

TRADE DESCRIPTIONS AND FALSE ADVERTISEMENTS.

1° EDWD. VIII., No. XLII.

No. 42 of 1936.

AN ACT to make provision for the application of trade descriptions to certain Goods and for the prevention of false advertisements in relation to Property for sale.

[Assented to 11th December, 1936.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Trade Descriptions and False Advertisements Act, 1936*, and shall come into operation on a day to be fixed by proclamation. Short title.

2. In this Act, subject to the context— Definitions.

“Chief Inspector” means the Chief Inspector of Factories appointed under the Factories and Shops Act, 1920.

“Court” means a court of petty sessions.

“Covering” includes stopper, glass, cask, bottle, vessel, box, cover, container, capsule, case, frame, or wrapper.

“Goods” means any article or thing of the nature, kind, or species set forth in the schedule to this Act, and any other article or thing which is the subject of trade, manufacture, or merchandise, and which is declared by regulation to be

“goods” within the meaning and for the purposes of this Act. This Act does not apply to goods acquired and not disposed of prior to the proclamation of this Act.

“Inspector” means an inspector appointed under the Factories and Shops Act, 1920, or the Health Act, 1911-1935.

“Label” includes band or ticket.

“Sell” includes exhibit, expose, or have in possession for sale, and includes the disposal of goods on the hire-purchase system.

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

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

and includes the use of any figure, word, trade name, trade style or mark which according to the custom of any trade is commonly taken as an indication of any of the above matters.

Cf. N.S.W. 39 of 1912, s. 76 as amended by 55 of 1931.

Cf. Imp. Act 50 and 51 Vic. C. 28, s. 3.

Cwlth. Commerce (Trade Descriptions) Act, 1905, s. 3.

N.S.W., 39 of 1912, as amended by 55 of 1931.

Construction.

3. (1.) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act so as not to exceed the legislative powers of the Parliament

of the State to the intent that any portion thereof which may be held to be in excess of that power shall (to the extent which it is so in excess) be deemed to be severable from the other portion of the Act, and not to affect the validity or operation thereof.

(2.) This Act shall be in addition to and not in derogation of the provisions of any other legislative enactments.

4. The Governor may at any time, and from time to time by regulation, declare that, as from a date to be specified therein, being not less than one calendar month after the date of publication of such regulation, any article or thing not included in the Schedule to this Act, and which is the subject of trade, manufacture, or merchandise shall be "goods" within the meaning and for the purposes of this Act.

Act does not affect other Acts, e.g., C. Code, Health Act, State Manufactures Description Act, Factories and Shops Act, etc.

Goods not included in the schedule may be declared to be goods by regulation.

Trade Descriptions.

5. (1.) No person shall sell—

- (a) any goods of the nature or description set out in the Schedule to this Act; or
- (b) any goods which are declared by regulation to be goods for the purpose of this Act,

unless there is conspicuously applied thereto in such manner as may be prescribed the full name and the complete address of the manufacturer and a trade description of the goods containing such details as may be prescribed.

Provided that—

- (i) in respect of any of the kinds or descriptions of goods specified in the preceding paragraphs (a) and (b) the Governor may from time to time by regulation suspend the operation of the Schedule or of any regulation declaring any goods to be goods for the purpose of this Act either generally or in relation to any particular kind or description of goods named therein;
- (ii) in respect of any goods or classes of goods to which this Act applies it shall not be necessary to state the name and address of the

Trade descriptions compulsory in certain cases.

- manufacturer where it is impracticable or inconvenient to do so and the regulations made under this Act make provision to that effect;
- (iii) before making any regulation for the purpose of paragraph (b) of this subsection the Governor shall give at least one calendar month's notice in the prescribed manner for the purpose of enabling manufacturers, traders, and members of the public an opportunity to be heard either in opposition to or in support of the proposed regulation and may delegate to some person authority to inquire into the matter and make a report to him for that purpose;
- (iv) this section shall not impose on any person a duty to disclose a trade secret of manufacture or preparation except in cases where in the opinion of the Commissioner of Public Health such disclosure is necessary for the protection of the health or well-being of the public and the said Commissioner issues a certificate in writing to that effect;
- (v) the Governor may revoke, vary, or amend from time to time any regulation made for the purpose of this section.

