

TANGANYIKA



No. 20 OF 1963

I ASSENT,

Julius K. Nyerere
President

16TH MAY, 1963

An Act to control the use of Marks and Trade Descriptions in relation to merchandise and consequentially to amend the Penal Code

[.....]

ENACTED by the Parliament of Tanganyika.

PART I

PRELIMINARY

1. This Act may be cited as the Merchandise Marks Act, 1963, and shall come into operation upon such date as the Minister may, by notice in the *Gazette*, appoint.

Short title
and
commence-
ment

2.—(1) In this Act, unless the context otherwise requires—

Interpretation

“covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper;

“false name or initials” means, as applied to any goods, any name or initials of a person which—

- (a) are not a trade mark, or part of a trade mark; and
- (b) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and
- (c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description from being a false trade description within the meaning of this Act;

- "forged trade mark" has the meaning assigned to it by section 4;
- "goods" means anything which is the subject of trade, manufacture or merchandise;
- "inspector" means any person appointed by the Minister to be an inspector for the purposes of this Act;
- "label" includes any band or ticket;
- "Minister" means the Minister for the time being responsible for matters of commerce;
- "name" includes any abbreviation of a name;
- "trade description" means any description, statement, or other indication, direct or indirect—
- (a) as to the number, quantity, measure, gauge or weight of any goods; or
 - (b) as to the standard of quality of any goods, according to a classification commonly used or recognized in the trade; or
 - (c) as to the fitness for purpose, strength, performance or behaviour of any goods; or
 - (d) as to the place or country in which any goods were made or produced; or
 - (e) as to the mode of manufacturing or producing any goods; or
 - (f) as to the material of which any goods are composed; or
 - (g) as to any goods being the subject of an existing patent, privilege or copyright;
- and the use of any figure, word, or mark, which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act;
- Cap. 394 "trade mark" has the meaning assigned thereto in the Trade Marks Ordinance.

(2) Without prejudice to the generality of the definitions contained in subsection (1), a trade description (to whichever of the matters mentioned in the definition of "trade description" it relates) shall be deemed for the purposes of this Act to be a false trade description if it is likely to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything likely to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

(3) The customs entry relating to imported goods shall, for the purposes of this Act, be deemed to be a trade description applied to those goods.

PART II

FORGERY AND DECEPTIVE APPLICATION OF TRADE MARKS, ETC.

Forging or
falsely
applying a
trade mark
or description
an offence

3. Every person who—

- (a) forges any trade mark; or
- (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive; or
- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

- (d) applies any false trade description to goods; or
- (e) disposes of or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f) causes any of the things referred to in the foregoing paragraphs of this section to be done,

shall, subject to the provisions of this Act and unless he proves that he acted without intent to defraud, be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

4. A person shall be deemed to forge a trade mark who either—

- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be likely to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise,

Certain acts deemed to be forgery of a trade mark

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

5. It shall be a sufficient defence to any charge of making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or of falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive, or of applying to goods any false trade description, or causing any of the things in this section mentioned to be done, if the accused satisfies the court—

Saving of certain acts in ordinary course of business

- (a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making or being used in making trade marks, or, as the case may be, to apply trade marks or trade descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Tanganyika, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) that he took reasonable precautions against committing the offence charged; and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and
- (d) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied.

6. Every person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forged trade mark or false trade description is applied or to which any trade mark or mark so nearly resembling a trade mark as to be likely to deceive is falsely applied, as the case may be, shall, unless he proves either—

Selling goods bearing false trade marks or descriptions an offence

(a) that having taken all reasonable precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods; or

(b) that otherwise he had acted innocently,

be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Acts which
constitute
application
of trade
marks and
descriptions

7.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark, mark or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark, mark or trade description.

(2) A person shall be deemed falsely to apply a trade mark or mark to goods who without the assent of the proprietor of a trade mark applies such trade mark or a mark so nearly resembling it as to be likely to deceive.

(3) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, marks or colours or arrangement or combination thereof, whether including a trade mark or not, or any false name or initials, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they in fact are and provisions relating to goods to which a false trade description is applied shall be construed accordingly.

(4) Goods delivered in pursuance of a request made by a reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purpose of paragraph (d) of subsection (1) of this section, be deemed to be goods in connection with which the trade mark or trade description is used.

Existing use
saved in
certain cases

8.—(1) Where at the commencement of this Act a trade description is lawfully and generally applied to goods of a particular class, or

manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied:

Provided that, where such trade description includes the name of a place or country, and is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

(2) Where—

- (a) at the commencement of this Act a trade mark either is registered under the Trade Marks Ordinance or is in use to indicate a connection in the course of trade between goods and the proprietor of the trade mark; and
- (b) the trade mark is used to indicate a connection in the course of trade between the goods and the person who is the proprietor of the trade mark or between the goods and a person who is registered under section 31 of the Trade Marks Ordinance as a registered user of the trade mark; and
- (c) the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the person who is the proprietor at the commencement of this Act,

the provisions of this Act with respect to false trade descriptions shall not apply to such trade mark or part of such trade mark when applied to such goods.

