



(Provisional Translation)

Unfair Competition Prevention Law
(No.47f May 19, 1993, as last amended on April 23, 1999)

TABLE OF CONTENTS

	<i>Article</i>
Purpose.....	1
Definitions.....	2
Right to Request an Injunction.....	3
Claim for Damages.....	4
Presumption of Amount of Damages, etc.....	5
Submission of Documents.....	6
Measures to Recover a Business Reputation.....	7
Negative Prescription.....	8
Prohibition of Commercial Use of a State Emblem of a Foreign State..	9
Prohibition of Commercial Use of a Mark of an International Organization.....	10
Prohibition of bribery of foreign public officials.....	10bis
Exemptions.....	11
Transitional Measures.....	12
Penal Provisions.....	13
Penal Provisions.....	14

Purpose

1. The purpose of this Law is to provide measures for *inter alia* the prevention of unfair competition and compensation for damages from unfair competition, in order to ensure fair competition among business entities and the full implementation of international agreements related thereto, and thereby to contribute to the sound development of the national economy.

Definitions

2.—(1) The term “unfair competition” used in this Law shall mean any of the following acts:

(i) the act of causing confusion with another person’s goods or business by using an indication of goods or other indication (hereinafter, “indication of goods or other indication” means a name connected with a person’s business, trade name, trademark, mark, container or package of goods, or any other indication used for the indication of goods or business) which is identical or similar to another person’s indication of goods or other indication which is well-known among consumers or other purchasers, or by assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using such indication ;

(ii) the act of using an indication of goods or other indication as one’s own which is identical or similar to another person’s indication of goods or other indication which is



famous; or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using such indication ;

(iii) the act of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods which imitate the configuration of another person's goods (excluding a configuration which is commonly used for goods of the same kind as that of such other person or, where it is not the same kind of goods, goods which have an identical or similar function and utility to those of such other person; in addition, also excluding goods for which three years have elapsed from the date selling thereof first commenced);

(iv) the act of acquiring a trade secret by improper means such as theft, fraud or coercion (hereinafter referred to as "improper acquisition of a trade secret"); or the act of using or disclosing a trade secret so acquired (including, hereinafter, the act of disclosing such trade secret confidentially to a specific person);

(v) the act of acquiring a trade secret while being aware that such trade secret has been acquired through improper acquisition or, through gross negligence, not being aware of such matter; or the act of using or disclosing a trade secret so acquired;

(vi) the act of using or disclosing a trade secret after becoming aware, subsequent to its acquisition, that such trade secret has been acquired through improper acquisition or, through gross negligence, not becoming aware of such matter;

(vii) the act of using or disclosing a trade secret which has been disclosed by the business entity holding it (hereinafter referred to as the "holder"), for the purpose of unfair business competition or otherwise acquiring an unfair benefit, or for the purpose of causing injury to such holder;

(viii) the act of acquiring a trade secret while being aware or, through gross negligence, not being aware that there has been an improper disclosure of such trade secret (which means, hereinafter, in the case stipulated in Article 2(vii) above, an act of disclosing a trade secret for the purpose stipulated in the said article, or an act of disclosing a trade secret in breach of a legal duty to maintain secrecy) or that such trade secret has been acquired through improper disclosure; or the act of using or disclosing a trade secret so acquired;

(ix) the act of using or disclosing an acquired trade secret after becoming aware, subsequent to its acquisition, that there has been improper disclosure of such trade secret or that such trade secret has been acquired through improper disclosure, or not being aware of such matter through gross negligence;

(x) the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing (a) devices (including machines combined with such devices) having the sole function of enabling the viewing of images, listening to sounds or running of programs, or recording of images, sounds or programs which are restricted by technological restriction measures used by business (excluding technological restriction measures used to restrict all but specific persons from viewing images, listening to sounds or running programs, or recording images, sounds or programs) by obstructing the effect of such technological restriction measures, or (b) data storage media or machines onto which programs have been



recorded (including programs combined with such programs) having only such function; or the act of providing programs having only such function through an electronic communication line;

