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UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

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Wholly Amended by Act No. 3897, Dec. 31, 1986
Amended by Act No. 4478, Dec. 31, 1991
Act No. 5454, Dec. 13, 1997
Act No. 5621, Dec. 31, 1998
Act No. 5814, Feb. 5, 1999
Act No. 6421, Feb. 3, 2001
Act No. 7095, Jan. 20, 2004
Act No. 7289, Dec. 31, 2004
Act No. 8767, Dec. 21, 2007
Act No. 9225, Dec. 26, 2008
Act No. 9537, Mar. 25, 2009
Act No. 9895, Dec. 30, 2009
Act No. 10810, Jun. 30, 2011
Act No. 11112, Dec. 2, 2011
Act No. 11963, Jul. 30, 2013

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 by Act No. 8767, Dec. 21, 2007]

Article 2 (Definitions)

The terms used in this Act shall be defined as follows: *<Amended by Act No. 11112, Dec. 2, 2011; Act No. 11963, Jul. 30, 2013>*

1. The term "acts of unfair competition" means any of the following acts:
 - (a) An act of causing confusion with another person's goods by using signs identical or similar to another person's name, trade name, trademark, container or package of goods or any other sign widely known in the Republic of Korea as an indication of another person's goods, or by selling, distributing, importing or exporting

goods bearing such signs;

- (b) An act of causing confusion with another person's commercial facilities or activities by using signs identical or similar to another person's name, trade name, emblem or any other sign widely known in the Republic of Korea as an indication of another person's business;
- (c) In addition to the act of causing confusion provided in item (a) or (b), an act of doing damage to distinctiveness or reputation attached to another person's sign by using the sign identical or similar to another person's name, trade name, trademark, container or package of goods or any other sign widely known in the Republic of Korea as an indication of another person's goods or business, or by selling, distributing, importing or exporting goods with such signs, without due causes as prescribed by Presidential Decree, such as for the purpose of noncommercial use;
- (d) An act of causing confusion about the source of origin by falsely marking the source of origin on goods or in an advertisement, on the trade documents communicated to the public or in communications, or by selling, distributing, importing or exporting goods falsely marked with the source of origin;
- (e) An act of making a mark on goods, advertisements, trade documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with a mark that would mislead the public into believing that the place of production, manufacture or processing is different from the actual place of production, manufacture or processing;
- (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 latter goods or advertisement thereof, or selling, distributing, importing or exporting goods using such

method or mark;

- (g) An act of using a trademark, without due 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, trademark, or any other mark, which is widely recognized in the Republic of Korea, by an unlawful holder for any of the following purposes:
 - (i) The purpose of selling or lending a mark, including a trademark, to an lawful holder or a third party;
 - (ii) The purpose of preventing a lawful holder from registering or using a domain name;
 - (iii) Other purpose of obtaining any commercial profits;
- (i) An act of transferring, lending, exhibiting, importing or exporting goods whose shape has been copied (referring to the form, image, color, gloss or any combination of these, including the shape of any test product and the shape in goods brochure; hereinafter the same shall apply) from the goods manufactured by any other person: Provided, That either of the following acts shall be excluded herefrom:
 - (i) An act of transferring, lending, exhibiting, importing or exporting goods whose shape has been manufactured by counterfeiting the shape of the other goods for which three years elapse from the

date on which the shape of the other goods, including when the prototype was produced, was completed;

- (ii) An act of transferring, lending, exhibiting, importing or exporting 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);
 - (j) Any other acts of infringing on other persons' economic interests by using the outcomes, etc. achieved by him/her 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 activity, that is not known publicly, is the subject of considerable effort to maintain its secrecy and has independent economic value;
3. The term "infringement of trade secrets" means any of the following:
- (a) 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) Acquiring trade secrets or using or disclosing them with the knowledge that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;
 - (c) After trade secrets have been acquired, using or disclosing them with knowledge that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross

negligence;

- (d) Using or disclosing trade secrets to obtain improper benefits or to damage the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;
- (e) Acquiring trade secrets, or using or disclosing them with the knowledge that the trade secrets have been disclosed in the manner provided in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;
- (f) After acquiring trade secrets, using or disclosing them with the knowledge that they have been disclosed in a manner provided 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 of these, which constitutes an Internet address composed of numbers.