PART III

IMPLIED WARRANTY ON SALE OF MARKED GOODS

9. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the purchaser.

PART IV

PROVISIONS RELATING TO THE IMPORTATION OF GOODS

10. No person shall import into Tanganyika for sale any goods—
- (a) to which any forged trade mark or false trade description is applied or to which any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive is falsely applied; or
 - (b) to which there is applied any trade mark or trade description which contains a direct or indirect reference to any town, place, district or country other than the town, place, district or country in which the goods were made or which bear any name or trade

Implied
warranty
on sale of
marked goods

Prohibition
of importa-
tion of
certain
goods

mark of any manufacturer, dealer or trader in Tanganyika, unless there is added to that trade mark or trade description in a conspicuous manner the name of the country in which such goods were made or produced so as to indicate that they were made or produced in that country.

Conditional
prohibition
of importa-
tion of
goods

11. The Minister may, by order published in the *Gazette*, prohibit the importation into Tanganyika for sale of goods of any class or description unless either or both of the following requirements have been complied with:—

- (a) there are applied to the goods words stating clearly the country in which they were made or produced and such words are applied in such manner as may be specified in the order or, if no manner is specified, in a conspicuous manner;
- (b) the goods bear such mark as may be specified in the order and conform to such standard as may be prescribed in the order.

PART V

INVESTIGATION AND PROCEEDINGS

Powers of
entry and
inspection

12.—(1) It shall be lawful for any inspector, on production of his authority, or for any police officer of or above the rank of Inspector, to enter without warrant and inspect any premises in which he has reason to believe that an offence against this Act has been or is about to be committed, and therein to—

- (a) examine goods, and all books, accounts and documents relating thereto;
- (b) take samples of any goods, and take copies of any book, account or document as aforesaid, or part thereof;
- (c) seize, remove and detain any goods which he has reasonable cause to believe may afford evidence of an offence against this Act, and any container, receptacle, book, account or document relating thereto;
- (d) require any occupant of such premises to render such explanations and give such information relating to any goods therein as may be reasonably required by such inspector or officer in the performance of his duties.

(2) The power to act under subsection (1) shall only be exercised without warrant if the inspector or officer so acting has reasonable cause to believe that the delay occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties.

(3) Any person who obstructs or hinders an inspector or officer acting in pursuance of any of the provisions of this section, or who on any requisition under paragraph (d) of subsection (1) wilfully withholds any information or gives any information knowing or having reason to believe it to be false or misleading, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand shillings or to a term of imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that no person may be required to answer any question the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

(4) Before removing any goods, account or document under the provisions of this section, the inspector or officer removing it shall furnish the person in whose custody or possession the goods are at the time of removal with a written receipt therefor.

(5) Every seizure under paragraph (c) of subsection (1) of this section shall be reported without unnecessary delay to a magistrate.

13. The court before whom any person is convicted of an offence against this Act may declare any goods in respect of which the offence was committed to be forfeited. Forfeiture of goods on conviction

14. If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act is unknown or cannot be found, a charge or complaint may be laid for the purpose only of enforcing such forfeiture and a subordinate court may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited. Forfeiture of goods in absence of owner

15. Any goods or things forfeited under this Act may be destroyed or otherwise disposed of in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realized by the disposal of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods. Disposal of goods forfeited

16.—(1) Where, in any prosecution under this Act, the consent of the proprietor of a trade mark is a relevant issue, the onus of proving the consent of such proprietor shall lie on the accused. Evidence

(2) In any prosecution for an offence against this Act, in the case of imported goods, evidence of the place from which the goods were consigned to Tanganyika shall be *prima facie* evidence of the place or country in which the goods were made or produced.

17. No prosecution for an offence against this Act shall be commenced after the expiration of five years next after the date on which the offence was alleged to have been committed. Limitation of prosecution

18. Where any offence against this Act is committed by a company, firm or other association of individuals, every person who at the time of the offence was a director, manager, secretary or other similar officer of such company, firm or association, or who was at that time concerned or purported to act in the management of its affairs, shall be severally liable to prosecution and punishment in like manner as if he had himself committed the offence, unless he proves that the offence was committed without his consent and that he took all reasonable steps to prevent its commission. Offences by companies

19. The Penal Code is hereby amended by repealing Chapter XXXVIII thereof. Amendment of Penal Code Cap. 16

Passed in the National Assembly on the twenty-fourth day of April, 1963.

T. J. M. K. K. K.
Clerk of the National Assembly