
Third Session Second Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 7 of 1984

[L.S.]

AN ACT to replace the Merchandise Marks Act. Chap. 82:82

[Assented to 2nd April, 1984]

WHEREAS it is enacted by section 13(1) of the Constitu- ^{Preamble}
tion that an Act of Parliament to which that section
applies may expressly declare that it shall have effect
even though inconsistent with sections 4 and 5 of the
Constitution and, if any Act does so declare, it shall
have effect accordingly:

And whereas it is provided in the said section (13)(2)
of the Constitution that an Act of Parliament to which

that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect notwithstanding sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:—

**and
Commencement**

1. (1) This Act may be cited as the Trade Descriptions Act, 1984 and shall come into operation on a date as the President may appoint by Proclamation.

**Act inconsistent
with Constitution**

(2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

2. (1) In this Act—

“advertisement” includes a catalogue, a circular and a price list;

“goods” includes ships and aircraft, things attached to land and growing crops;

“premises” includes any place and any stall, vehicle, ship or aircraft;

“ship” includes any boat and any other description of vessel used in navigation.

(2) For the purpose of this Act, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement.

**Prohibition
of false
trade
descriptions**

3. (1) Any person who, in the course of a trade or business—

(a) applies a false trade description to any goods; or

(b) supplies or offers to supply any goods to which a false trade description is applied, is subject to the provisions of this Act, guilty of an offence,

(2) Sections 4 to 8 shall have effect for the purposes of this section and for the interpretation of expressions used in this section, wherever they occur in this Act.

4. (1) A trade description is an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods: ^{Trade description}

- (a) quantity, size or guage;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in paragraphs (a) to (d);
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a type approved by any person;
- (h) place or date of manufacture, production, processing or reconditioning;
- (i) person by whom manufactured, produced, processed or reconditioned;
- (j) other history, including previous ownership or use.

(2) The matters specified in subsection (1) shall be taken—

- (a) in relation to any animal, to include sex breed or cross, fertility and soundness;
- (b) in relation to any semen, to include the identity and characteristics of the animal from which it was taken and measure of dilution.

(3) In this section “quantity” includes length, width, height, area, volume, capacity, weight and number.

(4) Notwithstanding anything in subsections (1) ^{Chap. 30:01} to (3), where provision is made under the Food and

Drugs Act prohibiting the application of a description except to goods in the case of which the requirements specified in that provision are complied with, that description, when applied to such goods, shall be deemed not to be a trade description.

False trade
description

5. (1) A false trade description is a trade description which is false to a material degree.

(2) A trade description which, though not false is misleading that is to say, likely to be taken for such an indication of any of the matters specified in section 4 as would be false to a material degree, shall be deemed to be a false trade description.

(3) Anything which, though not a trade description, is likely to be taken for an indication of any of those matters and, as such an indication, would be false to a material degree, shall be deemed to be a false trade description.

(4) A false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognised by any person or implied by the approval of any person shall be deemed to be a false trade description, if there is no such person or no standard so specified, recognised or implied.

Applying
a trade
description

6. (1) A person applies a trade description to goods if he—

(a) affixes or annexes it to or in any manner marks it on or incorporates it with—

(i) the goods themselves; or

(ii) anything in, on or with which the goods are supplied;

(b) places the goods in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or

(c) uses the trade description in any manner likely to be taken as referring to the goods.

(2) An oral statement may amount to the use of a trade description.

(3) Where goods are supplied in pursuance of a request in which a trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that trade description, the person supplying the goods shall be deemed to have applied that trade description to the goods.

7. (1) The following provisions of this section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

Trade
descriptions
used in
advertisements

(2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published—

(a) for the purpose of determining whether an offence has been committed under section 3(1)(a); and

(b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 3(1)(b).

