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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1928.

A B I L L

To include in the trade description of goods an indication of the country or place of origin; to provide for the trade description of certain goods; to make certain provisions as to altered and false trade description of goods, and as to false representation with respect to Royal Warrants and Government Departments; 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:—

INTRODUCTORY.

1. (1) This Act may be cited as the "Goods (Trade Descriptions) Act, 1928."

Short title
and
operation.

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

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

“Alter,” “apply,” and “sell” include cause to be altered applied or sold, as the case may be. Interpretation. Goods Act (Vict.), 1915, s. 86; 1918, s. 2.

“Australia” includes any territory under the authority of the Commonwealth.

“Commonwealth” means the Commonwealth of Australia.

“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” means anything which is the subject of trade, manufacture, or merchandise. 50 & 51 Vic., c. 28, s. 3 (1).

“Label” includes band or ticket.

“Name” includes any abbreviation of a name.

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

“Regulation”

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“Regulation” means a regulation made under this Act.

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

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

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

cf. Commerce (Trade Descriptions) Act, 1905 (Federal), s. 3.

- (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, or any portions or constituents thereof, were made or produced; or
- (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 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.

TRADE DESCRIPTIONS.

3. (1) No person shall sell any goods to which this section applies unless there is applied to the goods themselves, or if so prescribed, to any covering label reel or thing used in connection therewith, a trade description of such character, relating to such matters, and applied in such manner, as may be prescribed.

Specified goods.
cf. Goods Act, 1918 (Vict.), s. 3.

(2) This section applies to goods specified in accordance with the provisions of this section.

(3)

(3) The Governor may by proclamation published in the Gazette specify the goods to which 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.

The Governor may in like manner revoke, amend, alter, or vary any such proclamation.

(4) The regulations shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, except in any case where, on the ground that the disclosure is necessary for the protection of the health of the public, the Board of Health so recommends.

cf. Commerce (Trade descriptions) Act 1905 (Federal), s. 16.

4. (1) No person being a 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 to any goods.

Altered trade description. Goods Act, 1918 (Vict.), s. 4.

(2) No person shall sell any goods of which any trade description so applied has been altered in contravention of this Act.

5. No person shall apply a false trade description to any goods, or sell any goods to which a false trade description is applied.

False trade description. cf. Goods Act, 1915 (Vict.), No. 2,663, s. 87 (1).

6. On the sale or in the contract for the sale of any goods to which a trade description is applied, the seller shall be deemed to warrant that the trade description has not been altered in contravention of this Act and 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. cf. Goods Act, 1915 (Vict.), No. 2,663, s. 100.

7. (1) A trade description shall be deemed to be applied to goods if—

Applying trade description.

(a) it is applied to the goods themselves; or

Goods Act, 1915 (Vict.), s. 89; 1918 (Vict.), s. 4 (2).

(b) it is applied to any covering label reel or thing used in connection with the goods; or

(c)

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Goods (Trade Descriptions).

- (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, whether in an advertisement or catalogue or otherwise, in any manner in connection with or for the purposes of the sale of the goods.

(2) A 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 thing.

(3) Nothing in this section shall affect any requirement of this Act or of any regulation respecting the application of a trade description to specified goods.

OFFENCES.

8. Any person who—

- (a) sells or exposes or has in his possession for sale or any purpose of trade or manufacture any specified goods to which a trade description is not applied in compliance with the provisions of this Act; or Offences with intent to defraud. Goods Act, 1918 (Vict.), s. 5.
- (b) being a manufacturer dealer or trader, alters in contravention of this Act any trade description applied to any goods under or in compliance with any law of New South Wales or of the Commonwealth; or
- (c) sells or exposes or has in his possession for sale or any purpose of trade or manufacture any goods of which the trade description applied under or in compliance with any law of New South Wales or of the Commonwealth has been altered in contravention of this Act; or
- (d) applies any false trade description to any goods; or
- (e) contravenes any regulation,

shall be guilty of an offence against this Act, unless he proves that he acted without intent to deceive or defraud.

9. Any 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—

Sale with false trade description. cf. Goods Act, 1915 (Vict.), No. 2,663, s. 87 (2).

- (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 that the trade description was false; 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 acted innocently and that the goods were held by him bona fide and without any fraudulent intention.

10. (1) Any person, who being in the ordinary course of his business employed on behalf of another person to alter a trade description applied to goods, or to apply a trade description to goods—

Offences in course of business. cf. Goods Act, 1915 (Vict.), No. 2,663, s. 90.

- (a) alters in contravention of this Act any trade description which has been applied under or in compliance with any law of New South Wales or of the Commonwealth to any goods; or
 - (b) applies any false trade description to goods,
- shall be guilty of an offence against this Act, unless he proves—

- (i) that in the case which is the subject of the charge he was so employed by some person resident in Australia and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (ii) that he took reasonable precautions against committing the offence charged; and
- (iii) that he had at the time of the commission of the alleged offence no reason to suspect that the alteration was in contravention of this Act or that the trade description was false, as the case may be; and

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(iv) 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 on whose behalf the trade description was altered or applied.

(2) If by reason only of the defence mentioned in subsection one of this section any person is discharged from a prosecution under that subsection, he shall be liable to pay the costs thereof unless he has given due notice to the prosecutor, informant, or complainant of his intention to rely on the defence.

11. 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 guilty of an offence against this Act and shall be liable on summary conviction to a penalty of *twenty* pounds.

False representation as to Royal Warrant. .
cf. Goods Act, 1915 (Vict.), No. 2,663, s. 103.

12. (1) 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 offence against this Act shall be deemed to have committed that offence and shall be punishable accordingly.

Aiding and abetting.
Goods Act, 1918 (Vict.), s. 5.

(2) Any person who, being within New South Wales, aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission outside New South Wales of any act which, if committed in New South Wales, would be an offence against this Act shall be deemed to be guilty of that offence and shall be punishable accordingly.

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

13. 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 the 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.

Who may prosecute.
cf. Goods Act, 1915 (Vict.) No. 2,663, s. 97.

14.

14. 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.

Period for
prosecution.
cf. *Ibid.* s. 96.

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

Evidence.
cf. *Ibid.* s. 93.

- (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 country or place in or at which the goods were made or produced;
- (c) the production of the certificate of an analyst shall be sufficient evidence of the facts therein stated unless the defendant requires the analyst to be called as a witness.

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

Punishment.
cf. *Ibid.* s. 87
(3).

- (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;
- (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;
- (c) in any case to forfeit to His Majesty the goods in relation to which the offence is committed.

17. (1) Where in any prosecution for an offence against this Act the defendant is discharged therefrom, but it is proved that he exposed or had in his possession for sale or any purpose of trade or manufacture any goods in contravention of this Act, the goods shall be liable to be forfeited to His Majesty as if the owner had been convicted of an offence against this Act in relation thereto.

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

(2)

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(2) Any forfeiture under this section may be subject to a condition that it is not to be enforced if the owner gives security to the satisfaction of the Minister that the goods will not be sold in contravention of this Act or the regulations.

18. 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 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.

Goods of unknown owner.
cf. Goods Act, 1915 (Vict.), No. 2,663, s. 95 (2).

19. (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 (all marks and trade descriptions being first obliterated) award to any innocent party any loss he has sustained in dealing with such goods.

cf. Goods Act, 1915 (Vict.), No. 2,663, s. 95 (3).

SAVINGS.

20. 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) shall entitle any person to refuse to make discovery or 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 Act; or
- (c) shall render liable to prosecution or punishment any servant of a master resident in

Savings.
Ibid. s. 102.

Australia