

CHAPTER 85

THE MERCHANDISE MARKS ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 85

THE MERCHANDISE MARKS ACT

An Act to control the use of marks and trade descriptions in relation to merchandise and other related marks.

[15th April, 2005]

[GN. No. 94 of 2005]

Acts Nos.
20 of 1963
5 of 2005
19 of 2007
3 of 2012

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Merchandise Marks Act.

Interpretation
Acts Nos.
19 of 2007 s. 4
3 of 2012 s. 36

2.-(1) In this Act, unless the context otherwise requires-

“Chief Inspector” means a Chief Inspector of merchandise marks appointed by the Minister for the purposes of this Act and includes an inspector;

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

“counterfeit goods” means goods that are result of counterfeiting and includes any goods generally known as pirated goods and other means used for counterfeiting;

“exporter” includes any person who, at the relevant time-

- (a) is the owner or is in control or possession of any goods exported or to be exported from Mainland Tanzania;
- (b) carries the risk for any goods exported or to be exported;
- (c) represents or acts as if he is the exporter or owner of any goods exported or to be exported;
- (d) takes or attempts to take any goods from Tanzania;
- (e) has a beneficial interest in any manner or of any nature whatsoever, in any goods exported or to be exported;

- (f) acts on behalf of any person referred to in paragraphs (a), (b), (c) or (d); or
- (g) in relation to imported goods destined for exportation from Tanzania, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside Tanzania representing or acting on behalf of a manufacturer, producer, maker, supplier or a shipper;

“false name or initials” means, as applied to any goods, any name or initials of a person which are-

- (a) not a trade mark, or part of a trade mark;
- (b) identical with, or a colorable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of the name or initials; and
- (c) either those of a fictitious person or of some person not *bona fide* carrying on business in connection with the goods;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes any alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that, a trade description is a trade mark, or part of a trade mark, shall not prevent the trade description from being a false trade description within the meaning of this Act;

“forged trade mark” has the meaning ascribed to it under section 10;

“goods” means anything which is the subject of trade, manufacture or merchandise;

“intellectual property rights” include any right protected under-

- (a) the Copyright and Neighboring Rights Act;
- (b) the Trade and Service Marks Act;
- (c) the Patents (Registration) Act;

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(d) the Plant Breeders Rights Act; and

(e) any other related law;

“importer” includes a person, who at the material time-

(a) is the owner or is in control or in possession of any goods imported or to be imported into Tanzania;

(b) carries the risk for any goods imported or to be imported;

(c) represents, or acts as if he-

(i) is the importer or owner of any goods imported;

(ii) actually brings or attempts to bring any goods into Mainland Tanzania; or

(iii) has a beneficial interest, in any manner or of any nature whatsoever in any goods imported or to be imported; and

(d) acts on behalf of any person referred to in paragraphs (a), (b) or (c);

“label” includes any band or ticket;

“Minister” means the Minister responsible for commerce;

“name” includes any abbreviation of a name;

“protected goods” means-

(a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual right or goods to which that subject matter has been applied by that owner or authority;

(b) any particular class kind or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner or to which that subject matter may in law be applied by that owner or with the authority, but which has not yet been manufactured, produced or made to which that subject matter is not yet applied, with the authority of or by that owner, whichever is applicable;

“place” includes premises or any container or freight container irrespective of its size at, or in place or premises;

“trade description” means any description, statement, or other indication, direct or indirect as-

- (a) to the number, quantity, measure, gauge or weight of any goods;
- (b) to the standard of quality of any goods, according to a classification commonly used or recognised in the trade;
- (c) to the fitness for purpose, strength, performance or behavior of any goods;
- (d) to the place or country in which any goods were made or produced;
- (e) to the mode of manufacturing or producing any goods;
- (f) to the material of which any goods are composed; or
- (g) to any goods being the subject of an existing patent, privilege or copyright,

and the use of any figure, word, or mark, which, according to the custom of the trade, 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;

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“trade mark” has the meaning ascribed to it under the Trade and Service Marks Act;

“vehicle” means motorcar, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessels and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self propelled or not as well as any pack animal.

