

MERCHANDISE MARKS ACT

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MERCHANDISE MARKS ACT

An Act relating to fraudulent marks on merchandise.

[23 of 1915.15 of 1956. L.N. 47 of 1955.]

[6th January, 1916]

[Commencement.]

1. Short title

This Act may be cited as the Merchandise Marks Act.

1. Interpretation

(1) In this Act, unless the context otherwise requires-

“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 being a false trade description within the meaning of this Act;

“goods” means anything which is the subject or trade, manufacture or merchandise;

“name” includes any abbreviation of a name;

“person”, “manufacturer”, “dealer” or “trader” and **“proprietor”** include any body of persons corporate or unincorporate;

“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 to 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;

“trade mark” means a trade mark registered in the register of trade marks kept under or preserved by any Act and includes any trade mark which, either with or without registration, is protected by law.

(2) 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 calculated 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.

(3) The provisions of this Act respecting the application of a raise 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 such name or initials were a description, and for the purposes of this enactment, 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; 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 authorised the use of such name or initials; and

(c) are either of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

(4) Without prejudice to the generality of the definitions of "false trade description" and "trade description" as defined in this section, 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 calculated 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 calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

[15 of 1956.]

(5) Notwithstanding anything in the definition of "false trade description", no trade mark within the meaning of the Trade Marks Act, or part of such trade mark, shall by virtue of subsection (4) of this section, or paragraph (b) or paragraph (c) of this subsection in the definition of "trade description", 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-

[15 of 1956. Cap. T13.]

(a) on the 1st day of October, 1956, the trade mark either is registered under the Trade Marks Act, 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) 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) the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on the 1st day of October, 1956.

(6) Nothing contained in subsection (4) of this section, or in paragraph (b) or paragraph (c) of subsection (5) of this section in the definition of "trade description", nor the use of the word "misleading" in the definition of "false trade description" shall extend the classes of goods which under section 14 of this Act are prohibited to be imported into Nigeria as having a false trade description applied to them.

1. **Offences as to trade marks and trade descriptions**

(1) Every person who-

(a) forges any trade mark; or

(b) falsely applies to goods any trade mark or any marks so nearly resembling a trade mark as to be calculated to deceive; or

(c) makes, disposes of, or has in his possession 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) causes any of the things above in this section mentioned 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.

Selling goods to which false trade marks or descriptions applied

(2) Every person who sells, or exposes for, or has in his possession for, sale, or 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 calculated to deceive is falsely applied, as the case may be, shall, unless he proves either-

(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 things; or

(b) that otherwise he had acted innocently,

be guilty of an offence against this Act.

(3) Every person who is guilty of an offence against this Act shall be liable-
[L.N. 47 of 1955.]

(a) on conviction before a High Court to imprisonment for a term of two years, or to a fine, or to both;

(b) on summary conviction before a magistrate court to imprisonment for a term of six months or to a fine of one hundred naira;

(c) in any case, to forfeit every chattel, article, instrument or thing by means of or in relation to which the offence has been committed.

1. Forging trade mark

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 calculated 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:

Provided that, in any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant.

1. Applying mark or description

(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 or mark or trade description in any manner calculated 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) The expression “**covering**” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression “**label**” includes any band or ticket.

(3) 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.

(4) A person shall be deemed falsely to apply to goods a trade mark or mark 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 calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

6. Exemption of certain persons employed in ordinary course of business

Where a defendant is charged with making any dye, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things mentioned in this section to be done, and proves-

(a) that, in the ordinary course of his business, he is employed, on behalf of other persons, to make dyes, 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 Nigeria, and was not interested in the goods by way of profit or commission dependent on the sale of 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, 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, mark or trade description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely on the above defence.

1. Application of the Act to watches

(1) Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description shall apply accordingly.

(2) For the purposes of this section, the expression "watch" means all that portion of a watch which is not the watch case.

1. Description of trade mark in pleading

In any information, pleading, proceeding, or document in which any trade mark or forged trade mark is intended to be mentioned, it shall be 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.

1. Rules as to evidence

In a prosecution under this Act, in the case of imported goods, evidence as to the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

10. Punishment of accessory

Every person who, being within Nigeria, procures, counsels, aids, abets, or is accessory to the commission without Nigeria of any act, which if committed in Nigeria would under this Act be an offence, shall be guilty of that offence as a principal, and be liable to be proceeded against, tried and convicted in Nigeria as if the offence has been there committed.

11. Issue of and proceedings on search warrant

(1) Where, on any information or complaint laid for an offence against this Act, a magistrate has issued either a summons requiring the defendant charged by such information or complaint to appear to answer to the same, or has issued a warrant for the arrest of such defendant, and either the said magistrate or any other magistrate, on or after issuing the summons or warrant, is satisfied by information upon oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such magistrate may issue a warrant, by virtue of which it shall be lawful for any police officer named or referred to in the warrant to enter such houses, premises, or place at any reasonable time by day, and to search

there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a magistrate who shall decide whether the same are or are not liable to forfeiture under this Act.

Forfeiture in absence of defendants

(2) 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, an information or complaint may be laid or made for the purpose only of enforcing such forfeiture, and a magistrate 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 magistrate, 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.

Disposal of goods forfeited

(3) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of (all trade marks and trade descriptions being first obliterated) 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 realised by the disposition of such goods or things award to any innocent party any loss which he may have innocently sustained in dealing with such goods.

12. Costs of defence or prosecution

On any prosecution under this Act, the court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

13. Limitation of prosecution

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

14. Prohibition of importation of goods liable to forfeiture under this Act

(1) It shall be unlawful to import into Nigeria any goods which, if sold, would be liable to forfeiture under this Act, or any goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom, unless such 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 any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom that name, unless accompanied by the name of the country in which such place is situated, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(3) The Minister charged with responsibility for trade or commerce may make regulations respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and prescribing the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(4) Such regulations may apply to all goods the importation of which is prohibited by this section; or different regulations may be made respecting different classes of such goods, or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing the collector of customs and excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

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

Where 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 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 calculated 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, 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.

16. Implied warranty on sale of marked goods

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 ex-

pressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee. .

17. Saving

Nothing in this Act shall-

- (a) exempt any person from any action or proceedings which might, but for its provisions, be brought against him;
- (b) entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action or suit, but such discovery or answers shall not be admissible in evidence against such person in any prosecution for an offence against the Act; or
- (c) be construed so as to render liable to any prosecution or punishment any servant of a master resident in Nigeria who *bona fide* acts in obedience to the instruction of such master, and who, on demand made by or on behalf of the prosecutor, has given full information as to his master.

18. False representation as to warrant

Every person who falsely represents that any goods made by a person holding a warrant or other authority, or for the service of the President, or any ministry or department of the Federation, or any Government department, shall be guilty of an offence and on summary conviction, be liable to a fine of forty naira.

[L.N. 112 of 1964.]

MERCHANDISE MARKS ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation