

# ORGANIZACIÓN MUNDIAL DEL COMERCIO

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Consejo de los Aspectos de los Derechos de Propiedad  
Intelectual relacionados con el Comercio

Original: inglés

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

### Sudáfrica

En el presente documento se reproducen<sup>1</sup> las leyes y reglamentos siguientes, notificados por Sudáfrica de conformidad con el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/ZAF/1):

|  | <u>Página</u> |
|--|---------------|
| - Artículos 6 y 7 de la Ley de Marcas de Productos, N° 17, de 1941 | 2             |
| - Artículo 12 de la Ley de Bebidas Alcohólicas, N° 60, de 1989     | 4             |

Los artículos 42 y 43 de la Ley de Marcas de Fábrica o de Comercio, N° 194, de 1993, que son pertinentes para la protección de las indicaciones geográficas, se reproducen en el documento IP/N/1/ZAF/T/1.

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<sup>1</sup>En inglés solamente.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT  
 ss. 2-6 *Merchandise Marks Act, No. 17 of 1941* ss. 2-6

or part of a trade mark or not, as is likely to lead to the belief that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are shall be deemed to apply a false trade description to the goods.

3. **Appointment of officers.**—Subject to the laws governing the public service, the Minister may appoint such inspectors as he may deem necessary for carrying out the provisions of this Act.

4. **Powers of inspectors and police officers.**—(1) Any inspector generally or specially authorized thereto by writing signed by an officer thereto designated by the Minister, and any police officer of or above the rank of sergeant, may at any reasonable time and place require any person who has the possession or custody or control of any goods to produce those goods then and there or at a time and place fixed by that inspector or police officer.

(2) Any such inspector or police officer may at any reasonable time examine any goods, and for that purpose may open any packages, vessels or containers, if he has reasonable cause to suspect that they contain any goods, and may enter any place, whether it is a building or a vehicle or is in the open air, and whether it is open or enclosed, if he has reasonable cause to suspect that any goods are in or on that place, and if any such place is closed, may open that place.

(3) Any such inspector or police officer may seize and detain any goods if he has reasonable cause to suspect that in respect thereof the provisions of this Act have not been complied with, and may remove them or such portion thereof as may reasonably be necessary for further examination or for analysis.

(4) No compensation shall be payable in respect of any damage caused to any goods by any person in the exercise of his powers under this section, unless it is proved that such damage could have been avoided by the exercise of reasonable care.

[Sub-s. (4) added by s. 2 of Act No. 47 of 1954.]

5. **Obstruction of inspectors and police officers an offence.**—Any person who fails to comply with any demand made by any inspector or police officer under sub-section (1) of section *four*, or who hinders any inspector or police officer in the exercise of his functions under that section, shall be guilty of an offence.

6. **Forging or falsely applying trade mark and applying false trade description.**—Any person who—

- (a) forges any trade mark; or
- (b) falsely applies to goods any trade mark; or
- (c) makes, disposes of or has in his possession any die, block, machine or other instrument which is capable of being used for forging a trade mark; or
- (c)*bis* without the assent of the registered proprietor of a trade mark, manufactures or imports or has in his possession any device for applying that trade mark to any goods, or manufactures any reproductions replicas or representations of that trade mark or imports them otherwise ~~than~~ on goods to which they have been applied; or

[Para. (c)*bis* inserted by s. 1 (a) of Act No. 26 of 1951.]

- (c)*ter* manufactures or imports or has in his possession any device for applying to any goods a mark so nearly resembling a trade mark as to be likely to deceive; or

[Para. (c)*ter* inserted by s. 1 (a) of Act No. 26 of 1951.]

- (d) manufactures, imports or has in his possession any coverings, labels or reels or has in his possession any reproductions, replicas or representations of a trade mark or of a mark so nearly resembling a trade mark as to be likely to deceive, for the purpose of applying them contrary to the provisions of this Act; or

[Para. (d) amended by s. 1 (b) of Act No. 26 of 1951.]

