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UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

[Enforcement Date 23. Jun, 2021.] [Act No.17727, 22. Dec, 2020., Partial
Amendment]

특허청 (산업재산보호정책과)042-481-5899

 법제처 국가법령정보센터

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CHAPTER I GENERAL PROVISIONS

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

[This Article Wholly Amended on Dec. 21, 2007]

Article 2 (Definitions) The terms used in this Act are defined as follows: <Amended on Dec. 2, 2011; Jul. 30, 2013; Jan. 28, 2015; Apr. 17, 2018; Jan. 8, 2019>

1. The term "act of unfair competition" means any of the following acts:

- (a) An act of causing confusion with another person's goods by using marks identical or similar to, another person's name, trade name, trademark, or container or package of goods, or any other mark indicating another person's goods, which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks;
- (b) An act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or any other mark indicating another person's business (including methods of selling products and offering services or overall appearance of a business place such as signs, exterior, and interior decorations), which is widely known in the Republic of Korea;
- (c) In addition to the act of causing confusion prescribed in item (a) or (b); an act of doing damage to distinctiveness or reputation attached to another person's mark by using the mark identical or similar to, another person's name, trade name, trademark, or container or package of goods, or any other mark indicating another person's goods or business (with respect to marks indicating another person's business, including methods of selling products and offering services or overall appearance of a business place such as signs, exterior, and interior decorations), which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks; without good cause prescribed by Presidential Decree, such as the

- purpose of noncommercial use;
- (d) An act of causing confusion about the place of origin by making false marks of the place of origin on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the marks; or by selling, distributing, importing, or exporting goods bearing such marks;
 - (e) An act of making a mark that would mislead the public into believing that goods are produced, manufactured, or processed at places, other than the actual places of production, manufacture, or processing, on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the mark; or selling, distributing, importing, or exporting goods bearing such mark;
 - (f) An act of falsely assuming another person's goods or an act of advertizing any goods or making a mark in any manner of leading the public to misunderstand their quality, content, manufacturing process, usage, or quantity, in the goods or advertisement thereof, or selling, distributing, importing, or exporting goods using such method or mark;
 - (g) An act of using a trademark, without good cause, on goods identical or similar to the designated goods of the trademark, or an act of selling, distributing, exporting, or importing goods with such trademark, by an agent or a representative of the owner of the trademark that is identical or similar to a trademark registered in any of the following countries or by a person who was an agent or a representative within one year of the date of such act:
 - (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) An act of registering, holding, transferring, or using a domain name identical or similar to, another person's name, trade name, or trademark, or any other mark, which is widely known in the Republic of Korea, by a person who does not have a legitimate title for any of the following purposes:
 - (i) The purpose of selling or lending a mark, including a trademark, to a person who has a legitimate title concerning the mark or a third party;

- (ii) The purpose of preventing a person who has a legitimate title from registering or using a domain name;
- (iii) Other purpose of obtaining any commercial profits;
- (i) An act of transferring or lending goods whose shape has been copied (referring to the form, image, color, gloss, or any combination thereof, including the shape of any prototype and the shape in goods brochure; hereinafter the same shall apply) from the goods manufactured by any other person; exhibiting such goods for transfer or lending; or importing or exporting such goods: Provided, That either of the following acts shall be excluded herefrom:
 - (i) An act of transferring or lending goods whose shape has been manufactured by counterfeiting the shape of the other goods for which three years have elapsed from the date the shape of the other goods, including the production of the prototype, was completed; exhibiting such goods for transfer or lending; or importing or exporting such goods;
 - (ii) An act of transferring or lending goods whose shape has been manufactured by counterfeiting the common shape of goods that are identical to the goods manufactured by any other person (where the goods of the same kind are nonexistent, referring to other goods whose function or utility is identical or similar to the relevant goods); exhibiting such goods for transfer or lending; or importing or exporting such goods;
 - (j) An act of unfairly using information which includes another person's technical or business ideas with economic value in the process of negotiating or conducting transactions such as a business proposal, auction, and public offering for his/her business interests or the business interests of a third party in violation of the purpose of the provision or an act of providing such information to another person so that he/she can take advantage of it: Provided, That this shall not apply if the person provided with such ideas is already knowledgeable about them or such ideas are well known in the relevant industry;
 - (k) Any other acts of infringing on other persons' economic interests by using the outcomes, etc. achieved by them through substantial investment or efforts, for one's own business without permission, in a manner contrary to fair commercial practices or competition order;

2. The term "trade secret" means information, including a production method, sale method, useful technical or business information for business activities, which is not known publicly, is managed as a secret, and has independent economic value;
3. The term "infringement of trade secrets" means any of the following acts:
 - (a) An act of acquiring trade secrets by theft, deception, coercion, or other improper means (hereinafter referred to as "act of improper acquisition"), or subsequently using or disclosing the trade secrets improperly acquired (including informing any specific person of the trade secret while under a duty to maintain secrecy; hereinafter the same shall apply);
 - (b) An act of acquiring trade secrets or using or disclosing the trade secrets improperly acquired, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;
 - (c) An act of using or disclosing trade secrets after acquiring them, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;
 - (d) An act of using or disclosing trade secrets to obtain improper benefits or to cause damage to the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;
 - (e) An act of acquiring trade secrets, or using or disclosing them with the knowledge of the fact that they have been disclosed in the manner prescribed in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;
 - (f) An act of using or disclosing trade secrets after acquiring them, with the knowledge of the fact that they have been disclosed in a manner prescribed in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;
4. The term "domain name" means a number, a letter, or a sign, or any combination thereof, which constitutes an Internet address composed of numbers.

