

EXTRAORDINARY



BUITENGEWONE

THE UNION OF SOUTH AFRICA

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### PARLIAMENTARY NOTICE.

#### THE SENATE.

The following Bills have been introduced into this House and are published forthwith in accordance with Standing Order No. 73.

MAURICE J. GREEN,  
Clerk of the Senate.

The Senate,  
Houses of Parliament,  
Cape Town.  
22nd January, 1940.

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### PARLEMENTÊRE KENNISGEWING.

#### DIE SENAAT.

Die volgende Wetsontwerpe is in die Huis ingedien en word hiermee gepubliseer ooreenkomstig Artikel 73 van die Reglement van Orde.

MAURICE J. GREEN,  
Klerk van die Senaat.

Die Senaat,  
Parlementshuis,  
Kaapstad.  
22 Januarie 1940.

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# BILL

**To make provision concerning the marking of merchandise and the use of certain words and emblems in connection with business.**

*(Introduced by the MINISTER OF COMMERCE AND INDUSTRIES.)*

**BE IT ENACTED** by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

## Definitions.

1. In this Act, unless the context indicates otherwise—
  - “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, wrapper or container; 5
  - “false trade description” means any trade description, whether or not it consists of or includes a trade mark or part of a trade mark, which is false 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, if that alteration makes the description false in a material respect; 10
  - “goods” means anything which is the subject of trade, manufacture or merchandise; 15
  - “inspector” means an inspector appointed under section three; 15
  - “label” includes any band or ticket; 20
  - “mark” includes, for the purposes of sub-section (1) of section eight, a mark used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, dealing with or offering for sale; 25
  - “Minister” means the Minister of Commerce and Industries, or any other Minister of State to whom the Governor-General has assigned the administration of this Act, or any other Minister of State acting on behalf of any such Minister; 30
  - “name” includes an abbreviation or addition to a name;
  - “police officer” means any member of a police force;
  - “sell” includes expose for sale or have in possession for purposes of sale or any purpose of trade or manufacture; 35
  - “trade description” means any description, statement or other indication, direct or indirect, as to the number, quantity, measure, gauge or weight of any goods, or as to the place or country in which any goods were made or produced, or as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of an existing patent, privilege, or copyright, and includes any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the aforementioned matters; 40
  - “trade mark” means a trade mark registered in the register of trade marks kept under the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or an amendment thereof. 50

What acts amount to: applying a trade mark or trade description.

2. (1) A person shall be deemed to apply a trade mark or trade description to goods who—
  - (a) applies it to the goods themselves; or 55
  - (b) applies it to any covering, label or reel in or with which the goods are sold; or
  - (c) places, encloses or annexes the goods in, with or to any covering, label, reel or other thing to which that trade mark or trade description has been applied; 60
  - or
  - (d) uses in connection with the goods a trade mark or trade description in such manner as to be likely to lead to the belief that the goods are designated or described by that mark or description. 65

# WETSONTWERP

Om voorsiening te maak met betrekking tot die merk van handelsware en die gebruik van seker woorde en embleme in verband met handel.

(Ingedien deur die MINISTER VAN HANDEL EN NYWERHEID.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Tensy uit die samehang anders blyk, beteken in hierdie Woordomskrywing.