(2.) It shall not be necessary to affix the prescribed particulars relating to the manufacturer and to the goods on the goods themselves, but it shall be sufficient compliance with this section if such particulars are attached to any covering, label, reel, placard, or thing used in connection with the goods: provided that the same are at all times in sufficient proximity to the goods and conspicuously displayed so as to be clearly and easily referable thereto by any person proposing to purchase the goods.

Condition of
sale.

6. It shall be an implied condition of every sale or contract for sale of goods within the meaning of this Act—

- (a) that the trade description applied to the goods is true and correct; and
- (b) that the prescribed trade description has been applied to the goods.

7. A trade description shall be deemed to be applied to goods—

- (a) if it is attached to the goods themselves; or
- (b) if it is attached to any covering, label, reel, or thing used in connection with the goods; or
- (c) if it is used in any manner likely to lead to the belief that it describes or designates the goods; or
- (d) if it is used, whether in an advertisement or catalogue or otherwise, in any manner in connection with or for the purposes of the sale or disposal of the goods; or
- (e) if it is woven, impressed, or otherwise worked into or annexed or affixed to the goods, or to any covering, label, reel, or thing used, or to any placard required to be used in connection therewith.

Cf. Imp. 50 and 51, cap. 28.

Ibid., s. 5.

Vic. Goods Act, 1928, s. 90 (2) 96.
N.S.W., 39 of 1912, s. 81, amended by 55 of 1931.

False Advertisements.

8. (1.) Any person who publishes or causes to be published any statement which—

- (a) is intended or apparently intended by such person or any other person to promote the sale or disposal of any real property or any personal property (including chattels real, or stocks, shares, bonds or other securities), or any services, or to increase the consumption or use of any such personal property, or to induce any person or persons to enter into any obligations relating to any such real property or personal property or services or any interest in any such real or personal property; and
- (b) is to his knowledge false in any material particular,

False advertisements.
Vic. No. 4074 (1932).

shall be guilty of an offence.

Penalty: For a first offence, not exceeding fifty pounds; for a second offence, not less than fifty pounds or more than two hundred pounds, or imprisonment with hard labour for not less than six months or more than twelve months; for a third or subsequent offence, not less than two hundred pounds or more than three hundred pounds, or imprisonment with hard labour for not less than twelve months or more than two years.

As to publication.

(2.) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper or other publication printed and published in Western Australia; or
- (b) publicly exhibited—
 - (i) in, on, over or under any building, vehicle, or place (whether a public place or private place, and whether on land or water); or
 - (ii) in the air—
in view of persons being or passing in or on any public place; or
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or
- (d) made verbally to any person; or
- (e) broadcasted by radio.

Presumption of knowledge of falsity of statement published or caused to be published in certain cases.

(3.) In any proceedings under this section against any person for publishing any statement aforesaid, or causing the same to be published, if it is proved that such statement was false in any material particular, the person publishing the statement, or causing the same to be published, shall be deemed to have published the same, or to have caused the same to be published with knowledge of its falsity, unless he proves—

- (a) that he had reasonable ground to believe and did believe that the statement was true; or
- (b) that he had no reason to suspect that the statement was false; or
- (c) that otherwise he had acted innocently.

As to prosecutions of printers, etc., of newspapers.