(xi) the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing, to all but specific persons described below, (a) devices (including machines combined with such devices) having the sole function of enabling the viewing of images, listening to sounds or running of programs, or recording of images, sounds or programs which are restricted by technological restriction measures used by businesses to restrict all but specific persons from viewing images, listening to sounds or running programs, or recording images, sounds or programs by obstructing the effect of such technological restriction measures, or (b) data storage media or machines on to which programs have been recorded (including programs combined with such programs) having only such function; or the act of providing programs having only such function through an electronic communication line;

(xii) the act of indicating on goods or with respect to services, or in an advertisement thereof or in a document or correspondence used for a transaction related thereto, in a manner which is likely to be misleading with respect to the place of origin, quality, contents, manufacturing process, use or quantity of such goods, or the quality, contents, use or quantity of such services; or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods with such an indication or providing services with such an indication;

(xiii) the act of making or circulating a false allegation injurious to the business reputation of another person in a competitive relationship;

(xiv) the act of an agent, representative, or a person who was an agent or representative of an owner of a right relating to a trademark (such right shall be limited to a right equivalent to a trademark right and hereinafter referred to simply as a "right") within one year of the date of such act in a country of the Union established by the Paris Convention (used herein as defined in Article 4, paragraph (1), item (ii) of the Trademark Law (Law No. 127 of 1959)) or in a member country of the World Trade Organization or in a contracting party to the Trademark Law Treaty, without a legitimate reason and the consent of the owner of such right, using a trademark identical or similar to the trademark relating to such right in respect of goods or services identical or similar to those relating to such right; or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods, using such trademark, identical or similar to the goods relating to such right; or providing services, using such trademark, identical or similar to the services relating to such right.

(2) The term "trademark" used in this Law shall mean trademark as defined in Article 2 (1) of the Trademark Law.

(3) The term "mark" used in this Law shall mean mark as defined in Article 2(1) of the Trademark Law.

(4) The term “trade secret” used in this Law shall mean technical or business information useful in commercial activities, such as manufacturing or marketing methods, which is kept secret and not publicly known.

(5) The term “technological restriction measures” used in this law shall mean measures which restrict viewing images, listening to sounds or running programs, or recording images, sounds or programs through electro-magnetic means (which means electronic means, magnetic means or other means unrecognizable by human perception), and which adopt a system of recording on data storage media or transmitting a signal having specific effects on machines for such purposes as viewing and listening (which means, hereinafter, machines used for viewing images, listening to sounds or running programs, or recording images, sounds or programs), or a system of recording on data storage media or transmitting transformed images, sounds or programs which needs specific transformation by machines for such purposes as viewing or listening.

(6) The term “program” used in this Law shall mean combined instructions given to a computer so as to obtain a certain result.

Right to Request an Injunction

3.—(1) A person whose business interests are infringed or are likely to be infringed by unfair competition may request that a person who is infringing or is likely to infringe such business interests suspend or prevent such infringement.

(2) A person whose business interests are infringed or are likely to be infringed by unfair competition may request, at the time of the request described in the preceding paragraph, the destruction of objects which constitute an act of infringement (including objects created by the act of infringement), the removal of facilities used for an act of infringement, or other measures necessary to suspend or prevent such infringement.

Claim for Damages

4. A person who intentionally or negligently infringes on the business interests of another person through unfair competition shall be liable to compensate for damages which result therefrom. However, this provision shall not apply to damages which arise from use of a trade secret after the rights described in Article 8, herein, are extinguished in accordance with the said article.

Presumption of Amount of Damages, etc.

5.—(1) Where a person whose business interests have been infringed by unfair competition has claimed for compensation for damages which that person has suffered against a person who intentionally or negligently infringed such business interests and received profits through such act of infringement, such amount of profits shall be presumed to be the amount of damages caused to the person whose business interests were infringed.

