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BUITENGEWONE
OFFISIËLE KOERANT
VAN SUIDWES-AFRIKA.



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UITGAWE OP GESAG.

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No. 17, 1941 (Union).]

WET

ACT

Om voorsiening te maak met betrekking tot die merk van die handelsware en van bedekkings waarin of waarmee handelsware verkoop word, en die gebruik van seker woorde en embleme in verband met handel.

To make provision concerning the marking of merchandise and of coverings in or with which merchandise is sold and the use of certain words and emblems in connection with business.

(Deur die Goewerneur-generaal in Engels geteken.)
(Goedgekeur op 7 April 1941.)

(Signed by the Governor-General in English.)
(Assented to 7th April, 1941.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

1. Tensy uit die samehang anders blyk, beteken in hierdie Wet—

"aanbring op", in reliëf bring, indruk, graveer, ets of druk op, of inweef of op 'n ander wyse inwerk mer, of op 'n ander wyse aanleg of aanplak aan;

"fles", 'n fles van glas of erdwerk vervaardig;

"bedekking", ook enige prop, vat, fles, kan, doos, deksel, kapsule, kis, raamwerk, omhulsel of houer;

"valse handelonskrywing", 'n handelonskrywing, hetsy al dan nie dit uit 'n handelsmerk of 'n deel van 'n handelsmerk bestaan of dit insluit, wat in 'n belangrike opsig onjuis is met betrekking tot die verandering van 'n handelonskrywing, hetsy deur toevoeging of uitwisseling of op 'n ander wyse, in sulken daardie verandering die omskrywing in 'n belangrike opsig onjuis maak;

"ware", alles waarin handel gedryf word of wat vervaardig is;

"inspekteur", 'n inspekteur ingevolge artikel drie van die Wet;

"etiket", ook 'n band of kaartjie;

1. In this Act, unless the context indicates otherwise—"apply to" means emboss, impress, engrave, etch or print upon or weave or otherwise work into or otherwise annex or affix to;

"bottle" means a bottle made of glass or earthenware;

"covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, wrapper or container;

"false trade description" means any trade description, whether or not it consists of or includes a trade mark or part of a trade mark, 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, if that alteration makes the description false in a material respect;

"goods" means anything which is the subject of trade or manufacture;

"inspector" means an inspector appointed under section three;

"label" includes any band or ticket;

„merk”, ook ’n handelsmerk, en by toepassing van sub-artikel (1) van artikel *agt* en artikel *nege*, ook ’n merk wat op of in verband met ware gebruik word met die doel om aan te dui dat hulle die ware van die eienaar van die merk is weens vervaardiging, produksie, seleksie, handel dryf of te koop aanbieding;

„Minister”, die Minister van Handel en Nywerheid, of ’n ander Staatsminister aan wie die Goewerneur-generaal die uitvoering van hierdie Wet opgedra het, of ’n ander Staatsminister wat namens sodanige Minister optree;

„naam”, ook ’n afkorting van of ’n byvoeging tot ’n naam;

„polisiebeampte”, elke lid van ’n polisieag;.

„verkoop”, ook uitstal vir verkoop of in besit hê vir verkoopdoeleindes, of vir ’n handels- of vervaardigingsdoel;

„handelsomsrywing”, ’n beskrywing, verklaring of ander aanduiding, hetsy direk of indirek, aangaande die aantal, hoeveelheid, maat, grootte of gewig van ware, of aangaande die naam van die fabrikant, of produsent, of aangaande die plek of land waar ware vervaardig of geproduseer is, of aangaande die wyse van vervaardiging of produksie van ware, of aangaande die stof waarmet ware bestaan, of aangaande die feit dat ware onderhewig is aan ’n bestaande patent, voorreg of kopiereg, en dit sluit elke figuur, woord of merk in wat ooreenkomstig die handelsgebruik gewoonlik beskou word as ’n aanduiding van enigeen van die bogenoemde sake;

„handelsmerk”, ’n handelsmerk wat geregistreer is in die register van handelsmerke gelou ingevolge die „Wet op Patente, Modellen, Handelsmerke en Auteursreg, 1916 (Wet No. 9 van 1916), of ’n wysiging daarvan.

2. (1) Iemand word geag ’n handelsmerk of handelsomsrywing op ware aan te bring indien hy—

- (a) dit op die ware self aanbring; of
- (b) dit op enige bedekking, etiket of tolteltjie waarin of waarmee die ware verkoop word aanbring; of
- (c) die ware plaas in, insluit by of aanhang aan enige bedekking, etiket, tolteltjie of iets anders waarop daardie handelsmerk of handelsomsrywing aangebring is; of
- (d) ’n handelsmerk of handelsomsrywing op so ’n wyse in verband met die ware gebruik dat dit waarskynlik die indruk sal wek dat daardie merk of omsrywing daardie ware aandui of beskryf.

(2) Ware, wat ingevolge ’n aanbod of aansoek gelewer word waarin ’n handelsomsrywing wat voorkom op ’n uithangbord of in ’n advertensie, faktuur, wynkaart, besigheidsbrief, besigheidsdokument of ander besigheidsmededeling verwyk word, word by toepassing van paragraaf (d) van sub-artikel (1) geag ware te wees in verband waarmee daardie handelsomsrywing gebruik word.

(3) Iemand word geag ’n handelsmerk te vervals indien hy—

- (a) daardie handelsmerk, of ’n merk wat soveel daarop gelyk dat dit waarskynlik misleidend sou wees, vervaardig sonder toestemming van die geregistreerde eienaar van daardie handelsmerk; of
- (b) ’n egte handelsmerk verander of iets daaraan toevoeg of dit uitwis.