(4.) No prosecution shall be instituted against the printer or publisher or proprietor of any newspaper printed and published in Western Australia or against any broadcasting company operating in Western Australia and dealing in advertising business; or against the printer of any advertisement, dodger, or catalogue, or against any person acting under the authority of any such printer, publisher, or proprietor unless—

- (a) in the case of a newspaper—
 - (i) the printer, publisher, or proprietor has been warned by the Minister or the Chief Inspector of the falsity of such statement, or of any

other statement substantially the same as such statement, and that the publication thereof is an offence under this section, such warning to be in writing signed by the Minister or the Chief Inspector and delivered to the registered address of the newspaper: in the case of a daily, twelve hours before the date of publication, and in the case of a newspaper other than a daily, twenty-four hours before the date of publication; and

- (ii) the printer, publisher, or proprietor has on any day after the receipt of the warning, published or authorised or permitted the publication of such statement, or any such other statement in any issue of any newspaper in Western Australia printed, published, or owned by him (as the case may be);
- (b) in the case of any advertisement, dodger, or catalogue contained in any written publication other than a newspaper—
- (i) the printer has been warned by the Minister or the Chief Inspector of the falsity of such statement or of any other statement substantially the same as such statement and that the publication thereof is an offence under this section, such warning to be in writing, signed by the Minister or the Chief Inspector and delivered at the place of business of the printer;
 - (ii) such printer has not immediately withdrawn from publication all other advertisements, dodgers or catalogues in his possession, or in the case of any catalogue, book, or publication in which such advertisements are purely incidental, such printer has not amended the false advertisement to the satisfaction of an inspector so that the advertisement no longer offends against this Act;
- (c) in the case of a broadcasting station licensed to deal in advertising by wireless transmission—
- (i) the management has been warned in writing by the Minister or the Chief Inspector of the falsity of such a statement or of any other

statement substantially the same as the statement published by wireless transmission and that the publication thereof is an offence under this section; and

- (ii) the said management has not immediately withdrawn from its list of scheduled advertisements any such advertisement or advertisements declared to be false within the meaning of this Act.

(5.) In this section "newspaper" includes any periodical publication.

Inspectors.

Inspectors.

9. (1.) All inspectors appointed under the provisions of the Factories and Shops Act, 1920, or the Health Act, 1911-1935, shall by virtue of their offices be inspectors under this Act.

Duties of inspectors.

(2.) It shall be the duty of every inspector to see that the provisions of this Act relating to trade descriptions and false advertisements are being carried out or observed and, subject to the approval of the Chief Inspector of Factories and to the provisions of this Act, to commence and conduct prosecutions for offences under this Act; provided that nothing herein contained shall affect the right of any person to prosecute for any offence against this Act.

Powers of inspectors.

W.A., 5 of 1931, s. 11.
Cf. Vic. Goods Act, 1928, s. 109.
N.S.W., 39 of 1912, s. 94, as amended by 55 of 1931.

10. (1.) An inspector may—

- (a) enter during usual working hours by day or night any premises or place in which he has reasonable cause to believe that goods are or have been manufactured, sold, offered or exposed for sale, or any premises or place where he has reason to believe any offence against this Act or regulations thereunder has been committed;
- (b) take with him a member of the police force to assist him in the execution of his duty;
- (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are being infringed;
- (d) require the production by any person manufacturing goods or selling, offering, or exposing goods for sale of all books, vouchers, letters, and documents relating to the manufacture,

acquisition, purchase, or possession of such goods by such person, and make copies of or extracts from the same;

- (e) take with him into any building, premises, or place any person whom he may think qualified to act as an interpreter, and whose assistance he shall deem necessary for the performance of his duties. Any question asked by such person shall be deemed to have been actually asked by the inspector, and any person who obstructs the interpreter shall have been deemed to have obstructed the inspector within the meaning of this Act.

(2.) An inspector, acting under the provisions of this Act shall, and if and when called upon, produce satisfactory evidence of his appointment.

(3.) No inspector or interpreter shall disclose to any person, other than in the course of his duties under this Act, any information which he obtains in the exercise of his duties.

11. The occupier of any building, premises, or place shall at all reasonable times furnish the means required by an inspector for entry, inspection, or examination or inquiry in the exercise of his powers under this Act.

