

Strengthening IPR Protection

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Bongsan Talchum (Mask Dance Drama of Bongsan)
Talchum (mask dance) is a stage play wherein one person or several people wearing a mask act as a person, an animal, or a supernatural being (god), delivering a message with dialogues or dances. Bongsan Talchum was started in Bongsan-gun, Hwanghae-do about 200 years ago.

Providing Legal Basis for Data and Publicity Protection

Intellectual Property Protection Policy Division

Amendments to the *Unfair Competition Prevention and Trade Secret Protection Act* were promulgated on December 7, 2021 which stipulates new acts of unfair competition, including the misappropriation of data (to be enforced in April 2022) and distinctive signs (e.g. portraits and names) of a famous person (to be enforced June 2022).

As the ability to secure and use data is becoming a key element that determines competitiveness in a data economy, many countries around the world are hurrying to be the first to align their data-related legislations accordingly. In that regard, the ROK has been aiming to create an environment where data can be effortlessly used and distributed by making reasonable compensation for data creation.

However, there is concern that granting monopoly rights to data itself may discourage its use and hinder the development of the growing data industry. Therefore, the amendment only defines the action of misappropriation of data which has been accumulated and managed for the purpose of transaction to be an act of unfair competition and protect the data holder.

Going forward, the holder of the data is able to request an injunction by the court for unlawfully acquired or used data and claim compensation if any damage occurs. It will also be possible to request an investigation by KIPO to order corrective measures and remedies. Also, acts that work to impair the technical measures put in place to protect data may be subject to criminal penalties up to 3 years of imprisonment or a fine up to KRW 30 million.

The other amendment is related to the publicity of famous persons in the form of portraits or names. The rapidly growing global popularity of the Korean popular culture has created a large consumer base, however, a lack of stipulated legislation made it difficult to sufficiently protect against the production and sale of products using the unauthorized images and names of celebrities. With new provisions in place, a right holder can claim economic damages due to the unauthorized use of a portrait or name of famous persons and request an injunction by the courts as well as an investigation by KIPO to get compensation and remedies.

Enabling Reasonable Compensation for Damages

Intellectual Property Protection Policy Division

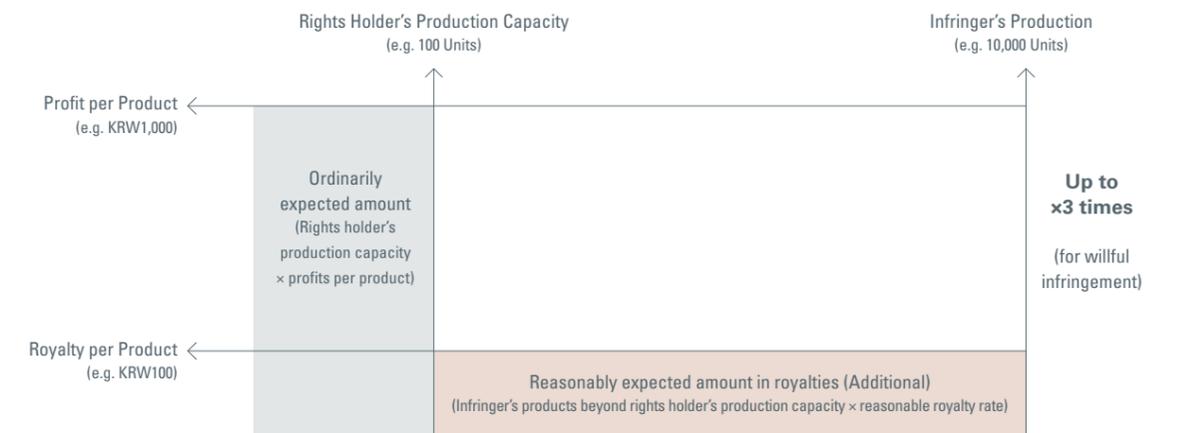
Partial amendments were made to the *Trademark Act*, *Design Protection Act*, and *Unfair Competition Prevention and Trade Secret Protection Act* to enable reasonable compensation that includes damages that exceeds the production capacity of the rights holders on June 23, 2021. The new calculation of compensation for damages was first introduced to only the *Patent Act* in December 2020, but now, the same compensation calculation method is applied to almost all intellectual properties except for copyrights.