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

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

The Commissioner of the Korean Intellectual Property Office may, for the prevention of acts of unfair competition and protection of trade secrets, engage in research, education and public relations, construction and operation of an information management system for the prevention of unfair competition, and other business prescribed by Presidential Decree.

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

CHAPTER II PROHIBITION OF UNFAIR COMPETITIVE ACTS

Article 3 (Prohibition of Use of National Flags and National Emblems, etc.)

- (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 indication 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 by Act No. 8767, Dec. 21, 2007]

Article 3-2 (Prohibition of Use of Geographic Mark Protected Under Free Trade Agreement, etc.)

- (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 subparagraphs 1 (d) and (e) of Article 2, no unlawful holder shall 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 an authentic mark 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) No unlawful holder shall conduct any of the following acts:

1. An act of transferring or delivering goods with a geographic mark in a manner falling under any of the subparagraphs 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 falling under subparagraph 1 (d) or (e) of Article 2, or an act of exhibiting for any aforementioned purpose.
 - (3) Notwithstanding the provisions of paragraph (1), a person who uses a trademark in a manner falling under any of the subparagraphs 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 pursuant to 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.

[Newly Inserted by Act No. 10810, Jun. 30, 2011]

Article 4 (Right to Request Prohibition of Acts of Unfair Competition, etc.)

- (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 by Act No. 10810, Jun. 30, 2011>*
- (2) When a person files a request under paragraph (1), he/she may also request the following measures: *<Amended by Act No. 10810, 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 by Act No. 8767, Dec. 21, 2007]

Article 5 (Liability for Compensation of Damage from Acts of Unfair Competition, etc.)

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 by Act No. 10810, Jun. 30, 2011>*

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

Article 6 (Restoration of Reputation Damaged by Acts of Unfair Competition, etc.)

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 as prescribed in Article 5, upon receiving 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 by Act No. 8767, Dec. 21, 2007]

Article 7 (Investigation, etc. of Acts of Unfair Competition, etc.)

- (1) If deemed necessary to ascertain where an act of unfair competition as provided in subparagraph 1 (a) through (g) of Article 2 or a violation as referred to in Article 3, and Article 3-2 (1) or (2) has occurred, the Commissioner of the Korean Intellectual Property Office, the Special Metropolitan City Mayor, a Metropolitan City Mayor, a Do Governor, the

Governor of a Special Self-Governing Province (hereinafter referred to as the "Mayor/Do Governor") or the head of a Si/Gun/Gu (referring to the head of an autonomous Gu; hereinafter the same shall apply) may have a related public official enter a business or manufacturing facilities to examine relevant documents, books, or products, or to collect the least amount of products necessary for testing and inspecting them. *<Amended by Act No. 10810, Jun. 30, 2011>*

(2) Where the Commissioner of the Korean Intellectual Property Office, a 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 by Act No. 10810, Jun. 30, 2011>*

(3) 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 by Act No. 10810, Jun. 30, 2011>*

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

Article 8 (Corrective Action Recommendations Against Violations)

If the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu recognizes that an act of unfair competition as provided for in subparagraph 1 (a) through (g) of Article 2 or a violation as referred to in Article 3 and Article 3-2 (1) or (2) has occurred, he/she may issue a corrective action recommendation to the person to cease the act or to remove or destroy the mark used in the act within a specific period not exceeding 30 days. *<Amended by Act No. 10810, Jun. 30, 2011>*

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

Article 9 (Hearing of Opinions)

If deemed necessary to issue a corrective action recommendation as prescribed in Article 8, the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu shall hear opinions of the