

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/CYP/G/1

30 June 1997

(97-2682)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

Cyprus

The present document reproduces¹ the text of the Trade Descriptions Law, No. 5/87, as notified by Cyprus under Article 63.2 of the Agreement (see document IP/N/1/CYP/1).

Cyprus has notified Article 11 of the Trade Marks Law as also being relevant to the protection of geographical indications (see document IP/N/1/CYP/1, p. 3). The text of the Trade Marks Law can be found in document IP/N/1/CYP/T/1.

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A
LA PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

Chypre

Le présent document contient le texte¹ de la Loi n° 5/87 sur les désignations commerciales, notifiée par Chypre au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/CYP/1).

Chypre a notifié l'article 11 de la Loi sur les marques comme étant également pertinent en ce qui concerne la protection des indications géographiques (voir le document IP/N/1/CYP/1, page 3). Le texte de la Loi sur les marques est reproduit dans le document IP/N/1/CYP/T/1.

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL
PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Chipre

En el presente documento se reproduce¹ el texto de la Ley de Descripciones Comerciales, N° 5/87, notificada por Chipre en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/CYP/1).

Chipre ha notificado el artículo 11 de la Ley de Marcas de Fábrica o de Comercio por ser también pertinente para la protección de las indicaciones geográficas (véase el documento IP/N/1/CYP/1, página 3). El texto de la Ley de Marcas de Fábrica o de Comercio figura en el documento IP/N/1/CYP/T/1.

¹English only/anglais seulement/inglés solamente.

THE TRADE DESCRIPTIONS LAW 1987

Arrangement of sections

PRELIMINARY PROVISIONS

Section

1. Short title.
2. Interpretation.

PROHIBITION OF FALSE TRADE DESCRIPTIONS

3. Prohibition of false trade description.
4. Trade description.
5. False trade description.
6. Applying a trade description to goods.
7. Trade descriptions used in advertisements.
8. Offer to supply.

PROHIBITION OF FALSE STATEMENTS OTHER THAN
FALSE TRADE DESCRIPTIONS

9. Prohibition of false or misleading indications as to price of goods.
10. Prohibition of false representations.
11. Prohibition of false or misleading statements as to services.

INDICATION OF COUNTRY OF MANUFACTURE
OR PRODUCTION

12. Indication of country of manufacture etc. of goods.
13. Country of production.

POWER TO IMPOSE REQUIREMENTS FOR MARKING
AND PROVIDING CERTAIN INFORMATION

14. Order for Marking.

15. Information, to be given in advertisements.

PENAL PROVISIONS

16. Offences and penalties.
17. Liability of Officers of corporate bodies.
18. Accessories to Offences committed abroad.
19. Offences due to fault of other person.
20. Time limit for prosecutions.

DEFENCES

21. Defence of mistake, accident, etc.
22. Innocent publication of advertisement.
23. Innocent act by employee.

ORGANS AND MEANS OF ENFORCEMENT

24. Authorization of officer.
25. Power to make test purchases.
26. Power to enter premises and inspect and seize goods and documents.
27. Obstruction of authorized officers.
28. Notice of test and intended prosecution.
29. Compensation for loss, etc. of goods seized under s.26.

MISCELLANEOUS PROVISION

30. Prohibition on Importation.
31. Rules as to evidence.
32. Trade marks containing trade descriptions.
33. Saving for Contractual Obligations.
34. Savings.
35. Regulations.
36. Coming into force.

No. 5 of 1987

A LAW TO REPEAL THE
MERCHANDISE MARKS LAW (CAP.265)
AND TO SUBSTITUTE NEW PROVISIONS
THEREFOR

The House of Representatives enacts as follows:

PRELIMINARY PROVISIONS

Short
title.

1. This Law may be cited as the Trade Descriptions
Law of 1987 until 1992.

5 of 1987
201 of 1987
3 of 1992.

Interpre-
tation.