Prior to the amendment, a rights holder could not claim compensation for damages that exceeded their own production capacity. Therefore, larger companies could profit from infringing on the innovative idea and technology of smaller companies with smaller production capacity. With a weak

deterrent, companies would oftentimes steal or copy and pay comparatively small compensation rather than sign lawful licensing agreements with the rights holder.

However, it is now possible to claim compensation for the full production capacity of the rights holder as well as any exceeding amount by calculating the reasonably expected amount in royalties. Furthermore, the amount awarded can increase up to three times in punitive damages for willful infringement.

With the new calculation methods, right holders will have more comprehensive protection against intentional violations of various IP rights. These amendments help establish an environment encouraging lawful use of ideas and technologies, thereby accelerate the innovation and growth of SMEs and venture companies.



- > With consideration that an IPR can be licensed by multiple people at the same time
(Right holder's production capacity x profits per product) + (Infringer's products beyond right holder's production capacity x reasonable royalty rate)
- *Up to 3 times in compensation for willful infringement
- >> Important to calculate damage compensation based on a reasonable royalty rate

Expanding and Reorganizing KIPO Divisions for Investigation

Technology & Design Police Division, Trademark Police Division, and Unfair Competition Investigation Division

Since 2010, KIPO has been strengthening IPR enforcement through gradual expansion of their investigative divisions. In 2021, to help further improve effectiveness of investigations, the Industrial Property Investigation Division was divided according to specific fields of IPRs and restructured into separate divisions Technology & Design Police Division, the Trademark Police Division and the Unfair Competition Investigation Division.

Each division consists of government administrative officials who carry out investigative and enforcement activities regarding fields that require specific expertise (i.e. patented technologies, trade secrets, designs, trademarks, and unfair competition actions). Based on information gathered from direct investigations, they are able to make quick and accurate judgement on the occurrence of IPR violations and order corrective recommendations or transfer the case to the Prosecutor's office. KIPO also increased the overall number of personnel from 47 to 58 people with 22 people in the Technology & Design Police Division, 29 people in the Trademark Police Division and 7 people in the Unfair Competition Investigation Team.

The Technology & Design Police Division (also known as the "Tech Police") dedicates effort to protect against infringement and leaks of key technologies, which are core assets of national industrial competitiveness. The Tech Police specializes in investigating illegal activity involving patented

technologies, trade secrets and designs. members are professionals with proficient knowledge in technology and IP law, such as having Ph.D degrees (law, engineering, pharmacy, and design), lawyer/patent attorney certification, or experience in examination and trials. In 2021, the Tech Police investigated 164 cases and arrested 376 individuals on criminal charges.

Most notably, KIPO worked in collaboration with the National Intelligence Service to close a major case regarding an attempt to internationally leak the trade secret of a medium-scale Korean semiconductor manufacturing equipment company. The case concluded with the arrest of 7 individuals, including an overseas company broker, and the prevention of KRW 100 billion worth of damage.

The Trademark Police Division works to prevent disruption of the market order and damage to consumers caused by trademark infringements mainly in the form of distribution of counterfeits. In addition to carrying out crackdowns and monitoring of on/offline counterfeits, the Trademark Police organizes private-public cooperation for counterfeit prevention, hosts training and promotional activities on the illegality of trademark infringement, and operates a reward system for reporting counterfeits. In 2021, they investigated 523 cases and arrested 557 individuals on criminal charges, confiscating 78,061 counterfeit items, thereby preventing consumer damages worth KRW 41.5 billion.

