

CHAPTER 245.

MERCHANDISE MARKS.

ARRANGEMENT OF SECTIONS.

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CHAPTER 245.

MERCHANDISE MARKS.

An Ordinance to regulate the law as to fraudulent marks on merchandise.

7 of 1889.
12 of 1889.
2 of 1908.
32 of 1908.
39 of 1908.
24 of 1955.

[23RD MAY, 1889.]

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

2. (1) For the purpose of this Ordinance—

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

Interpretation.

“ 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

24 of 1955.

(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 the mode of manufacturing or producing any 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 Ordinance;

“ 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 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.

24 of 1955.

(2) Without prejudice to the generality of the definitions “ trade description ” and “ false trade description,” 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 Ordinance 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 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 deemed, for the purposes of this Ordinance, to be a trade description.

(3) Notwithstanding anything in the definition of "false trade description," no trade mark within the meaning of the Trade Marks Ordinance, or part of such a trade mark, shall by virtue of the foregoing sub-sections 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—

24 of 1955.
Cap. 244.

(a) on the thirteenth day of February, 1956, the trade mark is registered under the Trade Marks Ordinance; 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 thirteenth day of February, 1956.

(4) Sub-sections (2) and (3) of this section shall not extend the classes of goods which under section 14 of this Ordinance are prohibited to be imported into Sierra Leone as having a false trade description applied to them.

24 of 1955.

(5) 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.

(6) 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 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 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 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.

Offences as to
trade marks.

3. (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, be guilty of an offence against this Ordinance.

24 of 1955.

(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 Ordinance, 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 acted innocently;
be guilty of an offence against this Ordinance.

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

(i) on conviction on information in the Supreme Court, 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 one hundred pounds, 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 two hundred and fifty pounds; and 24 of 1955.

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

(4) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

(5) If any person feels aggrieved by any conviction made by a Magistrate, he may appeal therefrom to the Supreme Court as a Court of Appeal under the provisions of the Appeals from Magistrates Ordinance or any Ordinance substituted therefor. Cap. 16.

(6) Any offence for which a person is, under this Ordinance, liable to punishment on summary conviction, may be prosecuted in such manner as prosecutions are conducted in the Police Magistrate's Court:

Provided that a person charged with an offence under this section before a Magistrate shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on information before the Supreme Court, and if he requires, be so tried accordingly.

(7) All fines and penalties imposed by this Ordinance shall be due to Her Majesty, Her Heirs and Successors, and shall be paid into the general revenue of the Colony.

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.

Applying
marks and
descriptions.

5. (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, cork, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression “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 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.

Exemption of
certain
persons
employed 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 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, and the provisions of this Ordinance 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, and for the purposes of this section the expression “watch” means all that portion of a watch which is not the watch case.

Application
of Ordinance
to watches.

8. 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.

Trade mark
how
described in
pleading.

Rules as to
evidence.

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.

Punishment
of accessories.

10. Any person who, being within the Colony, procures, counsels, aids, abets, or is accessory to the commission without the Colony, of any act which, if committed in the Colony, would, under this Ordinance, 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 the Colony in which he may be, as if the misdemeanour had been there committed.

Search
warrant.

11. (1) Where, upon information of an offence against this Ordinance, a Magistrate or 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 Magistrate or Justice of the Peace on or after issuing the 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 Magistrate or Justice of the Peace 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 such house, premises or place at any reasonable time by day and to search therefor 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 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 the 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,

(3) Any goods or things forfeited under this section or under any other 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.

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

Costs of
defence or
prosecution.

13. 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.

Limitation of
prosecution.

14. Whereas it is expedient to make further provision for prohibiting the importing of goods, which, if sold, would be liable to forfeiture under this Ordinance: Be it therefore enacted as follows—

Prohibition of
importation.

(1) All such goods 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, 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 this Colony, and subject to the provisions of this section shall be included among goods prohibited to be imported as if they were specified in the Table of Prohibitions in the Customs Ordinance, or any Customs Ordinance which shall for the time being be in force, unless a contrary intention shall be expressed therein; and, if imported, such goods shall be subject to the like procedure and penalties as if they had been included in such Table of Prohibitions.

Cap. 271.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture under the law relating to the Customs, the Comptroller of Customs may

require the rules under this section, whether as to information, security, conditions or matters, to be complied with, and may satisfy himself in accordance with those rules that the goods are such as are prohibited by this section to be imported.

(3) The Governor in Council may, from time to time, make either general or special rules 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 rules 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) 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.

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

(6) The Comptroller of Customs in administering the rules, and generally in the administration of this section, whether in the exercise of any discretion or opinion or otherwise, shall act under the control of the Governor.

(7) The rules may provide for the informant reimbursing the Comptroller of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceeding consequent on such detention.

Implied
warranty on
sale of
marked
goods.

15. 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 vendee.

16. Where, at the passing of this Ordinance, 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 descriptions when so applied:

Provisions of Ordinance as to 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.

17. (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.

Savings.

(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 any 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 this 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.

18. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government Department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

False representation as to Royal Warrant or Government Department.

19. The Governor in Council may, from time to time, make rules for the better administration of this Ordinance in any matter not sufficiently provided for.

Rules.