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

"advertisement" includes a catalogue, a circular
and a price-list;

"authorized officer" means a person duly author-
ized in accordance with the provisions of sec-
tion 24 of this Law;

"consumer"-

(a) in relation to any goods, means any person
who might wish to be supplied with the
goods for his own private use or consump-
tion;

(b) in relation to any services or facilities,
means any person who might wish to be pro-
vided with the services or facilities for
purposes other than those of his business;

and

- (c) in relation to any accommodation, means any person who might wish to occupy the accommodation for purposes other than those of his business;

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

"Minister" means the Minister of Commerce and Industry;

"name" includes any abbreviation of a name;

"premises" includes-

- (a) any place where any business, industry, production or trade is carried on or where services, accommodation or facilities are provided;
- (b) any place where any goods are stored, kept or exhibited;
- (c) a dwelling house if any part thereof is used for the purpose of, carrying on any business, industry, production or trade or, providing services, accommodation or facilities;
- (d) a place where any books of account or other documents, pertaining to, the carrying on of any business, industry, production or trade or, the provision of services, are kept;

and for the purposes of this term, "place"

includes vehicle, ship and aircraft;

"price", in relation to any goods, services, accommodation or facilities, means the aggregate of the sums required to be paid by a consumer for the supply of the goods or the provision of the services, accommodation or facilities and includes any method which will be or has been applied for the purpose of determining that aggregate;

"Republic" means the Republic of Cyprus;

"services" means the undertaking and performance, for profit or remuneration, of obligations for any matter, except the production or supply of goods, but does not include the provision of services to an employer under a contract of service;

"ship" includes any boat and any other description of vessel used in navigation;

"supply" includes sale, exchange, hire and hire-purchase;

"trade mark" includes any trade mark which, either with or without registration is protected by Law in the Republic, or in any other country with which the Republic has any arrangement for the mutual protection of trade marks;

(2) For the purposes of this Law, 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 DESCRIPTION

Prohibition
of false
trade
description.

3.-(1) No person shall in the course of any trade or business-

- (a) apply a false description to any goods; or
- (b) supply or offer to supply any goods to which a false description is applied.

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

Trade
description.

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, that is to say-

- (a) quantity, size or gauge;
- (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 the preceding paragraphs;
- (f) testing by any person and results thereof;

- (g) approval, authorisation, or permit given by any person;
- (h) person by whom manufactured, traded, produced, processed or reconditioned and qualifications and capacity of that person;
- (i) country, place or date of manufacture, production, processing or reconditioning;
- (j) other history, including previous ownership or use;
- (k) terms of sale including the existence of guarantee and aftersale service and repair;
- (l) conformity with any standard approved by any person, or established or recognised or commonly used in the trade;
- (m) that any goods or parts of goods are the subject of any existing patent, privilege or copyright or trade mark,

and includes use of any figure, word, letter or mark or combination thereof which is commonly taken as an indication of the above matters.

(2) The matters specified in subsection (1) of this section shall also apply-

- (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, weight and number.

False
trade
description.

5.-(1) A false trade description is a trade description which is false to a degree which objectively may mislead.

3 of 1992.

(2) A trade description which, though not false, is misleading, that is to say, likely to be taken by inference from what it states or fails to state for such an indication of any of the matters specified in section 4 of this Law as would be false to a degree which objectively may mislead, shall be deemed to be a false trade description.

3 of 1992.

(3) Anything which, though not a trade description, is likely to be taken by inference from what it states or fails to state for an indication of any of the matters specified in section 4 and, as such an indication, would be false to a degree which objectively may mislead, shall be deemed to be 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
to goods.

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; or
- (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) 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.

Trade
descriptions
used in
advertisements.

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.

(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 there has been a contravention of paragraph (a) of section 3(1); 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 there has been

contravention of paragraph (b) of the said section 3(1).

(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.

Offer to
supply.

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

PROHIBITION OF FALSE STATEMENTS OTHER THAN FALSE TRADE DESCRIPTIONS

Offences of
giving
misleading
price
indication.
4 of 3/92.

9A.-(1) Subject to the provisions of this Law, a person shall be guilty of an offence if, in the course of trade, business or profession, he gives to consumers by whatever means any indication which is misleading as to the price at which any goods, services, accommodations or facilities are available whether generally or from particular persons.

(2) Subject to the provisions of this Law, a person shall be guilty of an offence if-

(a) in the course of trade, business or profession, he has given an indication to any consumers which, after it was given, has become misleading as mentioned in subsection (1) above; and

(b) some or all of those consumers might reasonably be expected to rely on the indication at a time after it has become misleading; and

(c) he fails to take all such steps as are reasonable to prevent those consumers from relying on the indication.

(3) For the purposes of this section it shall be immaterial-

(a) whether the person who gives or gave the indication is or was acting on his own behalf or on behalf of another;

(b) whether or not that person is the person, or included among the persons, from whom the goods accommodation or facilities are available; and

(c) whether the indication is or has become misleading in relation to all the consumers to whom it is or has been given only in relation to some of them.

