



ANNO VICESIMO SEXTO

GEORGII V REGIS.

A.D. 1935.

No. 2214.

An Act to provide for the trade description of certain goods ; to make certain provisions as to altered and false trade descriptions of goods, and as to false representation with respect to Royal warrants and Government departments ; to repeal the Trade Marks Act, 1892 ; and for purposes connected therewith.

[*Assented to, 31st October, 1935.*]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the " Goods (Trade Descriptions) Act, 1935 ". Short title and commencement.

(2) This Act shall come into operation on a date to be fixed by proclamation.

2. 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 extent 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. Construction.

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Repeal of 551,
1892.

3. The Trades Marks Act, 1892, is hereby repealed.

Interpretation.
Cf. 551, 1892,
ss. 45 and 48
(2).

4. 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 :

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

“covering” includes stopper, glass, cask, bottle, vessel, box, cover, container, carton, 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 :

“label” includes band or ticket :

“name” includes any abbreviation of a name :

“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—

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

(b) the country, State, 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

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(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.

5. (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. Vic. No. 3694, 1928, s. 89.

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

(3) The Governor may, by proclamation, specify the goods to which this section shall apply as and from a date specified in the proclamation not earlier than twelve months after the date of publication of the proclamation.

The Governor may by proclamation revoke, amend, alter, or vary any such proclamation.

Every proclamation under this section shall in addition to being published in the *Gazette*, be published in a daily newspaper published in Adelaide.

(4) The regulations shall not prescribe a trade description which discloses trade secrets of manufacture or preparation.

(5) Any person who sells any specified goods to which a trade description is not applied in compliance with the provisions of this section shall be guilty of an offence against this Act, unless he proves that he acted without intent to deceive or defraud.

6. (1) No person being a manufacturer, dealer, or trader shall, except to the extent and in the manner prescribed, alter by effacement, addition, or otherwise, any trade description which has been applied under or in compliance with any law of South Australia, or of the Commonwealth, to any goods.

Altered trade description.
Cf. Vic., No. 3694, 1928, s. 90.

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

(3) Any person who—

(a) being a manufacturer, dealer, or trader, alters in contravention of this section any trade description

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applied to any goods under or in compliance with any law of South Australia or of the Commonwealth ;
or

- (b) sells any goods of which the trade description applied under or in compliance with any law of South Australia or of the Commonwealth has been altered in contravention of this section,

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

False trade
description.
cf. 551, 1892,
s. 46.

7. Any person being a manufacturer, dealer, or trader, who applies a false trade description to any goods shall be guilty of an offence against this Act, unless he proves that he acted without intent to deceive or defraud.

Implied
warranty.
cf. 551, 1892,
s. 59.

8. 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.

Applying trade
description.
cf. 551, 1892,
s. 48.

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

- (a) it is applied to the goods themselves ; or
(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, 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 with
intent to
defraud.
cf. N.S.W. 55,
1931, s. 2.

10. Any person who sells—

- (a) any goods in any covering other than the identical covering in which the goods were contained when the goods were sold or supplied by the manufacturer or producer of the goods :

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(b) any goods with any label, pamphlet, circular, mark, date, numeral or other distinguishing characteristic other than the identical label, pamphlet, circular, mark, date, numeral, or other distinguishing characteristic in or with which the goods are ordinarily supplied or sold by the manufacturer or producer of the goods :

(c) any goods with which any such covering, label, pamphlet, circular, mark, date, numeral, or other distinguishing characteristic was supplied or sold by the manufacturer or producer of the goods altered, removed, obliterated, torn, defaced, added to, tampered, or interfered with in anyway whatsoever,

unless he has the consent in writing of the manufacturer or producer of the goods to the alteration in respect of any such matter (the burden of proof of which consent shall lie upon the person charged), or unless the alteration in respect of any such matter hereinbefore provided for is required pursuant to regulations made under section 5, or pursuant to any provision of this Act, shall be guilty of an offence against this Act, unless he proves that he acted without intent to deceive or defraud.

11. Any person who sells 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. 551, 1892, s. 46.

(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, 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.

12. (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. 551, 1892, s. 49.

(a) alters in contravention of this Act any trade description which has been applied under or in compliance with any law of South Australia or of the Commonwealth to any goods ; or

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(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, commission, or other benefit dependent on the sale of the 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
- (iv.) that on demand made by or on behalf of the prosecutor, 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 (1) 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 or complainant of his intention to rely on the defence.

