

CHAPTER 90:04

MERCHANDISE MARKS ACT

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Merchandise Marks

1929 Ed.
c. 60
1953 Ed.
c. 339

CHAPTER 90:04

MERCHANDISE MARKS ACT

2 of 1888

An Act to consolidate and amend the Laws relating to Fraudulent Marks on Merchandise.

[18TH AUGUST, 1888]

Short title.

1. This Act may be cited as the Merchandise Marks Act.

Interpretation.

2. (1) In this Act—

“false trade description” means a trade description which is false 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 in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent that trade description being a false trade description within the meaning of this Act;

“goods” means anything which is the subject of 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, as to—

(a) the number, quantity, measure, gauge, or weight of any goods; or

(b) the place or country in which any goods were made or produced; or

(c) the mode of manufacturing or producing any goods; or

(d) the material of which any goods are composed; or

(e) 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, and a customs entry relating to imported goods as applied to those goods, shall be deemed to be a trade description within the meaning of this Act;

“trade mark” means a mark used, or proposed to be used, upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of that trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

(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 figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of someone other than the person whose manufacture or merchandise they really are.

(3) 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 that name or those initials were a trade description, and, for the purpose 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 that name or those initials; and

(c) are either those of a fictitious person or of some person not carrying on business in good faith in connection with those goods.

FRAUDULENT MARKING OF MERCHANDISE

Forging or, falsely applying trade marks and descriptions.

3. (1) Everyone 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 calculated 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 acts above in this section mentioned to be done,

shall, subject to 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) Everyone who sells, or exposes for sale, 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 be guilty of an offence unless he proves that—

- (a) having taken all reasonable precautions against committing an offence under this Act, 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 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 the goods or things; or

(c) otherwise he had acted innocently.

(3) Everyone guilty of an offence under this Act shall be liable— Punishment
for offence
against Act.

(a) on summary conviction to a fine of three hundred dollars or to imprisonment for four months, and, in the case of a second or any subsequent conviction, to a fine of seven hundred and fifty dollars or to imprisonment for six months; and

(b) on conviction on indictment to fine and to imprisonment for two years; and

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

(4) The court before which anyone is convicted under this section may order any forfeited article to be destroyed or otherwise disposed of as the court thinks fit.

(5) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any article liable to be forfeited under this Act by a magistrate may be forfeited, in manner provided by the Summary Jurisdiction Acts:

Provided that a person charged with an offence under this section before a magistrate, on appearing before the magistrate, and before the charge is investigated, shall be informed of his right to be tried on indictment, and, if he so requires, shall be so tried accordingly.

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

(a) without the assent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling it 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.

Applying
marks and
descriptions.

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

Forgery of
trade mark.

(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.

“Covering”;
“label”.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression “label” includes any brand 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 into 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 that 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. Where a defendant is charged with making any die, 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 in this section mentioned to be done, and proves that—

Exemption of certain persons employed in ordinary course of business.

(a) 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 in the case which is the subject of the charge he was so employed by some person resident in Guyana, and was not interested in the goods by way of profit or commission dependent on the sale of the goods; and

(b) he took reasonable precautions against committing the offence charged; and

(c) 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) he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or 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 the prosecutor that he will rely on the above defence.

7. (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.

Application of the Act to watches.

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

PROCEDURE

Mode of
describing
trade mark in
pleading.

8. In any indictment, 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.

Rules as to
evidence.
Examination
of defendant.

9. In any prosecution for an offence under this Act—

(a) a defendant and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness; and

(b) 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.

Punishment of
accessory.

10. Everyone, who being within Guyana, procures, counsels, aids, abets, or is accessory to the commission, without Guyana, of any act, which, if committed in Guyana, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in Guyana in which he is, as if the misdemeanour had been there committed.

Search
warrant.

11. (1) Where upon information of an offence against this Act, a justice of the peace has issued either a summons requiring the defendant charged by the information to appear to answer thereto, or a warrant for the arrest of the defendant, and either that justice, on or after issuing the summons or warrant, or any other justice, 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 the 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, the justice

may issue a warrant under his hand by virtue of which any constable named or referred to in the warrant may enter the house, premises, or place at any reasonable time by day, and search there for, and seize and take away, those goods or things; and any goods or things seized under the warrant shall be brought before a magistrate for the purpose of its being determined whether they are or are not liable to forfeiture under this Act.

(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 for the purpose only of enforcing that 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, the goods or things will be forfeited, and at that 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 them or any of them to be forfeited.

Forfeiture in absence of defendant.

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

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

Costs of prosecution or defence.

13. No prosecution for an offence against this Act 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.

Limitation of prosecution.

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MISCELLANEOUS PROVISIONS

Implied
warranty on
sale of marked
goods.

14. 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 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.

False represen-
tation as to
goods made
for State, etc.

15. Anyone who falsely represents that any goods are made for the service of the State or any government department, shall be liable to a fine of one hundred and fifty dollars.

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

16. 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 those goods, the provisions of this Act with respect to false trade descriptions shall not apply to that trade description when so applied:

Provided that, where the 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.

17. (1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for 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 action, but that discovery or answer shall not be admissible in evidence against the person making it 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 resident in Guyana who acts in good faith in obedience to the instructions of his master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.
