

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

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 their enforcement.

[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 which fall 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 with 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 it is deemed that the use of a mark is 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 Korea Industrial Property Office collects

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the minimum quantity of products necessary for investigation under Article 7 (1) of the Act, he/she shall issue a certificate of collection described in annexed Form 1 to the owner or possessor of the products.

(2) Where the Commissioner of the Korea Industrial Property Office finds that the products in question are not involved in any unfair competitive act or any violation of Article 3 of the Act as a result of an examination of products collected in accordance with Article 7 (1) of the Act, he/she shall return them to the owner or possessor at the time of collecting them.

(3) The certificate prescribed in Article 7 (2) of the Act shall be in accordance with annexed Form 2.

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

Article 2 (Methods, etc. of Recommendation on Correction)

(1) Recommendation on correction as prescribed in Article 8 of the Act shall be made in the form of a document in which any grounds for recommendation and time limit for correction are specified.

(2) The Commissioner of the Korea Industrial Property Office may have the public official concerned confirm the actual site, where deemed necessary for making recommendation on correction prescribed in paragraph (1) or for confirming whether such recommendation on correction is implemented.

(3) A public official who confirms the actual site under paragraph (2) shall carry a certificate which indicates his/her authority and show it to the person concerned.

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

Article 3 (Procedure for Hearing of Opinion)

(1) If the Commissioner of the Korea Industrial Property Office intends to hear an opinion under Article 9 of the Act, he/she shall, in writing, notify the other party, interested person, or person for reference of the recommendation on correction or his/her agents at least ten days before the date when the hearing of opinion is to be held, and shall provide them with an opportunity to state their opinions.

(2) The other party, interested person, or person for reference of the recommendation on correction or his/her agents who have received notification under paragraph (1), may attend the designated place at the designated date and time, and may state their opinions or present their opinions in writing.

(3) If the other party, interested person or person for reference of the recommendation on correction or his/her agents have attended and stated

their opinions under paragraph (2), the public official concerned shall prepare the written substance thereof and shall have those who have stated such opinions verify and affix their signatures or seals thereto.

(4) Written notification as prescribed in paragraph (1) shall specify that, if the persons concerned do not comply with the notification without justifiable reason, they will be deemed to have renounced the opportunity to state their opinions.

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

Article 4 (Delegation of Authority and Entrustment of Duties)

(1) The Commissioner of the Korea Industrial Property Office shall, pursuant to the provisions of Article 17 (1) of the Act, delegate authority falling under any of the following subparagraphs, to the Special Metropolitan City Mayor, the Metropolitan City Mayor, the *Do* Governor or the Governor of a Special Self-Governing Province (hereinafter referred to as the “Mayor/*Do* Governor”): *Provided*, That if it is deemed that any unfair competitive act prescribed in each item of subparagraph 1 of Article 2 of the Act or any act in violation of Article 3 of the Act is likely to have a serious effect on the order of domestic or foreign commercial transactions, the Commissioner of the Korea Industrial Property Office may directly exercise the said authority:

1. Investigation of any unfair competitive act, etc. provided for in Article 7 (1) of the Act;
2. Recommendation on correction of violations provided for in Article 8 of the Act;
3. Hearing of opinions provided for in Article 9 of the Act;
4. Imposition and collection of fines for negligence provided for in Article 20 of the Act.

(2) If the Mayor/*Do* Governor to whom authority is delegated under paragraph (1) deals with duties falling under the authority delegated, he/she shall report quarterly on the details of dealings with the duties to the Commissioner of the Korea Industrial Property Office.

(3) The Commissioner of the Korea Industrial Property Office shall direct or supervise the Mayor/*Do* Governor so that the duties pertaining to the authority delegated to the Mayor/*Do* Governor under paragraph (1) may be dealt with consistency and balance.

(4) The Commissioner of the Korea Industrial Property Office may entrust the duties of research, education and public relations and construction

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and operation of an information management system provided for in Article 2-2 of the Act to a juristic person or an organization in the following subparagraphs, as prescribed in Article 17 (2) of the Act:

1. Korea Intellectual Property Service established under the Invention Promotion Act;
2. Juristic persons or organizations designated and publically announced by the Commissioner of the Korea Industrial Property Office from among juristic persons or organizations deemed to have expertise in of the duties provided for in Article 2-2 of the Act.

(5) Any juristic person or organization that intends to receive the subsidization of expenses under Article 17 (5) of the Act shall file an application for expense subsidy for unfair competition prevention and trade secret protection duties in the annexed Form 3, accompanied by the documents in the following subparagraphs, with the Commissioner of the Korea Industrial Property Office. In such cases, the Commissioner of the Korea Industrial Property Office shall confirm the certified transcript of registry of the juristic person (only in the case of the juristic person) through the sharing of administrative information prescribed in Article 36(1) of the Electronic Government Act: *(Amended by Presidential Decree No. 22151, May 4, 2010)*

1. Plan for unfair competition prevention and trade secret protection duties;
2. Articles of association (only in the case of the juristic person).

(6) The Commissioner of the Korea Industrial Property Office shall determine and publicly announce standards and procedures for selection of the juristic person or organization provided for in Article 4 (2).

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

Article 5 (Education)

The Commissioner of the Korea Industrial Property Office may, where deemed necessary, carry out education on duties for a public official engaged in the duties concerning prevention of unfair competitive act.

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

Article 6 (Procedure for Imposing Fines for Negligence)

Standards for imposing fines for negligence provided for in Article 20 (1) of the Act shall be prescribed in the 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 applied 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.