
MERCHANDISE MARKS ACT, 1964 (ACT 253)**ARRANGEMENT OF SECTIONS**

Section

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AN ACT to consolidate and amend the law relating to fraudulent marks on merchandise.

DATE OF ASSENT: 9th October, 1964

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:-

Offences relating to trade marks and trade descriptions.

1. (1) Subject to the provisions of this Act, any person who (a) applies any false trade description to goods; 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) forges any trade mark; or
 - (d) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging a trade mark; 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

(D causes any of the foregoing things to be done, is guilty of a misdemeanour.

(2) Subject to the provisions of this Act, any person who sells or exposes for or has in his possession for sale or for any purpose of trade or manufacture any goods or things 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 applied, as the case may be, is guilty of a misdemeanour.

(3) Where a person is convicted of an offence under this section any goods and things of any kind by means of or in relation to which the offence is committed shall be liable, at the discretion of the court, to be forfeited to the Republic.

Defences.

2. (1) Where a person is charged with any offence under subsection (1) of section 1, it shall be a good defence if he proves that he acted without intent to defraud.

(2) Where a person is charged with any offence under paragraph (a), (b) or (d) of subsection 1 of section 1 or under paragraph (f) of the said subsection for causing to be done any of the things mentioned in the said paragraphs (a), (b) and (d), it shall be a good defence if he proves -

- (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 marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Ghana and was not interested in the goods by way of profit or commission dependent on the sale of the 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 doubt the genuineness of the trade mark, mark, or trade description; and
- (d) that he gave the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied.

(3) Where a person is charged with an offence under subsection (2) of section 1, it shall be a good defence if he proves -

- (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 doubt the genuineness of the trade mark, mark or trade description and that on demand made by or on behalf of his prosecutor, he gave all the information in his power with respect on the persons from whom he obtained the goods or things; or

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- (b) that otherwise he had acted innocently.

(4) A person discharged of an offence by virtue of the defence specified in subsection (2) of this section shall, notwithstanding his discharge, be liable to pay the costs incurred by the prosecutor, unless he has given to the prosecutor such notice as the court thinks reasonable of his intention to rely on that defence.

Applying marks and descriptions.

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

- (a) applies it to 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 or 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 or mark or trade description.

(2) A trade mark or mark or trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to the goods or to any covering, label, reel or other thing.

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

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

(5) A person shall be deemed to apply falsely to goods a trade mark or mark, if without the assent of the proprietor of a trade mark he applies the trade mark or a mark so nearly resembling it as to be likely to deceive; so however that in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall be on the defendant.

(6) In this section -

"covering" includes any stopper, cork, bottle, vessel, box, cover, capsule, case, frame or wrapper; and

"label" includes any band or ticket.

Forging trade mark.

4. (1) 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 trade 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; and any trade mark or mark so made or falsified is in this Act referred to as a "forged trade mark".

(2) In any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant.

Prohibition on importation of goods not properly marked.

5. (1) AH goods which, if sold, would be liable to forfeiture under this Act and also goods manufactured outside -Ghana bearing any name or trade mark of any manufacturer, dealer, or trader in Ghana, are prohibited to be imported into Ghana, unless the name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

(2) Where there is on goods a name which is identical with or a colourable imitation of the name of a place in Ghana, that name, unless accompanied by the name of the country in which the place is situate, shall be treated for the purpose of this section as if it were the name of a place in Ghana.

(3) No goods shall be deemed to be prohibited to be imported into Ghana by subsection (1) which would not be so prohibited but for the provisions of paragraph (b) or (c) in the definition of "trade description" in subsection (1) of section 17 or of subsection (2) of the said section or but for the fact that there is applied to those goods any trade description which is a false trade description as defined in the said subsection (1) of section 17 by reason of its being misleading in any material respect.

Power of President to make instruments relating to the indication of origin of goods.

6. (1) The President may by legislative instrument prohibit the sale, distribution or exposure for sale or advertising of imported goods of a class or description specified in the instrument unless the goods bear, or unless there is published in connection with the goods, such indication of origin as may be prescribed.

(2) An instrument under this section may also require the goods to bear the indication of origin at the time of their importation and the importation of any goods which fail to comply with any such requirement shall, unless the President otherwise directs in the instrument, be deemed to be prohibited under section 5.

(3) An instrument under this section may contain such ancillary or consequential provisions as the President thinks proper for carrying into effect the purposes of the instrument.

(4) An instrument made under this section shall specify a date on which the instrument is to come into force which Shall, except in the case of an instrument revoking a previous instrument either entirely or as respects some of the goods to which that instrument relates, be a date not earlier than one month from the date of publication of the instrument in the Gazette.

Description of trade mark in pleading.

7. In any indictment, pleading, proceeding or document in whi 'h any trade mark or forged trade mark is intended to be mentioned, it shall oe sufficient, without further

description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Proof of place of origin.

8. In any prosecution for an offence against this Act or any statutory instrument made thereunder in the case of imported goods, evidence of the port of shipment shall be prima facie evidence of the place or country in which the goods were made or produced.

Limitation of prosecutions.

9. No prosecution for an offence against this Act or any statutory instrument made thereunder shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof, by the prosecutor, whichever expiration first happens.

Implied warranty on sale of marked goods.

10. 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 seller shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied and that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the purchaser.

Forfeiture of goods or things of unknown or missing owners.

11. (1) 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 complaint may be laid for the purpose only of enforcing the forfeiture as provided by this section.

(2) The District Court of the district in which the goods or things are found may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice the goods or things will be forfeited to the Republic.

(3) At that time and place the District Court may, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, order the goods or things or any of them to be forfeited to the Republic.

Certain powers of Comptroller relating to imported goods not properly marked.