5 Wet—

- „bedekking”, ook enige prop, vat, fles, kan, doos, deksel, kapsule, kis, raamwerk, omhulsel of houer;
- „valse handelsoms-krywing”, ’n handelsoms-krywing, hetsy al dan nie dit uit ’n handelsmerk of ’n deel van ’n handelsmerk bestaan of dit insluit, wat in ’n belangrike opsig onjuis is met betrekking tot die ware waarop dit aangebring is, en sluit dit elke verandering van ’n handelsoms-krywing, hetsy deur toevoeging of uitwissing of op ’n ander wyse, in, indien daardie verandering die omskrywing in ’n belangrike opsig onjuis maak;
- „ware”, alles wat onderhewig is aan handel, vervaardiging of verhandeling;
- „inspekteur”, ’n inspekteur ingevolge artikel drie aangestel;
- „etiket”, ook ’n band of kaartjie;
- „merk”, by toepassing van sub-artikel (1) van artikel ag, ook ’n merk wat op of in verband met ware gebruik word met die doel om aan te dui dat hulle die ware van die eienaar van die merk is weens vervaardiging, seleksie, handel dryf of te koop aanbieding;
- „Minister”, die Minister van Handel en Nywerheid, of ’n ander Staatsminister aan wie die Goewerneur-generaal die uitvoering van hierdie Wet opgedra het, of ’n ander Staatsminister wat namens sodanige Minister optree;
- „naam”, ook ’n afkorting van of ’n byvoeging tot ’n naam;
- „polisiebeampte”, elke lid van ’n polisiemag;
- „verkoop”, ook uitstal vir verkoop of in besit hê vir doeleindes van verkoop of op enige manier handel te dryf of te vervaardig;
- „handelsoms-krywing”, ’n beskrywing, verklaring of ander aanduiding, hetsy direk of indirek, aangaande die aantal, hoeveelheid, maat, grootte of gewig van ware, of aangaande die plek of land waar ware vervaardig of geproduseer is, of aangaande die wyse van vervaardiging of produksie van ware, of aangaande die stof waaruit ware saamgestel is, of aangaande die feit dat ware onderhewig is aan ’n bestaande patent, voorreg of kopiereg en dit sluit elke syfer, woord of merk in wat ooreenkomstig die handelsgebruik gewoonlik beskou word as ’n aanduiding van enigeen van die bogenoemde sake;
- „handelsmerk”, ’n handelsmerk wat geregistreer is in die register van handelsmerke gehou ingevolge die „Wet op Patente, Modellen, Handelsmerken en Auteursrecht, 1916” (Wet No. 9 van 1916), of ’n wysiging daarvan.

- 2. (1) Iemand word geag ’n handelsmerk of handelsoms-krywing op ware aan te bring indien hy—
- 55 (a) dit op die ware self aanbring; of
- (b) dit op enige bedekking, etiket of tolletjie waarin of waarmee die ware verkoop word aanbring; of
- (c) die ware plaas in, insluit by of aanheg aan enige bedekking, etiket, tolletjie of iets anders waarop daardie handelsmerk of handelsoms-krywing aangebring is; of
- 60 (d) ’n handelsmerk of handelsoms-krywing op so ’n wyse in verband met daardie ware gebruik dat dit waarskynlik die indruk sal wek dat daardie merk of omskrywing daardie ware aandui of beskryf.
- 65

Watter handelinge tot aanbring van ’n handelsmerk gereken word.

(2) A trade mark or 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 to any covering, label, reel or thing.

(3) Goods delivered in pursuance of an offer or request in which reference is made to a trade description contained in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purposes of paragraph (d) of sub-section (1), be deemed to be goods in connection with which that trade description is used.

Forging a trade mark.

(4) A person shall be deemed to forge a trade mark who—

(a) without the assent of the registered proprietor of that trade mark makes that trade mark or a mark so nearly resembling it as to be likely to deceive; or

(b) alters, adds to or effaces any genuine trade mark.

Falsely applying a trade mark.

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

(6) Any person who sells goods which having been used have been reconditioned, rebuilt or remade and which bear the trade mark of the original maker or seller of the goods, shall, unless full disclosure is made on the goods or on the covering of the goods that the goods have been reconditioned, rebuilt or remade, as the case may be, be deemed to have falsely applied the said trade mark.

Applying a false trade description.

(7) Any person who applies to goods any such word, name, letter, figure or mark, or arrangement or combination thereof, whether consisting of or including a trade mark or part of a trade mark or not, as is likely to lead a reasonable person to believe 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.

Appointment of officers.

3. 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.

Powers of inspectors and police officers.

4. (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 in respect of which 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.

Obstruction of inspectors and police officers an offence.

5. 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.

Forging or falsely applying trade mark and applying false trade description.

