

Trade Secret Protection in Japan

－ 我が国における営業秘密保護 －

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Intellectual Property Policy Office
Economic and Industrial Policy Bureau

経済産業政策局 知的財産政策室

1 Unfair Competition Prevention Act / 不正競争防止法

- Japan has a special law, the Unfair Competition Prevention Act (“UCPA”), which regulates trade secret infringement.

我が国では、「不正競争防止法」において営業秘密侵害を規制

UCPA Article 1

The purpose of this Act is to ensure fair competition among business operators and the proper implementation of related international agreements, **to provide measures for the prevention of unfair competition** and compensation for damages caused by unfair competition and **thereby contribute to the sound development of the national economy.**

不正競争防止法第一条

この法律は、事業者間の公正な競争及びこれに関する国際約束の的確な実施を確保するため、**不正競争の防止**及び不正競争に係る損害賠償に関する措置等を講じ、**もって国民経済の健全な発展に寄与することを目的とする。**

2 Acts of Unfair Competition / 不正競争行為

- Infringement of trade secrets is one of the acts of unfair competition which UCPA regulates.

営業秘密侵害は、不正競争行為の一類型

Acts of Unfair Competition / 不正競争行為

1. Causing Confusion by Using Well-known Trademarks / 周知表示の混同惹起
2. Use of Another Famous Person's Likeness / 著名表示冒用
3. Imitation of Shape/Form of Goods / 形態模倣
4. **Infringement of Trade Secrets / 営業秘密侵害**
5. Avoidance of Technological Restriction Measures / 技術的制限手段無効化装置
6. Illicit Acquisition of Domain Name / ドメインネームの不正取得
7. Act of Misrepresenting Information related to Origin or Quality / 誤認惹起表示
8. Act of Injury to Business Reputation / 信用毀損行為
9. Illicit Use of Foreign National Flags or Crests, etc. / 外国国旗・紋章等の不正使用
10. Bribes to Foreign Officials / 外国公務員贈賄

Remedies / 法的措置

Civil Recourse / 民事

- ✓ Right to seek an injunction / 差止請求権
- ✓ Claim for Damages / 損害賠償請求権
- ✓ Presumption of Amount of damages, etc. / 損害額の推定

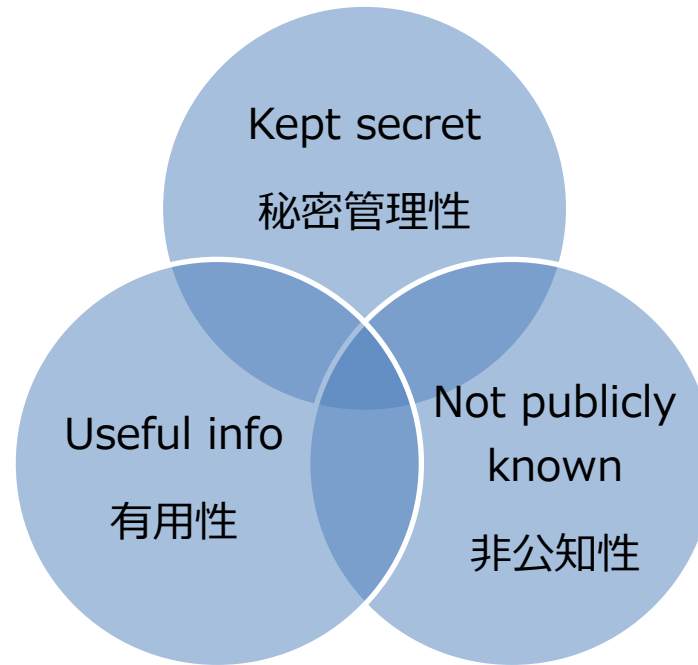
Criminal Recourse / 刑事

- ✓ Penalty (Imprisonment, Fine) / 刑罰 (懲役、罰金)
- ✓ Criminal Penalties Applicable to Legal Entities / 法人両罰
- ✓ Penal Provisions for Acts in Foreign Countries / 国外犯処罰

3 What constitutes a “Trade Secret”? / 「営業秘密」とは？

- Three key factors of trade secrets; Kept Secret / Useful Info / Not Publicly Known

営業秘密の三要素：秘密管理性 / 有用性 / 非公知性



* UCPA Article 2(6) defines a **trade secret** as:

- technical or business **information useful for commercial activities** such as manufacturing or marketing methods,
- that is **kept secret**; and
- that is **not publicly known**.

不正競争防止法第2条第6項

この法律において「営業秘密」とは、秘密として管理されている生産方法、販売方法その他の事業活動に有用な技術上又は営業上の情報であつて、公然と知られていないものをいう。

4 Past Revision of UCPA / これまでの不正競争防止法改正

- Japan has strengthened the protection of trade secrets through several revisions of UCPA.

数度の改正を通じ、徐々に営業秘密保護を強化

- | | |
|------|---|
| 1990 | Partial revision of UCPA introducing trade secret protection /
営業秘密保護のための部分改正 |
| 2003 | Introducing criminal recourse / 刑事的保護の導入 |
| 2005 | Strengthening of punishment; etc. / 罰則強化等 |
| 2006 | |
| 2009 | |
| 2011 | Maintenance of criminal procedures for appropriate protection of
trade secrets in the courts /
法廷における適切な営業秘密保護に向けた刑事訴訟手続の整備 |

5 Amendment of UCPA in 2015 / 不正競争防止法改正

- Japan amended both civil and criminal articles of UCPA for the purpose of increasing deterrents against infringement of trade secrets.
営業秘密侵害に対する抑止力向上のため、民事・刑事両面にわたる法改正を実施。

(1) Expansion of criminal protection coverage / 刑事保護範囲拡大

Punishment of subsequent dishonest acquirer / 転得者の処罰範囲拡大

Regulation of distribution of trade secret infringing products / 営業秘密侵害品の譲渡・輸出入等の規制

Punishment for attempted infringement / 未遂行為の処罰

Punishment of trade secret crimes outside Japan / 国外犯処罰の範囲拡大

Raise the maximum fine, prosecution despite absence of complaint / 罰金額の上限引上げ、非親告罪化

Reduction of Burden of Proof / 立証負担の軽減

Discretionary confiscation / 任意的没収規定の創設

Extension of Statute of Limitations / 除斥期間の延長

(2) Increase deterrents / 抑止力向上

(3) More effective civil remedies / 民事救済の実効性向上

6 Schedule / 今後の予定

- Revised UCPA will become effective in early 2016.

来年1月頃、改正法が施行予定

2015/7/3 Amendment of UCPA was approved by Diet / 改正法成立

2015/7/10 Promulgation / 公布

Around 2016/Jan. Revised Law will become effective* / 改正法施行予定

* Article 1 of Supplementary Provisions

This Act shall come into effect on a day specified by Cabinet Order **within a period not exceeding six months from the day of promulgation**; provided, that the provisions of **Article 15 of this Act** shall come into effect as of the day on which this Act comes into effect.



Statutes of Limitations

附則第一条

この法律は、**公布の日から起算して六月を超えない範囲内**において政令で定める日から施行する。ただし、**第十五条の改正規定**は、公布の日から施行する。



除斥期間に関する規定