[This Article Wholly Amended on Dec. 21, 2007]

Article 2-2 (Establishment of Basic Plans) (1) To prevent unfair competition and protect trade secrets (hereinafter referred to as "unfair competition prevention, etc."), the Commissioner of the Korean Intellectual Property Office shall establish a basic plan for the prevention of unfair competition, etc. (hereinafter referred to as "basic plan") every five years in

consultation with the heads of the relevant central administrative agencies.

(2) A basic plan shall include the following matters:

1. Basic objectives and directions for unfair competition prevention, etc.;
2. Analysis and evaluation of the previous basic plans for unfair competition prevention, etc.;
3. Changes in and prospects for domestic and overseas conditions related to unfair competition prevention, etc.;
4. Current status of and response to disputes arising in connection with unfair competition prevention, etc.;
5. Improvement of systems and statutes or regulations related to unfair competition prevention, etc.;
6. Matters relating to cooperation among the State, local governments, and the private sector in unfair competition prevention, etc.;
7. International cooperation related to unfair competition prevention, etc.;
8. Other matters necessary for unfair competition prevention, etc.

(3) Where deemed necessary to establish a basic plan, the Commissioner of the Korean Intellectual Property Office may request the heads of relevant central administrative agencies to provide necessary materials. In such cases, the heads of the relevant central administrative agencies in receipt of such request shall comply therewith, unless there is a compelling reason not to do so.

(4) The Commissioner of the Korean Intellectual Property Office shall notify a basic plan to the heads of relevant central administrative agencies and the Special Metropolitan City Mayor, a Metropolitan City Mayor, a Special Self-Governing City Mayor, a Do Governor, or a Special Self-Governing Province Governor (hereinafter referred to as "Mayor/Do Governor").

[This Article Newly Inserted on Oct. 20, 2020]

[Previous Article 2-2 Moved to Article 2-5 <Oct. 20, 2020>]

Article 2-3 (Establishment of Action Plans) (1) The Commissioner of the Korean Intellectual Property Office shall establish and implement a detailed plan to fulfill a basic plan (hereinafter referred to as "action plan") every year.

(2) Where necessary to establish and implement an action plan, the Commissioner of the Korean Intellectual Property Office may request cooperation from the heads of relevant

institutions, such as State agencies, local governments, public institutions under the Act on the Management of Public Institutions, or special corporations established under other statutes.

[This Article Newly Inserted on Oct. 20, 2020]

Article 2-4 (Fact-Finding Surveys) (1) The Commissioner of the Korean Intellectual Property Office shall conduct a fact-finding survey each year to obtain basic data for establishing and implementing a basic plan and action plan: Provided, That a fact-finding survey may be conducted occasionally, where deemed necessary by the Commissioner of the Korean Intellectual Property Office.

(2) The Commissioner of the Korean Intellectual Property Office may request the head of any public research institute defined in the Technology Transfer and Commercialization Promotion Act to submit data necessary for conducting fact-finding surveys under paragraph (1). In such cases, the head of the institute requested to submit data shall cooperate therein, unless there is a compelling reason not to do so as prescribed by Presidential Decree, such as the maintenance of corporate business or trade secrets.

(3) The specific scope, etc. of preparing data in conducting fact-finding surveys under paragraph (1) shall be prescribed by Presidential Decree.

[This Article Newly Inserted on Oct. 20, 2020]

Article 2-5 (Business for Unfair Competition Prevention and Trade Secret Protection) For the prevention of acts of unfair competition and protection of trade secrets, the Commissioner of the Korean Intellectual Property Office may engage in activities to lay a foundation therefor such as research, education, and public relations, establishment and operation of an information management system for the prevention of unfair competition, and other business prescribed by Presidential Decree. <Amended on Oct. 20, 2020>

[This Article Newly Inserted on Mar. 25, 2009]

[Moved from Article 2-2 <Oct. 20, 2020>]

CHAPTER II PROHIBITION OF ACTS OF UNFAIR COMPETITION

Article 3 (Prohibition of Use of National Flags and National Emblems) (1) No person shall use as a trademark a symbol that is identical or similar to the national flag, emblem, or other insignia of any party to the Paris Convention, any member state of the World Trade

Organization, or any signatory state of the Trademark Law Treaty, a mark of an international organization: Provided, That the same shall not apply where such use is authorized by the state or international organization concerned.

(2) No person shall use as a trademark a symbol that is identical or similar to any mark of inspection or certification of the government of any party to the Paris Convention, any member state of the World Trade Organization, or any signatory state of the Trademark Law Treaty: Provided, That the same shall not apply where such use is authorized by the government concerned.

[This Article Wholly Amended on Dec. 21, 2007]

Article 3-2 (Prohibition of Use of Geographic Marks Protected under Free Trade Agreements)

(1) As to a geographic mark protected under a free trade agreement which is concluded bilaterally or multilaterally and takes effect between the Republic of Korea and a foreign country, or foreign countries, (hereafter referred to as "geographic mark" in this Article), in addition to the act of unfair competition under subparagraph 1 (d) and (e) of Article 2, any person who does not have a legitimate title shall not conduct any of the following acts with respect to the goods whose place of origin is not the one indicated in the geographic mark concerned (limited to goods that are identical to or recognized to be identical to the goods with the relevant geographic mark):

1. Using a geographic mark separately, in addition to the authentic place of origin;
2. Using a geographic mark which is translated or transliterated;
3. Using a geographic mark with the expression of "kind", "type", "mode", "counterfeit", or other expressions.

