



Fair Trade Protections for Right of Publicity and Trade Secrets

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The Unfair Competition Prevention And Trade Secret Protection Act (the “Trade Secrets Act”) has been amended and will become effective on April 20, 2022. The amended Trade Secrets Act is the first law to explicitly recognize the Right of Publicity in Korea and regulates the infringement of such right as an unfair competition activity. The amended Trade Secrets Act also strengthens protections of trade secrets by regulating the unfair use of trade secrets as an unfair competition activity.

a. Right of Publicity

Article 2 Subparagraph 1(l) of the amended Trade Secrets Act provides legal grounds for the Right of Publicity, by regulating “illegal use of personal identification indicia” as a new type of unfair competition activity.

(l) the act of infringing another person’s economic interests by using such person’s name, portrait, voice, signature, or other indicia which are widely known within the country and have economic value for one’s own business without permission in a manner contrary to fair commercial practices or competition order.

The Right of Publicity is the right to have exclusive control over the proprietary value (economic benefits) of an individual’s name, likeness, or other recognizable indicia of one’s persona. Previously, this was not explicitly protected by law. For such reason, in the past, some cases recognized infringement of the Right of Publicity based on other legal grounds, such as infringement of personality rights or illegal conduct, whereas other cases refused to accept such claim for lack of legal grounds.

b. Trade Secrets

The amended Trade Secrets Act further strengthened protections for trade secrets by regulating the unfair use of trade secrets as an unfair competition activity. Article 2 Subparagraph 1(k) of the amended Trade Secrets Act defines unfair use of trade secrets as follows:

(k) any of the following conduct which uses data (as defined in Article 2 Subparagraph 1 of the “Framework Act on Promotion of Data Industry and the Promotion of Use” which is technical or business information which is not kept as secret, and a substantial amount of which is accumulated and managed in an electronic form and provided to a specific person or specific number of persons, hereinafter the same shall apply) in an unfair manner:

1. the act of obtaining data or using and disclosing such data obtained by way of theft, deception, illegal access, and other unlawful means by a person who does not have authority to access the data;
2. the act of using, disclosing, or providing to a third party, the data of a data owner for the purpose of gaining unfair profits or making the data owner suffer damages by a person who has authority to access the data under contractual relationships, etc., with the data owner;
3. the act of knowingly obtaining the data pertaining to (1) and (2) above and knowingly using and disclosing such data;
4. the act of providing, importing, exporting, manufacturing, transferring, leasing or transmitting without authorization, or displaying for the purpose of transferring and leasing, the technology, service, device or the components of such devices whose main purpose is to avoid, eliminate or change technical protective measures implemented for the protection of the data (the “neutralization”); provided that, this shall not apply to the manufacturing of devices or components thereof to neutralize the technical protective measures for the purpose of research and development of technical protective measures.

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