

Overview of the Unfair Competition Prevention Act

1. Introduction

The Unfair Competition Prevention Act aims to protect business interests of business entities by preventing unfair competition and thereby ensuring the fair competition among business entities. This law forms part of intellectual property laws including the Patent Act, Trademark Act and Design Act.

The specific acts defined as unfair competition are as follows (Article 2, paragraph (1)):

- (i) creating confusion concerning well-known indication of goods or business (item (i));
- (ii) unauthorized use of famous indication of goods or business (item (ii));
- (iii) transfer or other actions concerning products that imitate the shape of a third party's product (item (iii));
- (iv) unfair acts concerning trade secrets (items (iv) through (x));
- (v) unfair acts concerning shared data with limited access (items (xi) through (xvi));
- (vi) unfair acts against technological restriction measures (items (xvii) and (xviii));
- (vii) unfair acts concerning domain names (item (xix));
- (viii) creating confusion as to characteristics of products (item (xx));
- (ix) harming a third party's business reputation (item (xxi); and
- (x) unauthorized use of a trademark by an agent (item (xxii)).

English translation of the Act is available from:

<https://www.japaneselawtranslation.go.jp/en/laws/view/3629>

2. Major categories of acts of unfair competition

(1) Protection of indication of goods or business

The restrictions on the acts of (i) creating confusion concerning well-known indication of goods or business (item (i)) and (ii) unauthorized use of famous indication of goods or business (item (ii)) are for protecting business reputation embodied in indication, in addition to the Trademark Act.

A. (i) Creating confusion concerning well-known indication of goods or business (item (i))

Item (i) (Creating confusion concerning well-known indication of goods or

business) defines an act of creating confusion with another person's goods or business by using an indication of goods or business that is identical or similar to another person's indication of goods or business that is widely recognized among consumers as belonging to that person as an act of unfair competition. These acts constitute the violation of the Unfair Competition Prevention Act. Unlike trademarks, a registration is not required; however, an indication of goods or business must be widely recognized among consumers as an indication of goods or business of a third party.

An indication of goods or business means an indication identifying the source of products or business, including, for example, names, trade names, trademarks (including service marks), etc. pertaining to a person's business.

B. (ii) Unauthorized use of famous indication of goods or business (item (ii))

Item (ii) (unauthorized use of famous indication of goods or business) defines an act of using an indication of goods or business that is identical or similar to another person's famous indication of goods or business as one's own as an act of unfair competition. These acts constitute the violation of the Unfair Competition Prevention Act. The abovementioned unfair competition act of creating confusion concerning well-known indication of goods or business refers to an act of creating confusion using well-known indication; whereas this unauthorized use of famous indication of goods or business of a third party is considered as an act of unfair competition even it creates no confusion.

(2) Protection of shape of products

The restriction on the act of transfer or other actions concerning products that imitate the shape of a third party's product (item (iii)) protects against the transfer of products imitating the shape of a third party's product for three years after its release on the market, in a similar way as the Design Act.

Item (iii) defines an act of transfer or other actions concerning products that imitate the shape of a third party's product as an act of unfair competition. These acts constitute the violation of the Unfair Competition Prevention Act. After three years from the day of first sale of the product, the imitation of shape does not constitute unfair competition and Article 2(1)(iii) of the Unfair Competition Prevention Act does not apply.

(3) Protection of trade secrets

The restriction of unfair acts concerning trade secrets (items (iv) through (x)) protects technical or business information, in addition to other laws including the Patent Act.

A. Requirements of trade secrets

Information must satisfy the following three requirements to be eligible as trade secrets protected under the Unfair Competition Prevention Act.

- (i) the information is managed as confidential information (confidential treatment);
- (ii) it is technical or business information useful for business activities (usefulness); and
- (iii) it is not publicly known (non-public information).

For further details of the abovementioned requirements, see the Management Guidelines for Trade Secrets:

<https://www.meti.go.jp/english/policy/economy/chizai/chiteki/pdf/0813mgtc.pdf>

B. Categories of acts of infringement of trade secrets

The Unfair Competition Prevention Act has no comprehensive provision which prohibits unfair competition generally. As Article 2(1) is an exhaustive list of acts of unfair competition subject to civil liabilities, acts of infringing trade secrets subject to civil liabilities are limited to those specified in Article 2(1), items (iv) through (x). Therefore, an act which does not fall under these items, including the development or acquisition of the same information with no reference to the trade secrets in question does not constitute the infringement of trade secrets.

(A) Unauthorized acquisition of trade secrets (item (iv))

Item (iv) defines an act of acquiring trade secrets by wrongful means, such as an act of wrongful acquisition of trade secrets by unauthorized access, and an act of using or disclosing trade secrets acquired through an act of wrongful acquisition as acts of unfair competition. These acts constitute the violation of the Unfair Competition Prevention Act.

(B) Authorized acquisition of trade secrets (item (vii))

Item (vii) defines an act of a trade secret holder's employee, contractor, licensee, etc. to use or disclose trade secrets received from the trade secret

holder for the purpose of wrongful gain or causing damage to the holder as an act of unfair competition, and therefore these acts constitute the violation of the Unfair Competition Prevention Act.

The term "purpose of wrongful gain" means a purpose to gain undue profits in a manner against the public policy or principle of good faith in general. For example, if a licensee that received know-how under a license agreement discloses it to a third party and has the third party manufacture competing products, without consent from the licensor, this act falls under this item.

(C) Subsequent acquisition of trade secrets from those who unduly acquired it (items (v), (vi), (viii) and (ix))

Using or disclosing trade secrets by a subsequent recipient also falls under an act of unfair competition and constitutes the violation of the Unfair Competition Prevention Act if it satisfies specific conditions.

3. Remedies

For the violation of the Unfair Competition Prevention Act, civil remedies including compensation for damages and injunction against an act of unfair competition are available. Some types of acts (items (i) through (iv), item (vi) and item (viii)) are subject to criminal punishment.