(2) A person whose business interests are infringed by unfair competition in any of the manners described in Article 2(1) items (i) to (ix) and (xii) may claim, against a person who intentionally or negligently has infringed such business interests, compensation for damages which the infringed person has suffered in an amount equivalent to the amount which normally ought to be awarded as compensation, in accordance with the type of unfair competition described in the following items, for the act described in such items:

(i) unfair competition as described in Article 2(1) item (i) or (ii):

the use of an indication of goods or other indication relating to such infringement;

(ii) unfair competition as described in Article 2(1) item (iii):

the use of a configuration of goods relating to such infringement;

(iii) unfair competition as described in Article 2(1) items (iv) to (ix):

the use of a trade secret relating to such infringement;

(iv) unfair competition as described in Article 2(1) item (xii):

the use of a trademark relating to such infringement.

(3) The provisions in the preceding paragraph shall not prevent a claim to compensate for damages exceeding the amount indicated in such paragraph. In such a case, the court may take into consideration, in determining the amount of compensation for damages, the fact that a person who infringed such business interests did not do so intentionally or through gross negligence.

Submission of Documents

6. In litigation relating to infringement of business interests through unfair competition, the court may order, upon petition of a party, the other party to submit any document necessary to calculate the amount of damages caused by such infringement. However, this provision shall not apply when the person holding such a document has a legitimate reason for refusing to submit it.

Measures to Recover a Business Reputation

7. The court may order a person who intentionally or negligently has committed an act of unfair competition and thereby injured the business reputation of another person to take measures, upon the request of the person whose business reputation has been so injured, necessary for the recovery of the business reputation of that person in lieu of compensation for damages or in addition thereto.

Negative Prescription

8. The right to request an injunction, by the provisions of Article 3(1), to suspend or prevent an infringement through an act of using a trade secret described in Article 2(1) items

(iv) to (iv) shall be extinguished by prescription when such act committed by the person is continuing and the right holder whose business interests have been infringed or are likely to be infringed by such act does not exercise such right within three years from the time that such right holder becomes aware of such facts and of the person committing such act. The same extinguishment shall apply, in any event, when ten years have elapsed from the time of commencement of such act.

Prohibition of Commercial Use of a State Emblem of a Foreign State

9.—(1) No person shall use, as a trademark, a mark identical to a flag or an armorial bearing of a foreign state or any other emblem which is prescribed by an ordinance of the Ministry of Economy, Trade and Industry (hereinafter, all such emblems referred to as a “flag of a foreign state or other emblem”) or a mark similar to a flag of a foreign state or other emblem (hereinafter, such identical or similar marks referred to as a “mark similar to a flag of a foreign state or other emblem”), or shall assign, deliver, display for the purpose of assignment or delivery, export or import goods using a mark similar to a flag of a foreign state or other emblem as a trademark, or shall provide services using a similar mark to a flag of a foreign state or other emblem. However, this provision shall not apply when permission has been obtained from the government agency of the foreign state which is vested with authority to grant permission (including, in this case and hereinafter, administrative measures similar to permission) for the use of a national flag of a foreign state or other insignia.

(2) In addition to the provision stipulated in the preceding paragraph, no person shall use, in a manner which is likely to mislead with respect to the place of origin of goods, an armorial bearing of a foreign state which is prescribed by an ordinance of the Ministry of Economy, Trade and Industry referred to in the preceding paragraph (hereinafter referred to as an “armorial bearing”), or shall assign, deliver, display for the purpose of assignment or delivery, export or import goods using an armorial bearing, or shall provide services using an armorial bearing. However, this provision shall not apply when permission has been obtained from the government agency of the foreign state which is vested with the authority to grant permission to use the coat of arms.

(3) No person shall use a mark identical to a hallmark or a sign of a foreign state or regional public entity, indicating control or warranty, which is prescribed by an ordinance of the Ministry of Economy, Trade and Industry (hereinafter referred to as a “sign of a foreign state or other sign”) or a similar mark (hereinafter, such identical or similar marks referred to as a “sign similar to that of a foreign state or other sign”) as a trademark on goods or for services identical or similar to goods or services for which such sign of a foreign state or other sign is used, or shall assign, deliver, display for the purpose of assignment or delivery, export or import goods using a government sign or other sign as a trademark, or shall provide services using a government sign or other sign as a trademark. However, this provision shall not apply when permission has been obtained from the government agency of the foreign state which is vested with authority to grant permission to use the government sign or other sign.

Prohibition of Commercial Use of a Mark of an International Organization

10. No person shall use, in a manner which is likely to mislead with respect to a relationship with any international organization (hereinafter in this article, means an international organization of governments or any organization equivalent thereto prescribed by an ordinance of the Ministry of Economy, Trade and Industry), a mark identical or similar to a mark representing an international organization which mark is prescribed by an ordinance of the Ministry of Economy, Trade and Industry (hereinafter, such identical or similar mark is referred to as a “similar mark of an international organization”), as a trademark, or shall assign, deliver, display for the purpose of assignment or delivery, export or import goods using a similar mark of an international organization as a trademark, or shall provide services using a similar mark of an international organization as a trademark. However, this provision shall not apply when permission of such international organization has been obtained.

Prohibition of bribery of foreign public officials

10bis.—(1) No person shall give, offer or promise any pecuniary or other advantage, to a foreign public official, in order that the official act or refrain from acting in relation to the performance of official duties, or in order that the official, using his position, exert upon another foreign public official so as to cause him to act or refrain from acting in relation to the performance of official duties, in order to obtain or retain improper business advantage.

(2) The term “foreign public official” used in paragraph (1) shall mean any person under the following :

(i) any person who engages in public service for a national or a local foreign government;

(ii) any person who engages in service for an entity constituted under foreign special laws to carry out specific tasks in the public interest;

(iii) any person who engages in service for an enterprise of which the number of stocks with the right to vote or the amount of capital subscription directly owned by one or more of national or local foreign governments exceeds one-half of that enterprise’s total issued stocks with the right to vote or total subscribed capital, or of which the number of executives (which mean directors, auditors, liquidators or other persons who engage in management of its business) appointed or named by one or more of national or local foreign governments exceeds one-half of that enterprise’s executives, and to which privileges are given by national or local foreign governments to do its business ;

(iv) any person who engages in public service for an international organization (hereinafter, “ an international organization” means an entity which is formed by governments or by other international organizations among governments);

(v) any person who exercises a public function which belongs to the authorized competence of a national or a local foreign government or an international organization and is delegated by them.

(3) Paragraph (1) is not applicable, when the foreign country described in items (i) to (iii) and (v) in paragraph (2) is the same foreign country where the main office of the person

who gives, offers or promises any advantage (which, in the case of a representative, an agent or an employee of a legal person or a person who gives, offers or promises any advantage in relation to the business of the legal person or the person, means the main office of the legal person or the person) is located.

Exemptions

11.—(1) The provisions of Articles 3 to 8, 13 (excluding those portions concerning item (iii) thereof) and 14 are not applicable to the following acts of unfair competition:

(i) unfair competition as described in Article 2(1)(i), (ii), (x) and (xii):

the act of using or indicating in a normally-used manner a common name for goods or business (excluding the name of a place of origin of goods made from grapes or using grapes as an ingredient, and having become a common name) or goods or other indication that is commonly-used for identical or similar goods or business (hereinafter such a common name or commonly-used indication together referred to as a “common name”); or the act of assigning or delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using or indicating a common name in a normally-used manner (including, in the case of unfair competition as described in items (x) or (xii) of the same paragraph, an act of providing services using or indicating, in a normally-used manner, a common name);

(ii) unfair competition as described in Article 2(1)(i), (ii) and (xii):

the act of using one's own personal name, for no unfair purpose (hereinafter, “unfair purpose” means a purpose to acquire an unfair benefit, a purpose to cause injury to another person or any other unfair purpose); or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods using, for no unfair purpose, one's own personal name (including, in the case of unfair competition as described in any of the said items, an act of providing services using one's own personal name for no unfair purpose);