(2) Any person who does not have a legitimate title shall not conduct any of the following acts:

1. An act of transferring or delivering goods with a geographic mark in a manner referred to in any subparagraph of paragraph (1), or an act of exhibiting, importing, or exporting such goods for any aforementioned purpose;
2. An act of delivering goods with a geographic mark in a manner referred to in subparagraph 1 (d) or (e) of Article 2, or an act of exhibiting for any aforementioned purpose.

(3) Notwithstanding paragraph (1), a person who uses a trademark in a manner referred to in any subparagraph of paragraph (1) and has satisfied all the following requirements may

continue to use the relevant trademark on the goods that have been used by the person:

1. That the relevant trademark shall be used at home prior to the date when the protection of a geographic mark commences;
2. The outcome of the use of the trademark under subparagraph 1 shall reveal that domestic consumers recognize the relevant trademark as the one indicated on any particular person's goods on the date when the protection of a geographic mark commences.

[This Article Newly Inserted on Jun. 30, 2011]

Article 4 (Right to Request Prohibition of Acts of Unfair Competition) (1) A person whose business interest is injured or threatened by an act of unfair competition or a violation of Article 3-2 (1) or (2) may file a request, with the court, for prohibition or prevention against any person who conducts or intends to conduct an act of unfair competition or a violation of Article 3-2 (1) or (2). <Amended on Jun. 30, 2011>

(2) When a person files a request under paragraph (1), he/she may also request the following measures: <Amended on Jun. 30, 2011>

1. Destruction of the goods that promote an act of unfair competition or a violation of Article 3-2 (1) or (2);
2. Removal of the facilities used during an act of unfair competition or a violation of Article 3-2 (1) or (2);
3. Cancellation of registration of the domain name which is the object of an act of unfair competition or a violation of Article 3-2 (1) or (2);
4. Any other measures necessary to prohibit or prevent an act of unfair competition or a violation of Article 3-2 (1) or (2).

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Jun. 30, 2011]

Article 5 (Liability for Compensation of Damage from Acts of Unfair Competition) A person who causes damage to another person's business interest by intentionally or negligently engaging in an act of unfair competition or an act of violation of Article 3-2 (1) or (2) (only referring to an act of unfair competition committed intentionally in the case of subparagraph 1 (c) of Article 2) shall be liable for compensation of damage. <Amended on Jun. 30, 2011>

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Jun. 30, 2011]

Article 6 (Restoration of Reputation Damaged by Acts of Unfair Competition) The court may order a person who has damaged the business reputation of another person by intentionally or negligently engaging in an act of unfair competition or an act of violation of Article 3-2 (1) or (2) (only referring to an act of unfair competition committed intentionally in the case of subparagraph 1 (c) of Article 2) to take a measure necessary for restoring the business reputation in addition to or in lieu of compensation for damage prescribed in Article 5, upon receipt of a claim from a person whose business interest is infringed by the act of unfair competition or the act of violation of Article 3-2 (1) or (2).

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Jun. 30, 2011]

Article 7 (Investigation of Acts of Unfair Competition) (1) The Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu (the head of a Gu means the head of an autonomous Gu; hereinafter the same shall apply) may have a related public official enter business or manufacturing facilities to investigate relevant documents, books, or products or to collect the least amount of products necessary for testing and inspecting them; if deemed necessary to ascertain whether an act of unfair competition provided in subparagraph 1 of Article 2 (excluding (h) and (k)) or a violation of Article 3 or 3-2 (1) or (2) has occurred and where otherwise it is impracticable to ascertain whether such act of unfair competition or violation has occurred. <Amended on Jun. 30, 2011; Jan. 27, 2016; Jan. 17, 2017; Apr. 17, 2018; Oct. 20, 2020>

(2) Where the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu conducts the investigation under paragraph (1), he/she shall avoid overlapping investigations pursuant to Article 15 of the Framework Act on Administrative Investigations. <Newly Inserted on Jun. 30, 2011>

(3) Where the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu becomes aware of the fact that mediation of a dispute under Article 43 of the Invention Promotion Act (hereinafter referred to as "dispute mediation") is pending due to the same case as that of a person subject to investigation in the course of the investigation under paragraph (1), he/she may suspend the investigation in consideration of the intentions of both parties. <Newly Inserted on Oct. 20, 2020>

(4) Where a dispute is mediated, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu may terminate the investigation. <Newly Inserted on Oct. 20, 2020>

(5) A public official who conducts the investigation, etc. under paragraph (1) shall carry a certificate indicating his/her authority and produce it to interested parties. <Amended on Jun. 30, 2011; Oct. 20, 2020>

(6) Other matters necessary for procedures, etc. for investigation into acts of unfair competition, etc. shall be prescribed by Presidential Decree. <Newly Inserted on Oct. 20, 2020>

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Jun. 30, 2011]