(3) In determining for the purposes of this section whether any goods are of a class to which a trade description used in an advertisement relates regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

8. A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer to supply them.

Offer to
supply

9. Where it appears to the Minister—

(a) that it would be in the interest of persons to whom any goods are supplied; or

Definition
Orders

- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Trinidad and Tobago,

that any expressions used in relation to the goods should be understood as having definite meanings, the Minister may by Order assign such meanings either—

- (i) to those expressions when used in the course of a trade or business as, or as part of, a trade description applied to the goods; or
- (ii) to those expressions when so used in such circumstances as may be specified in the Order;

and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when used as mentioned in paragraph (i) or, as the case may be, paragraph (ii).

**Marking
Orders**

10. (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are supplied that the goods should be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods, the Minister may, subject to this Act, by Order impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given.

(2) Where an Order under this section is in force with respect to goods of any description, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the Order is, subject to this Act, guilty of an offence.

(3) An Order under this section may make different provision for different circumstances and may, in the case of goods supplied in circumstances where the

information or instruction required by the Order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

11. (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are to be supplied that any description of advertisements of the goods should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods the Minister may, subject to this Act, by Order impose requirements as to the inclusion of that information or of an indication of the means by which it may be obtained, in such description of advertisements of the goods as may be specified in the Order.

Information, etc.,
to be given in
advertisements

(2) An Order under this section may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make different provision for different circumstances.

(3) Where an advertisement of any goods to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement, is, subject to this Act, guilty of an offence.

12. (1) A requirement imposed by an Order under section 10 or 11 in relation to any goods shall not be confined to goods manufactured or produced in any one country or any one of a number of countries or to goods manufactured or produced outside any one or more countries, unless it is imposed with respect to a description of goods in the case of which the Minister is satisfied that the interest of persons in Trinidad and Tobago to whom goods of that description are supplied will be sufficiently protected if the "requirement is so confined" and the Minister is satisfied that the Order is compatible with the international obligations of Trinidad and Tobago.

Provisions
supplementary to
sections 10
and 11

(2) Where any requirements with respect to any goods are for the time being imposed by such an Order and the Minister is satisfied, on the representation of persons appearing to the Minister to have a substantial interest in the matter, that greater hardship would be

caused to such persons if the requirements continued to apply than is justified by the interest of persons to whom such goods are supplied, the power of the Minister to relax or discontinue the requirements by a further Order may be exercised without the consultation and notice required by section 40(2).

False or
misleading
indications
as to price
of goods

13. (1) If any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than—

(a) a recommended price; or

(b) the price at which the goods or goods of the same description were previously offered by him;

or is less than such a price by a specified amount, he is, subject to this Act, guilty of an offence.

(2) If any person offering to supply any goods gives, by whatever means, any indication likely to be taken as an indication that the goods are being offered at a price less than that at which they are in fact being offered he is subject to this Act, guilty of an offence.

(3) For the purposes of this section—

(a) an indication that goods were previously offered at a higher price or at a particular price—

(i) shall be treated as an indication that they were so offered by the person giving the indication, unless it is expressly stated that they were so offered by others and it is not expressed or implied that they were, or might have been, so offered also by that person; and

(ii) shall be treated, unless the contrary is expressed, as an indication that they were so offered within the preceding six months for a continuous period of not less than twenty-eight days;

- (b) an indication as to a recommended price—
- (i) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended by the manufacturer or producer; and
 - (ii) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended generally for supply by retail in the area where the goods are offered;
- (c) anything likely to be taken as an indication as to a recommended price at which goods were previously offered shall be treated as such an indication; and
- (d) a person advertising goods as available for supply shall be taken as offering to supply them.

14. If any person, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him or any methods adopted by him are or are of a kind supplied to or approved by the President, the State, any Government office or department or any public office or institution, he is, subject to this Act, guilty of an offence.

False representation as to approval by President, etc.

15. If any person, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him are of a kind supplied to any person he is, subject to this Act, guilty of an offence.

False representations as to supply of goods and services

16. (1) It is an offence for any person in the course of any trade or business—

False or misleading statements as to services, etc.