(2) Without prejudice to the generality of the definitions contained in subsection (1), “a trade description,” to whichever of the matters mentioned in the definition of “trade description” it relates, shall be deemed for purposes of this Act to be a false trade description where it is likely to be misunderstood as, or mistaken for, an indication as to the same or some other matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything likely to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

(3) The customs entry relating to imported goods shall, for the purposes of this Act, be deemed to be a trade description applied to those goods.

Appointment of
Chief Inspector
Act No.
19 of 2007 s. 4

3.–(1) The Minister shall appoint a Chief Inspector and other inspectors necessary for the purposes of the execution of this Act.

(2) Appointment of inspectors shall be published in the *Government Gazette*.

[s. 2A]

Powers of Chief
Inspector
Act No.
19 of 2007 s. 4

4.–(1) The Chief Inspector shall, for the purpose of execution of this Act, have powers to do any of the following:

- (a) conduct investigation and cause investigation to be conducted on suspected person who breaches the provisions of this Act;
- (b) initiate proceedings before the court in the manner stipulated under this Act;
- (c) examine any person, either alone or in presence of another person as he thinks desirable with respect to matters under this Act; and
- (d) demand from the supplier of goods, information relating to particulars of the manufacturer of those goods suspected to violate the provisions of this Act.

(2) Where the supplier has not given information under subsection (1)(d) within fourteen days, the supplier of goods shall be presumed to be the manufacturer of the goods.

[s. 2B]

Summary
proceedings
Act No.
19 of 2007 s. 4

5.–(1) Notwithstanding the provisions of this Act, the Chief Inspector may entertain complaint in respect of counterfeited goods by the owners who are injured by the counterfeits and conduct summary trials under the procedures laid down in the regulations made by the Minister.

(2) A person who is aggrieved by the final decision of the Chief Inspector may appeal to the Fair Competition Tribunal within fourteen days from the date of the decision.

(3) For the purpose of this section, “final decision” means a decision which is not an intermediate verdict pending the final ruling.

[s. 2C]

Delegation of powers
Act No.
19 of 2007 s. 4

6. The powers of the Chief Inspector may be delegated to a person or public institutions as the Minister may direct on the advice of Chief Inspector.

[s. 2D]

Immunity
Act No.
19 of 2007 s. 4

7. The Chief Inspector, any inspector or person exercising the power of the Chief Inspector under this Act, shall not be liable to criminal or civil liability for the *bona fide* exercise of powers subject to the provisions of this Act.

[s. 2E]

Conflict of interest
Act No.
19 of 2007 s. 4

8. The Chief Inspector or a member of the inspectorate or public officer having powers under this Act to take action shall abstain from exercising the powers where he has a pecuniary or other interest in the subject matter.

[s. 2F]

PART II

PROHIBITION TO DEAL IN COUNTERFEIT GOODS¹

Offence on owning, possessing, etc. counterfeit goods
Acts Nos.
5 of 2005 Sch.
3 of 2012 s. 38

- 9.**—(1) A person shall not, in the course of trade-
- (a) own, possess or be in control of any counterfeit goods;
 - (b) manufacture, produce or make any counterfeit goods;
 - (c) sell, hire out, barter or exchange, offer or offer for sale of any counterfeit goods;
 - (d) expose or exhibit any counterfeit goods;
 - (e) distribute counterfeit goods;

¹ Act No. 3 of 2012 s. 37.