Article 8 (Recommendations for Correction of Violations) (1) If the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu recognizes that an act of unfair competition provided in subparagraph 1 of Article 2 (excluding (h) and (k)) or a violation referred to in Article 3 or 3-2 (1) or (2) has occurred, he/she may issue a recommendation necessary for correction to the person to cease the act or violation, to remove or modify the mark, etc. used in the act or violation, or to prevent recurrence of the act or violation, within a specific period not exceeding 30 days. <Amended on Jun. 30, 2011; Jan. 17, 2017; Apr. 17, 2018; Oct. 20, 2020>

(2) Where a person who has committed a violation fails to comply with a recommendation for correction under paragraph (1), the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu may publish the details of the violation, the fact that he/she has made the recommendation for correction, etc. <Newly Inserted on Oct. 20, 2020>

(3) Procedures and methods for publication under paragraph (2), and other necessary matters shall be prescribed by Presidential Decree. <Newly Inserted on Oct. 20, 2020>

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Oct. 20, 2020]

Article 9 (Hearing of Opinions) If deemed necessary for a recommendation for correction and publication under Article 8, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu shall hear opinions of the relevant party,

interested persons, or witnesses, as prescribed by Presidential Decree. <Amended on Jun. 30, 2011; Oct. 20, 2020>

[This Article Wholly Amended on Dec. 21, 2007]

CHAPTER III PROTECTION OF TRADE SECRETS

Article 9-2 (Certification of Original Document of Trade Secrets) (1) In order to have an electronic document certified as to whether it is an original document containing trade secrets, a person who possesses trade secrets may file for registration of the unique identification value extracted from the relevant electronic document (hereinafter referred to as "electronic fingerprint") with an agency that certifies the original documents of trade secrets under Article 9-3.

(2) Where the electronic fingerprint registered under paragraph (1) and the electronic fingerprint extracted from the electronic document kept by a person who possesses trade secrets are the same, an agency that certifies the original documents of trade secrets under Article 9-3 may issue a certificate verifying that the relevant electronic document is the original registered with the electronic fingerprint (hereinafter referred to as "certificate of the original document").

(3) A person who has been issued with a certificate of the original document under paragraph (2), shall be deemed to possess the information as stated in the relevant electronic document as at the time the electronic fingerprint referred to in paragraph (1) is registered. <Newly Inserted on Jan. 28, 2015>

[This Article Newly Inserted on Jul. 30, 2013]

Article 9-3 (Designation of Original Document Certification Agency) (1) The Commissioner of the Korean Intellectual Property Office may designate a person who has the expertise in the duties of certifying electronic documents containing trade secrets as the original by using electronic fingerprints (hereinafter referred to as "duties of certifying original documents"), as an agency that certifies the original documents of trade secrets (hereinafter referred to as "original document certification agency") in consultation with the Minister of Small and Medium-Sized Enterprises (SMEs) and Startups. <Amended on Jul. 26, 2017>

(2) A person who intends to be designated as an original document certification agency shall file an application therefor with the Commissioner of the Korean Intellectual Property Office after fulfilling the requirements for professional manpower, facilities, etc. prescribed by Presidential Decree.

(3) The Commissioner of the Korean Intellectual Property Office may fully or partially subsidize the expenses required by an original document certification agency to perform the duties of certifying original documents.

(4) In order to ensure the safety and reliability of performance of duties of certifying original documents, an original document certification agency shall comply with the matters prescribed by Presidential Decree with respect to the following:

1. Extraction, registration, and safekeeping of electronic fingerprints;
2. Certification of original documents of trade secrets and the issuance of certificates of original documents;
3. Management of professional manpower and protection of facilities necessary for performing the duties of certifying original documents;
4. Operation, management, etc. of other duties of certifying original documents.

(5) Matters necessary for the criteria and procedures for the designation of an original document certification agency shall be prescribed by Presidential Decree.

[This Article Newly Inserted on Jul. 30, 2013]

Article 9-4 (Corrective Orders to Original Document Certification Agency) (1) Where an original document certification agency falls under any of the following cases, the Commissioner of the Korean Intellectual Property Office may order it to take corrective measures within a fixed period not exceeding six months:

1. Where it does not satisfy the requirements prescribed in Article 9-3 (2) any more after having been designated as an original document certification agency;
2. Where it fails to comply with the matters prescribed by Presidential Decree under Article 9-3 (4).

(2) Where an original document certification agency uses the subsidy granted under Article 9-3 (3) for purposes other than the intended, the Commissioner of the Korean Intellectual Property Office may order it to return the subsidy within a fixed period.

(3) Where an original document certification agency falls under any of the following cases, the Commissioner of the Korean Intellectual Property Office may revoke the designation or

may order it to fully or partially suspend the duties of certifying original documents for a fixed period not exceeding six months: Provided, That in the case of subparagraph 1 or 2, the designation shall be revoked:

1. Where the agency is designated by fraud or other improper means;
2. Where a person who has been ordered to fully or partially suspend the duties of certifying original documents performs the duties of certifying original documents in violation of such order;
3. Where the agency fails to commence the performance of duties of certifying original documents within six months from the date on which it is designated as an original document certification agency or discontinues the performance of duties of certifying original documents for at least six consecutive months, without good reason;
4. Where the agency fails to comply with the corrective order issued under paragraph (1) without good reason;
5. Where the agency fails to comply with the order to return the subsidy issued under paragraph (2).

(4) An original document certification agency whose designation has been revoked under paragraph (3), shall hand over the records related to the duties of certifying original documents, such as registered electronic fingerprints and other records on the registration of electronic fingerprints, to another original document certification agency designated by the Commissioner of the Korean Intellectual Property Office within three months from the date on which the designation is revoked: Provided, That where the agency is unable to hand over the records concerning the duties of certifying original documents for any unavoidable reason, such as the rejection of the takeover thereof by another original document certification agency, it shall notify such fact to the Commissioner of the Korean Intellectual Property Office without delay.

