



THE MERCHANDISE MARKS ACT, 1889



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THE MERCHANDISE MARKS ACT, 1889

¹ACT No. IV OF 1889

[1st March, 1889]

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows :—

1. Title, extent and commencement.—(1) This Act may be called the ²* Merchandise Marks Act, 1889.

³[(2) It extends to the whole of Pakistan]; and ⁴* * * ,

(3) It shall come into force on the first day of April, 1889.

2. Definitions. In this Act, unless there is something repugnant in the subject or context,—

⁵[(1) “trade mark” means any mark used for denoting that goods as are the manufacture or merchandise of a particular person and includes any trade mark which is registered in the register of trade marks kept under the Trade Marks Act, 1940 (V of 1940).]

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 109; for Report of the Select Committee, see *ibid.*, 1889, Pt. V, p. 27; and for Proceedings in Council, see *ibid.*, 1888, Pt. VI, pp. 111 and 136, and *ibid.*, 1889, Pt. VI, p. 38.

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P., subject to certain modifications; and also extended to the Excluded Area of Upper Tanawal (N.W.F.P.) other than Phulera with effect from such date and subject to such modifications as may be notified, see N.W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950.

The Act has been extended to the State of Bahawalpur see G. G. O. 11 of 1953, as amended.

The Act has been applied to Balochistan, by Reg. 13 of 1940 (see also Reg. 3 of 1954).

It has been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950); and applied in the Federated Areas of Balochistan, see Gazette of India, 1937, Pt. I, p. 1499.

Extended to the Balochistan States Union, see G. G. O. 4 of 1953, s. 2 and Sch.

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

² The word “Indian” omitted by A. O., 1949, Sch.

³ Sub-section (2) as amended by A. O., 1949, Arts. 3 (2) and 4, has been subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

⁴ The words “subject to the provision of the last section of this Act” rep. by the Indian Merchandise Marks and Sea Customs Acts Amdt. Act, 1891 (9 of 1891), s. 1.

⁵ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch., for the existing clause (1).

(2) ¹"trade description" means any description, statement or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge or weight of any goods, or

(b) as to the place or country in which, or the time at which, any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege or copyright; and the use of any numeral, 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:

(3) ¹"false trade description" means a trade description which is untrue 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, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act:

(4) "goods" means anything which is the subject of trade or manufacture: and

(5) "name" includes any abbreviation of a name.

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3. [*Substitution of new sections for sections 478 to 489 of the Indian Penal Code.*] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Schedule.

TRADE DESCRIPTIONS

¹4. Provisions supplemental to the definition of false trade description.—(1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated 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 really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

¹Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c.28), s. 3 (2).

²Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981) s. 3 and 2nd Sch.

¹(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(a) not being a trade mark, or part of a trade mark, and

(b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

²5. Application of trade descriptions.—(1) A person shall be deemed to apply description to goods who—

(a) applies it to the goods themselves, or

(b) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression “label” includes any band or ticket.

¹Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 3 (3).

² Cf. *ibid.*, s. 5.