(4) Any person found guilty of an offence under subsection (1) or (2) shall be subject to the penalties provided for under subsection (1) of section 16 of this Law.

(5) In a criminal proceeding for an offence under subsection (1), it shall be a defence for the defendant to show that-

(a) the indication did not relate to the availability from him of any goods, services, accommodations or facilities;

- (b) the price had been recommended to every person from whom, in accordance with the indication, the goods, services, accommodations or facilities were being available;
- (c) the indication related to that price and was misleading as to that price only by reason of a failure by any person to follow the price that was recommended;
- (d) it was reasonable for the person who gave the indication to assume that the recommendation was, to a great extent, being followed.

Meaning of
"misleading"
indication
as to price.
4 of 3/92.

9B.-(1) For the purposes of section 9A above, an indication given to any consumers is misleading as to the price if what is conveyed by the indication, or what those consumers might reasonably be expected to infer from the indication or any omission from it, includes any of the following that is to say-

- (a) that the price is less than in fact it is;
- (b) that the applicability of the price does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the price covers matters in respect of which an additional charge is in fact made;
- (d) that a person who in fact has no such expectation-
 - (i) expects the price to be increased or reduced whether or not at a particular time or by a particular amount; or

(ii) expects the price or the price as increased or reduced, to be maintained whether or not for a particular period; or

(e) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

(2) For the purposes of subsection (1)(e) above, a comparison is a relevant comparison in relation to a price if it is made between that price and any price or value which is stated or implied to be, to have been or to be likely to be attributed or attributable to the goods, services, accommodation or facilities in question or to any other goods, services, accommodation or facilities;

Code of
practice.
4 of 3/92.

9C.-(1) The Minister may, after consultations with the interested parties or associations which, in his opinion, they represent interests that are greatly affected, by order published in the Official Gazette of the Republic, approve any code of practice for the purpose of-

- (a) giving practical guidance with respect to any of the requirements of section 9A above; and
- (b) promoting the methods or proceedings that appear to the Minister to be a desirable practice as to the circumstances and manner in which any person gives an indication as to the price at which any goods, services, accommodation or facilities are available or indicating any other matter in respect of which any such indication may be misleading.

(2) A contravention of a code of practice approved under this section shall not of itself give rise to any criminal or civil liability, but in any proceedings against any person for an offence under section 9A(1) or (2) above-

- (a) any contravention by that person of such a code may be relied on in relation to any matter for the purpose of establishing that that person committed the offence or of negating any defence; and
- (b) compliance by that person with such a code may be relied on in relation to any matter for the purpose of showing that the commission of the offence by that person has not been established or that that person has a defence.

Regulations
as to price
indications.
4 of 3/92.

9D.-(1) Regulations made under section 35 may include provisions-

- (a) concerning the circumstances and manner in which any person-
 - (i) gives any indication as to the price at which any goods, services, accommodation or facilities will be or are available or have been supplied or provided; or
 - (ii) indicates any other matter in respect of which any such indication may be misleading;
- (b) for the purpose of facilitating the enforcement of the provisions of section 9A above or of any regulations made under this section.

(2) Without any prejudice as to the generality of subsection (1), regulations made under this section may-

- (a) prohibit any indication as to a price from referring to such matters as may be prescribed by the regulations;
- (b) require any indication as to a price or other matter to be accompanied or supplemented by such explanations or such additional information as may be prescribed by the regulations;
- (c) require information or explanations with respect to a price or other matter to be given to an authorised officer and to authorise such an officer to require such information or explanations to be given;
- (d) require any information or explanations provided for the purposes of any regulations made by virtue of paragraph (b) or (c) above to be accurate;
- (e) prohibit the inclusion in indications as to a price or other matter of statements that the indications are not to be relied upon;
- (f) provide that expressions used in any indication as to a price or other matter shall be construed in a particular way for the purposes of this Law;
- (g) provide that a contravention of any provision of the regulations shall constitute a criminal offence for which the provided penalties may not exceed those penalties provided by section 16 of this Law;

- (h) provide for the applicability of any provision of this Law which relates to a criminal offence to an offence created by virtue of paragraph (g) above.

Prohibition
of false
representations.

10. No person shall, in the course of any trade or business, give, 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.

Prohibition
of false or
misleading
statements
as to services.
5(a) of 3/92.