(4) Iemand wat ’n handelsmerk of ’n merk wat soveel daarop gelyk dat dit waarskynlik misleidend sou wees, sonder toestemming van die geregistreerde eienaar van daardie handelsmerk op ware aanbring, word geag daardie handelsmerk valslik op ware aan te bring.

(5) Iemand wat ware verkoop wat, nadat hulle gebruik is, opgeknap, opnuut innemakar gesit of oorgemaak is, hetsy binne die Unie of elders, en wat die handelsmerk van die oorspronklike vervaardiger of verkoper van die ware dra, word geag die handelsmerk valslik aan te gebring het, tensy woorde wat duidelik verklaar dat die ware opgeknap, opnuut innemakar gesit of oorgemaak is, na gelang van die geval, op ’n opvallende wyse op die ware aangebring is.

“mark” includes a trade mark and, for the purposes of sub-section (1) of section *eight* and section *nine*, a mark used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, production, selection, dealing with or offering for sale;

“Minister” means the Minister of Commerce and Industries, or any other Minister of State to whom the Governor-General has assigned the administration of this Act, or any other Minister of State acting on behalf of any such Minister;

“name” includes an abbreviation or addition to a name;

“police officer” means any member of a police force;

“sell” includes expose for sale or have in possession for purposes of sale or any purpose of trade or manufacture;

“trade description” means any description, statement or other indication, direct or indirect, as to the number, quantity, measure, gauge or weight of any goods, or as to the name of the manufacturer or producer or as to the place or country in which any goods were made or produced, or as to the mode of manufacturing or producing any goods, or as to the material of which any goods consist, or as to any goods being the subject of an existing patent, privilege, or copyright, and includes any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the aforementioned matters;

“trade mark” means a trade mark registered in the register of trade marks kept under the Patents, Design, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or an amendment thereof.

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

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label or reel in or with which the goods are sold; or
- (c) places, encloses or annexes the goods in, with or to any covering, label, reel or other thing to which that trade mark or trade description has been applied; or
- (d) uses in connection with the goods a trade mark or trade description in such manner as to be likely to lead to the belief that the goods are designated or described by that mark or description.

(2) Goods delivered in pursuance of an offer or request in which reference is made to a trade description contained in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purposes of paragraph (d) of sub-section (1), be deemed to be goods in connection with which that trade description is used.

(3) A person shall be deemed to forge a trade mark who—

- (a) without the assent of the registered proprietor of that trade mark makes that trade mark or a mark so nearly resembling it as to be likely to deceive; or
- (b) alters, adds to or effaces any genuine trade mark.

(4) A person shall be deemed falsely to apply to goods a trade mark who, without the assent of the registered proprietor of that trade mark, applies to goods that trade mark or a mark so nearly resembling it as to be likely to deceive.

(5) Any person who sells goods which having been used have been reconditioned, rebuilt or remade, whether in the Union or elsewhere, and which bear the trade mark of the original maker or seller of the goods, shall, unless there is applied to them in a conspicuous manner words stating clearly that the goods have been reconditioned, rebuilt or remade, as the case may be, be deemed to have falsely applied the said trade mark.

(6) Elkeen wat so 'n woord, naam, letter, syfer of merk of 'n rangslikking of kombinasie daarvan, hetsy al dan nie dit uit 'n handelsmerk of 'n deel van 'n handelsmerk bestaan of dit insluit, op ware aanbring as wat waarskynlik die indruk sal skep dat die ware die fabriek of handelsware van iemand anders is, of die persoon wie se fabriek of handelsware hulle werklik is, word geges 'n vals handelsomsrywing op ware aan te bring.

3. Die Minister kan, met inagning van die wette wat die staatsdiens reël, inspekteurs aanstel wat hy nodig ag vir die uitvoering van die bepalings van hierdie Wet.

4. (1) Elke inspekteur wat skriftelik, onder die handtekening van 'n amptenaar deur die Minister daartoe aangewys, in die algemeen of spesiaal gemagtig word daartoe, en elke polisiebeampte met die rang van sersant of daarbo, kan op enige redelike tyd en plek van enigen wat ware besit, bewaar of hê, eis dat hy daardie ware daar en dan of op 'n tyd en plek deur daardie inspekteur of polisiebeampte bepaal, vertoon.

(2) Elke sodanige inspekteur of polisiebeampte kan te enige redelike tyd enige ware ondersoek, en met daardie doel alle pakke, vate of houers oopmaak, indien hy 'n redelike grond tot verdenking het dat hulle ware bevat, en kan hy elke plek, hetsy 'n gebou of voertuig of in die opelug, en hetsy oop of toegemaak, binnegaan indien hy 'n redelike grond tot verdenking het dat enige ware in of op daardie plek is, en hy kan sodanige plek oopmaak indien dit gesluit is.

(3) Elke sodanige inspekteur of polisiebeampte kan alle ware in beslag neem en in bewaring hou, indien hy 'n redelike grond tot verdenking het dat die bepalings van hierdie Wet nie in verband daarmee nagekom is nie en kan daardie ware of soveel daarvan as wat redelik nodig is vir nader ondersoek of ontleding, wegneem.

5. Iemand wat versuim om aan 'n deur 'n inspekteur of polisiebeampte ingeolge sub-artikel (1) van artikel vier gedane eis te voldoen, of wat 'n inspekteur of polisiebeampte in die uitvoering van sy pligte ingeolge daardie artikel belemmer, is aan 'n misdryf skuldig.

6. Iemand wat—

- (a) 'n handelsmerk vervals; of
- (b) valslik 'n handelsmerk op ware aanbring; of
- (c) 'n stempel, blok, masjiën of ander werktuig wat geskik is om gebruik te word vir vervalsing, vervaardig, verhandel of in sy besit het; of
- (d) bedekkings, etikette of tolletjies vervaardig, invoer of in sy besit het met die doel om hulle in stryd met die bepalings van hierdie Wet aan te bring; of
- (e) 'n vals handelsomsrywing op ware aanbring;

is aan 'n misdryf skuldig tensy, ingeval van 'n aanklag onder paragraaf (b), (c) of (e), dit bewys word—

- (i) dat in die gewone loop van besigheid sy dienste gehuur word om vir ander persone stempels, blokke, masjiëne of ander werktuie te maak vir gebruik by die vervaardiging van handelsmerke, of, na gelang van die geval, om vir ander persone merke of omskrywings op ware aan te bring, en dat die handeling wat die, onderwerp van die aanklag is deur hom in die gewone loop van die verrigting van dienste gehuur deur iemand wat in die Unie woonagtig is, gedoen is, en dat hy geen belang gehad het nie in die wins of kommissie wat deur verkoop van sodanige ware kon gemaak gewees het; en
- (ii) dat hy alle redelike voorsorgsmaatreëls geneem het om te verhoed dat hy die misdryf waarvan hy aangekla is, sou pleeg; en
- (iii) dat hy, toe hy die beweerde oortreding gepleeg het, geen rede gehad het om die egtheid van die handelsmerk, merk of handelsomsrywing in twyfel te trek nie; en

(6) Any person who applies to goods any such word, name, letter, figure or mark, or arrangement or combination thereof, whether consisting of or including a trade mark or part of a trade mark or not, as is likely to lead to the belief that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are shall be deemed to apply a false trade description to the goods.

3. Subject to the laws governing the public service, the Minister may appoint such inspectors as he may deem necessary for carrying out the provisions of this Act.

4. (1) Any inspector generally or specially authorized thereto by writing signed by an officer thereto designated by the Minister, and any police officer of or above the rank of sergeant, may at any reasonable time and place require any person who has the possession or custody or control of any goods to produce those goods then and there or at a time and place fixed by that inspector or police officer.

(2) Any such inspector or police officer may at any reasonable time examine any goods, and for that purpose may open any packages, vessels or containers, if he has reasonable cause to suspect that they contain any goods, and may enter any place, whether it is a building or a vehicle or is in the open air, and whether it is open or enclosed, if he has reasonable cause to suspect that any goods are in or on that place, and if any such place is closed, may open that place.

(3) Any such inspector or police officer may seize and detain any goods if he has reasonable cause to suspect that in respect thereof the provisions of this Act have not been complied with, and may remove them or such portion thereof as may reasonably be necessary for further examination or for analysis.

5. Any person who fails to comply with any demand made by any inspector or police officer under sub-section (1) of section four, or who hinders any inspector or police officer in the exercise of his functions under that section, shall be guilty of an offence.

6. Any person who—

- (a) forges any trade mark; or
- (b) falsely applies to goods any trade mark; or
- (c) makes, disposes of or has in his possession any die, block, machine or other instrument which is capable of being used for forging a trade mark; or
- (d) manufactures, imports or has in his possession any coverings, labels or reels for the purpose of applying them contrary to the provisions of this Act; or
- (e) applies any false trade description to goods,

shall be guilty of an offence, unless, in the case of a charge under paragraph (b), (c) or (e) it be proved—

- (i) that in the ordinary course of business he is employed to make dies, blocks, machines or other instruments for other persons to be used in the making of trade marks, or, as the case may be, to apply marks or descriptions to goods for other persons, and that the act which is the subject of the charge was done by him in the ordinary course of his employment by a person resident in the Union, and that he was not interested in the profit or commission that might be gained upon the sale of such goods; and
- (ii) that he took all 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 the genuineness of the trade mark, mark or trade description; and

(iv) dat hy, toe hy daartoe versoek is deur 'n inspekteur, polisiebeampte, of doeanbeampte, hom alle inligting verstrek het wat in sy vermoen was met betrekking tot die persone vir wie die stempel, blok, masjien of ander werktuig vervaardig is of die handelsmerk, merk of omskrywing aangebring is.

7. Elkeen wat ware verkoop waarop 'n vervalste handelsmerk of valsde handelsomskrywing aangebring is, of waarop 'n handelsmerk valslik aangebring is, is aan 'n misdryf skuldig, tensy dit bewys word—

- (i) dat hy alle redelike voorsorgsmaatreëls geneem het om te verhoed dat hy die misdryf waarvan hy aangekla is, sou pleeg; en
- (ii) dat hy, toe hy die beweerde misdryf gepleeg het, geen rede gehad het om die egtheid van die handelsmerk of handelsomskrywing in twyfel te trek nie; en
- (iii) dat, indien hy daartoe versoek is deur 'n inspekteur, polisiebeampte of doeanbeampte, hy aan hom alle inligting verstrek het waarvoor hy beskik het met betrekking tot die persone van wie hy die ware verkry het.

8. (1) Iemand wat ware in die Unie verkoop of, met die doel om ware te adverteer, ware in die Unie versprei, met nie in die Unie vervaardig of geproduseer is nie, en waarop 'n naam of merk aangebring is wat voorgee om die naam of merk van 'n fabrikant, produsent of handelaar in die Unie of die naam van 'n plek of distrik in die Unie te wees, is aan 'n misdryf skuldig, tensy die naam van die land waarin die ware vervaardig of geproduseer is, op 'n opvallende wyse by daardie naam of merk gevoeg is, benevens 'n verklaring dat hulle aldaar vervaardig en geproduseer is.

(2) Hierdie artikel is nie van toepassing nie met betrekking tot die aanbring van 'n naam of handelsmerk op artikels wat gebruik word of bedoel is om gebruik te word vir enigeen van die volgende doeleindes, naamlik as bedekkings, etikette, toltjies of ander artikels waarin of waarmee ware wat in die Unie vervaardig of geproduseer is, verkoop word of vir verkoop bedoel word, indien die naam of merk wat aldus aangebring is, die naam of handelsmerk van 'n fabrikant, produsent van of handelaar in daardie ware in die Unie is: en die naam of handelsmerk met sy toestemming aangebring is.

9. Elkeen wat ware wat nie in die Unie vervaardig of geproduseer is nie en waarop 'n handelsmerk, merk of handelsomskrywing in die Afrikaanse of Engelse taal aangebring is, in die Unie verkoop of, met die doel om ware te adverteer, sulke ware in die Unie versprei, is aan 'n misdryf skuldig, tensy die naam van die land waarin die ware vervaardig of geproduseer is op 'n opvallende wyse by die merk of omskrywing gevoeg is, benevens 'n verklaring dat hulle aldaar vervaardig of geproduseer is.

10. (1) Die Minister kan, na so 'n ondersoek as wat hy dienstig ag, deur kennisgewing in die *Staatskoerant* die invoer of verkoop in die Unie wat ware van 'n kategorie of soort in die kennisgewing omskreef, hetsy binne die Unie of elders vervaardig of geproduseer, verbied, tensy een of meer van die volgende vereistes, wat in die kennisgewing vermeld word, met betrekking tot daardie ware nagekom is—

- (a) woorde wat duidelik verklaar in watter land hulle vervaardig of geproduseer is, moet op 'n wyse wat in die kennisgewing bepaal word, op hulle aangebring word, of as die wyse waarop die woorde aangebring moet word, nie aldus bepaal word nie, dan moet die woorde op 'n opvallende wyse op hulle aangebring word;
- (b) as hulle 'n merk dra wat in die kennisgewing omskryf word, moet hulle aan die standaard wat die kennisgewing voorskryf voldoen;
- (c) woorde wat duidelik verklaar uit watter stof hulle saamgestel is, moet op 'n opvallende wyse op hulle aangebring word;

(iv) that on demand made by any inspector, police officer or officer of customs, he gave to him all the information in his power with respect to the persons on whose behalf the die, block, machine or other instrument was made or the trade mark, mark or description was applied.

7. Any person who sells any goods to which any forged trade mark or false trade description is applied, or to which any trade mark is falsely applied, shall be guilty of an offence, unless it be proved—

- (i) that he took all reasonable precautions against committing the offence charged; and
- (ii) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description; and
- (iii) that if any demand was made by any inspector, police officer or officer of customs he gave to him all the information available to him with respect to the persons from whom he had obtained the goods.

8. (1) Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not made or produced in the Union, and to which there is applied any name or mark being or purporting to be the name or mark of any manufacturer, producer or trader in the Union or the name of any place or district in the Union, shall be guilty of an offence, unless there is added to that name or mark, in a conspicuous manner, the name of the country in which the goods were made or produced, with a statement that they were made or produced there.

(2) This section shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes, that is to say, as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in the Union are or are to be sold, if the name or mark so applied is the name or trade mark of a manufacturer, producer or trader in those goods in the Union, and the name or trade mark was applied with his consent.

9. Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not made or produced in the Union, and to which there is applied any trade mark, mark or trade description in the English or Afrikaans language, shall be guilty of an offence, unless there is added to that mark or description, in a conspicuous manner, the name of the country in which the goods were made or produced, with a statement that they were made or produced there.

10. (1) The Minister may, after such investigation as he may think fit, by notice in the *Gazette* prohibit the importation into or the sale in the Union of goods of any class or description specified in the notice, whether made or produced in the Union or elsewhere, unless one or more of the following requirements, specified in the notice, have been complied with in respect of those goods—

- (a) there shall be applied to them in a manner specified in the notice words stating clearly the country in which they were made or produced, or, if the manner in which the words shall be applied is not so specified, the words shall be applied to the goods in a conspicuous manner;
- (b) they shall, if they bear any mark specified in the notice, conform to such standard as may be prescribed in the notice;
- (c) there shall be applied to them in a conspicuous manner words stating clearly the material of which they are composed;

(d) indien hulle, nadat hulle gebruik is, opgeknop, opnuut in mekaar gesit of oorgemaak is, lietsy in die Unie of elders, moet woorde wat in die kennisgewing vermeld word, en wat duidelik verklaar dat hulle opgeknop, opnuut inmekaar gesit of oorgemaak is, na gelang van die geval, op 'n opvallende wyse op hulle aangebring word.

(2) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-artikel (1) uitgevaardig is, deur kennisgewing in die *Staatskoerant* intrek, wysig of kwalifiseer.

(3) Elkeen wat 'n sodanige verbod oortree, is aan 'n misdryf skuldig.

11. (1) Indien die Minister, na so 'n ondersoek as wat hy dienstig ag, daarvan oortuig is—

(a) dat op grond van die feit dat 'n aansienlike deel van die arbeid wat by die vervaardiging van ware van een of ander kategorie of soort wat in die Unie verkoop word, of wat volgens voorneme in die Unie verkoop sal word, in 'n bepaalde land of elders as in 'n bepaalde land beste is; of

(b) dat op grond van die feit dat 'n aansienlike deel van die stof waaruit ware van een of ander kategorie of soort wat in die Unie verkoop word, of wat volgens voorneme in die Unie verkoop sal word, bestaan, in 'n bepaalde land of elders as in 'n bepaalde land geproduseer is,

dit wenslik is, om die doel van die bepaling van hierdie Wet wat betrekking het op die openbaarmaking van die plek waar of die land waarin ware vervaardig of geproduseer is, te bereik, dat die in paragraaf (a) of (b) bedoelde feite aangaande sulke ware openbaar word, kan hy by kennisgewing in die *Staatskoerant* die invoer of verkoop in die Unie van sulke ware verbied, tensy woorde wat in die kennisgewing uitgesig word en wat bedoelde feite aangaande bedoelde ware openbaar, op 'n opvallende wyse op hulle aangebring word.

(2) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-artikel (1) uitgevaardig is, by kennisgewing in die *Staatskoerant* intrek, wysig of kwalifiseer.

(3) Elkeen wat 'n sodanige verbod oortree, is aan 'n misdryf skuldig.

12. (1) Indien tydens die inwerkingtreeding van hierdie Wet 'n handelsomsyrywing regmatig en oor die algemeen op ware van sekere kategorie of vervaardig op 'n sekere wyse aangebring word om daardie kategorie of vervaardigingswyse aan te dui, dan, behoudens die bepaling van hierdie artikel, is die bepaling van hierdie Wet aangaande valse handelsomsyrywings nie op daardie handelsomsyrywing van toepassing nie wanneer dit aldus aangebring word.

(2) Indien 'n handelsomsyrywing die naam van 'n plek of land insluit, en waarskynlik die indruk sal skep dat die ware waarop dit aangebring is in daardie plek of land vervaardig of geproduseer is, dan geld die uitsondering in sub-artikel (1) vermeld nie vir daardie handelsomsyrywing nie.

(3) Na so 'n ondersoek as wat hy dienstig ag, kan die Minister by kennisgewing in die *Staatskoerant* verklaar dat 'n in die kennisgewing vermeldde handelsomsyrywing 'n handelsomsyrywing is, al dan nie, waarvoor die uitsondering geld wat in sub-artikel (1) vermeld word, en daarna, tensy die kennisgewing ingevolge sub-artikel (5) ingetrek is, word daardie handelsomsyrywing geag 'n handelsomsyrywing te wees, al dan nie, en na gelang van die geval, waarvoor bedoelde uitsondering geld.

(4) Die Minister kan, indien hy te enige tyd oortuig is dat die omstandighede dit vereis, by wyse van kennisgewing in die *Staatskoerant* die toepassing van of artikel *agt* of *nege* of albei ophef, of vir so 'n tydperk as wat hy nodig ag enige ware of kategorie ware vrystel van die toepassing van een van of albei hierdie artikels.

(5) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-artikel (3) of (4) uitgevaardig is, by kennisgewing in die *Staatskoerant* intrek.

(d) there shall be applied to them in a conspicuous manner, if, after they have been used, they have been reconditioned, rebuilt or remade, whether in the Union or elsewhere, words specified in the notice, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

(2) The Minister may, if he is satisfied that the circumstances require it, by notice in the *Gazette* withdraw, amend or qualify any notice issued in terms of sub-section (1).

(3) Any person who contravenes any such prohibition shall be guilty of an offence.

11. (1) If the Minister, after such investigation as he may think fit, is satisfied—

(a) that, by reason of the fact that a considerable part of the labour expended in the manufacture of any goods of any class or description which are sold or which it is proposed to sell in the Union has been expended in any particular country or elsewhere than in any particular country; or

(b) that, by reason of the fact that a considerable part of the material of which any goods of any class or description which are sold or which it is proposed to sell in the Union are composed has been produced in any particular country or elsewhere than in any particular country,

it is desirable that in order that the purpose of the provisions of this Act which relate to the disclosure of the place or country in which goods have been manufactured or produced may be attained, disclosure be made concerning such goods of the facts referred to in paragraph (a) or (b), he may by notice in the *Gazette* prohibit the importation into or the sale in the Union of such goods, unless there is applied to them in a conspicuous manner words specified in the notice making disclosure of the facts referred to concerning such goods.

(2) The Minister may if he is satisfied that the circumstances require it, by notice in the *Gazette* withdraw, amend or qualify any notice issued in terms of sub-section (1).

(3) Any person who contravenes any such prohibition shall be guilty of an offence.

12. (1) If at the commencement of this Act a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method, to indicate that class or method, the provisions of this Act as to false trade descriptions shall not, subject to the provisions of this section, apply to that trade description when so applied.

(2) If a trade description includes the name of a place or country and is likely to lead to the belief that the goods to which it is applied were made or produced in that place or country the qualification set forth in sub-section (1) shall not apply to that trade description.

(3) The Minister may, after such investigation as he may think fit, by notice in the *Gazette* declare that a trade description mentioned in the notice is or is not a trade description to which the qualification set forth by sub-section (1) applies, and thereafter, unless the notice has been withdrawn in terms of sub-section (5), that trade description shall be deemed to be or not to be (as the case may be) a trade description to which the said qualification applies.

(4) The Minister may, by notice in the *Gazette*, if he is satisfied at any time that the circumstances require it, suspend the operation of either section *eight* or *nine* or of both or exempt for such period as he may deem necessary any goods or class of goods from the operation of either or both of these sections.

(5) The Minister may, if he is satisfied that the circumstances require it, by notice in the *Gazette*, withdraw any notice issued in terms of sub-section (3) or (4).

13. Voordat die Minister 'n kennisgewing ingevolge artikel tien, elf, twaalf of vyftien uitgevaardig, moet hy, deur regstreeks met die persone wat, na hy rede het om te vermoed, belang in die saak het, in verbinding te tree, of deur kennisgewing in die *Staatskoerant*, persone wat belang in die saak het uitnodig om binne 'n bepaalde tydperk vertoë in geskrif aangaande die saak in te dien, en hy moet alle vertoë wat aldus ingedien is, in oorweging neem.

