

## **THE TYPES OF UNFAIR TRADE CONDUCTS REGARDING PARALLEL IMPORT**

Enacted on July 29, 1997  
by the Fair Trade Commissions Notification No. 1997-27

Amended on December 31, 1998  
by the Fair Trade Commissions Notification No. 1998-18

The types of unfair business practices regarding parallel import, pursuant to Article 23 (Prohibition of Unfair Business Practices), Paragraph 2 of the Monopoly Regulations and Fair Trade Act and Article 36 (Designation of Unfair Business Practices), Paragraph 2 of its enforcement decree, shall be announced as follows.

December 31, 1998  
The Fair Trade Commission

### **The Types of Unfair Business Practices Regarding the Parallel Import**

#### **Article 1 Purpose**

The purpose of this Notification is to prevent, in advance, the unfair conducts of impeding parallel import, by specifying the representative types of the conducts that falls under the prohibited unfair trade conducts regulated by Article 23 (Prohibition of Unfair Business Practices), Paragraph 1 of the Monopoly Regulations and Fair Trade Act (hereinafter referred to as the "Act").

#### **Article 2 Definition of the Term**

- (1) "Authentic commercial goods" mean the goods that are distributed with the trademarks that were attached by a person who has a right to duly use the trademark in foreign countries.
- (2) "Person with an exclusive importing right" means a person who falls under one of the following subparagraphs;
  1. When persons with the foreign trademark right and domestic trademark right are the same person, or in a subsidiary relationship (when a person is a largest investor and owns stocks or equities more than 30%), or in an importing agency relationship.
  2. A person who received an exclusive right to use from a person who is in a relationship referred to under subparagraph 1 with a foreign trademark right holder.
- (3) "Parallel import" means an importation of authentic commercial goods by a third party through other distribution channel without a permission of the

person with an exclusive importing right, when the concerned foreign goods are imported by the person with an exclusive importing right.

### **Article 3 Subject of Application**

This Notification shall regulate unfair trading conducts of a person with an exclusive importing right and seller who unduly impede a parallel importer's importing and selling of the goods whose imports are permitted since they are "not deemed to infringe upon the trademark right" pursuant to the proviso of Article 1-3, subparagraph 3 of the Notification Regarding the Import-Export Clearance Management for the Protection of Intellectual Property Right of the Korea Customs Service. The cases of unfair conducts impeding parallel imports as referred to in Articles 5 through 11 of this Notification shall be premised hereon.

### **Article 4 Basic Principle**

(1) Since a third party other than a person who has an exclusive importing right imports authentic commercial goods through other distribution channels, parallel import generally has a effect of promoting competition, and thus unfairly impeding such shall constitute the violation of the Act.

(2) In the event where goods which are said to be the parallel imports are not authentic commercial goods but imitated goods, a person with an exclusive importing right may terminate sales of such goods citing the reason that the trademark right is infringed and in principle, it shall not raise any legal problems to take necessary actions to protect the credibility of trademarks when there exists a possibility, by a false indication of the origin, etc., that general consumers may misunderstand certain goods as the same commercial goods with the one a person with an exclusive importing right deals with, even though the goods have different characteristics and qualities.

### **Article 5 Interrupting the Purchase of Authentic Goods from the Foreign Channels of Distribution**

When a person with an exclusive importing right engages in the one of the following acts, it shall fall under Subparagraph 7 (Transactions based on Restrictive Conditions), Item B (Restricting the Transacting Area or Partner) of the Appendix of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act (hereinafter referred to as the "Appendix of the Enforcement Decree), violating the former part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Subparagraph 5 of the Act, or it shall fall under Subparagraph 8 (Interference in Business Activities), Item D (Other Interference in Business Activities) of the Appendix of the Enforcement Decree, violating the latter part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Subparagraph 5 of the Act:

1. Acts that prevent a person with the foreign trademark right from supplying products to his foreign customers when a parallel importer wants to purchase authentic commercial goods.

2. Acts that prevent a person with the foreign trademark right from supplying products to his foreign customer who deals with the same products by finding out the channels of purchase from the product number of parallel imports.

