

Revision of Unfair Competition Protection Act

In order to strengthen protections of trade secrets and data, the Unfair Competition Protection Act (UCPA) was amended and will eventually come into force on July 1, 2019.

The major changes include changes in both civil and criminal features of how the Act may be applied, largely reflecting how penalties are to be expanded in order to deter violations.

By definition, a trade secret relates to any technical information that is necessary for marketing, manufacturing, and/or commercial activities, and such information has not been made public.

1. Civil features

The revision mainly applies to the expansion of protections to include new restrictions on the assignment and import/export of materials, goods, and services that are deemed to be trade secrets. Additionally, the statute of limitations with respect to wrongful use has increased to 20 years from the first detected case of wrongful use by an offending party.

2. Criminal features

Criminal liability shall be expanded to cover attempted cases of trade secret violations and cases in which the violations occurred outside of Japan. Those convicted of violating a trade secret would be subject to steeper fines even in the case in which the violation(s) occurred outside of Japan. Additionally, the prosecution of trade secret violations would be permitted even in the case when the IP rights owner did not file an actual complaint. Lastly, the ability for authorities to seize assets and proceeds obtained through the illegal use of trade secrets was imposed.

There are cases in which the acquisition, disclosure and/or use of information does not qualify as violations of a

trade secret. The UCPA defines "data for limited provision" as technical information (usually contained in an electronic or magnetic medium) which is not deemed to contain a "trade secret" and is frequently provided to a specific person (such as "Big Data"). Under the new UCPA, the illegal acquisition, disclosure and/or use of this technical information will be deemed as unfair competition.

Acts deemed to be unfair competition by the UCPA

1. Trade secret infringement
2. Sales of counterfeit goods
3. Misuse, misappropriation, or causing intentional confusion of another company's well-known indications (ie. marks, logos, etc)
4. Provision of devices or programs for violating restriction measures in digital contents.
5. Improper acquisition and use of domain names.
6. Misleading consumers as to quality, uses and contents of goods.
7. Impairing another company's business through slander.