14. (1) Elkeen wat in verband met sy handel, besigheid, beroep of bedryf, of in verband met 'n handelsmerk, merk of handelsomskrywing, wat deur hom op ware wat hy vervaardig, produsent of verkoop aangebring word—

- (a) die Koninklike Wapen, of 'n wapen wat soveel op die Koninklike Wapen lyk dat dit waarskynlik misleidend sou wees, gebruik sonder skriftelike volmag geteken deur of ten behoewe van Sy Majesteit of deur of ten behoewe van die Goewerneur-generaal in eie persoon; of
- (b) die Uniewapen of 'n wapen wat soveel op die Uniewapen lyk dat dit waarskynlik misleidend sou wees, gebruik sonder skriftelike volmag geteken ten behoewe van die Goewerneur-generaal-in-Rade; of
- (c) sonder skriftelike volmag deur of ten behoewe van die Minister geteken—
 - (i) die betiteling, titel, naam, portret of afbeelding van die Koning, 'n lid van die Koninklike Huis, die Goewerneur-generaal of 'n Staatsminister van die Unie; of
 - (ii) die naam, portret of afbeelding van 'n President van die Suid-Afrikaanse Republiek of die Oranje-Vrystaat; of
 - (iii) 'n weergawe van die Nasionale Vlag van die Unie, gebruik,

is aan 'n misdryf skuldig: Met dien verstande dat hierdie sub-artikel nie van toepassing is nie op 'n handelsmerk wat geregistreer is voor en reeds bestaan het op die eerste dag van Februarie 1941.

(2) Iemand wat in verband met sy handel, besigheid, beroep of bedryf 'n tekening, beeld, embleem, titel of woorde op so 'n wyse gebruik dat dit ander persone waarskynlik onder die indruk sal bring dat sy handel, besigheid, beroep of bedryf gedryf word onder die beskerming van, of dat hy in diens is van, of ware lewer aan, Sy Majesteit, enige lid van die Koninklike Huis, die Goewerneur-generaal, enige Regeringsdepartement of 'n provinsiale administrasie, sonder skriftelike volmag geteken deur of ten behoewe van Sy Majesteit, daardie lid van die Koninklike Huis, die Goewerneur-generaal, die Minister wat daardie departement beheer of die betrokke Administrateur, nu gelang van die geval, is aan 'n misdryf skuldig.

15. (1) Nu so 'n ondersoek as wat hy dienstig ag, kan die Minister die gebruik van 'n merk, woord, letter of figuur of enige rangskikking of kombinasie daarvan, in verband met enige handel, besigheid, beroep of bedryf, of in verband met 'n handelsmerk, merk of handelsomskrywing wat op ware aangebring is, by kennisgewing in die *Staatskoerant* af geheel en al of voorwaardelik verbied.

(2) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-artikel (1) uitgevaardig is, deur kennisgewing in die *Staatskoerant* intrek, wysig of kwalifiseer.

(3) Elkeen wat 'n sodanige totale verbod oortree of versuim om aan 'n voorwaarde in sodanige kennisgewing voorgeskrif te voldoen, is aan 'n misdryf skuldig.

16. Iemand wat ware waarop 'n handelsmerk of handelsomskrywing aangebring is verkoop, word geag te waarborg dat die merk 'n egte handelsmerk is en die vervals of valslik aangebring nie, of, na gelang van die geval, dat die handelsomskrywing nie 'n valse handelsomskrywing is nie, tensy die teenoorgestelde in 'n geskrif uitgesê is wat deur of ten behoewe van die verkoper geteken is en tydens die verkoop gelewer is aan en aangeneem is deur die koper.

13. Before the Minister issues any notice under section ten, eleven, twelve or fifteen he shall, by direct communication with the persons who he has reason to believe are interested in the matter, or by notice in the *Gazette*, invite persons interested in the matter to submit representations on the matter within a period stated, and shall take into consideration all representations so submitted.

14. (1) Any person who uses in connection with his trade, business, profession or occupation, or in connection with a trade mark, mark or trade description applied by him to goods made, produced or sold by him—

- (a) without authority in writing signed by or on behalf of His Majesty or by or on behalf of the Governor-General in person, the Royal Arms, or arms so nearly resembling the Royal Arms as to be likely to deceive; or
- (b) without authority in writing signed on behalf of the Governor-General-in-Council, the Arms of the Union, or arms so nearly resembling the Arms of the Union as to be likely to deceive; or
- (c) without authority in writing signed by or on behalf of the Minister—
 - (i) the style, title, name, portrait or effigy of the King, of a member of the Royal Family, of the Governor-General or of a Minister of State of the Union; or
 - (ii) the name, portrait or effigy of any President of the South African Republic or of the Orange Free State; or
 - (iii) a reproduction of the National Flag of the Union,

shall be guilty of an offence: Provided that this sub-section shall not apply to a trade mark registered before and in existence on the first day of February, 1941.

(2) Any person who uses in connection with his trade, business, profession or occupation any device, emblem, title or words in such a manner as to be likely to lead other persons to believe that his trade, business, profession or occupation is carried on under the patronage of, or that he is employed by or supplies goods to, His Majesty, any member of the Royal Family, the Governor-General, any Government department or a provincial administration, without authority in writing signed by or on behalf of His Majesty, that member of the Royal Family, the Governor-General, the Minister administering that department or the Administrator concerned, as the case may be, shall be guilty of an offence.

15. (1) The Minister may, after such investigation as he may think fit, by notice in the *Gazette*, prohibit either absolutely or conditionally the use of any mark, word, letter or figure or any arrangement or combination thereof, in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods.