(5) Where an original document certification agency whose designation has been revoked under paragraph (3), fails to hand over the records related to the duties of certifying original documents or to notify the fact that it is unable to hand over the records, the Commissioner of the Korean Intellectual Property Office may issue an order to correct it.

(6) Detailed standards and procedures for the dispositions under paragraph (3) and matters necessary for the handover and takeover under paragraph (4) shall be prescribed by Presidential Decree.

[This Article Newly Inserted on Jul. 30, 2013]

- Article 9-5 (Penalty Surcharges)** (1) Where the Commissioner of the Korean Intellectual Property Office is to issue an order for suspension of duties under Article 9-4 (3) and such suspension of duties is likely to cause severe inconvenience to persons who utilize the relevant original document certification agency or cause harm to public interest, he/she may impose a penalty surcharge not exceeding 100 million won in lieu of the suspension order.
- (2) Where a person who is subject to the imposition of penalty surcharge under paragraph (1), fails to pay the penalty surcharge by the due date, the Commissioner of the Korean Intellectual Property Office shall collect it in the same manner as delinquent national taxes are collected.
- (3) The amount of a penalty surcharge and the method of calculation thereof according to the types and gravity of violations subject to the imposition of penalty surcharges under paragraph (1), and other necessary matters shall be prescribed by Presidential Decree.
- [This Article Newly Inserted on Jul. 30, 2013]

- Article 9-6 (Hearings)** If the Commissioner of the Korean Intellectual Property Office intends to revoke the designation or order the suspension of duties under Article 9-4 (3), he/she shall hold a hearing.
- [This Article Newly Inserted on Jul. 30, 2013]

- Article 9-7 (Keeping Confidentiality)** (1) No person shall eliminate, damage, alter, forge, or leak any electronic fingerprints registered with an original document certification agency or other information related thereto.
- (2) No person who is, or was, an executive officer or employee of an original document certification agency, shall divulge any confidential information he/she has learned in the course of performing his/her duties.
- [This Article Newly Inserted on Jul. 30, 2013]

- Article 10 (Right to Request Prohibition of Infringement of Trade Secrets)** (1) A person who possesses trade secrets, may file a request, with the court, for prohibition or prevention of infringement against any person who infringes or is likely to infringe trade secrets, if business interests of the person who possesses the trade secrets is damaged or is likely to

be damaged by such infringement.

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

[This Article Wholly Amended on Dec. 21, 2007]

Article 11 (Liability for Damages for Infringement on Trade Secrets) A person who damages the business interest of a person who possesses trade secrets through an intentional or negligent infringement of trade secrets, shall be liable for compensation for such damage.

[This Article Wholly Amended on Dec. 21, 2007]

Article 12 (Restoration of Reputation of Person Possessing Trade Secrets) Upon receipt of a request from a person possessing trade secrets, the court may order a person who damages business reputation of a person possessing trade secrets through an intentional or negligent infringement of trade secrets, to take measures necessary to restore the business reputation in lieu of or in addition to compensation for damage under Article 11.

[This Article Wholly Amended on Dec. 21, 2007]

Article 13 (Special Cases concerning Bona Fide Persons) (1) Articles 10 through 12 shall not apply to an act by a person who has properly acquired trade secrets through a transaction or uses or discloses the trade secrets within the scope of the rights the person has properly acquired through the transaction.

(2) "Person who has properly acquired trade secrets" in paragraph (1) means a person who has obtained trade secrets without the knowledge and without gross negligence that the trade secrets were improperly disclosed or that an act of improper acquisition or of improper disclosure of the trade secrets occurred when he/she acquired under subparagraph 3 (c) or (f) of Article 2.

[This Article Wholly Amended on Dec. 21, 2007]

Article 14 (Prescription) When infringement of trade secrets continues, the right to request prohibition or prevention of the infringement of trade secrets under Article 10 (1) expires unless the right is exercised within three years from the date on which a person possessing trade secrets learned the fact that business interests were damaged or threatened to be

damaged by an infringer and the identity of the infringer. The same shall also apply where ten years have elapsed after the date on which the act of infringement first occurred.

[This Article Wholly Amended on Dec. 21, 2007]

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 14-2 (Estimating Damages) (1) Where a person whose business interests have been infringed by an act of unfair competition, a violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, claims compensation for damage under Article 5 or 11; and where the person who has infringed the business interests transfers the goods causing the act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets (hereafter in this paragraph referred to as "act of unfair competition or any other infringement"), the sum of the following may be set as damages: <Amended on Jun. 30, 2011; Dec. 22, 2020>

1. The amount calculated by multiplying profits per unit quantity of the goods that a person whose business interests have been infringed would have been able to sell if there had been no such act of unfair competition or any other infringement, by the quantity not exceeding the quantity that the person whose business interests have been infringed could have produced, subtracted by the quantity of the goods actually sold, out of the quantity of the goods transferred (where the person whose business interests have been infringed was unable to sell the goods for reasons other than the act of unfair competition or any other infringement, the quantity calculated by subtracting the quantity not sold for such reasons other than the act of unfair competition or any other infringement);
2. Where, out of the quantity of the goods transferred, there exists any quantity exceeding the quantity that the person whose business interests have been infringed could have produced, subtracted by the quantity of the goods actually sold, or there exists any quantity that such person was unable to sell for reasons other than the act of unfair competition or any other infringement, an amount that the he/she would have reasonably receive if there had been no such act of unfair competition or any other infringement.

