

CHAPTER 47.

MERCHANDISE MARKS.

MERCHANDISE MARKS ORDINANCE.

1 of 1889.
14 of 1889.
40 of 1949.

[18th February, 1889.]

Short title.

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

Offences as to trade marks and trade descriptions.

2. (1) 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 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 things above in this section mentioned to be done

shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud, commit an offence.

(2) Every person who sells, or exposes 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

- (a) that having taken all reasonable precautions against committing an offence against this Ordinance, he

had at the time of the alleged offence no reason to suspect the genuineness of the trade mark or trade description; and

(b) 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

(c) that otherwise he had acted innocently,

be guilty of an offence.

(3) Every person guilty of an offence against this Ordinance shall be liable

(i) on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine or to both imprisonment and fine; and

(ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding £20, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding £30; and

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

3. (1) In this Ordinance unless the context otherwise requires— Definitions.

“Trade mark” means a trade mark registered in the register of trade marks kept under the provisions of the Trade Marks Act, 1905, and includes any trade mark which, either with or without registration, is protected by law in the Colony, or in any British possession or foreign state, to which the provisions of section 91 of the Patents and Designs Act, 1907, are under Order in Council for the time being applicable.

“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 place or country in which any goods were made or produced; or

- (c) as to the mode of manufacturing or producing any goods; or
 - (d) as to the material of which any goods are composed; or
 - (e) 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 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 Ordinance.

“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 such trade description being a false trade description within the meaning of this Ordinance.

“Goods” means anything which is the subject of trade, manufacture or merchandise.

“Person,” “manufacturer,” “dealer” or “trader” and “proprietor” include any body of persons corporate or unincorporate.

“Name” includes any abbreviation of a name.

(2) The provisions of this Ordinance 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 Ordinance 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 applied in like manner, as if such name or initials were a trade description.

“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 those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

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 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 Ordinance 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.

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

Applying
marks and
descriptions.

- (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) "Covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; "label" includes any band or ticket.

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) A person shall be deemed to falsely 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.

Exemption
of certain
persons em-
ployed in
ordinary
course of
business.

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—

- (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 the Colony 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, 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.

7. 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 Ordinance with respect to goods to which a false trade description has been applied, and the provisions of this Ordinance with respect to selling exposing or having in possession for sale or any purpose of trade or manufacture, goods with a false trade description shall apply accordingly. "Watch" means all that portion of a watch which is not the watch case.

Application
to watches.

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.

Trade mark
how des-
cribed in
pleading.

9. In any prosecution for an offence against this Ordinance 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.

Rules as to
evidence.

10. (1) Where upon information of an offence against this Ordinance a justice of the peace has issued either a summons requiring the defendant charged by such information to appear to answer to the same or a warrant for the arrest of such defendant, and either the said justice on or after issuing the said summons or warrant, or any other justice of the peace, is satisfied by information on 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

Search
warrant.

justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant to enter any such house, premises or place at any reasonable time by day and there to search 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 or two justices of the peace for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Ordinance, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a magistrate or two justices of the peace 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 or two justices of the peace, unless the owner or any person on his behalf or other person interested in the goods or things show cause to the contrary, may order such goods or things, or any of them, to be forfeited.

Costs of
defence or
prosecution.

(3) Any goods or things forfeited under any provision of this Ordinance 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 realised by the disposition 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.

Limitation of
prosecutions.

11. No prosecution for an offence against this Ordinance 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.

Prohibition
on importa-
tion.

12. (1) All goods which, if sold would be liable to forfeiture under this Ordinance and also all 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 or any British possession.

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unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the Colony.

(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 situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(3) The Governor in Council may make, revoke and vary 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 may by such regulations determine 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 all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

13. 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 Ordinance, 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 purchaser.

Implied warranty on sale of marked goods.

14. 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 Ordinance with respect to false trade descriptions shall not apply to such trade description when so applied:

False description not to apply in certain cases.

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.

Savings.

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

(2) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

(3) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Colony who, *bona fide* acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor has given full information as to his master.

Regulations.

16. The Governor in Council may from time to time make, alter and rescind regulations for carrying out the provisions of this Ordinance.