(2) The Minister may, if he is satisfied that the circumstances require it, by notice in the *Gazette*, withdraw, amend or qualify any notice issued in terms of sub-section (1).

(3) Any person who contravenes any such absolute prohibition or fails to comply with any condition prescribed in any such notice shall be guilty of an offence.

16. Every person who sells any goods to which a trade mark or trade description has been applied shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the case may be, unless it is a false trade description, as the case may be, unless the contrary is expressed in writing signed by the seller or on his behalf and delivered at the time of the sale to and accepted by the purchaser.

17. (1) Iemand—

(a) wat 'n fles of skroefprop waarop woorde in die Afrikaanse of Engelse taal waarmee duidelik verklar word dat die fles of skroefprop die eiendom van 'n genoemde persoon is, op 'n onuitwisbare wyse aangebring is, koop of verkoop; of

(b) wat ware in so 'n fles vervat, verkoop, tensy bedoelde ware die eiendom is van, of vervaardig of geproduseer is deur, die aldus genoemde persoon,

is aan 'n misdryf skuldig.

(2) Sub-artikel (1) is nie van toepassing nie op 'n transaksie waarby so 'n fles of skroefprop verkoop word—

(a) deur die vervaardiger daarvan aan die daarop genoemde persoon; of

(b) tesame met die hele besigheid in verband waarmee dit gebruik word.

18. (1) By elke vervolging weens vervalsing of valse aanbring van 'n handelsmerk rus die bewyslast, die geregistreerde eienaar ingestem het, op die beskuldigde.

(2) By elke vervolging weens 'n misdryf volgens die bepaling van hierdie Wet is getuennis dat ingevoerde ware uit een of ander hawe verskep is, *prima facie* getuennis dat daardie ware in die land waarin daardie hawe geleë is, vervaardig of geproduseer is.

19. Geen vervolging weens 'n misdryf volgens die bepaling van hierdie Wet word ingestel nadat 'n tydperk van drie jaar, bereken vanaf die datum waarop volgens bewering die misdryf begaan is, verstryk het nie.

20. (1) Elkeen wat skuldig bevind is aan 'n misdryf volgens die bepaling van hierdie Wet, is strafbaar met 'n boete van hoogstens vyftig pond, of, indien by tevore skuldig bevind is aan 'n misdryf volgens die bepaling van hierdie Wet of van 'n Wet wat deur artikel *een-en-twintig* herroep word, met 'n boete van hoogstens tweehonderd pond.

(2) Wanneer iemand skuldig bevind is aan 'n misdryf volgens die bepaling van hierdie Wet, kan die Hof waardeer by skuldig bevind is, behalwe enige ander straf wat opgelê mag word, ook die verbeurderklaring bevel van geheel of enige deel van die ware in verband waarmee die misdryf gepleeg is, en met ware wat aldus verbeurd verklaar is, word gehandel soos die Minister mag bepaal.

21. Die „Merchandise Marks Act, 1888”, (Wet No. 12 van 1888), en die „Merchandise Marks Amendment Act, 1889”, (Wet No. 14 van 1889), van die Kaap die Goeie Hoop, die „Merchandise Marks Law, 1888”, (Wet No. 22 van 1888), en Wet No. 11 van 1889 van Natal, en die „Merchandise Marks Ordinance, 1903”, (Ordonnansie No. 47 van 1903), van Transvaal word hiermee herroep.

22. Hierdie Wet heet die Handelswaremerke-wet, 1941, en tree in werking op 'n datum wat die Goewerneur-generaal by proklamasie in die *Staatskoerant* vasstel, watter datum nie vroeër as ses maande na die datum waarop hierdie Wet vir die eerste keer as 'n wet in die *Staatskoerant* afgekondig word, mag wees nie.

17. (1) Any person—

(a) who buys or sells any bottle or screw stopper to which have been indelibly applied words in the English or Afrikaans language stating plainly that the bottle or screw stopper is the property of a named person; or

(b) who sells any goods contained in any such bottle, unless those goods are the property of or have been produced or manufactured by the person so named,

shall be guilty of an offence.

(2) Sub-section (1) shall not apply to any transaction whereby any such bottle or screw stopper is sold—

(a) by the manufacturer thereof to the person named thereon; or

(b) with the whole of the business in connection with which it is used.

18. (1) In any prosecution for forging or falsely applying a trade mark the burden of proving the assent of the registered proprietor shall lie on the accused.

(2) In any prosecution for an offence under the provisions of this Act evidence that any imported goods were shipped at any port shall be *prima facie* evidence that those goods were made or produced in the country within which that port is situated.

19. No prosecution for any offence under the provisions of this Act shall be commenced after the expiration of a period of three years reckoned from the date upon which the offence was alleged to have been committed.

20. (1) Any person who is convicted of any offence under the provisions of this Act shall be liable to a fine not exceeding fifty pounds, or, if he has been previously convicted of any offence under the provisions of this Act or any law repealed by section *twenty-one* to a fine not exceeding two hundred pounds.

(2) Whenever any person is convicted of an offence under the provisions of this Act, the Court by which he is convicted may, in addition to any other penalty which may be imposed, order the confiscation of all or any part of the goods in respect of which an offence was committed, and goods so ordered to be confiscated shall be disposed of as the Minister may direct.

21. The Merchandise Marks Act, 1888 (Act No. 12 of 1888), and the Merchandise Marks Amendment Act, 1889 (Act No. 14 of 1889), of the Cape of Good Hope, the Merchandise Marks Law, 1888 (Law No. 22 of 1888), and Law No. 11 of 1889 of Natal, and the Merchandise Marks Ordinance, 1903 (Ordinance No. 47 of 1903), of the Transvaal are hereby repealed.