6. 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

(d) manufactures, imports or has in his possession any labels for the purpose of applying them contrary to the provisions of this Act; or

(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

- (2) 'n Handelsmerk of handelsoms krywing word geag aan-gebring te wees of dit nou geweef, afgedruk of op 'n ander wyse ingewerk is met die ware of enige bedekking, etiket, tolletjie of iets anders, of daaraan aangeheg of -geplak is.
- 5 (3) Ware, wat ingevolge 'n aanbod of aansoek gelewer word waarin na 'n handelsoms krywing wat voorkom op 'n uithang-bord of in 'n advertensie, faktuur, wynkaart, besigheidsbrief, besigheidsdokument of ander besigheidsmededeling verwys word, word by toepassing van paragraaf (d) van sub-artikel
- 10 (1) geag ware te wees in verband waarmee daardie handels-oms krywing gebruik word.
- (4) Iemand word geag 'n handelsmerk te vervals indien hy— Vervalsing van 'n handelsmerk.
- (a) daardie handelsmerk, of 'n merk wat soveel daarop gelyk dat dit waarskynlik misleidend sou wees, ver-vaardig sonder toestemming van die geregistreerde eienaar van daardie handelsmerk; of
- 15 (b) 'n egte handelsmerk verander of iets daaraan toevoeg of dit uitwis.
- (5) Iemand wat 'n handelsmerk of 'n merk wat soveel Valse aanbring van 'n handels-merk.
- 20 daarop gelyk dat dit waarskynlik misleidend sou wees, sonder toestemming van die geregistreerde eienaar van daardie handels-merk op ware aanbring, word geag daardie handelsmerk valselyk op ware aan te bring.
- (6) Iemand wat ware verkoop wat, nadat hulle gebruik is, 25 opgeknep, opnuut inmekaar gesit of opnuut gemaak is, en wat die handelsmerk van die oorspronklike vervaardiger of verkoper van die ware dra, word geag die handelsmerk valselyk aan te gebring het, tensy op die ware of op die bedekking van die ware ten volle geopenbaar word dat die ware opgeknep, 30 opnuut inmekaar gesit of opnuut gemaak is na gelang van die geval.
- (7) Elkeen wat so 'n woord, naam, letter, syfer of merk of 'n rangskikking of kombinasie daarvan, hetsy al dan nie dit uit 'n handelsmerk of 'n deel van 'n handelsmerk bestaan of 35 dit insluit, op ware aanbring as wat waarskynlik die indruk op 'n redelike persoon sal maak dat die ware die fabrikaat of handelsware van iemand anders is as die persoon wie se fabri-kaat of handelsware hulle in werklikheid is, word geag 'n valse handelsoms krywing op ware aan te bring.
- 40 3. Die Minister kan, met inagneming van die wette wat die staatsdiens reël, inspekteurs aanstel wat hy noodsaaklik ag vir die uitvoering van die bepalings van hierdie Wet.
4. (1) Elke inspekteur wat skriftelik, onder die handtekening van 'n amptenaar deur die Minister daartoe aangewys, ge-Bevoegdthede van inspekteurs en polisiebeamptes.
- 45 magtig word daartoe, en elke polisiebeampte met die rang van sersant of daarbo, kan op enige redelike tyd en plek van enigeen wat ware besit, bewaar of beheer eis dat hy daardie ware dan en daar of op 'n tyd en plek deur daardie inspekteur of polisie-beampte bepaal, vertoon.
- 50 (2) Elke sodanige inspekteur of polisiebeampte kan te enige redelike tyd enige ware ondersoek, en met daardie doel alle pakke, vate of houters oopmaak, indien hy 'n redelike grond tot verdenking het dat hulle ware bevat, en kan elke plek, hetsy 'n gebou of voertuig of in die opelug, en hetsy oop of 55 toegemaak, binnegaan indien hy 'n redelike grond tot ver-denking het dat enige ware in of op daardie plek is, en hy kan sodanige plek oopmaak indien dit gesluit is.
- (3) Elke sodanige inspekteur of polisiebeampte kan alle ware in verband waarmee die bepalings van hierdie Wet nie 60 nagekom is nie, in beslag neem en in bewaring hou, en kan daardie ware of soveel daarvan as redelik noodsaaklik is, weg-neem vir verder ondersoek of ontleding.
5. Iemand wat versuim om aan 'n deur 'n inspekteur of polisiebeampte ingevolge sub-artikel (1) van artikel (4) gedane 65 eis te voldoen, of wat 'n inspekteur of polisiebeampte in die uitvoering van sy pligte ingevolge daardie artikel belemmer, is aan 'n misdryf skuldig.
6. Iemand wat—
- (a) 'n handelsmerk vervals; of
- 70 (b) valselyk 'n handelsmerk op ware aanbring; of
- (c) 'n stempel, blok, masjien of ander werktuig wat ge-skik is om gebruik te word vir vervalsing, vervaardig, verhandel of in sy besit het; of
- (d) etikette vervaardig, invoer of in sy besit het met die 75 doel om hulle in stryd met die bepalings van hierdie Wet aan te bring; of
- (e) 'n valse handelsoms krywing op ware aanbring, is aan 'n misdryf skuldig tensy, ingeval van 'n aanklag onder paragraaf (b), (c) of (e) dit bewys word—
- 80 (i) dat in die gewone loop van besigheid sy dienste ge-huur word om vir ander persone stempels, blokke,