11.-(1) Subject to the provisions of any other Law, no person shall, in the course of any trade, business or profession-

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

- (i) the provision in the course of any trade, business or profession of any services, accommodation or facilities;
- (ii) the nature of any services, accommodation or facilities provided in the course of any trade, business or profession;
- (iii) the time or the place at which, or the manner in which or persons by whom any services, accommodation or facilities are so provided, as well as the qualifications and capacity of such persons;
- (iv) the examination, approval or evaluation by any person of any services, accommo-

dition or facilities so provided;

(v) the location or amenities of any accommodation so provided; or

(2) For the purposes of this section-

5(b) of 3/92.

(a) anything (whether or not a statement as to any of the matters specified in subsection (1)) likely to be taken by inference from what it states or fails to state 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 matters 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 degree which objectively may mislead.

INDICATION OF COUNTRY OF MANUFACTURE OR PRODUCTION

Indication
of country
of manuf-
acture etc.
of goods.

12.-(1) Subject to the provisions of any Regulations made under subsection (3) and the provisions of any other Law, no person shall, in the course of any trade or business-

6 of 3/92.

- (a) import into the Republic any goods which at the time of their importation are not marked with, or accompanied by, a clear and conspicuous indication of the country of their manufacture or production;
- (b) supply or offer to supply in the Republic any goods which are not marked with, or accompanied by, a clear and conspicuous indication of the country of their manufacture or production;
- (c) publish any advertisement which enables any person to be supplied directly with goods which have not been previously tested, unless the advertisement contains a clear indication of the country of manufacture or production of the goods.

(2) For the purposes of this section the use of a false indication of the country of manufacture or production of the goods shall be deemed to be no such indication.

2 of 201/87.

(3) The Council of Ministers may make Regulations published in the Official Gazette of the Republic which shall exempt or discharge any item or category of goods from the prohibiting provisions of paragraphs (a), (b) and (c) of subsection (1) provided that this is imperative by reason of practical difficulties and that this is not contrary to the interest of the persons to whom the goods are being supplied. This exemption or discharge may be made for every item or category of goods under conditions prescribed in these Regulations.

Country
of production.

13.-(1) For the purposes of this Law, goods shall be deemed to have been manufactured or produced in the country in which they last underwent a treatment or

process resulting in a substantial change.

(2) The Minister may, by an order published in the official Gazette of the Republic, 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 Law as having been manufactured or produced.

POWER TO IMPOSE REQUIREMENTS FOR MARKING
AND PROVIDING CERTAIN INFORMATION

Order for
Marking.

14.-(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 by an Order, to be published in the Official Gazette of the Republic, 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 has been issued and is in force with respect to goods of any

description, no person shall, in the course of any trade or business, supply or offer to supply goods of that description in contravention of the Order.

(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 displayed near the goods.

Information,
to be given
in adverti-
sements.

15.-(1) Where it appears to the Minister necessary or expedient, in the interest of persons to whom any goods are to be supplied, or any services, accommodation or facilities are to be provided, that any description of advertisements thereof should contain or refer to any information (whether or not amounting to or including a trade description or statement in relation to any matter specified by subsection (1) of section (11)) relating to the goods, or services, accommodation or facilities, the Minister may, by an Order, to be published in the Official Gazette of the Republic, impose requirements as to the inclusion of that information, or of the means by which it may be obtained in advertisements of such description as may be specified in the Order.

(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 Order under this section has been issued and is in force with respect to advertisements of goods, services, accommodation or facilities of any description, no person shall, in contravention of the Order, publish any advertisement of such goods, ser-

vices, accommodation or facilities supplied or provided, in the course of any trade or business.

PENAL PROVISIONS

Offences
and
penalties.

16.-(1) Any person who contravenes, or omits to comply with any of the provisions of-

7 of 3/92.

- (a) section 3(1);
- (b) section 9A;
- (c) section 10;
- (d) section 11(1);
- (e) section 12(1);
- (f) section 14(2); or
- (g) section 15(3),

subject to the provisions of this Law, commits an offence and shall, on conviction, be liable to a fine not exceeding seven hundred and fifty pounds or to a term of imprisonment not exceeding twelve months, or to both such fine and imprisonment. And in case of a second or subsequent conviction to a fine not exceeding one thousand pounds or to a term of imprisonment not exceeding two years, or to both such fine and imprisonment.

(2) In addition the Court trying the offence may order forfeiture of the goods or items with which or in relation to which the offence was committed.

