

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1927.

A BILL

To provide for the indication of the country of origin and the trade description of certain goods; to make certain provisions as to the application of a false trade description to goods; to amend the Evidence Act, 1898, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Goods (Trade Short title. Descriptions) Act, 1927."

(2) This Act shall come into operation on a date Commence- not earlier than six months after it has been assented to, ment. to be fixed by the Governor and notified by proclamation published in the Gazette.

—(2)

(3)

(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any enactment thereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

2. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Covering” includes stopper, glass, cask, bottle, vessel, box, cover, container, capsule, case, frame, or wrapper.

“False trade description” means a trade description which by reason of anything contained therein or omitted therefrom is false or likely to mislead 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 which makes the description false or likely to mislead in a material respect.

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

“Label” includes band or ticket.

“Name” includes any abbreviation of a name.

“Prescribed” means prescribed by this Act or by any regulation made thereunder.

“Sell” includes expose or have in possession for sale, or for any purpose of sale, trade, or manufacture.

“Specified goods” means goods specified in a proclamation made under the provisions of this Act.

“Trade description” in relation to any goods means any description, statement, indication, or suggestion direct or indirect as to—

(a) the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods; or

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

(c)

Construction.

Interpretation.

Goods Act (Vict.), 1915, s. 86; 1918, s. 2.

50 & 51 Vic., c. 28, s. 3 (1).

- (c) the manufacturer or producer of the goods or the person by whom they were selected, packed, graded, or in any way prepared for the market; or
- (d) the mode of manufacturing, producing, selecting, packing, grading, or otherwise preparing the goods; or
- (e) the material or ingredients of which the goods are composed or from which they are derived; or
- (f) the goods being the subject of an existing patent, privilege, or copyright; and includes an advertisement or catalogue relating to goods and the use of any figure, word, trade name, trade style, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters.

(2) 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—

Goods Act,
1918 (Vict.),
s. 7.

- (a) to the application to goods, of any such figures, words, or marks or arrangement or combination thereof, as are reasonably calculated to lead persons to believe that the goods were made or produced in or at a country or place other than the country or place in or at which they were actually made or produced; and
- (b) to any goods with any such figures, words, or marks, or arrangement or combination thereof as aforesaid applied thereto.

3. A person shall be deemed to apply a trade description to goods who 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 description has been applied.

Applying
trade
descriptions.
Goods Act,
1915 (Vict.),
s. 89.

4. (1) The Governor may on the recommendation of the Public Service Board appoint such inspectors and other officers as may be necessary for the purposes of this Act.

Officers.

Any

Goods (Trade Descriptions).

Any such inspector or other officer shall receive such remuneration and allowances as may be fixed by the Public Service Board.

(2) The duties of an inspector shall be such as are assigned to him by the Minister and as may be prescribed.

5. (1) The Governor may by proclamation published in the Gazette specify the goods to which the provisions of this section shall apply as and from a date specified in the proclamation not earlier than six months after the date of the publication of the proclamation.

Trade description to be applied. Goods Act, 1918 (Vict.), s. 3.

The Governor may in like manner revoke, amend, alter, or vary any proclamation made under the authority of this subsection.

(2) No person shall sell any specified goods unless there is applied to them (or, if so prescribed, to any covering, label, reel, or thing used in connection therewith) in the manner prescribed a trade description indicating, in addition to any other matter prescribed, the country or place in or at which the goods, or such portions or constituents thereof as are prescribed, were made or produced.

6. (1) No manufacturer, dealer, or trader shall, except to the extent and in the manner prescribed, alter by effacement or otherwise any trade description which has been applied under or in compliance with any law of New South Wales or of the Commonwealth of Australia to any goods, and no person shall sell any goods of which the trade description applied as aforesaid has been so altered otherwise than as so prescribed.

Trade description not to be altered, and goods not to be sold. *Ibid.* s. 4.

(2) For the purposes of this section a trade description shall be deemed to be applied to goods if—

When trade description deemed to be applied.

- (a) it is applied to the goods themselves ;
- (b) it is applied to any covering, label, reel, or thing used in connection with the goods ; or
- (c) it is used in any manner likely to lead to the belief that it describes or designates the goods ; or
- (d) it is used in any manner in connection with or for the purposes of the sale of the goods.

7.

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7. (1) Any person who applies any false trade description to goods shall, subject to the provisions of this Act and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

Offences as to false trade descriptions.
cf. Goods Act, 1915 (Vict.), No. 2,663, s. 87.

(2) Every person who sells or exposes or has in his possession for sale or any purpose of trade or manufacture any goods to which any false trade description is applied shall be guilty of an offence against this Act, unless 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 suspect the genuineness of the trade description ; and
- (b) that on demand made by or on behalf of the prosecutor, informant, complainant, or party aggrieved he gave all the information in his power with respect to the person from whom he obtained the goods ; or
- (c) that otherwise he had acted innocently and that the goods were held by him bona fide and without any fraudulent intention.