- (a) to make a statement which he knows to be false; or
- (b) recklessly to make a statement which is false, as to any of the following matters:

- (i) the provision in the course of any trade or business of any services, accommodation or facilities;
 - (ii) the nature of any services, accommodation or facilities provided in the course of any trade or business;
 - (iii) the time at which, manner in which or persons by whom any services, accommodation or facilities are so provided;
 - (iv) the examination, approval or evaluation by any person of any services accommodation or facilities so provided; or
 - (v) the location or amenities of any accommodation so provided.
- (2) for the purposes of this section—
- (a) anything, whether or not a statement as to any of the matters specified in subsection (1), likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; and
 - (b) a statement made regardless of whether it is true or false shall be deemed to be made recklessly, whether or not the person making it had reasons for believing that it might be false.
- (3) In relation to any services consisting of or including the application of any treatment or process or the carrying out of any repair, the matter specified in subsection (1) shall be taken to include the effect of the treatment, process or repair.
- (4) In this section “false” means false to a material degree and “services” does not include anything done under a contract of service.

Orders defining
terms for purposes
of section 16

17. Where it appears to the Minister that it would be in the interest of persons for whom any services, accommodation or facilities are provided in the course

of any trade or business that any expressions used with respect thereto should be understood as having definite meanings, the Minister may by Order assign such meanings to those expressions when used as, or as part of, such statements as are mentioned in section 16 with respect to those services, accommodation or facilities; and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when so used.

18. Where a false trade description is applied to any goods outside Trinidad and Tobago and the false indication, or one of the false indications, given, or likely to be taken as given, thereby is an indication of the place of manufacture, production, processing or reconditioning of the goods or any part thereof, the goods shall not be imported into Trinidad and Tobago.

Prohibition of
importation of
goods bearing
false indication
or origin

19. (1) Any person guilty of an offence under this Act is liable—

Punishment
of offence
against Act

- (a) on conviction on indictment to a fine of ten thousand dollars and to imprisonment for two years; and
- (b) on summary conviction for a first offence, to a fine of five thousand dollars and to imprisonment for four months and on any subsequent summary conviction to a fine of ten thousand dollars and to imprisonment for six months; and
- (c) in any case to forfeit to the State every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(2) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any article liable to be forfeited under this Act may be forfeited, in manner prescribed by the Summary Courts Act; but a person charged summarily with any offence under this section shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Jurisdiction

Chap. 4:20

(3) A court by or before which a person is convicted of an offence, in addition to dealing with him in any other way, may, on application or otherwise, make an order requiring him to pay compensation for any personal injury, any loss or damage resulting from that offence.

Evidence
relating to
sampling
under Food
and Drugs
Act
Chap. 30:01

20. (1) Where any act or omission constitutes both an offence under this Act and an offence under the Food and Drugs Act, evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible in proceedings for the offence under this Act unless section 24 of the Food and Drugs Act and Regulations 11 and 12 of the Food and Drugs Regulations thereof have been complied with.

Sub. Leg.
Chap. 30:01

(2) The Minister may by Order provide that in proceedings for an offence under this Act in relation to such goods as may be specified in the Order (other than proceedings for an offence falling within subsection (1)) evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible unless the sample has been dealt with in such manner as may be specified in the Order.

Time limit
for prosecutions

21. 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 one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Accessories

22. (1) Any person who, in Trinidad and Tobago, assists in or induces the commission in any other country of an act in respect of goods which, if the act were committed in Trinidad and Tobago, would be an offence under section 3 is guilty of an offence, except as provided by subsection (2) of this section, but only if either—

- (a) the false trade description concerned is an indication (or anything likely to be taken as an indication) that the goods or any part thereof were manufactured, produced, processed or reconditioned in Trinidad and Tobago; or

(b) the false description concerned—

- (i) consists of or comprises an expression (or anything likely to be taken as an expression) to which a meaning is assigned by an Order made by virtue of section 9(b), and
- (ii) where that meaning is so assigned only in circumstances specified in the Order, the trade description is used in those circumstances.