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT  
ss. 6-9 *Merchandise Marks Act, No. 17 of 1941* ss. 6-9

(e) applies any false trade description to goods,  
shall be guilty of an offence, unless, in the case of a charge under paragraph (b), (c) or (e)  
it be proved—

- (i) that in the ordinary course of business he is employed to make dies, blocks, machines or other instruments for other persons to be used in the making of trade marks, or, as the case may be, to apply marks or descriptions to goods for other persons, and that the act which is the subject of the charge was done by him in the ordinary course of his employment by a person resident in the Union, and that he was not interested in the profit or commission that might be gained upon the sale of such goods; and
- (ii) that he took all reasonable precautions against committing the offence charged; and
- (iii) that 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
- (iv) that on demand made by any inspector, police officer or officer of customs, he gave to him all the information in his power with respect to the persons on whose behalf the die, block, machine or other instrument was made or the trade mark, mark or description was applied.

7. Sale of goods bearing forged trade marks and false trade descriptions.—Any person who sells any goods to which any forged trade mark or false trade description is applied, or to which any trade mark is falsely applied, shall be guilty of an offence, unless it be proved—

- (i) that he took all reasonable precautions against committing the offence charged; and
- (ii) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description; and
- (iii) that if any demand was made by any inspector, police officer or officer of customs he gave to him all the information available to him with respect to the persons from whom he had obtained the goods.

8. Sale of imported goods bearing name or mark of a Union manufacturer or trader, unaccompanied by indication of origin.—(1) Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not made or produced in the Union, and to which there is applied any name or mark being or purporting to be the name or mark of any manufacturer, producer or trader in the Union or the name of any place or district in the Union, shall be guilty of an offence, unless there is added to that name or mark, in a conspicuous manner, the name of the country in which the goods were made or produced, with a statement that they were made or produced there.

(2) This section shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes, that is to say, as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in the Union are or are to be sold, if the name or mark so applied is the name or trade mark of a manufacturer, producer of or trader in those goods in the Union, and the name or trade mark was applied with his consent.

9. Sale of imported goods bearing marks in English or Afrikaans, unaccompanied by indication of origin.—Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not made or produced in the Union, and to which there is applied any trade mark, mark or trade description in the English or Afrikaans language, shall be guilty of an offence, unless there is added to that mark or description, in a conspicuous manner, the name of the country in which the goods were made or produced, with a statement that they were made or produced there.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA—INTOXICATING LIQUOR  
ss. 11 – 13                      *Liquor Products Act, No. 60 of 1989*                      ss. 11 – 13

- (6) The provisions of this section shall not be construed as restricting the use of—
- (a) a trade mark as defined in section 2 (1) of the Trade Marks Act, 1963 (Act No. 62 of 1963), which is used or is intended for use in connection with the sale of a liquor product;
  - (b) the name of a company as defined in section 1 (1) of the Companies Act, 1973 (Act No. 61 of 1973);
  - (c) the name of a co-operative society as defined in section 1 of the Wine and Spirit Control Act, 1970 (Act No. 47 of 1970); or
  - (d) the name of a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984),

that was registered, used or established on the date of commencement of this section, except if the word “estate”, “landgoed”, “vineyard” or “wingerd” is contained in, or forms part of, such trade mark or name.

(7) The board and the administering officer shall for the purposes of any proceedings in terms of any applicable law, be deemed to be an interested party who may lawfully lodge an objection against the continued registration, or an application for the registration of, a trade mark or name referred to in subsection (6) in so far as such objection relates to any word, expression or other particulars referred to in subsection (2), (3) or (4).

**12. Prohibition of false or misleading descriptions for liquor products.**—(1) No person shall use any name, word, expression, reference, particulars or indication in any manner, either by itself or in coherence with any other verbal, written, printed, illustrated or visual material, in connection with the sale of a liquor product in a manner that conveys or creates or is likely to convey or create a false or misleading impression as to the nature, substance, quality, composition or other properties, or the class, cultivar, origin, age, identity, or manner or place of production, of the liquor product.

(2) If—

- (a) the administering officer or the board, as the case may be, is of the opinion that a person has contravened the provisions of subsection (1); and
- (b) such person has declared himself prepared thereto in writing,

the administering officer or the board, as the case may be, may refer the alleged contravention for investigation and decision to an appeal board referred to in section 22.

13. . . . .

[S. 13 repealed by s. 3 of Act No. 11 of 1993.]

continued on page 221