8. Any person who falsely represents that any goods are made by a person holding a Royal Warrant or for the service of His Majesty or of any Government department or have been tested or inspected by or on behalf of His Majesty or any Government department shall be liable on summary conviction to a penalty of *twenty* pounds.

False representation as to Royal Warrant.
Ibid. s. 103.

9. (1) Any person who commits a contravention of any provision of this Act shall, unless he proves that he acted without intent to deceive or defraud, be guilty of an offence.

Offences.
Goods Act, 1918 (Vict.), s. 5.

(2) Any person who aids, abets, counsels, or procures, or by act or omission is in any way directly or indirectly knowingly concerned in the commission of any contravention of this Act or of any regulation made thereunder shall be deemed to have committed that contravention and shall be punishable accordingly.

(3)

(3) Any person who, being within New South Wales, aids, abets, counsels, or procures, or is an accessory to the commission outside New South Wales of any act which, if committed in New South Wales, would be an offence against the provisions of this Act shall be deemed to be guilty of that offence and be punishable accordingly.

Accessories.
Goods Act,
1915 (Vict.),
s. 94.

10. A person who commits an offence against this Act where no other penalty or punishment is provided shall be liable—

Punishment.

- (a) upon conviction upon indictment to imprisonment, with or without hard labour, for a term not exceeding *two* years, or to a penalty not exceeding *one hundred* pounds, or to both imprisonment and penalty; and
- (b) upon summary conviction to imprisonment with or without hard labour for a term not exceeding *six* months or to a penalty not exceeding *fifty* pounds; and
- (c) in any case to forfeit to His Majesty the goods in relation to which the offence is committed.

11. (1) All specified goods to which or to the prescribed portions or constituents whereof the prescribed trade description is not applied as provided by section five which are offered for sale, and all goods in respect of which, or the covering, label, reel, or thing used in connection therewith, any false trade description has been applied or in respect of which any trade description has been altered in contravention of the provisions of this Act and which are offered for sale, may, by order of a police or stipendiary magistrate, be seized by an inspector, and by a like order may be forfeited to His Majesty.

Forfeiture of
goods.
Goods Act,
1918 (Vict.),
s. 6.

(2) The regulations may provide that the Minister may in any case, and, if in his opinion the omission, alteration, or other contravention has not occurred either knowingly or negligently, that he shall permit any goods which have been seized under this section to be delivered to the owner upon security to the satisfaction of the Minister that the goods will not be sold in contravention of this Act or the regulations.

12.

12. Where a defendant is charged with applying to goods any false trade description or causing a false trade description to be applied to goods, and proves—

- (a) that in the ordinary course of his business he is employed on behalf of another person to apply a mark or trade description to goods, and that in the case which is the subject of the charge he was so employed by some person resident in New South Wales 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 mark or trade description; and
- (d) that he gave to the party aggrieved all the information in his power with respect to the person on whose behalf the mark or trade description was applied—

he shall be discharged from the prosecution but shall be liable to pay the costs thereof unless he has given due notice to the prosecutor, informant, or complainant that he will rely on the above defence.

13. In any prosecution for an offence against this Act—

- (a) a defendant or his spouse giving testimony shall be compellable to disclose communications made between him and his spouse during the marriage relating to the subject matter of the charge;
- (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.

14. If the owner of any goods 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 such forfeiture, and a court of petty sessions

Exemption of certain persons employed in ordinary course of business.

cf. Goods Act 1915 (Vict.), No. 2,663, s. 90.

Rule as to evidence.

cf. *Ibid.* s. 93.

Forfeiture of goods owner unknown.

Ibid. s. 95

(2).

sessions 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 will be forfeited, and at such time and place the court, unless the owner or any person on his behalf or other person interested in the goods show cause to the contrary, may order such goods or any of them to be forfeited.

15. (1) Any goods forfeited under this Act may be destroyed or otherwise disposed of in such manner as is prescribed in the regulations. Disposal of forfeited goods.

(2) The court by which the same are forfeited may out of any proceeds which may be realised by the disposition of such goods or things (all marks and trade descriptions being first obliterated) award to any innocent party any loss he has sustained in dealing with such goods.

16. 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 of one year next after the first discovery thereof by the party aggrieved, whichever expiration first happens. Limitation of prosecution. cf. Goods Act, 1915 (Vict.), No. 2,663, s. 96.

17. No proceedings shall be taken before any justice or court of petty sessions for an offence against this Act unless the same are taken by a person whose rights are impaired or who is specially aggrieved by the commission of such offence or by the duly appointed attorney of any such person, or unless the same are taken by some person acting under the direction of the Minister. Certain persons only to take proceedings. Ibid. s. 97.

18. On the sale or in the contract for the sale of any goods to which a trade description has been applied, the seller shall be deemed to warrant 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. Implied warranty on sale of marked goods. Ibid. s. 100.

19. Nothing in this Act—

- (a) shall exempt any person from any action, suit, or other proceeding which might but for the provisions of this Act be brought against him; or
 - (b)
- Savings. Ibid. s. 102.