12. (1) Where any goods which if sold, would be liable to forfeiture under this Act are imported into Ghana, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Ghana, and the Comptroller is, upon representations made to him satisfied that the use of the name or trade mark is fraudulent, he may require the importer of the goods, or his agent

- (a) to produce any documents in his possession relating to the goods;

- (b) to furnish information as to the name and address of the person by whom the goods were consigned to Ghana;
- (c) to furnish information as to the name and address of the person to whom the goods were sent in Ghana.

(2) Any importer or agent who without lawful excuse the proof of which shall be on him, fails to comply with any requirement made under subsection (1), shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding one hundred pounds and, in the case of a continuing offence, to a further fine not exceeding ten pounds for each day on which the offence is continued.

(3) The Comptroller may communicate to any person whose name or trade mark is alleged to have been used or infringed any information obtained from the

importer of goods or his agent under subsection (1).

(4) The Comptroller, before taking any action under subsection (1) or (3) or detaining any goods the importation of which is alleged to be prohibited under this Act or taking any further proceedings with a view to the forfeiture of those goods under any law relating to the customs, may require any regulations made under section 13 to be complied with, whether as to information, security, conditions or other matters, and may satisfy himself in accordance with any such regulations that the goods are such as are prohibited under this Act to be imported.

Minister to make rules regarding detention and forfeiture of goods.

13. (1) The Minister responsible for Trade may, after consultation with the Comptroller, make by legislative instrument rules regarding the functions of the Comptroller with respect to the detention and forfeiture of goods the importation of which is prohibited under this Act, and the conditions, if any, to be fulfilled before such detention and forfeiture and, without prejudice to the general effect of the foregoing may by such rules prescribe -

- (a) the information, notices and security to be given for any of the purposes of section 5,
- (b) evidence requisite for any of those purposes and the mode of verification of that evidence,
- (c) the fee to be paid in respect of any action taken or to be taken by the Comptroller under subsection (1) or (3) of section 12.

(2) Without prejudice to the general effect of subsection (1) any rules made under that subsection may provide for the informant re-imbursing the Comptroller all expenses and damages incurred in respect of any detention made on his information and of any proceeding consequent on the detention.

(3) Rules made under subsection (1) may be made to apply to all goods the importation of which is prohibited under this Act or different rules may be made respecting different classes of those goods or of offences in relation to those goods.

Disposal of forfeitures.

14. (1) Where any goods or things are forfeited to the Republic under section 1 or 11, the court may order the goods or things to be destroyed or, after causing all trade marks and trade descriptions thereon to be obliterated, otherwise dispose of as

the court thinks fit.

(2) The court may, out of any proceeds which may be realised by the disposition of the goods, award to any innocent party any loss he may have innocently sustained in dealing with the goods.

(3) Where the court makes no order under this section in respect of the disposition of any goods or things forfeited to the Republic under section 1 or 11, those goods or things shall be disposed of in such manner as the Minister within the meaning of the Criminal Procedure Code (Act 30) may, after consultation with the Minister responsible for Trade direct.

Provisions of Act as to false description not to apply in certain cases.

15. (1) Subject to subsection (2), where, at the passing 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 those goods, the provisions of this Act with respect to false trade descriptions shall not apply to the trade descriptions when so applied.

(2) Where any 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, and the goods are not actually made or produced in that place or country, subsection (1) 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.

(3) No trade mark or part of a trade mark, shall by virtue of the provisions of paragraph (b) or (c) in the definition of "trade description" in subsection (1) of section 17 or of the provisions of subsection (2) of that section or by virtue of the fact that the trade mark or that part is misleading in any material respect

for the purposes of the definition of "false trade description" in the said subsection (1) of section 17, be treated as a false trade description in relation to any goods to which the trade mark is applied if the following conditions are satisfied, that is to say -

- (a) if at the commencement of this Act, the trade mark either is registered in the register of trade marks or is in use to indicate a connection in the course of trade between those goods and the proprietor of the trade mark; and
- (b) if the trade mark as applied 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; and
- (c) if the person who is the proprietor of the trade mark is the same as, or a successor in title of, the proprietor at the said commencement.

Savings.

16. (1) This Act shall not exempt any person from any suit or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete

discovery, or to answer any question or interrogatory in any suit, but the discovery or answer shall not be admissible in evidence against that person in any prosecution for an offence under this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master, where the master is resident in Ghana, if the servant acts bona fide in obedience to the instruction of the master, and on demand made by or on behalf of the prosecutor, has given full information as to his master.

Interpretation.

17. (1) In this Act -

"Comptroller" means the Comptroller of Customs and Excise;

"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 the 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, or trade manufacture, or merchandise;

"manufacturer", "dealer", "trader" and "proprietor" include any body of persons corporate and unincorporate;

"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 recognised 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 matters referred to in paragraphs (a) to (g) shall be deemed to be a trade description within the meaning of this Act;

"trade mark" means a trade mark in the register of trade marks kept under or

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preserved by any enactment, and includes any trade mark which is by law registrable in that register by virtue of an arrangement with any other country for the mutual protection of trade marks.

(2) Without prejudice to the generality of the definitions of "false trade description" and "trade description" in subsection (1), a trade description (to whichever of the matters mentioned in the said 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 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, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably 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 really are.

(4) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if the name or initials were a trade description, and for the purpose of this subsection the expression 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 but 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 authorised the use of the name or initials; and
- (b) are either those of a fictitious person or of some person not bona fide carrying on business in connection with those goods.

Repeal.

18. (1) The Merchandise Marks Ordinance (Cap. 178) is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance any regulations made under section 6 thereof and in force immediately before the commencement of this Act shall continue in force as if they were rules made under section 13 of this Act.

