

COMMERCE (TRADE DESCRIPTIONS).

No. 16 of 1905.

An Act relating to Commerce with other Countries.

[Assented to 8th December, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

INTRODUCTORY.

1. This Act may be cited as the *Commerce (Trade Descriptions) Act 1905*, and shall commence on a day to be fixed by proclamation not being earlier than six months after the passing of this Act. Short title and commencement.

2. This Act shall be incorporated and read as one with the *Customs Act 1901*. Incorporation.

3. In this Act, unless the contrary intention appears— Definitions.

“Officer” means an officer of Customs.

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

- (a) as to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods ; or
- (b) as to the country or place in or at which the goods were made or produced ; or
- (c) as to the manufacturer or producer of the goods or the person by whom they were selected, packed, or in any way prepared for the market ; or
- (d) as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods ; or
- (e) as to the material or ingredients of which the goods are composed, or from which they are derived ; or
- (f) as to the goods being the subject of an existing patent, privilege, or copyright,

and includes a Customs entry relating to goods ; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act.

“False trade description” means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

When false trade description deemed to be applied to goods.

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

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

(2) “Covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper ; and “label” includes any band or ticket.

INSPECTION OF IMPORTS AND EXPORTS.

Inspection of imports and exports.

5.—(1.) An officer may inspect and examine all prescribed goods which are imported, or which are entered for export or brought for export to any wharf or place.

(2.) The officer may where practicable take samples of any goods inspected by him pursuant to this section, and the samples so taken shall be dealt with as prescribed.

(3.) For the purposes of this section an officer may enter any ship, wharf or place, and may open any packages, and may do all things necessary to enable him to carry out his powers and duties under this section.

Notice of intention to export.

6. Every person who intends to export any goods of a kind or class required under this Act to be inspected or examined by an officer, shall, if required to do so by regulation, before the goods are shipped, give notice, in accordance with the regulations, to the Customs of his intention to export the goods and of the place where the goods may be inspected.

Penalty : Twenty pounds.

IMPORTS.

Prohibition of imports not bearing prescribed trade description.

7.—(1.) The regulations may prohibit the importation or introduction into Australia of any specified goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

(2.) All goods imported in contravention of any regulation under this section may be detained by the Collector and may by direction of the Minister be seized as forfeited to the King.

(3.) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the prescribed trade description will be applied to the goods or that they will be forthwith exported.

(4.) No regulation under this section shall take effect until after the expiration of not less than three months from notification in the *Gazette*.

8. All imported goods to which a trade description is by this Act or the regulations required to be applied, and which are found in Australia in any package or covering in which they were imported, and without the prescribed trade description, shall until the contrary is proved be deemed to have been imported in contravention of this Act or of the regulations as the case may be.

Imported goods found in Australia without prescribed trade description.

9. No person shall import any goods to which a false trade description is applied.

Importation of falsely marked goods.

Penalty: One hundred pounds.

It shall be a defence to a prosecution for an offence against this section if the defendant proves that he did not knowingly import the goods in contravention of this section.

10. All goods to which any false trade description is applied are hereby prohibited to be imported, and shall if imported be forfeited to the King.

Forfeiture of falsely marked goods.

Provided that the Comptroller-General, or on appeal from him the Minister, may, if he is satisfied that any goods which have been seized as forfeited under this section were not knowingly imported in contravention of this Act, permit the importer to correct the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the importer to the Customs of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

EXPORTS.

11.—(1.) The regulations may prohibit the exportation of any specified goods, unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

Prohibition of exports not bearing the prescribed trade description.

(2.) All such goods to which the prescribed trade description is not applied, which are exported or entered for export or put on board any ship or boat for export or brought to any wharf or place for export, may be detained by the Collector, and may by direction of the Minister be seized as forfeited to the King.

(3.) Subject to the regulations the Comptroller-General, or on appeal from him the Minister, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or exporter, upon security being given to the satisfaction of the Comptroller-General that the goods shall not be exported in contravention of the regulations.

12. No person shall—

Penalty for applying false trade description to exports.

(a) knowingly apply any false trade description to any goods intended or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export; or

- (b) knowingly export or enter for export or put on any ship or boat for export any goods to which a false trade description is applied.

Penalty : One hundred pounds.

Exportation of falsely marked goods.

13. All goods to which any false trade description is applied are hereby prohibited to be exported, and shall, if exported or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export, be forfeited to the King.

Provided that the Comptroller-General, or on appeal from him the Minister, may, if he is satisfied that the owner of any goods, which have been seized as forfeited under this section did not knowingly act in contravention of this Act, permit the correction of the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the exporter of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

Marking of goods for export.

14. Any goods intended for export which have been inspected in pursuance of this Act may in manner prescribed be marked with the prescribed trade description.

Application of sections 7 and 11.

15. Sections seven and eleven of this Act shall not apply to any goods other than—

- (a) articles used for food or drink by man, or used in the manufacture or preparation of articles used for food or drink by man ; or
- (b) medicines or medicinal preparations for internal or external use ; or
- (c) manures ; or
- (d) apparel (including boots and shoes) and the materials from which such apparel is manufactured ; or
- (e) jewellery ; or
- (f) seeds and plants.

Trade description disclosing trade secrets.

16. The regulations under sections seven and eleven of this Act shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Governor-General the disclosure is necessary for the protection of the health or welfare of the public.

MISCELLANEOUS.

Regulations.

17. The Governor-General may make regulations not inconsistent with this Act prescribing all matters and things required or permitted by this Act to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to this Act, and particularly for the analysis of samples taken under this Act, and the extent to which certificates of analysis shall be *prima facie* evidence in proceedings under this Act of the facts therein stated.

Aiding or abetting offences.

18. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission of any offence against this Act shall be deemed to have committed that offence, and shall be punishable accordingly.