False representation as to Royal warrant.
Cf. 551, 1892, s. 62.

13. 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.

Aiding and abetting.
Cf. 551, 1892, s. 53.

14. (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.

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

Who may prosecute.
Cf. 551, 1892, s. 56.

15. No proceedings shall be taken before any court of summary jurisdiction for an offence against this Act, unless the same are taken by a person whose rights are impaired or who

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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.

16. (1) Any person who commits an offence against this Act shall be liable— Punishment.
Cf. 551, 1892,
s. 46.

(a) to imprisonment for a term not exceeding six months, or to a penalty not exceeding fifty pounds :

(b) to forfeit to His Majesty the goods in relation to which the offence is committed.

(2) The court before which any person is convicted of any such offence may order the forfeiture of the goods in relation to which the offence was committed.

17. All proceedings for offences against this Act shall be disposed of summarily. Summary
proceedings.

18. (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. 551, 1892,
s. 46.

(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.

(3) Where any articles have been declared forfeited pursuant to this Act, any special magistrate or justice may issue a warrant under his hand, by virtue of which any member of the police force, or any other person named or referred to in the warrant, may break and enter into any shop, house, ship, vehicle, or place at any time during the day or night, and search there for and seize and take away those articles.

19. (1) Where, upon complaint for an offence against this Act, either a summons requiring the defendant charged by the complaint to appear to answer the same, or a warrant for the arrest of the defendant has been issued, and either at the time of the issue of the summons or warrant or at any time thereafter any justice is satisfied by complaint on 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 dwelling-house, tenement, ship, or Search warrant
Cf. 551, 1892,
s. 54.

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vehicle of the defendant, or otherwise in his possession or under his control in any place, the justice may issue a search warrant under his hand, by virtue of which any member of the police force named or referred to in the warrant may break and enter the dwelling-house, ship, vehicle, or place, at any reasonable time by day, and search there for and seize and take away those goods or things.

(2) Any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

Goods of
unknown
owner.
Cf. 551, 1892,
s. 54.

20. (1) 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, complaint may be laid for the purpose only of enforcing such forfeiture.

(2) A court of summary jurisdiction 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 may be forfeited.

(3) At the said time and place the court, unless the owner or any person on his behalf or other person interested in the goods shows cause to the contrary, may order the goods or any of them to be forfeited.

Disposal of
forfeited goods.
Cf. 551, 1892,
s. 46.

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

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

Costs of defence
or prosecution.
Cf. 551, 1892,
s. 57.

22. When proceedings for an offence against this Act are taken before a court of summary jurisdiction by any person acting under the direction of the Minister, or by any other person whomsoever, the court may order costs to be paid to the defendant by the person taking the proceedings, or to such person by the defendant, having regard to the information given by and the conduct of the defendant and such person respectively.

Savings.
Cf. 551, 1892,
s. 61.

23. 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

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- (b) shall entitle any person to refuse to make discovery or answer any question or interrogatory in any action, but any such discovery or answer shall not be admissible in evidence against that 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 the Commonwealth who *bona fide* acts in obedience to the instructions of such master, and on demand by or on behalf of the prosecutor or complainant has given full information as to his master.

24. Where, at the seventeenth day of December, eighteen hundred and ninety-two, a trade description was 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 any 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.

Provisions of Act as to false description not to apply in certain cases. 551, 1892, s. 60.

25. (1) The Governor may make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

Regulations.

- I. The use and definition of trade terms applied to goods:
- II. The use and definition of place names applied to goods:
- III. The amount of error which may be tolerated in trade descriptions of any goods or kind of goods with respect to the nature, number, quantity, quality, purity, class, grade, gauge, size, or price thereof:
- IV. The methods for ascertaining the country, State, or place in or at which goods, or any portions or constituents, are made or produced:

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- v. Prescribing the character of trade descriptions to be applied to specified goods, the matters to which such trade descriptions shall relate, and the manner in which the same shall be applied :
 - vi. Presenting the extent to which, and the manner in which, trade descriptions of a kind referred to in section 6 may be altered ;
 - vii. The sale, destruction, or other disposition of goods forfeited under this Act.
- (2) The regulations may prescribe a penalty not exceeding twenty pounds for any contravention thereof.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. DUGAN, Governor.