(2) Where a person whose business interests have been infringed by an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, claims compensation for damage under Article 5 or 11, the profits gained by the infringer through the infringement, if any, are estimated to be the damages suffered by the person whose business interests have been infringed. <Amended on Jun. 30, 2011>

(3) Where a person whose business interests have been infringed by an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, claims compensation for damage under Article 5 or 11, he/she may claim as damages the amount of money that the person would normally be entitled to receive for using a mark applied to goods if the mark was the object of an act of unfair competition or a violation referred to in Article 3-2 (1) or (2), or for using trade secrets that were the object of the infringement. <Amended on Jun. 30, 2011>

(4) Where the amount of actual damage caused by an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets exceeds the amount under paragraph (3), the excess amount may also be claimed as compensation for damage. In such cases, when awarding damages, the court may consider whether the person who has infringed the business interest was willful or grossly negligent. <Amended on Jun. 30, 2011>

(5) Where the court recognizes in litigation the extreme difficulty, owing to the nature of the case, of proving the damages that has occurred related to an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, the court may determine a reasonable amount on the basis of the entire tenor of oral proceedings and the results of evidence investigations, notwithstanding paragraphs (1) through (4). <Amended on Jun. 30, 2011>

(6) Where an act defined in subparagraph 1 (j) of Article 2 or infringement of trade secrets is found to be willful, the court may determine the amount of compensation within the maximum of three times the damages recognized under paragraphs (1) through (5), notwithstanding Article 5 or 11. <Newly Inserted on Jan. 8, 2019; Oct. 20, 2020>

(7) In determining the amount of compensation mentioned in paragraph (6), the court shall take the following into consideration: <Newly Inserted on Jan. 8, 2019>

1. Whether the infringer has a superior position;

2. Whether the infringement has been done with willfulness or the level of awareness of the risk of causing damage;
3. The scale of damage suffered by the person who possesses trade secrets as a result of the infringement;
4. The economic benefits obtained by the infringer through the infringement;
5. The period, number, etc. of the infringement;
6. The fines imposed for the infringement;
7. The financial status of the infringer;
8. The relative degree of efforts made by the infringer to redress damage.

[This Article Wholly Amended on Dec. 21, 2007]

Article 14-3 (Submission of Materials) In litigation related to the infringement of business interests through an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, the court may, upon the request of either party, order the other party to submit materials necessary for the assessment of damage caused by the infringement: Provided, That the same shall not apply where the holder of such materials has a good reason for the refusal of the submission thereof. <Amended on Jun. 30, 2011>

[This Article Wholly Amended on Dec. 21, 2007]

Article 14-4 (Confidentiality Order) (1) In litigation related to the infringement of business interests through an act of unfair competition, violation referred to in Article 3-2 (1) or (2), or infringement of trade secrets, where the relevant party has verified the accuracy of both of the following information as to the trade secrets held by him/her, the court may order, by decision, the other party (in cases of a corporation, its representative), the relevant party's legal counsel, or any other person who has acquired such trade secrets due to said litigation neither to use such trade secrets for purposes other than for continuing said litigation nor to disclose such secrets to persons other than those who have been ordered in relation to such secrets pursuant to this paragraph, upon the request of the relevant party: Provided, That the same shall not apply where the other party (in cases of a corporation, its representative), the relevant party's legal counsel, or any other person who has acquired the trade secrets due to said litigation has already been aware of such secrets by a method other than inspection of the legal brief or investigation of the evidence as referred to in subparagraph 1 as at the time such request is made:

1. That the legal brief already submitted or to be submitted or the evidence already investigated or to be investigated contains trade secrets;
 2. The business secrets referred to in subparagraph 1, if used or disclosed for purposes other than for conducting said litigation, are likely to impede the business operation of the relevant party, so that it is required to place a restriction on the use or disclosure of such trade secrets in order to prevent the impediment.
- (2) A request for issuing an order under paragraph (1) (hereinafter referred to as “confidentiality order”) shall be made in a written form that indicates the following:
1. A person who will be subject to the confidentiality order;
 2. The facts sufficient to specify the trade secrets to be protected by the confidentiality order;
 3. The facts constituting the causes described in the subparagraphs of paragraph (1).
- (3) Where the court has determined to issue a confidentiality order, it shall serve the written decision on the person subject to the confidentiality order.
- (4) A confidentiality order shall take effect when the written decision referred to in paragraph (3) is served on the person subject to the confidentiality order.
- (5) A relevant party may lodge an immediate complaint against a trial that has dismissed or rejected his/her application for a confidentiality order.

[This Article Newly Inserted on Dec. 2, 2011]

- Article 14-5 (Revocation of Confidentiality Order)** (1) A person who has requested a confidentiality order or a person subject to a confidentiality order may, if he/she fails or ceases to satisfy the requirements under Article 14-4 (1), apply for the revocation of the confidentiality order to the court that maintains the relevant trial record (where no such court exists, referring to the court that has issued the confidentiality order).
- (2) Where a trial is held in relation to a request for revocation of a confidentiality order, the court shall serve the written decision on the person who has requested the revocation and the other party.
- (3) A relevant party may lodge an immediate complaint against a trial related to his/her request for the revocation of a confidentiality order.
- (4) A trial revoking a confidentiality order shall take effect when it becomes final and conclusive.