Occupier to
allow inspection.
*Cf. W.A., 5
of 1931, s. 11*

12. (1.) No person shall—

- (a) obstruct any inspector in the execution of his duties under this Act;
- (b) being lawfully required by an inspector, fail to produce or exhibit any books, vouchers, letters, or documents, or to permit extracts from or copies to be taken or made; or
- (c) wilfully mislead any inspector in any particular likely to affect the discharge of his duties; or
- (d) being lawfully required to answer any questions by an inspector pursuant to this Act, fail to answer the same truthfully to the best of his knowledge, information and belief.

Obstructing
inspectors.
*Cf. W.A., 5
of 1931, s. 13*

(2.) A person shall be deemed to obstruct an inspector in the execution of his duty under this Act who—

Ibid., s. 14.

- (a) without reasonable cause delays an inspector in the exercise of any of his powers and duties under this Act; or

- (b) fails to comply with the requisition of any inspector made under any such powers, or to produce any documents which he is required by this Act to produce; or
- (c) prevents, or attempts to prevent, any person from appearing alone before or being examined by an inspector.

Offences.

Offences not
otherwise
stated.

13. Any person who by act or omission commits a breach of any of the provisions of this Act, or of any regulations under this Act, shall be guilty of an offence against this Act.

Penalties for
offences.
Cf. Vic. Goods
Act, 1928, s.
103.

N.S.W., 39 of
1912, s. 90,
as amended
by 55 of 1931

14. Any person guilty of an offence against this Act for which no penalty is specifically provided, shall be liable to a penalty of fifty pounds, and for a second offence to a penalty of not less than twenty-five pounds, nor more than one hundred pounds, and for a third or any subsequent offence, to a penalty not less than fifty pounds nor more than two hundred pounds.

Miscellaneous.

Goods with-
out trade de-
scriptions to
be seized.

15. (1.) If an inspector finds any goods which are exposed or offered, or are in the possession of any person for sale, and to which the prescribed trade description has not been applied as required by this Act, he may take possession of and detain such goods, for such time as may be necessary to decide what action (if any) shall be taken against the owner or person in possession of the goods, but such inspector shall take all reasonable precautions to protect such goods from injury, damage, theft, or loss to the owner until any proceedings that may be taken in respect of such goods for an offence against this Act are disposed of, and such inspector shall, before removing such goods, give to the owner a receipt for same, specifying the quantity and class of goods so taken possession of: Provided that if no action be taken against such owner or person in possession of such goods within one calendar month of the taking possession of the goods, such goods shall be returned to such owner or person at the end of such calendar month.

(2.) Such goods shall at all times during such detention be at the risk and expense of the owner thereof.

(3.) If an inspector takes possession of and detains any goods in the absence of the owner, he shall do so in the presence of a reputable witness, and shall affix to such goods a statement giving his name and the date of his inspection, and shall, as soon as practicable, notify the owner that he has taken possession of and detained such goods.

16. When an inspector has taken possession of and detained any goods under the power conferred by section fifteen of this Act, the goods may be dealt with, as follows:—

Manner in which goods seized may be dealt with.

- (a) The inspector may apply to the court for the forfeiture of the goods to the Crown, and the court may make such order in regard to the goods as they are empowered to make under the succeeding paragraphs of this section.
- (b) If proceedings are taken in respect of the goods for an offence against this Act and the defendant is convicted of such offence, the court, in addition to imposing a penalty, may order that the goods shall be forfeited to the Crown, or that the goods shall be returned to the owner, subject to any conditions which the court may think fit to impose:

Provided that, where the court orders the return of the goods subject to conditions, the inspector shall detain the goods until such conditions have been observed and performed, and, if such conditions are not observed and performed within three months after the date of the order, the inspector, by complaint against the defendant under the Justices Act, 1902-1932, may apply to the court for an order forfeiting the goods to the Crown.