- (f) own or be in possession or in control of any die, block, machine or other instrument for the purpose of or use for counterfeiting;
 - (g) import into, export, transit through or trans ship within or outside Tanzania, except for private or domestic use by the importer or exporter any of counterfeit goods;
 - (h) apply any false trade description of goods; or
 - (i) dispose in any other manner any counterfeit goods.
- (2) A person who contravenes the provisions of subsection (1), commits an offence and on conviction, shall be liable-
- (a) in case of a first offender-
 - (i) to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings;
 - (ii) to a fine of not less than three times the value of the prevailing retail total price of the goods in respect of each or item involved in an act of dealing in counterfeit goods to which the offence relates; or
 - (iii) to both;
 - (b) in case of a second or any subsequent offender-
 - (i) to imprisonment for a term not exceeding fifteen years;
 - (ii) to a fine of not less than fifty million shillings or five times the value of the prevailing retail price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates whichever amount is greater; or
 - (iii) to both.
- (3) A holder of an intellectual property right or his successor in title, a licensee or agent who, in relation to any protected goods, has reasonable cause to suspect that, an offence against subsection (1) has been or is being committed may make a complaint to the Chief Inspector.

[s.3]

Certain acts deemed to be forgery of trade mark

10. A person shall be deemed to forge a trade mark who either-

- (a) without the assent of the proprietor of the trade mark, makes that trade mark or a mark nearly resembling that trade mark as to be likely to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise,

and any trade mark or mark made or falsified is in this Act referred to as a forged trade mark.

[s. 4]

Saving of certain acts in ordinary course of business

11. It shall be a sufficient defence to any charge of making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or of falsely applying to goods any trade mark or mark nearly resembling a trade mark as to be likely to deceive, or of applying to goods any false trade description, or causing any of the things in this section mentioned to be done, where the accused satisfied the court that-

- (a) in the ordinary course of his business, he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making or being used in making trade marks, or, as the case may be, to apply trademarks or trade descriptions to goods, and that in the case which is the subject of the charge, he was employed by some person resident in Tanzania, and was not interested in the goods by way of profit or commission dependent on the sale of the goods;
- (b) he took reasonable precautions against committing the offence charged;
- (c) he had, no reason to suspect the genuineness of the trade mark or trade description at the time of the commission of the alleged offence; and
- (d) he gave to the prosecutor the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied.

[s. 5]

Selling goods bearing false trade marks or descriptions offence
Acts Nos. 5 of 2005 Sch. 3 of 2012 s. 39

12. A person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forged trade mark or false trade description is applied or to which any trade mark or mark nearly resembling a trade mark as to be likely to deceive is falsely applied, as the case may be, shall, unless he proves either that-

- (a) having taken reasonable precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that on demand made by or on behalf of the prosecutor, he gave the information in his power with respect to the persons from whom he obtained goods; or
 - (b) otherwise he had acted innocently,
- commits an offence and on conviction shall be liable-

(i) in case of a first offender:

- (a) to imprisonment for a term not exceeding five years;
- (b) to a fine not exceeding ten million shillings or not less than three times the value of the prevailing retail total price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates or whichever greater; or
- (c) to both;

(ii) in case of a second or any subsequent conviction-

- (a) to imprisonment for a term not exceeding fifteen years;
- (b) to a fine not less than fifty million shillings or five times the value of the prevailing retail price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates or whichever greater; or
- (c) to both.

[s. 6]

Acts which constitute application of trade marks and descriptions

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

- (a) applies it to the goods themselves;

- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture;
- (c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade mark or trade description has been applied; or
- (d) uses a trade mark, mark or trade description in any manner likely to lead to the belief that, the goods in connection with which it is used are designated or described by that trade mark, mark or trade description.

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

(3) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any figures, words, marks or colors or arrangement or combination thereof, whether including a trade mark or not, or any false name or initials, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they in fact are and provisions relating to goods to which a false trade description is applied shall be construed accordingly.

(4) Goods delivered in pursuance of a request made by a reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purpose of subsection (1)(d), be deemed to be goods in connection with which the trade mark or trade description is used.

