



‘Trade Dress’ and ‘Ideas’ are subject to Protection in South Korea

The National Assembly of Korea revised the Unfair Competition Prevention and Trade Secret Protection Act (hereinafter abbreviated as ‘UCPTA’) and the Trademark Act on April 17, 2018. The revision at issue does not touch on the Patent Act, the Utility Model Act, the Design Protection Act, or the Copyright Act significantly. The revision, however, touches on UCPTA and the Trademark Act. The major features are <protection of ‘trade dress’> and <protection of ‘ideas’> under UCPTA and <relaxing the requirement for applying for the registration of collective marks with geographical indications> under the Trademark Act. The details are stated below.

1. Revision of the Unfair Competition Prevention and Trade Secret Protection Act

(1) Specific protection of the so-called trade dress

Prior to Revision	Subsequent to Revision
<p>Article 2 (definition) The term "act of unfair competition" means any of the following acts:</p> <p>1. The term of "act of unfair competition" used in this Act shall be defined as follows:</p> <p>(b) An act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or any other mark indicating another person's business, which is widely known in the Republic of Korea;</p> <p>(c) In addition to the act of causing confusion provided in item (a) or (b); an act of doing damage to distinctiveness or reputation attached to another person's mark by using the mark identical or similar to, another person's name, trade name, trademark, or container or package of goods, or any other mark indicating another person's goods or business, which is widely known in the Republic of Korea; or by selling, distributing,</p>	<p>Article 2 (definition) The term "act of unfair competition" means any of the following acts:</p> <p>1. The term of "act of unfair competition" used in this Act shall be defined as follows:</p> <p>(b) An act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or any other mark indicating another person's business (including the sales of goods or the provision of services including business signage, visual makeup, and interior design including the overall outlook of the place at which businesses are conducted), which is widely known in the Republic of Korea;</p> <p>(c) In addition to the act of causing confusion provided in item (a) or (b); an act of doing damage to distinctiveness or reputation attached to another person's mark by using the mark identical or similar to, another person's name, trade name,</p>

importing, or exporting goods bearing such marks; without good cause prescribed by Presidential Decree, such as the purpose of noncommercial use;

trademark, or container or package of goods, or **any other mark indicating another person's goods or business (including the sales of goods or the provision of services including business signage, visual makeup, and interior design including the overall outlook of the place at which businesses are conducted)**, which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks; without good cause prescribed by Presidential Decree, such as the purpose of noncommercial use;

1 (b) and (c) of Article 2 under the effective Unfair Act defined as "act of unfair competition" as followings:

(b) An act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or **any other mark indicating another person's business**, which is widely known in the Republic of Korea;

(c) In addition to the act of causing confusion provided in item (a) or (b); an act of doing damage to distinctiveness or reputation attached to another person's mark by using the mark identical or similar to, another person's name, trade name, trademark, or container or package of goods, or **any other mark indicating another person's goods or business**, which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks; without good cause prescribed by Presidential Decree, such as the purpose of noncommercial use;

The Revised Act further regulates an unfair competition act including ① the sales of goods, the method of providing services, or ② the overall outlook of the places at which businesses are conducted including business signage, visual makeup, or interior design.

Therefore, the Revised Act would now regulate a person's act of imitating a trade dress that would constitute **the total image and overall outlook** used to distinguish his or her own business operations from those of others.

The Revised Act takes effect as of July 18, 2018.

(2) Protection of technical or commercial ideas communicated between two parties

Prior to Revision	Subsequent to Revision
<p>Article 2 (definition) The terms used in this Act shall be defined as follows:</p> <p>1. The term "act of unfair competition" means any of the following acts:</p>	<p>Article 2 (definition) The terms used in this Act shall be defined as follows:</p> <p>1. The term "act of unfair competition" means any of the following acts:</p>

	<p>(j) An act of unjustly using ideas of economic value or ideas that constitute someone else's technical or commercial information during business operations or process or transaction of commercial offers, bidding, public offering, etc. in contravention of the purpose for which such ideas are distributed for financial gains or an act of distributing such ideas to someone else for unjust purposes</p> <p>Exceptions: ideas already well known by the time they are provided to someone or ideas well known in the industry</p>
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The revised Act adapts Article 2 (1)(j) as a new act of unfair competition as follows:

(j) An act of unjustly using ideas of economic value or ideas that constitute someone else's technical or commercial information during business operations or process or transaction of commercial offers, bidding, public offering, etc. in contravention of the purpose for which such ideas are distributed for financial gains or an act of distributing such ideas to someone else for unjust purposes

However, if and when the ideas at issue have already been well known by the time they were provided or if and when they are already well known in the industry, they would be outside the scope of the Unfair Competition and Prevention Act.

Under present Korean practice in the context of intellectual property rights protection, "ideas" standing alone were not subject to protection under the Copyright Act or the Patent Act. They were subject to protection only under separate contractual agreements in the context of civil law. The purpose of the Revision is to help to file an injunctive action or have a claim for compensatory damages against a person who takes advantage of ideas created and developed by the original thinker.

The Revised Act takes effect as of July 18, 2018.

2. Revision of the Trademark Act: relaxing the requirement for applying for the registration of collective marks with geographical indications

Prior to Revision	Subsequent to Revision
<p>Article 3 (Persons Entitled to Registration of Trademark)</p> <p>2. Any corporation (in cases of a collective mark with geographical indication, limited to a corporation only comprised of persons who produce, manufacture or process goods on which such geographical indication may be used) jointly founded by persons who produce, manufacture,</p>	<p>Article 3 (Persons Entitled to Registration of Trademark)</p> <p>2. Any corporation (in cases of a collective mark with geographical indication, limited to a corporation comprised of persons who produce, manufacture or process goods on which such geographical indication may be used) jointly founded by persons who produce, manufacture,</p>

process or sell goods, or provide services may obtain registration of its collective mark.

process or sell goods, or provide services may obtain registration of its collective mark.

Article 3(2) of the Korean Trademark Act has been considered as an excessive method of regulation as it has excluded or precluded corporations that engage in distribution or sales from registering collective trademarks with geographical indications.

The Revised Act removes the word "only" and corporations that engage in distribution or sales can be allowed to file for collective marks with geographical indications. The Revised Act would therefore ease the burden placed on applicants to establish corporations and purports to revitalize the industry and economy.

The Revised Act takes effect as of October 18, 2018.



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