22. This Act shall be called the Merchandise Marks Act, 1941, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*, which date shall not be earlier than six months after the date on which this Act is first published in the *Gazette* as a law.

No. 3, 1946 (Unic).]

WET

Tot wysiging van die Handelswaremerke-Wet, 1941.

(Afrikaanse Teks deur die Goewerneur-generaal geteken.)
(Goedgekeur op 28 Maart 1946.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Artikel *tien* van die Handelswaremerke-wet, 1941, word hierby gewysig deur paragraaf (c) van sub-artikel (1) te vervang deur die volgende paragraaf:—

No. 3, 1946 (Union).]

ACT

To amend the Merchandise Marks Act, 1941.

(Afrikaans Text signed by the Governor-General).
(Assented to on 28th March, 1946.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

1. Section *ten* of the Merchandise Marks Act, 1941, is hereby amended by the substitution for paragraph (c) of sub-section (1) of the following paragraph:—

„(c) woorde wat duidelik verklaar uit watter stowwe hulle saamgestel is, en die persentasies van sulke stowwe bereken of volgens gewig of volgens volume, soos in die kennisgewing voorgeskryf word, moet op 'n opvallende wyse en soos in die kennisgewing bepaal word, op hulle aangebring word.”

2. Hierdie Wet heet die Wysigingswet op Handelswaremerke, 1946.

No. 26, 1951 (Unie).]

WET

Tot wysiging van die Handelswaremerke-Wet, 1941.

(Engelse teks deur die Goewerneur-generaal geteken.)
(Goedgekeur op 26 April 1951.)

DIET WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Artikel ses van die Handelswaremerke-wet 1941 (hieronder die Hoofwet genoem), word hiermee gewysig—

(a) deur die volgende paragrawe na paragraaf (c) in te voeg:

„(c)bis sonder toestemming van die geregistreerde eienaar van 'n handelsmerk, enige middel om hierdie handelsmerk op ware aan te bring, vervaardig of invoer of in sy besit het, of reproduksies, replicas of voorstellings van daardie handelsmerk vervaardig of hul invoer anders dan op ware waarop hul aangebring is; of

(c)ter enige middel om 'n merk wat soveel op 'n handelsmerk gelyk dat dit waarskynlik misleidend sou wees, op ware aan te bring, vervaardig of invoer of in sy besit het; of”;

(b) deur in paragraaf (d), na die woord „het”, die woorde of reproduksies, replicas of voorstellings van 'n handelsmerk of van 'n merk wat soveel op 'n handelsmerk gelyk dat dit waarskynlik misleidend sou wees, in sy besit het” in te voeg.

2. Artikel tien van die Hoofwet word hiermee gewysig deur paragrawe (c) en (d) van sub-artikel (1) te vervang deur die volgende paragrawe:

„(c) woorde of letters wat duidelik verklaar uit watter stowwe hulle saamgestel is en indien dit vereis word die persentasies van sulke stowwe bereken volgens of gewig of volume soos voorgeskryf in die kennisgewing, moet op 'n opvallende wyse en soos vermeld in die kennisgewing op hulle aangebring word;

(d) indien hulle, nadat hulle gebruik is, opgeknap, opnuut inmeekaar gesit of oorgemaak is, lietsy in die Unie of elders, dan moet, op die wyse in die kennisgewing vermeld, aldus vermeldde woorde wat duidelik verklaar dat hulle opgeknap, opnuut inmeekaar gesit of oorgemaak is, na gelang van die geval, op hulle aangebring word.”

3. Artikel agtien van die Hoofwet word hiermee gewysig deur in sub-artikel (1), na die woord „handelsmerk”, die woorde „of weens 'n misdryf ingevolge paragraaf (c)bis van artikel ses”, in te voeg.

4. Hierdie Wet heet die Wysigingswet op Handelswaremerke, 1951.

“(c) there shall be applied to them in a conspicuous manner and as specified in the notice, words stating clearly the materials of which they are composed and the percentages of such materials calculated either by weight or by volume as prescribed in the notice.”

2. This Act shall be called the Merchandise Marks Amendment Act, 1946.

No. 26, 1951 (Union).]

ACT

To amend the Merchandise Marks Act, 1941.

(English text signed by the Governor-General.)
(Assented to 26th April, 1951.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

1. Section six of the Merchandise Marks Act, 1941 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after paragraph (c), of the following paragraphs:

“(c)bis without the assent of the registered proprietor of a trade mark, manufactures or imports or has in his possession any device for applying that trade mark to any goods, or manufactures any reproduction, replicas or representations of that trade mark or imports them otherwise than on goods to which they have been applied; or

(c)ter manufactures or imports or has in his possession any device for applying to any goods a mark so nearly resembling a trade mark as to be likely to deceive; or”;

(b) by the insertion in paragraph (d), after the word “reel”, of the words “or has in his possession any reproductions, replicas or representations of a trade mark or of a mark so nearly resembling a trade mark as to be likely to deceive.”

2. Section ten of the principal Act is hereby amended by the substitution for paragraphs (c) and (d) of sub-section (1), of the following paragraphs:

“(c) there shall be applied to them in a conspicuous manner and as specified in the notice, words or letters stating clearly the materials of which they are composed and if so required the percentages of such materials calculated either by weight or by volume as prescribed in the notice;

(d) there shall, if after they have been used, they have been reconditioned, rebuilt or remade, whether in the Union or elsewhere, be applied to them in the manner specified in the notice, words so specified stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.”

3. Section eighteen of the principal Act is hereby amended by the insertion in sub-section (1), after the word “mark”, of the words “or for an offence under paragraph (c)bis of section six”.

4. This Act shall be called the Merchandise Marks Amendment Act, 1951.