- (c) Where any goods are by order of any court forfeited to the Crown, they shall be disposed of by the inspector obtaining the same on behalf of the Crown in the manner prescribed.
- (d) Subject as hereinafter provided where in any case the court hearing the complaint does not make any order forfeiting the goods to the Crown, the inspector detaining the goods shall return the same to the owner so far as

may be known forthwith at such owner's expense:

Provided that, where the court is of the opinion that the owner has acted innocently in the matter and that he has exercised reasonable care to avoid committing an offence under this Act, the court may order that the owner's expenses in connection with the return of the goods shall be paid to the owner.

- (e) If proceedings are taken in respect of the goods for an offence against this Act, and the defendant is not convicted, but it is proved in the proceedings that the goods are of a kind to which the prescribed trade description is required to be applied in accordance with this Act, the Court may make an order that the goods shall be detained by the inspector until the owner thereof gives a written undertaking to the inspector, and security to the satisfaction of a law officer that the prescribed trade description will be applied to the goods before they are sold:

Provided that, if such written undertaking and security are not given within three months after the date of the order, the goods shall be deemed to be forfeited to the Crown, and shall be disposed of by the inspector on behalf of the Crown in the manner prescribed.

- (f) Where in any case mentioned in paragraph (e) hereof, the owner of the goods gives the undertaking and security mentioned in the said paragraph, the inspector detaining the goods shall return the same forthwith to the owner at the owner's expense.

Goods of unknown owner.
Of. Vic. Goods Act, 1928, s. 102 (2).
N.S.W., 39 of 1912, as amended by 65 of 1931.

17. Where the owner of goods 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 a resident or police magistrate 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 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 shows cause to the contrary, may order such goods or any of them to be forfeited.

18. Notwithstanding the provisions of section two hundred and twenty-seven of the Justices Act, 1902-1932, the period of limitation for the prosecution of offences under this Act shall be twelve months from commission of any such offence.

Limitation
period for
prosecution.

19. In any prosecution for an offence against this Act—

Evidence.

- (a) in the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the country or place in or at which the goods were made or produced;
- (b) the production of a certificate by an analyst shall be sufficient evidence of the facts therein stated, unless the defendant requires the analyst to be called as a witness.

20. Nothing in this Act—

- (a) shall exempt any person from any action, suit, or other proceeding which might but for the provisions of this Act be brought against him; or
- (b) shall entitle any person to refuse to make discovery or answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such persons in any prosecution for an offence against this Act; or
- (c) shall render liable to prosecution or punishment any servant of a master resident in Australia who *bona fide* acts in obedience to the instructions of such master, and, on demand by or on behalf of the prosecutor, has given full information in regard to his master and the circumstances of the case.

Savings.

*Of. Vic. Goods
Act, 1928, s
109.*

*N.S.W., 39 of
1912, s. 94,
as amended
by 55 of 1931*

21. Subject to the provisions of the preceding section—

Aiding or
abetting
offences.

- (a) every person who 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 under this Act, shall be deemed to have committed that offence, and shall be punishable accordingly;

Liability of
two or more
persons.

(b) where two or more persons commit, or knowingly authorise or permit the commission of any offence under this Act, each of such persons shall be liable therefor, and the liability of each of them shall be independent of the liability of the other or others.

Saving as to
civil proceed-
ings.

22. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in conviction or otherwise) such person shall remain liable to all civil proceedings, in like manner as if proceedings for an offence had not been taken.

Regulations.

23. The Governor may make regulations, not inconsistent with this Act, prescribing all such matters as by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to this Act.

THE SCHEDULE.

Sec. 2.

Clothing and materials for clothing made wholly or mainly of wool.

Bedding.

Blankets.

Flannel.

Flour.

Furniture.

Motor bodies, including cabs, trays, platforms, and coaches of every description as used on motor vehicles for private, passenger, or any commercial purpose.

Rugs.