

ENFORCEMENT DECREE OF THE UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

Wholly Amended by Presidential Decree No. 16065, Dec. 31, 1998
Amended by Presidential Decree No. 17255, Jun. 27, 2001
Presidential Decree No. 21691, Aug. 18, 2009
Presidential Decree No. 22151, May 4, 2010
Presidential Decree No. 23153, Sep. 22, 2011

Article 1 (Purpose) The purpose of this Decree is to prescribe matters delegated by the Unfair Competition Prevention and Trade Secret Protection Act and matters necessary for the enforcement thereof.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 1-2 (Justifiable Grounds)

"Justifiable grounds prescribed by Presidential Decree, such as non-commercial uses" in subparagraph 1 (c) of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act (hereinafter referred to as the "Act") means cases falling under any of the following subparagraphs:

1. Where a mark is used for non-commercial purposes;
2. Where a mark is used in a news report or commentary;
3. Where a person (including his/her successor), who has used any one identical or similar to a name, trade name, trademark, or container or package of goods of any other person, or a mark indicating any other person's goods or business (hereinafter referred to as "mark") before such mark becomes widely known to the public in Korea, continues to use it without any unjust purpose;
4. Where the use of a mark is deemed not inconsistent with standard

practices of fair commercial transactions.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 1-3 (Disposal, etc. of Collected Goods)

- (1) Where the Commissioner of the Korean Intellectual Property Office, the Special Metropolitan City Mayor, a Metropolitan City Mayor, Do Governor, Special Self-Governing Province Governor (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) collects the least amount of products necessary for inspecting them under Article 7 (1) of the Act, he/she shall issue a certificate of collection described in attached Table 1 to the owner or possessor of such products. *<Amended by Presidential Decree No. 23153, Sep. 22, 2011>*
- (2) Where an inspection of the products collected pursuant to Article 7 (1) of the Act reveals that such products are not involved in any act of unfair competition falling under subparagraph 1 (a) through (g) of Article 2 of the Act or any violation as referred to in Article 3 or Article 3-2 (1) or (2) of the Act, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor or the head of a Si/Gun/Gu shall return such products to the owner or possessor at the time such products are collected. *<Amended by Presidential Decree No. 23153, Sep. 22, 2011>*
- (3) The certificate prescribed in Article 7 (3) of the Act shall be in accordance with attached Table 2. *<Amended by Presidential Decree No. 23153, Sep. 22, 2011>*

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 2 (Methods, etc. of Corrective Recommendation)

- (1) A corrective recommendation as prescribed in Article 8 of the Act shall be made in the form of a document in which any grounds for recommendation and deadline for correction are specified.
- (2) The Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor or the head of a Si/Gun/Gu may require a related public official to confirm the actual site, where deemed necessary to issue a corrective

recommendation as prescribed in paragraph (1) or to verify whether such corrective recommendation is implemented. *<Amended by Presidential Decree No. 23153, Sep. 22, 2011>*

- (3) A public official who confirms the actual site under paragraph (2) shall carry a certificate indicating his/her authority and produce it to interested parties.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 3 (Procedure for Hearing of Opinions)

- (1) If the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor or the head of a Si/Gun/Gu/Myeong to hear opinions pursuant to Article 9 of the Act, he/she shall provide written notice to the relevant party, interested person or witness of the corrective recommendation or his/her agent at least ten days before a scheduled hearing date, and shall offer him/her with an opportunity to state opinions. *<Amended by Presidential Decree No. 23153, Sep. 22, 2011>*

- (2) The relevant party, interested person or witness of the corrective recommendation or his/her agent, who has received the notice under paragraph (1), may go to the designated place at the designated date and time, and state opinions or submit written statements.

- (3) If the relevant party, interested person or witness of the corrective recommendation or his/her agent has appeared and stated opinions pursuant to paragraph (2), the relevant public official shall prepare written lists and require those who have stated such opinions to verify, sign or seal the details thereof.