(2) A person is not guilty of an offence under subsection (1) if, by virtue of section 34, the act, though committed in Trinidad and Tobago, would not be an offence under section 3 had the goods been intended for despatch to the other country.

(3) Any person who, in Trinidad and Tobago, assists in or induces the commission outside Trinidad and Tobago of an act which, if committed in Trinidad and Tobago, would be an offence under section 14 is guilty of an offence.

23. Where the commission by any person of an offence under this Act is due to the act or default of some other person that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

Offences due
to fault of
other person

24. (1) In any proceedings for an offence under this Act it is, subject to subsection (2), a defence for the person charged to prove—

Defence of
mistake,
accident, etc.

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged is not, without leave of the court, entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In any proceedings for an offence under this Act of supplying or offering to supply goods to which a false trade description is applied it is a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods.

Innocent
publication of
advertisement

25. In the proceedings for an offence under this Act committed by the publication of an advertisement it is a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisements for publication in the ordinary course of business and although he exercised all due diligence to avoid the commission of such offence he did not know and had no reason to suspect that its publication would amount to an offence under this Act.

Appointment
of enforcing
officers

26. The Minister may appoint one or more persons to be authorised officers for the purposes of this Act and shall furnish every such person with a certificate of his appointment as such, the certificate being in the form set out as in the Schedule and shall be signed by the Minister and the person so appointed.

Schedule

Duty of authorised
officer

27. Every authorised officer is empowered to enforce the provisions of this Act and of any Order made under this Act.

Power to
make test
purchases

28. The Permanent Secretary of the Ministry shall have power to make, or to authorise any of its officers to make on his behalf, such purchases of goods, and to authorise any such officers to secure the provision of such services, accommodation or facilities, as may

appear expedient for the purpose of determining whether or not the provisions of this Act and any Order made thereunder are being complied with.

29. (1) An authorised officer may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers:

Power to
enter
premises and
inspect and
seize goods
and documents

- (a) he may, for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises other than premises or such part thereof used exclusively as a dwelling;
- (b) if he has reasonable cause to suspect that an offence under this Act has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document;
- (c) if he has reasonable cause to believe that an offence under this Act has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;
- (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any Order made thereunder are duly observed, require any person having authority to do so to break-open any container or open any vending machine

and, if that person does not comply with the requirement, he may do so himself.

(2) An officer seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) If a magistrate, on sworn information in writing—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the magistrate may by warrant under his hand, which shall continue in force for a period of one month,

authorise an authorised officer to enter the premises, if need be by force.

(4) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(5) If any person discloses to any person—

- (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this section; or
- (b) any information obtained by him in pursuance of this Act.

he is guilty of an offence unless the disclosure was made in or for the purpose of the performance by him or any other person of functions under this Act.

(6) If any person who is not a duly authorised officer purports to act as such under this section he is guilty of an offence.

(7) Nothing in this section shall be taken to compel the production by a barrister or a solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

30. (1) In any proceedings for an offence against this Act, any goods or things seized shall be brought before the court for the purpose of its being determined whether they are or are not liable to forfeiture under this Act.

Goods liable
to forfeiture

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, a complaint may be laid for the purpose only of enforcing such forfeiture, and the court may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and

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

Disposal
of goods
forfeited

(3) Any goods or things forfeited under this Act, may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs

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

Obstruction of
authorised
officers

32. (1) Any person who—

- (a) wilfully obstructs an authorised officer acting in pursuance of this Act;
- (b) wilfully fails to comply with any requirement properly made to him by an authorised officer under section 29; or
- (c) without reasonable cause fails to give an authorised officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act,

is liable on summary conviction to a fine of five thousand dollars.

(2) If any person, in giving any such information as is mentioned in subsection (1), makes any statement which he knows to be false, he is guilty of an offence.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or the person's spouse.