Liability
of Officers
of corporate
bodies.

17. Where an offence under this Law which has been committed by a corporate body is proved to have been committed with the consent or forbearance of, or is attributable to any neglect on the part of, any managing director, manager, secretary or other similar officer of the corporate body, or any person who is purporting to act in any such capacity, such person as well as the corporate body shall be guilty of that

offence and on conviction shall be liable to the penalties provided by this Law for the particular offences.

**Accessories
to Offences
committed
abroad.**

18.-(1) Any person who, in the Republic, induces or assists in, the commission in any other country of an act in respect of goods which, if the act were committed in the Republic, would be an offence under section 3, shall be guilty of an offence provided that the relevant false trade description is an indication or anything which is likely to be taken as an indication, that the goods or part thereof were manufactured, produced, processed or reconditioned in the Republic.

(2) A person who is found guilty of the offence provided by subsection (1) shall be liable to the same penalties as those provided by sub-section (1) of section 16.

**Offences
due to
fault of
other
person.**

19. Where the commission by any person of an offence under this Law is due to the act or default of some other person that other person shall be 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.

**Time limit
for prosecutions.**

20. No prosecution for an offence under this Law shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

DEFENCES

Defence of
mistake,
accident,
etc.

21.-(1) In any proceedings for an offence under this Law it shall be a defence for the person charged to prove-

- (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) In any proceedings for an offence under subsection (1)(b) of section 3 it shall be a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained-

- (a) that the goods did not conform to the description; or
- (b) that the description had been applied to the goods.

Innocent
publication
of adverti-
sement.

22. In proceedings for an offence under this Law committed by the publication of an advertisement it shall be 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 advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Law.

Innocent
act by
employee.

23. In any proceedings for an offence under this Law it shall be a defence for the person charged to prove that in committing the offence-

- (a) was under an employee to employer relationship, and
- (b) acting in good faith obeying instructions or orders of the said employer.

Authorised
act or
omission.
8 of 3/92.

23A. In a criminal proceeding for an offence committed under this Law in relation to any trade description, declaration or indication, it shall be a defence for the defendant to show that for his acts or omission had a relevant authorisation, for the purposes of this section, by regulations made by virtue of this Law.

ORGANS AND MEANS OF ENFORCEMENT

Authorization
of officer.

24. The Minister may, by a notification published in the Official Gazette of the Republic, authorize a suitable person or persons to act as authorized officers for the application of this Law and the Regulations or Orders made thereunder.

Power to
make test
purchases.

25. An authorized officer shall have power to make, such purchases of goods, and to secure the provision of such services, accommodation or facilities, as may appear to him expedient for the purpose of determining whether or not the provisions of this Law and any Orders made thereunder are being complied with.

Power to
enter
premises
and inspect

26.-(1) An authorized officer may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say-

and seize
goods and
documents.

- (a) he may, for the purpose of ascertaining whether any offence under this Law has been committed, enter any premises and inspect any goods or places where services, accommodation or facilities are provided;
- (b) if he has reasonable cause to suspect that an offence under this Law 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 Law 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 Law;
- (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 Law and of any Orders and Regulations 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 authorized 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.

Cap.155
93 of 1972
2 of 1975
12 of 1975
41 of 1978
162 of 1989
142 of 1991
9 of 1992
10(I) of 1996.

(3) Subject as to the remaining to all provisions of the Criminal Procedure Law relating to the issue and execution of search warrants, if a district Judge, on sworn information-

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

(i) that any goods, books or documents which an authorized 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 Law; or

(ii) that any offence under this Law 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 obstructed; or

(ii) 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,

he may issue a warrant directing an authorized officer
to enter the premises by force if necessary.

(4) An authorized 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 the preceding
subsection 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 manufactur-
ing 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 Law;

he shall be guilty of an offence, unless the disclos-
ure was made in or for the purpose of the performance
by him or any other person of functions under this Law
and shall, on conviction, be liable to imprisonment
for a period not exceeding twelve months or to a fine
not exceeding seven hundred and fifty pounds or to
both such imprisonment and fine.

(6) If any person who is not a duly authorized
officer purports to act as such under this section he
shall be guilty of an offence and shall, on convic-
tion, be liable to imprisonment for a period not

exceeding two years or to a fine not exceeding one thousand pounds or to both such imprisonment and fine.

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

Obstruction
of authorized
officers.

