgation.

(Transitional measures)

Article 2 Except as otherwise provided, the provisions of the post-revision Unfair Competition Prevention Act (hereinafter referred to as the "New Act") also apply to matters that arose before this Act came into effect; provided, however, that this does not preclude any effect that had arisen based on the pre-revision Unfair Competition Prevention Act (hereinafter referred to as the "Former Act").

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

- (i) an act that falls under Article 2, paragraph (1), item (ii) of the New Act (excluding an act that falls under item (i) of the same paragraph); or
- (ii) among the acts listed in Article 2, paragraph (1), item (xiii) of the New Act, the act of making an indication on services, or in an advertisement thereof or in trade documents, or correspondence, in a way that is likely to cause a misconception as to the quality, contents, purpose, or quantity of such services, or the act of providing services while making 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, paragraph (1), items (iv) to (vi), item (viii), and item (ix) of the New Act in connection with an act of wrongful acquisition prescribed in item (iv) of the same paragraph or an act of improper disclosure prescribed in item (viii) of the same paragraph that took place before June 15, 1991, if such acts of unfair competition are committed on or after such date (excluding acts listed in the following items), or to the continuation of the act of using a trade secret prescribed in item (vii) of the same paragraph that was commenced before such date:

- (i) the act of disclosing a trade secret as prescribed in Article 2, paragraph (1), items (iv) to (vi), item (viii), and item (ix) of the New Act; or

(ii) the act of acquiring a trade secret as prescribed in Article 2, paragraph (1), item (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 litigation filed after this Act comes into effect, and with regard to litigation filed before this Act comes into effect, the provisions then in force shall remain applicable.

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

Article 7 A person who has obtained a permission prescribed in Article 4, paragraphs (1) to (3) or Article 4-2 of the Former Act before this Act comes into effect is deemed to have obtained a permission respectively prescribed in the provisos to Article 16, paragraphs (1) to (3) or the proviso to Article 17 of the New Act.

Article 8 The provisions of Article 16 of the New Act shall not apply to a person who has obtained the permission prescribed in Article 4, paragraph (4) of the Former Act as of the time this Act comes into effect.

Article 9 The provisions of Article 17 of the New Act shall not apply to the continuation of anything that falls under the category of the act of using a mark similar to that of an international organization (excluding a mark identical or similar to the emblem, flag, or other insignia, 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 that of a private international organization") as a trademark, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, providing through a telecommunications line, goods that use a mark similar to that of a private international organization as a trademark or providing services using a mark similar to that of a private international organization as a trademark, which is prescribed in Article 17 of the New Act, if such act is commenced before this Act comes into effect.

Article 10 The provisions of Article 21 (excluding the part pertaining to Article 21, paragraph (2), item (vi)) and Article 22 of the New Act shall not apply to the continuation of an act that falls under Article 3, item (ii) of the



Supplementary Provisions of this Act, if such an act was commenced before this Act comes into effect.

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 this Act comes into effect, the provisions then in force shall remain applicable.

(Transitional measures for application of penal provisions)

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

(Delegation to Cabinet Order)

Article 14 Beyond what is 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 Cabinet Order.