33. (1) Where any goods seized or purchased by an officer in pursuance of this Act are submitted to a test, ^{Notice of result of test} then—

- (a) if the goods were seized, the officer shall inform the person mentioned in section 29(2) of the result of the test;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Act, the officer shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in section 29(2), of the result of the test;

and shall, where as a result of the test proceedings for an offence under this Act are instituted against any person, allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

34. In relation to goods which are intended—

- (a) for despatch to a destination outside Trinidad and Tobago;

^{Power to exempt goods sold for export, etc.}

- (b) for use in a ship or aircraft (and includes fuel and spare parts and other articles of equipment whether or not for immediate fitting) on a voyage or flight to an eventual destination outside Trinidad and Tobago; or

- (c) for use by the armed forces of Trinidad and Tobago,

section 3 shall apply as if there were omitted from the matters included in section 4(1) those specified in paragraph (a) thereof; and, if the Minister by Order specifies any other of those matters for the purposes of this section with respect to any description of goods, the said section 3 shall apply, in relation to goods of that description which are intended for despatch to a destination outside Trinidad and Tobago and such country, if any, as may be specified in the Order, as if the matters so specified were also omitted from those included in section 4(1).

Compensation
for loss, etc.,
of goods
seized

35. (1) Where, in the exercise of his powers under section 29, an authorised officer seizes and detains any goods and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under this Act committed in relation to the goods, the owner is entitled to compensation for the loss so suffered.

(2) Any disputed question as to the right to or the amount of any compensation payable under this section shall on the written application of the owner or of the Attorney General be determined as follows:

(a) if the amount of the compensation claimed does not exceed five thousand dollars, by a Magistrate; or

(b) if the amount of the compensation claimed exceeds five thousand dollars, by a Judge of the Supreme Court.

in like manner as if the Magistrate or the Judge were a single arbitrator appointed pursuant to the provisions of the Arbitration Act, and the provisions of that Act shall apply accordingly.

Chap. 5:01

(3) Compensation payable under this section shall be defrayed out of moneys provided for the purpose by Parliament.

Trade marks
containing
trade
descriptions
Chap. 82:81

36. The fact that a trade description is a trade mark, or part of a trade mark, within the meaning of the Trade Marks Act does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied:

(a) that it could have been lawfully applied to the goods if this Act had not been passed; and

(b) that on the day this Act is passed the trade mark either is registered under the Trade Marks Act or is in use to indicate a connection in the course of trade between such goods and the proprietor of the trade mark; and

(c) that the trade mark as applied is used to indicate such a connection between the goods and the proprietor of the trade

mark or a person registered under section 37 of the Trade Marks Act as a registered user of the trade mark; and Chap. 82:81

- (d) that the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on the day this Act is passed.

37. A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act. Saving for civil right

38. (1) For the purposes of this Act in the case of manufactured or processed goods, the goods shall be deemed to have been manufactured or produced in the country it last underwent its treatment or process resulting in a substantial change. Country of origin

(2) The Minister may by Order specify—

- (a) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this section as resulting or not resulting in a substantial change;
- (b) in relation to any description of goods different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of this Act as having been manufactured or produced.

39. (1) In this section “market research experiment” means any activities conducted for the purpose of ascertaining the opinion of persons (in this section referred to as “participants”) of— Market research experiments

- (a) any goods;
- (b) anything in, on or with which the goods are supplied;
- (c) the appearance or any other characteristic of the goods or of any such thing; or
- (d) the name or description under which the goods are supplied.
-

(2) This section applies to any market research experiment with respect to which the following conditions are satisfied:

- (a) that any participant to whom any goods are supplied in the course of the experiment is informed, at or before the time at which they are supplied to him, that they are supplied for such a purpose as is mentioned in subsection (1), and
- (b) that no consideration in money or money's worth is given by a participant for the goods or any goods supplied to him for comparison.

(3) Neither section 3 nor 10 shall apply in relation to goods supplied or offered to be supplied, whether to a participant or any other person, in the course of a market research experiment to which this section applies.

