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# Enforcing Trade Secrets at Japanese Courts

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# History of Protection for Trade Secrets in Japan

- 1934: Enactment of Unfair Competition Prevention Act
  - There were no specific provisions regarding trade secrets.
  - Trade secrets were protected under general laws (i.e. damages in torts).

# History of Protection for Trade Secrets in Japan (continued)

- 1990: Addition of provisions regarding civil protections for trade secrets
  - injunctions against wrongful acquisition, use or disclosure of trade secrets
  - compensation for damages
- 1993: Full-fledged revision of Unfair Competition Prevention Act
  - Addition of provisions regarding presumption of the amount of damage, etc.

# History of Protection for Trade Secrets in Japan (continued)

- 2003: Addition of provisions regarding criminal sanctions
- 2004: Addition of provisions regarding procedural protections in civil proceedings
- 2005: Reinforcement of criminal sanction
- 2009: Reinforcement of criminal sanction
- 2011: Addition of provisions regarding procedural protections in criminal proceedings

# History of Protection for Trade Secrets in Japan (continued)

- 2015: (Most recent revisions)
  - Addition of provisions presuming the use of trade secrets for manufacturing process, etc.
  - Extension of the term of extinctive prescription
  - Reinforcement of criminal sanction

# Civil Protection

- Infringement of trade secrets
  - Definition of “trade secret”
  - Categories of Infringement
  - Remedies

# Definition of “trade secret”

The term "trade secret" as used in this Act means **technical or business information useful for business activities**, such as manufacturing or marketing methods, that **is kept secret** and that **is not publicly known**.  
(Article 2, Paragraph (6))

## Definition of “trade secret” (continued)

- to be kept secret
  - restriction on access
  - recognizable as secret

## Definition of “trade secret” (continued)

- information useful for business
  - technical data, manufacturing methods, customers information, etc.
  - negative information
  - information regarding illegal activities and/or scandals should be excluded

## Definition of “trade secret” (continued)

- not publicly known
  - information that can be acquired by reverse engineering of marketed products?
  - information easily acquired by simple analysis of the products
  - information obtained by highly skilled work that needs considerable time

# Categories of Infringement

- the act of **acquiring a trade secret by theft, fraud, duress, or other wrongful means** (hereinafter referred to as an "act of wrongful acquisition"), or the act of **using or disclosing** (including the disclosure in confidence to a specific person or persons; the same shall apply hereinafter) **a trade secret through an act of wrongful acquisition;**  
(Article 2, Paragraph (1), Subparagraph (iv))

# Categories of Infringement (continued)

- the act of acquiring a trade secret with the knowledge, or with gross negligence in not knowing, that there has been an intervening act of wrongful acquisition, or the act of using or disclosing a trade secret so acquired;  
(Article 2, Paragraph (1), Subparagraph (v))

# Categories of Infringement (continued)

- the act of using or disclosing an acquired trade secret after having learned, or having been grossly negligent in not learning, subsequent to its acquisition, that there has been an intervening act of wrongful acquisition;  
(Article 2, Paragraph (1), Subparagraph (vi))

# Categories of Infringement (continued)

- the act of using or disclosing a trade secret that has been disclosed by the business operator that owns said trade secret (hereinafter referred to as the "owner") for the purpose of acquiring a wrongful gain, or causing injury to such owner;

(Article 2, Paragraph (1), Subparagraph (vii))

# Categories of Infringement (continued)

- the act of **acquiring a trade secret with the knowledge, or with gross negligence in not knowing, that such trade secret's disclosure is an act of improper disclosure** (meaning, in the case prescribed in the preceding item, the act of disclosing a trade secret for the purpose prescribed in said item, or the act of disclosing a trade secret in breach of a legal duty to maintain secrecy; the same shall apply hereinafter) **or that there has been an intervening act of improper disclosure with regard to such trade secret, or the act of using or disclosing a trade secret so acquired;**  
(Article 2, Paragraph (1), Subparagraph (viii))

# Categories of Infringement (continued)

- the act of using or disclosing an acquired trade secret after having learned, or having been grossly negligent in not learning, subsequent to its acquisition, that such trade secret's disclosure was an act of improper disclosure or that there has been an intervening act of improper disclosure with regard to such trade secret;

(Article 2, Paragraph (1), Subparagraph (ix))

# Remedies

- Injunctions
- Compensation for damages
  - Presumption of the amount of damage, etc.  
(Plaintiff's profit per unit  $\times$  quantity of the transferred infringing articles; defendant's profit; royalty equivalents)
- Measures to restore business reputation
- Extinctive prescription
  - 3 years from the plaintiff's learning of the infringement, 10 years ( $\rightarrow$  20 years) from the beginning of the infringement

# Procedural Protection in Civil Procedure

- protective order
- suspension of open examination of parties
- in-camera procedure for determining the presence of the justifiable grounds for refusing to submit documents
- restriction on disclosure of trial records

# Criminal Sanction

- Sanction
  - imprisonment (up to 10 years) and/or fine (up to 10 million yen → 20 million yen/30 million yen ) for individuals
  - fine (up to 300 million yen → 500 million yen/1 billion yen) for companies
- Procedural Protections in Criminal proceedings
  - protective rulings for trade secrets
  - examination of witnesses, etc. on a day other than a trial date

Thank you for your attention.