27.-(1) Any person who-

- (a) wilfully obstructs an authorized officer acting in pursuance of this Law; or
- (b) wilfully fails to comply with any requirement properly made to him by such an officer under section 26 of this Law; or
- (c) without reasonable cause fails to give such an 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 Law,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a period not exceeding six months or to a fine not exceeding three hundred pounds or for both such imprisonment and fine.

(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 shall be guilty of an offence, and shall, on conviction, be liable to imprisonment for a period not exceeding twelve months or to a fine not exceeding seven hundred and fifty pounds or to both such imprisonment and fine.

(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 him.

Notice
of test
and intended
prosecution.

28. Where any goods seized or purchased by an authorized officer in pursuance of this Law are submitted to a test, then-

- (a) if the goods were seized, the authorized officer shall inform the person mentioned in section 26(2) of this Law of the result of the test, as soon as possible, and in any case within ten days from the day of seizure of the goods;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Law, the authorized 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 26(2) of this Law, of the result of the test;

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

Compensation
for loss,
etc. of goods
seized under
section 26.

29.-(1) Where, in the exercise of his powers under section 26 of this Law, an authorized officer seizes and detains any goods and their owner suffers loss by reason thereof or by reason that the goods, during the detention, are lost or damaged or deteriorated, then, unless the owner is convicted of an offence under this Law committed in relation to the goods, the owner shall be 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 be determined by the competent court.

MISCELLANEOUS PROVISION

Prohibition on Importation. 30.-(1) Where a false trade description is applied to any goods outside the Republic, then the goods shall not be imported into the Republic, unless the same are imported for private use or domestic use of the importer.
9 of 3/92.

(2) Subject to the provisions of subsection (3), goods the importation of which has been prohibited by virtue of subsection (1) or of paragraph (a) of subsection (1) of section 12 shall be subject, upon their importation in the Republic, to seizure and forfeiture in accordance with the relevant provisions of the Customs and Consumption Duties Laws.
82 of 1967
57 of 1969
4 of 1971
45 of 1973
12 of 1977

(3) Where the import of any goods into the Republic is prohibited under this section, the Minister, after being satisfied that the goods are capable of being marked so as to comply with the requirements of this Law, or the orders or regulations made hereunder, may, subject to the terms he will specify, permit the importer to mark them so as to comply with such requirements and such goods may then be imported into the Republic.

Rules as to evidence. 31.-(1) Any invoice or other document submitted or used by an importer or any other person in connection with the importation of goods in respect of which a prosecution is brought under this Law may be produced

as evidence in any criminal proceedings without calling the person who prepared or signed it.

(2) Where, in any prosecution for a contravention of this Law, the consent of the proprietor or registered user of a trade mark is a relevant issue, the onus of proving the consent of such proprietor or registered user shall lie on the accused.

Trade
marks
containing
trade
descriptions.
Cap.268
63 of 1962
69 of 1971

32.-(1) The fact that a trade description is a trade mark, or part of a trade mark, as the same is defined in the Trade Marks Law, does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied, that is to say-

- (a) that it could have been lawfully applied to the goods if this Law had not come into operation; and
- (b) that on the day this Law came into operation the trade mark either is registered under the Trade Marks Law 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 29 of the Trade Marks Law as a registered user of the trade mark;
- (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 Law came into operation.

**Saving
for Con-
tractual
Obligations.**

33. A contract for the supply of any goods or provision of any services, accommodation or facilities shall not be void or unenforceable by reason only of a contravention of any provision of this Law.

Savings.

34.-(1) This Law shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Law, be brought against him.

(2) Nothing in this Law shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against him in any prosecution for an offence against this Law.

Regulations.

35.-(1) The Council of Ministers may make Regulations generally for the better carrying out of the provisions of this Law.

(2) Regulations made under this Law shall be laid before the House of Representatives. If within thirty days of such laying the House of Representatives does not by resolution amend or annul, in whole or in part, the Regulations so laid they shall then soon after the expiry of the period hereinbefore mentioned be published in the Official Gazette of the Republic and they shall come into force as from such publication. In the event of their amendment in whole or part, by the House of Representatives they shall be published in the Official Gazette of the Republic as so amended and shall come into force as from such publication.

**Coming
into
force.**

36.-(1) This Law shall come into operation on a date to be fixed by the Council of Ministers by a notification published in the Official Gazette of the

Republic.

Cap.265. (2) On the date of the coming into operation of
this Law the Merchandise Marks Law is repealed.