Order made
under Act

40. (1) Any Order made under this Act shall be subject to affirmative resolution of Parliament.

(2) The following provisions shall apply to the making of an Order under section 9, 10, 11, 17 or 38, except in the case mentioned in section 12(2):

- (a) before making the Order the Minister may consult with such organisations as appear to him to be representative of interests substantially affected by it and shall publish, in such manner as the Minister thinks appropriate, notice of his intention to make the Order; and
- (b) the Order shall not be made until the expiration of a period of twenty-eight days from the publication of the Notice and may then be made with such modifications, if any, as the Minister thinks appropriate having regard to any representations received by him.

Repeal
Chap. 82:82

41. The Merchandise Marks Act is hereby repealed.

Amendment
Chap. 82:81

42. (1) The Trade Marks Act is amended by inserting the following section after section 69:

Restriction
of importa-
tion of
goods
bearing
infringing
trade
marks

“69A. (1) The person who is registered as the proprietor or registered user of a trade mark in respect of any goods may give notice in writing to the Minister to whom the responsibility for Customs and Excise is assigned—

- (a) that he is the proprietor or registered user of that trade mark,
- (b) that such goods bearing the trade mark are expected to arrive in Trinidad and Tobago at a time and place and by a consignment specified in the notice,
- (c) that the use within Trinidad and Tobago of the trade mark in relation to the goods would infringe the proprietor's exclusive right to that use, and
- (d) that he requests the Minister to treat the goods as prohibited goods.

(2) Where a notice has been given under this section in respect of any goods bearing a trade mark and has not been withdrawn and the requirements of any Regulations made under this section are complied with, then, subject to the following provisions of this section, the importation into Trinidad and Tobago of the goods shall, if the condition of subsection (1)(c) is satisfied, be deemed to be prohibited.

(3) The Minister may make Regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Minister with such evidence, and to comply with such other

conditions, if any, as may be specified in the Regulations, and any such Regulations may include such incidental and supplementary provisions as the Minister considers expedient for the purposes of this section.

(4) Without prejudice to the generality of subsection (3), Regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1), or a notice purporting to be a notice under that subsection—

- (a) to pay such fees in respect of the notice as may be prescribed by the Regulations;
- (b) to give to the Minister such security as may be so prescribed in respect of any liability or expense which they may incur in consequence of the detention of any goods to which the notice relates, or in consequence of anything done in relation to goods so detained;
- (c) whether any such security is given or not, to keep the Minister indemnified against any such liability or expense as is mentioned in paragraph (b).

(5) Regulations under subsection (3) shall be subject to affirmative resolution of Parliament.”.

Amendment of
Customs Ordinance
Ch. 32, No. 2
(1950 Ed.)

(2) Section 39(1)(a) of the Customs Ordinance is amended by deleting the words “Merchandise Marks Ordinance” and by substituting the words “Trade Descriptions Act, 1983”.

SCHEDULE

Section 26

CERTIFICATE OF APPOINTMENT OF AUTHORISED OFFICER
(Section 26 of the Trade Descriptions Act, 1983)

OFFICIAL STAMP

This is to certify that

.....
has been appointed as an authorised
officer under section 26 of the Trade
Descriptions Act, 1983.

AFFIX PASSPORT SIZE
PHOTOGRAPH HERE

.....
*Signature of Authorised
Officer*

.....
*Signature of Minister
assigned responsibility for
Consumer Affairs*

Passed in the Senate this 13th day of December, 1983.

R. L. GRIFFITH
Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for
which has been passed by the Senate and at the final
vote thereon in the Senate has been supported by the
votes of not less than three-fifths of all the members
of the Senate that is to say by the votes of 25 Senators.

R. L. GRIFFITH
Clerk of the Senate

Passed in the House of Representatives this 9th day
of March, 1984.

J. E. CARTER
Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 32 members of the House.

J. E. CARTER
Clerk of the House