The Unfair Competition Investigation Team carries out administrative investigations and recommends measures for correction according to provisions under the *Unfair Competition Prevention and Trade Secret Protection Act*. There has been a steady growth in the number of reported cases each year with a total of 405 cases reported to KIPO from December 2017 until 2021. Having concluded investigation for 327 cases, there were 148 instances where the offenders made self-corrections

and 14 required KIPO to make orders of corrective measures. The number of reports is expected to increase as protection of data and publicity fall under the scope of administrative investigations.

In that regard, the expansion and reorganization has allowed KIPO to effectively focus enforcement according to specific needs and to commit itself to promoting a fair market order with thorough inquiry and investigations.



Outcome of Counterfeit Enforcement in 2021

Trademark Police Division

KIPO has been actively responding to trademark infringements and distribution of counterfeit goods. In 2021, KIPO's special judicial police on IP arrested 557 people on criminal charges and confiscated 78,061 counterfeit goods which was worth KRW 41.5 billion in counterpart genuine product value. As a result of KIPO's efforts

to eradicate counterfeits, the number of arrests decreased by 9.7% from 617 people in 2020, and the number of confiscated goods decreased 89.2% from 720,471 items in 2020 and the overall value of the counterfeit goods that were confiscated increased by 160.1% from KRW 15.96 billion in 2020.

Results of Counterfeit Enforcement by Year

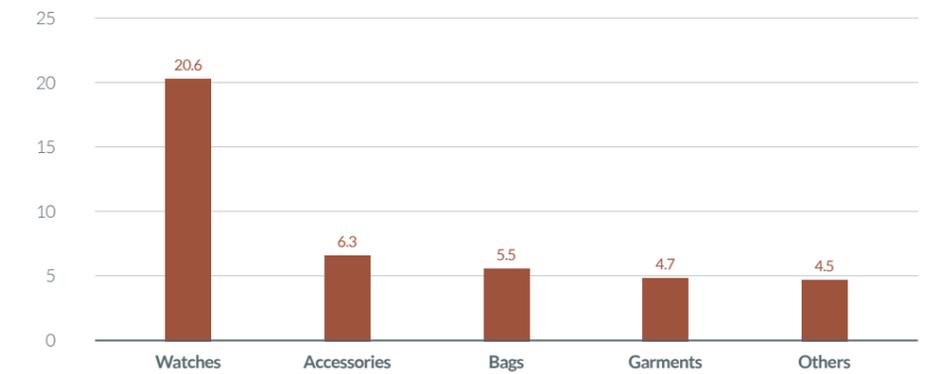
Category	2017	2018	2019	2020	2021
Arrests on criminal charges (individual)	362	361	376	617	557
Confiscated goods (item)	691,630	542,505	6,269,797	720,471	78,061
Genuine product value (KRW 100 million)	416.5	364.6	633.1	159.6	415.1

In terms of the value of the seized counterfeit products, timepieces (wristwatches, etc.) were at the top at KRW 20.6 billion, followed by accessories (rings, necklaces, earrings, bracelets, etc.) at KRW 6.3 billion, bags (handbags,

pouches, purses and wallets, etc.) at KRW 5.5 billion, clothing (tops/bottoms, gloves, socks, hats, etc.) at KRW 4.7 billion, and miscellaneous (shoes, glasses, electronic devices, cosmetics, toys, etc.) at KRW 4.5 billion.

Top Items Seized in Terms of Genuine Product Value

(unit: KRW 100 million)



In 2021, a popular influencer was even controversially found wearing counterfeit items on a popular online video platform. As such, while most of the seized counterfeit goods were related to expensive foreign luxury brands, a significant amount of high-demand daily household products in the low and middle price range were also confiscated. Moreover, the growing coffee market and increasing popularity of golf related-entertainment has led to an increase in

the number of sellers and vendors selling counterfeit goods in the form of tumblers, mugs, golf balls, etc.

As consumers progressively rely on remote transactions, the presence of counterfeit goods on online platforms will increase. Therefore, KIPO will strengthen its investigations of counterfeit sellers both online and offline to protect consumers, especially related to health and safety.