

Topics November 10, 2005

The revision of the Prevention of Unfair Competition Act, which has become effective as of November 1, 2005, was made as a countermeasure against the increased loss caused by infringement of brand value by imitations or pirated versions as well as infringement of trade secret involving foreign companies and former employees.

1. Increased Protection of Trade Secret

1) Introduction of penalty against the overseas use and disclosure of trade secret

i) The penalty applies to those who use or disclose outside Japan trade secret which is kept in Japan.

ii) The penalty applies to those who violate outside Japan the court order of confidentiality in civil action concerning trade secret.

2) Introduction of penalty applying to former officers and employees

The penalty applies to cases such as those where proposals or solicitations for wrongful use or disclosure of trade secret without obtaining or copying of the media are made to officers or employees who later leave the employment.

3) Introduction of penalty aiming at corporations

Penalty aiming at corporations (a fine of 150,000,000 yen or less) to which the culprit of infringement charge of trade secret made by those who have no authority of access to trade secret belong has been introduced.

2. Countermeasure against Imitation and Pirated Versions

1) Introduction of criminal penalty to unauthorized use of prominent representation

The criminal penalty applies to the act to use others' famous brand names, etc. without obtaining authorization in order to label one's own goods or service for the purpose of selling such product or service.

2) Introduction of criminal penalty to the act to imitate the form of goods

The criminal penalty applies to the act to use for the purpose of selling, etc. copy goods having substantially the same form as that of others' goods.

3) Introduction of water's edge measure (Proportional Tariff Act)

Above mentioned goods with unauthorized representation of prominent brand names, imitation goods of others' form as well as those confusing consumers by using others' well-known representation without authorization are added to those subject to water's edge suspension measure. Further, the system to make a reference to the minister of Economy, Trade and Industry for his/her comments has been implemented in order for the customs to promptly and appropriately determine whether certain goods are infringing on others' goods at water's edge.

3. Revision of Punitive Provisions

Penalty incurred by the offense to violate Prevention of Unfair Competition Act has been changed from a prison term of three years or less, or a fine of 3 million yen or less to a prison term of five years or less, or a fine of 5 million yen or less

and at the same time combined punishment by prison term and fine has been introduced.

4. Clarification of Imitation Act of the Form of Goods Stipulated in the Article 2, Section 1-3 of Prevention of Unfair Competition Act
 - 1) The form of inner structure is also covered by the Act, however, the case where the appearance of the subject goods is clearly different is not deemed as unfair competition act.
 - 2) The form includes shape and pattern, color, luster and distinctive feel which are linked to such shape and all those are covered by the Act.
 - 3) The word, "imitation", is now defined clearly in the Act as depending the form of others' goods to produce goods having substantially the same form as such others' goods.
 - 4) Notwithstanding the above, the provision that such protection lasts only for three years after the first use in Japan remains unchanged (exception to Article 19).