(iii) unfair competition as described in Article 2(1)(i):

the act of a person using an indication of goods or other indication, for no unfair purpose, identical or similar to another person's indication of goods or other indication which is well-known, if such person had used such indication before it became well-known among consumers or other purchasers or had succeeded to a business related to such indication; or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing goods which use such indication for no unfair purpose;

(iv) unfair competition as described in Article 2(1)(ii):

the act of a person's using an indication of goods or other indication, for no unfair purpose, identical or similar to another person's indication of goods or other indication which is famous, if such person had used such indication before it became famous or had succeeded to a business related to such indication; or the act of assigning, delivering, displaying for the

purpose of assignment or delivery, exporting or importing goods which uses such indication for no unfair purpose;

(v) unfair competition as described in Article 2(1)(iii):

the act of a person assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods which the person has obtained by assignment, and which, as described in item (iii), imitate the configuration of another person's goods (provided that such person, at the time of obtaining such goods by assignment, was unaware that such goods imitated the configuration of another person's goods and was not unaware of such matter through gross negligence);

(vi) unfair competition as described in Article 2(1)(iv) to (ix):

the act of a person using or disclosing a trade secret, within the scope of authority which such person acquired through a transaction, which such person has acquired through such transaction (provided that such person, at the time of such acquisition, was not aware that there had been an improper disclosure of such trade secret or that such trade secret had been acquired through an improper disclosure or improper acquisition and was not unaware of such matter through gross negligence).

(vii) unfair competition as described in Article 2(1)(x) and (xi):

the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing devices, or data storage media or machines on to which programs have been recorded as described in Article 2(1)(x) and (xi), or the act of providing such programs through an electric communication line, for the purpose of testing or research of technological restriction measures.

(2) A person whose business interests are infringed or likely to be infringed through one of the acts described in item (ii) or (iii) of the preceding paragraph may request a person who is described in the following items, in accordance with the type of unfair competition described in such items, to use an appropriate indication in order to prevent confusion with the goods or business of such person:

(i) an act as described in item (ii) of the preceding paragraph:

a person using his own personal name (including a person who assigns, delivers, displays for the purpose of assignment or delivery, exports or imports, by himself goods using his own personal name);

(ii) an act as described in item (iii) of the preceding paragraph:

a person using an indication of goods or other indication identical or similar to another person's indication of goods or other indication and a person who succeeds to a business relating to such an indication (including a person who assigns, delivers, displays for the purpose of assignment or delivery, exports or imports, by himself or herself, goods using such an indication).

Transitional Measures

12. In the case where an ordinance of the Ministry of Economy, Trade and Industry is to be enacted, amended or abolished in accordance with the provisions of this Law, such ordinance may prescribe, to the extent deemed necessary and reasonable for such enactment, amendment or abolition, necessary transitional measures (including transitional measures concerning penal provisions).

Penal Provisions

13. Any person who falls under any of the following items shall be liable to imprisonment for a period not exceeding three years or for a fine not exceeding ¥3,000,000:

(i) a person who commits, for an unfair purpose, any act of unfair competition described in Article 2(1)(i) or (xii);

(ii) a person (excluding a person described in the preceding item) who indicates a falsehood on goods, with respect to services, in an advertisement thereof, or in a document or correspondence used for a transaction thereof, which is likely to mislead with respect to the place of origin, quality, contents, manufacturing process, use or quantity of such goods, or the quality, contents, use or quantity of such services;

(iii) a person who violates any provision of Article 9, Article 10 or Article 10*bis*(1).

Penal Provisions

14. In the case where a representative, an agent or an employee of a legal person or a person has committed, in relation to the business of the legal person or the person, any of the violations described in the preceding article, in addition to the violator being punished, the legal person shall also be liable for a fine not exceeding ¥300,000,000 and the persons shall be liable for the same fine described in the preceding article.