[s. 7]

Existing use saved
in certain cases

14.-(1) Where 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 the particular class or method of manufacture of goods, the provisions of this Act with respect to false trade descriptions shall not apply to trade description when applied:

Provided that, where the trade description includes the name of a place or country, and is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

(2) Where-

- (a) at the commencement of this Act, a trade mark either is registered under the Trade and Service Marks Act or is in use to indicate a connection in the course of trade between goods and the proprietor of the trade mark;
- (b) the trade mark is used to indicate a connection in the course of trade between the goods and the person who is the proprietor of the trade mark or between the goods and a person who is registered under section 42 of the Trade and Service Marks Act as a registered user of the trade mark; and
- (c) the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the person who is the proprietor at the commencement of this Act, the provisions of this Act with respect to false trade descriptions shall not apply to trade mark or part of the trade mark when applied to the goods.

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[s. 8]

PART III
IMPLIED WARRANTY ON SALE
OF MARKED GOODS

Implied warranty
on sale of marked
goods

15. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that, the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the purchaser.

[s. 9]

PART IV
PROVISIONS RELATING TO THE
IMPORTATION OF GOODS

Prohibition of
importation of
certain goods
Act No.
3 of 2012 s.40

16. A person shall not import into Mainland Tanzania for sale any goods-

- (a) to which any forged trade mark or false trade description is applied or to which any trade mark or a mark nearly resembling a trade mark as to be likely to deceive is falsely applied; or
- (b) to which there is applied any trade mark or trade description which contains a direct or indirect reference to any town, place, district or country other than the town, place, district or country in which the goods were made or which bear any name or trade mark of any manufacturer, dealer or trader in Tanzania, unless there is added to that trade mark or trade description in a conspicuous manner the name of the country in which goods were made or produced so as to indicate that they were made or produced in that country.

[s. 10]

Conditional prohibition of importation of goods
Act No. 3 of 2012 s. 41

17. The Minister may, by order published in the *Gazette*, prohibit the importation into Mainland Tanzania for sale of goods of any class or description unless either or both of the following requirements have been complied with:

- (a) there are applied to the goods, words stating clearly the country in which they were made or produced and words are applied in a manner as may be specified in the order or, if no manner is specified, in a conspicuous manner; or
- (b) the goods bear a mark and conform to a standard as may be specified or prescribed in the order.

[s. 11]

PART V INVESTIGATION AND PROCEEDINGS

Power of entry and inspection
Acts Nos. 5 of 2005 Sch. 3 of 2012 s. 42

18.—(1) It shall be lawful for any inspector, on production of his authority, or for any police officer of or above the rank of inspector, to enter without warrant and inspect any premises, place or vehicle in which he has reason to believe that, an offence against this Act has been or is about to be committed, and therein to—

- (a) examine goods, and books, accounts and documents relating thereto;
- (b) take samples of any goods, and take copies of any book, account or document as aforesaid, or part thereof;
- (c) seize, remove and detain any goods which he has reasonable cause to believe may afford evidence of an offence under this Act, and any container, receptacle, book, account or document relating thereto; and
- (d) require any occupant of premises to render the explanations and give the information relating to any goods therein as may be reasonably required by the inspector or officer in the performance of his duties.

(2) The power to act under subsection (1), shall only be exercised without warrant where the inspector or officer acting has reasonable cause to believe that, the delay occasioned in

obtaining a search warrant would seriously hinder him in the performance of his duties.

(3) A person who obstructs or hinders an inspector or officer acting in pursuance of any of the provisions of this section, or who on any requisition under subsection (1)(d) willfully withholds any information or gives any information knowing or having reason to believe it to be false or misleading, commits an offence and on conviction, shall be liable, to a fine of not less than one hundred thousand shillings but not more than five hundred thousand shillings or to imprisonment for a term not less than six months but not more than twelve months or to both:

Provided that, a person may not be required to answer any question, the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

(4) Before removing any goods, account or document under the provisions of this section, the inspector or officer removing it shall furnish the person in whose custody or possession the goods are at the time of removal with a written receipt thereof.

[s. 12]

Forfeiture of
goods upon
conviction

19. The court before whom any person is convicted of an offence against this Act, may declare any goods in respect or by means of which the offence was committed to be forfeited.

