

67(2), 73(1)(iii) and (iv), 85, 90 and 91 includes trademarks similar to the registered trademark; if the colors of a similar trademark are the same as the colors of the registered trademark, the similar trademark is deemed identical to the registered trademark.

(2) "A trademark similar to the registered trademark" referred to in Articles 66(1) and 73(1)(ii) does not include trademarks similar to a registered trademark that are deemed identical to the registered trademark because the colors of the similar trademark are the same as the colors of the registered trademark.

### **Article 92 *Mutatis Mutandis* Application of the Patent Act**

Articles 218 to 220, 222 and 224*bis* of the Patent Act apply *mutatis mutandis* to trademarks.

## **CHAPTER X**

### **PENAL PROVISIONS**

#### **Article 93 Offense of Infringement**

A person who has infringed a trademark right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

#### **Article 94 Offense of Perjury**

(1) Having taken an oath under law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets

falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1) of this Article, a person who reveals the offense before the examination of the case is concluded, before the examiner's decision to grant or refuse trademark registration is made or before a trial decision on the case becomes final may be partially or totally exempted from the application of the penalty.

### **Article 95 Offense of False Marking**

A person who violates Article 91 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 96 Offense of Fraud**

A person who fraudulently or unjustly obtains a trademark registration, the supplementary registration of designated goods, the registration for renewal of the term of a trademark right, the registration of the reclassification of goods or a trial decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 97 Dual Liability**

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person violates Articles 93, 95 or 96 with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 93, a fine not exceeding 300 million won; or
- (ii) under Articles 95 or 96, a fine not exceeding 60 million won.

### **Article 97bis Confiscation**

(1) A trademark or packaging that infringes trademark rights or the exclusive use of the rights of another under Article 93, or a trademark obtained by such an infringement, or machinery used for the production of such goods, must be confiscated.

(2) Notwithstanding paragraph (1) of this Article, if, to remove an infringement, goods can be easily detached from their trademarks or packagings without affecting the function or feature of those goods, the goods may not be confiscated.

### **Article 98 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence; or
- (iii) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph(1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph(2) of this Article may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of the date of notification of the imposition.

(4) Upon receipt of a protest under paragraph(3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where an objection has not been raised within the period prescribed in paragraph(3) of this Article and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990.

### **Article 2 General Transitional Measures**

Except as otherwise provided in Articles 3 to 8 of this addendum, this Act applies to matters that have taken place before this Act enters into force. However, any effect taken under the previous provisions is not affected.

### **Article 3 Transitional Measures on the Dismissal of a Correction**

A correction made before this Act enters into force is subject to the previous provisions.

### **Article 4 Transitional Measures on an Application for Trademark Registration etc.**

The examination of an application for trademark registration, an application