#### **Article 6      Restriction against the Distributors' Handling of Parallel Imports**

In the event where a person with an exclusive importing right transacts with his distributor under the condition that he/she will not unfairly deal with parallel imports in selling exclusive imported goods, etc., in other words, when the distributors are not allowed to deal with parallel imports, it shall fall under Subparagraph 7 (Transaction based on Restrictive Conditions), Item A (Exclusive Transactions) of the Appendix of the Enforcement Decree, violating the former part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Subparagraph 5 of the Act.

#### **Article 7      Discriminative Treatment to Seller who Deals with the Parallel Imports**

It falls under Number 2 (Discriminative Treatment), Item A (Price Discrimination) and Item B (Discrimination on Trading Condition) and violates the latter part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Number 1 of the Act when a person with an exclusive importing right, in selling exclusively imported goods, deals with his sellers who treat parallel imports, in considerably unfavorable price compared to other sellers, or unduly discriminates the sellers with respect to terms and conditions, including quantity and quality, or contents of the trade.

#### **Article 8      Suspension and Refusal of Product Supply to Sellers who Deals with Parallel Imports**

It falls under Subparagraph 1 (Refusal to Deal), Item B (Other Refusals of Trade) of the Appendix of its Enforcement Decree and violates the former part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Subparagraph 1 of the Act when a person with an exclusive importing right, in selling the exclusively imported goods, refuses to deal with a seller who deals with parallel imports or when a person with an exclusive importing right unduly suspends the supply of products to a seller who deals with the parallel imports, among the sellers with whom he had an ongoing relationship, for the only reason that the seller deals with parallel imports.

#### **Article 9      Restriction on Selling of the Exclusively Imported Goods to a Retailer who Deals with the Parallel Imports**

When a person with an exclusive importing right unduly prevents his sellers (wholesalers) from selling the exclusively imported goods to a retailer who deals with parallel imports, it shall fall under Subparagraph 7 (Transactions based on Restrictive Conditions), Item B (Restriction on the Trading Area or Trading Partners) of the Appendix of Enforcement Decree, violating the former part of Article 23 (Prohibition of Unfair Business Practices), Paragraph 1, Number 5 of

the Act, or it shall fall under Subparagraph 6 (Abuse of Trading Position), Item E (Interference with the Management), violating Article 23(Prohibition of Unfair Business Practices), Paragraph 1, Number 4 of the Act,

**Article 10 Slanderous Representation and Advertisement regarding Parallel Imports < Deleted on December 31, 1998>**

**Article 11 Interference in PR Activities of Parallel Imports < Deleted on December 31, 1998>**

#### **ADDENDUM < July 29, 1997>**

**Article 1 Effective Date**

This Notification shall enter into effect on the date of its notification.

**Article 2 Interim Measures**

With regard to acts that have been committed before the enforcement of this Notification, the Notification on the Types of Unfair Business Practices in Parallel Import (Jan. 1, 1996) shall apply.

#### **ADDENDUM < December 31, 1998>**

**Article 1 Effective Date**

This Notification shall take effect on January 1, 1999.

**Article 2 Interim Measures**

With respect to acts that have been committed before the enforcement of this Notification, the Types of Unfair Business Practices in Parallel Import (Fair Trade Commission Notification No. 1997-27) shall apply.

<Appendix>

**Korea Customs Service Notification  
Regarding the Management of Customs Clearance of Export-Imports  
for the Purpose of Protecting Intellectual Property Rights**

**The Contents of Proviso Article 1-3, Subparagraph 5**

With regard to products, attached with the same trademark as the one requested for the protection of trademark right, that are reported as imports by a person who is not a trademark right holder, it shall be regarded as not infringing upon a trademark right in the event that the trademark concerned is attached by a person with a right to legally use it in foreign countries and trademark right holders at home and abroad falls under one of the following items.

- (a) When there are relationships that could be regarded as the same person: for example, persons with trademark right at home and abroad are the same people, are in affiliated relationship (when the person owns 30% or more shares of the other and is its largest investor) or in importing agency relationship.
- (b) When a person receives an exclusive right of use from domestic trademark right holder who is in relationship as referred to under subparagraph (a) with a person with the foreign trademark right; provided, however, that in the event where a person with an exclusive right of use at home only manufactures and sells the goods with the trademark concerned, it shall be limited to the case that a person with an exclusive right of use at home and foreign trademark right holder are the same entity or may be considered the same entity.