

Suggestions for improving Korea's parallel importation system



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'Parallel Importation' refers to the importation of genuine foreign products (products covered by the trademark of a foreign company with legitimate trademark rights) by third parties, using different distribution channels from those used by domestic exclusive importers, and without the exclusive importers' consent.

In Korea, parallel importation is believed to promote competition, permitting multiple parties to import the same product through different distribution channels. Accordingly, parallel importation is considered a legitimate business activity under the Trademark Act, the Monopoly Regulation and Fair Trade Act (Fair Trade Act), and the Unfair Competition Prevention and Trade Secret Protection Act (Unfair Competition Act). In contrast, when a product is counterfeit, of totally different quality and/or specification, or if the parallel importer forges/falsifies the trademark or origin of the product to mislead consumers into believing that such product is identical to genuine products, then genuine trademark holders may file a claim to prohibit sale of the offending products.

The Fair Trade Act assumes that parallel importation is legal and legitimate. It specifies activities related to parallel importation that would constitute unfair trade practices. These include interference with the purchase of genuine products from overseas distribution channels, restricting the sale and distribution of parallel import products, discriminating against parallel import product sellers, refusing or ceasing to supply products to parallel import product sellers, restricting the sale of imported products to retail sellers of parallel import products.

Practices of the Korea Fair Trade Commission are designed to promote competition among importers, allowing consumers to purchase products at lower prices. That policy is legitimate and reasonable. However, unless regulations related to parallel importation are revised, property rights will be severely undermined and damaged, especially rights related to brands of exclusive importers and trademark holders.

Under the Fair Trade Act, trademark holders/domestic exclusive

importers have no means of controlling distribution channels/methods for genuine products. Trademark holders/exclusive importers are left without many options to maintain and preserve their brand image and value. Generally, exclusive importation/sales agreements of well-known foreign brands set forth detailed requirements relating to the location and interior of the store, display of products and methods of advertising. These agreements offer customers not only the "product" itself but also the "experience of purchasing the product," by controlling the environment where the products are sold. They leave a favorable impression with customers by offering this "experience" and accumulate and expand "goodwill" from the full experience and sale. This ultimately improves brand value - an intangible asset.

Because trademark holders cannot exercise control over the environment or selling method with parallel importation,

significant time and expense devoted to cultivating brand value can be wasted and severe damage inflicted on brand value. There are documented cases where well-known fashion brands' images were damaged by parallel importation. However, the current legal system provides insufficient protection to trademark holders.

Intangible assets are particularly vulnerable to encroachment on their value. Brand value established over decades may be rendered worthless by uncontrollable distribution environments. Current legal rules governing parallel importation should be revised to provide more balanced protection, taking into account the legal interests of trademark

owners. The Unfair Competition Act contains some regulations applicable to conduct causing damage to brand reputation or consumer confusion on product origin. These regulations, however, are insufficient to prevent such conduct from encroaching on the brand value of others. Korea is transitioning from a brand-importing country to a brand-exporting country. Its intellectual property practices are becoming a model for other countries. Now is the time to evaluate and embrace more balanced parallel importation rules.

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