(5) If there exists any person subject to a confidentiality order as to relevant trade secrets, other than the person who has requested the revocation of the confidentiality order or the other party, the court that has rendered a judgment to revoke the confidentiality order shall notify such person of the fact that the trial to revoke the confidentiality order was held.

[This Article Newly Inserted on Dec. 2, 2011]

Article 14-6 (Notification of Request for Inspection of Trial Record) (1) Where a decision under Article 163 (1) of the Civil Procedure Act has been rendered for the trial record respecting a trial that has issued a confidentiality order (excluding trials revoking any and all confidentiality orders) and there was a request by the relevant party to inspect the part containing the trade secrets specified in the same paragraph or take any other similar action, but the procedures for such request have been taken by a person not subject to a confidentiality order in the litigation at issue, a court official of Grade IV, court official of Grade V, court official of Grade VI, or court official of Grade VII (hereafter referred to as "court official of Grade V, etc." in this Article) shall notify the person who has made a request under Article 163 (1) of the Civil Procedure Act (excluding the person who has requested the inspection, etc. thereof: hereafter the same shall apply in paragraph (3)) of the fact that a request for the inspection, etc. thereof was made immediately after such request.

(2) In the case of paragraph (1), until two weeks have elapsed from the date a request under paragraph (1) was made (where a request for issuing a confidentiality order to the person who has taken procedures for such request was made within the said period, until the time a trial regarding such request has become final and conclusive), no court official of Grade V, etc. shall permit the person who has taken procedures for such request to inspect the part containing the trade secrets specified in paragraph (1) or take any other similar action.

(3) Paragraph (2) shall not apply where all the parties who have filed a request under Article 163 (1) of the Civil Procedure Act give their consent to permitting the person who has requested inspection, etc. under paragraph (1) to inspect the part containing the trade secrets specified in paragraph (1) or take any other similar action.

[This Article Newly Inserted on Dec. 2, 2011]

Article 14-7 (Sending Records) Where a lawsuit has been filed seeking compensation for damage under Article 5, the court may, if necessary, demand that the Korean Intellectual Property Office send records of investigation into an act of unfair competition, etc. prescribed in Article 7 (including a report on examination of a person interested in the case, a person for reference or an appraiser, stenographic records, and other evidence that can be used in court).

[This Article Newly Inserted on Apr. 17, 2018]

Article 15 (Relationship to Other Statutes) (1) If any provision of the Patent Act, the Utility Model Act, the Design Protection Act, the Trademark Act, the Agricultural and Fishery Products Quality Control Act, or the Copyright Act is inconsistent with Articles 2 through 6 and 18 (3) of this Act, such provisions of the relevant statutes shall preferentially apply.

<Amended on Jun. 30, 2011; Jul. 30, 2013>

(2) If any provision concerning the national flag or emblem referred to in the Monopoly Regulation and Fair Trade Act, the Act on Fair Labeling and Advertising, the Fair Transactions in Subcontracting Act or the Criminal Act is inconsistent with subparagraph 1 (d) through (f), (j), and (k) of Article 2, and Articles 3 through 6 and 18 (3) of this Act, such provisions of the relevant statutes shall preferentially apply. <Amended on Jul. 30, 2013; Apr. 17, 2018>

[This Article Wholly Amended on Dec. 21, 2007]

Article 16 (Payment of Monetary Rewards for Reports) (1) The Commissioner of the Korean Intellectual Property Office may pay a monetary reward to a person who files a report on a person who has conducted an act of unfair competition referred to in subparagraph 1 (a) of Article 2 (limited to cases related to registered trademarks defined in Article 2 (1) 10 of the Trademark Act) within the budget. <Amended on Feb. 29, 2016>

(2) Standards for the payment of monetary rewards for reports and the methods and procedures therefor under paragraph (1) shall be prescribed by Presidential Decree.

[This Article Newly Inserted on Jul. 30, 2013]

Article 17 (Entrustment of Duties) (1) Deleted. <Jun. 30, 2011>

(2) The Commissioner of the Korean Intellectual Property Office may entrust the duties related to laying a foundation such as research, education, and public relations, and establishment and operation of an information management system provided in Article 2-5

to a corporation or organization (hereafter referred to as "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 on Mar. 25, 2009; Oct. 20, 2020>

(3) The Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu may receive assistance from a specialized organization if necessary for performing the duties under Article 7 or 8. <Newly Inserted on Mar. 25, 2009; Jun. 30, 2011>

(4) Article 7 (5) shall apply mutatis mutandis to those who engage in assistance services under paragraph (3). <Newly Inserted on Mar. 25, 2009; Jun. 30, 2011; Oct. 20, 2020>

(5) The Commissioner of the Korean Intellectual Property Office may fully or partially subsidize the expenses incurred in the services entrusted under paragraph (2) and the assistance services under paragraph (3) within the budget. <Newly Inserted on Mar. 25, 2009>

[This Article Wholly Amended on Dec. 21, 2007]

[Title Amended on Jun. 30, 2011]

Article 17-2 (Re-Examination of Regulation) The Commissioner of the Korean Intellectual Property Office shall examine the appropriateness of the following matters every three years, counting from January 1, 2015 (referring to the period that ends on the day before the base date of every third year) and shall take measures, such as making improvements:

1. Standards for administrative dispositions imposed upon an original document certification agency under Article 9-4;
2. Standards for the imposition of administrative fines under Article 20.