[s. 13]

Forfeiture of
goods in absence
of owner

20. Where the owner of any goods or things which, where the owner thereof had been convicted, would be liable to forfeiture under this Act is unknown or cannot be found, a charge or complaint may be laid for the purpose only of enforcing forfeiture and a subordinate 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, the goods or things will be forfeited, and at the time and place, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, the court may order the goods or things or any of them to be forfeited.

[s. 14]

Disposal of goods forfeited **21.** Goods or things forfeited under this Act may be destroyed or otherwise disposed of in a manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realized by the disposal of the goods, trademarks and trade descriptions being first obliterated, award to any innocent party any loss he may have innocently sustained in dealing with such goods.

[s. 15]

Evidence Act no 3 of 2012 s. 43 **22.**—(1) Where, in any prosecution under this Act, the consent of the proprietor of a trade mark is a relevant issue, the onus of proving the consent of the proprietor shall lie on the accused.

(2) In any prosecution for an offence under this Act, in the case of imported goods, evidence of the place from which the goods were consigned to Mainland Tanzania shall be *prima facie* evidence of the place or country in which the goods were made or produced.

[s. 16]

Limitation of prosecution **23.** A prosecution for an offence against this Act shall not be commenced after the expiration of five years next after the date on which the offence was alleged to have been committed.

[s. 17]

Offences by companies **24.** Where any offence under this Act is committed by a company, firm or other association of individuals, a person who at the time of the offence was a director, manager, secretary or other similar officer of the company, firm or association, or who was at that time concerned or purported to act in the management of its affairs, shall be severally liable to prosecution and punishment in like manner as if he had himself committed the offence, unless he proves that the offence was committed without his consent and he took reasonable steps to prevent its commission.

[s. 18]

Power to make regulations
Act No.
19 of 2007 s. 4

25.—(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may make regulations-

- (a) prescribing the procedure for summary proceedings conducted by the Chief Inspector on complaint referred to him on alleged counterfeited goods by the owner of the trade mark counterfeited;
- (b) prescribing the manner of conducting summary proceedings other than proceedings arising from a complaint in accordance with this Act;
- (c) laying down procedures for the seizure and detention of goods, safe custody and final disposal of goods;
- (d) relating to the delegation of powers under the Act to any person or public institutions;
- (e) providing for forms to be used for the purposes of this Act;
- (f) for fixing fees, fines and other penalties which may be imposed by the Chief Inspector upon conduct of summary proceedings and other proceedings under this Act; and
- (g) prescribing anything which under the Act may be prescribed.

[s. 18A]

Prohibition to host websites in contravention of Act
Act No.
3 of 2012 s. 44

26.—(1) A person who hosts, operates or manages any website or other electronic network by or through which counterfeit goods or copyright infringing materials are displayed or advertised, commits an offence.

(2) Upon receipt of a complaint from the owner of intellectual property right, the Chief Inspector shall issue a notice in writing to the service provider to expeditiously disable access to the website or remove the relevant material from the website not later than three days after receipt of the request.

(3) A person who contravenes the provision of subsection (2), commits an offence and on conviction, shall be liable to a fine not exceeding twenty million shillings or imprisonment for a term not exceeding two years or to both.

(4) The Chief Inspector may, in his reasonable discretion and the powers conferred upon him under subsection (2), decline to accept any complaints of material from the website unless the owner of the intellectual property right on whose behalf the power is to be exercised has furnished security to the Chief Inspector of the amount and manner that, the Chief Inspector require to indemnify the other inspectors against any liability that may be incurred in the exercise of the power.

[s. 18B]

Prohibition
to advertise
counterfeit goods
Act No.
3 of 2012 s. 44

27. A person who-

- (a) advertises counterfeit goods through any media; or
- (b) aids, abets or assists in the advertising of counterfeit goods in any media whatsoever,

commits an offence, and on conviction shall be liable to a fine not exceeding thirty percent of the loss caused to the plaintiff or to imprisonment for a term not exceeding two years.

[s. 18C]

Omitted

28. [Omitted.]

[s. 19]

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