- (4) The written notice as prescribed in paragraph (1) shall clarify that, if a person does not comply with the details of the notification without justifiable grounds, he/she shall be deemed to have renounced the opportunity to state his/her opinions.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 4 (Entrustment of Duties, Etc.)

- (1) and (2) Deleted. *<by Presidential Decree No. 23153, Sep 22, 2011>*

- (3) "A corporation or organization related to the duties of protection of industrial property rights or prevention of unfair competition prescribed by Presidential Decree" under Article 17 (2) of the Act means a corporation or organization falling under each of the following subparagraphs:
<Amended by Presidential Decree No. 23153, Sep. 22, 2011>
1. The Korea Invention Promotion Association established under the Invention Promotion Act;
 2. A corporation or organization designated and publicly announced by the Commissioner of the Korean Intellectual Property Office from among those who are acknowledged as having expertise in the affairs falling under Article 2-2 of the Act.
- (4) The provisions of Article 2 (2) and (3) shall apply mutatis mutandis to a person who engages in the support duties in accordance with Article 17 (3) and (4) of the Act. <Amended by Presidential Decree No. 23153, Sep. 22, 2011>
- (5) A corporation or organization that intends to receive subsidies to cover expenses under Article 17 (5) of the Act shall file an application for a subsidy to cover the expense incurred for the duties of unfair competition prevention and trade secret protection in attached Table 3, attached with the following documents, with the Commissioner of the Korean Intellectual Property Office. In such cases, the Commissioner of the Korean Intellectual Property Office shall verify the corporation registration certificate (applicable only to a corporation) through the shared use of administrative information prescribed in Article 36 (1) of the Electronic Government Act:<Amended by Presidential Decree No. 22151, May 4, 2010; Presidential Decree No. 23153, Sep. 22, 2011>
1. Work plan for unfair competition prevention and trade secret protection;
 2. Articles of association (limited to a corporation).
- (6) The Commissioner of the Korean Intellectual Property Office shall determine and publicly announce standards and procedures for designation of a corporation or organization provided for in paragraph (3) 2.

<Amended by Presidential Decree No. 23153, Sep. 22, 2011>

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 4-2 (Operating Procedure of Common Affairs)

The Commissioner of the Korean Intellectual Property Office shall determine and publicly announce the details which are necessary for the operating procedure, guidance, etc. of the duties provided for in Article 7 through 9 and 20 of the Act.

[This Article Newly Inserted by Presidential Decree No. 23153, Sep. 22, 2011]

Article 5 (Education)

The Commissioner of the Korean Intellectual Property Office may, where deemed necessary, provide education on duties for public officials engaged in the duties concerning unfair competition prevention.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

Article 6 (Criteria for Imposition of Fines for Negligence)

The criteria of imposing a fine for negligence as provided for in Article 20 (1) of the Act shall be prescribed in attached Table.

[This Article Wholly Amended by Presidential Decree No. 21691, Aug. 18, 2009]

ADDENDUM

This Decree shall enter into force on January 1, 1999.

ADDENDUM *<Presidential Decree No. 17255, Jun. 27, 2001>*

This Decree shall enter into force on July 1, 2001.

ADDENDA *<Presidential Decree No. 21691, Aug. 18, 2009>*

Article 1 (Enforcement Date)

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

Article 2 (Transitional Measures)

(1) Standards for imposing fines for negligence with respect to any offense committed before this Decree enters into force shall be governed by the previous provisions.

(2) Where standards for imposing fines for negligence per frequency of offense are applied pursuant to the amended provisions in attached Table, the first offense committed after this Decree enters into force shall be deemed one offense.

ADDENDA<Presidential Decree No. 22151, May 4, 2010>

Article 1 (Enforcement Date)

This Decree shall enter into force on May 5, 2010.

Articles 2 through 4 Omitted.

ADDENDUM<Presidential Decree No. 23153, Sep. 22, 2011>

This Decree shall enter into force on October 1, 2011.