[This Article Newly Inserted on Jan. 27, 2016]

[Previous Article 17-2 Moved to Article 17-3 <Jan. 27, 2016>]

Article 17-3 (Deemed Public Officials in Application of Penalty Provisions) Those who engage in assistance services under Article 17 (3) shall be deemed a public official in application of penalty provisions under Articles 127 and 129 through 132 of the Criminal Act.

[This Article Newly Inserted on Mar. 25, 2009]

[Moved from Article 17-2 <Jan. 27, 2016>]

Article 18 (Penalty Provisions) (1) Any person who uses trade secrets in a foreign country or commits any of the following acts while knowing that trade secrets will be used in a foreign country, shall be punished by imprisonment with labor for not more than 15 years or by a fine not exceeding 1.5 billion won: Provided, That where he/she is punished by a fine and the amount equal to ten times the amount of proprietary benefits acquired by the violation exceeds 1.5 billion won, a fine equal to two to ten times the amount of proprietary benefits shall be imposed: <Amended on Jan. 8, 2019>

1. Any of the following acts committed for the purpose of making an improper profit or causing damage to a person who possesses trade secrets:

- (a) Acquiring, using, or leaking to any third party, trade secrets;
- (b) Unauthorized release of trade secrets out of a designated place;
- (c) Continuing to possess trade secrets even after a request to delete or return them by the person who possesses such trade secrets;

2. Any act of acquiring trade secrets by steal, fraud, intimidation, or other improper means;

3. Any act of acquiring or using (except for the uses permitted under Article 13 (1)) trade secrets with knowledge of the commission of an act described in subparagraph 1 or 2.

(2) Any person who commits an act described in any subparagraph of paragraph (1) shall be punished by imprisonment with labor for not more than 10 years or by a fine not exceeding 500 million won: Provided, That if where he/she is punished by a fine and the amount equal to ten times the amount of proprietary benefits acquired by the violation exceeds 500 million won, a fine equal to two to ten times the amount of proprietary benefits shall be imposed. <Amended on Jan. 8, 2019>

(3) Any of the following persons shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won: <Amended on Jul. 30, 2013; Jan. 17, 2017; Apr. 17, 2018>

1. A person who has engaged in an act of unfair competition under subparagraph 1 of Article 2 (excluding items (h), (j), and (k));

2. A person who has used as a trademark a symbol that is identical or similar to any of the following insignias or marks in violation of Article 3:

- (a) The national flag, national emblem, or other insignias 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 of inspection or certification 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) Any of the following persons shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding 10 million won: <Newly Inserted on Jul. 30, 2013>

1. A person who has eliminated, damaged, altered, forged, or leaked any electronic fingerprints registered with an original document certification agency or any other information related thereto in violation of Article 9-7 (1);

2. A person who has divulged any confidential information he/she learned in the course of performing his/her duties in violation of Article 9-7 (2).

(5) Imprisonment with labor and a fine referred to in paragraphs (1) and (2) may be concurrently imposed. <Amended on Jul. 30, 2013>

[This Article Wholly Amended on Dec. 21, 2007]

Article 18-2 (Attempted Crimes) Any person who has attempted to commit a crime provided in Article 18 (1) and (2) shall be punished.

[This Article Wholly Amended on Dec. 21, 2007]

Article 18-3 (Criminal Intent and Conspiracy) (1) Any person who intends or conspires to commit a crime under Article 18 (1), shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won. <Amended on Jan. 8, 2019>

(2) Any person who intends or conspires to commit a crime under Article 18 (2), shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won. <Amended on Jan. 8, 2019>

[This Article Wholly Amended on Dec. 21, 2007]

Article 18-4 (Violation of Confidentiality Order) (1) Any person who has violated a confidentiality order issued under Article 14-4 (1) without good cause in the Republic of Korea or overseas, shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(2) No prosecution against a crime under paragraph (1) shall be instituted without a criminal complaint thereof filed by an interested party.

[This Article Newly Inserted on Dec. 2, 2011]

Article 19 (Joint Penalty Provisions) If the representative of a corporation or an agent or employee of, or other persons employed by, the corporation or an individual commits any of the violations referred to in Article 18 (1) through (4) in conducting the business affairs of the corporation or individual, the corporation or individual shall, in addition to punishing the violators accordingly, be subject to a fine prescribed in the relevant Article: Provided, That this shall not apply where the corporation or individual is not negligent in giving due care and supervision to prevent such violation with regard to the relevant business affairs. <Amended on Jul. 30, 2013>

[This Article Wholly Amended on Dec. 26, 2008]

Article 20 (Administrative Fines) (1) Any of the following persons shall be subject to an administrative fine not exceeding 20 million won: <Amended on Jul. 30, 2013>

1. A person who has refused, interfered with, or evaded investigation or collection by the relevant public official under Article 7 (1);

2. A person who has failed to comply with a corrective order, in violation of Article 9-4 (5).

(2) Administrative fines under paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu, as prescribed by Presidential Decree. <Amended on Jun. 30, 2011>

(3) Deleted. <Dec. 30, 2009>

(4) Deleted. <Dec. 30, 2009>

(5) Deleted. <Dec. 30, 2009>

[This Article Wholly Amended on Dec. 21, 2007]