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.

Sale of goods bearing forged trade marks and false trade descriptions.

7. 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—

- (a) (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 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 from whom he had obtained the goods; or
- (b) that otherwise he acted innocently.

Sale of imported goods bearing name or trade mark of a Union manufacturer or trader, unaccompanied by indication of origin.

8. (1) Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not actually 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 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 an equally conspicuous manner with that name or mark, the name of the country in which the goods were actually 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 or trader in those goods in the Union, and the name or trade mark was applied with his consent.

Sale of imported goods bearing marks in English or Afrikaans, unaccompanied by indication of origin.

9. Any person who sells or, for the purpose of advertising goods, distributes in the Union any goods which were not actually 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 an equally conspicuous manner with that mark or description, the name of the country in which the goods were actually made or produced, with a statement that they were made or produced there.

Power to require indication of origin and compliance with specified standards in the case of certain classes of goods.

10. (1) The Minister may, after such investigation as he may think fit, by notice in the *Gazette* prohibit the importation into and the sale in the Union of goods of any class or description specified in the notice, whether made or produced in the Union or elsewhere, unless one or more of the following requirements, specified in the notice, have been complied with in respect of those goods—

- (a) there shall be applied to them words indicating clearly the country in which they were made or produced;
- (b) they shall, if they bear any mark specified in the notice, conform to such standards as may be prescribed in the notice;

- masjiene of ander werktuie te maak vir gebruik by die vervaardiging van handelsmerke, of, na gelang van die geval, om vir ander persone merke of omskrywings op ware aan te bring, en dat die handeling wat die onderwerp van die aanklag is deur hom in die gewone loop van die verrigting van dienste gehuur deur iemand wat in die Unie woonagtig is, gedoen is, en dat hy geen belang gehad het nie in die wins of kommissie wat deur verkoop van sodanige ware kon gemaak gewees het; en
- (ii) dat hy alle redelike voorsorgsmaatreëls geneem het om te verhoed dat hy die misdryf waarvan hy aangekla is, sou pleeg; en
- (iii) dat hy, toe hy die beweerde oortreding gepleeg het, geen rede gehad het om die egtheid van die handelsmerk, merk of handelsomskrywing in twyfel te trek nie; en
- (iv) dat hy, toe hy daartoe versoek is deur 'n inspekteur, polisiebeampte, of doeanebeampte, hom alle inligting verstrek het wat in sy vermoë was met betrekking tot die persone vir wie die stempel, blok, masjien of ander werktuig vervaardig is of die handelsmerk, merk of omskrywing aangebring is.

7. Elkeen wat ware verkoop waarop 'n vervalste handelsmerk of valse handelsomskrywing aangebring is, of waarop 'n handelsmerk valslik aangebring is, is aan 'n misdryf skuldig, tensy dit bewys word—

- (a) (i) dat hy alle redelike voorsorgsmaatreëls geneem het om te verhoed dat hy die misdryf waarvan hy aangekla is, sou pleeg; en
- (ii) dat hy, toe hy die beweerde misdryf gepleeg het, geen rede gehad het om die egtheid van die handelsmerk of handelsomskrywing in twyfel te trek nie; en
- (iii) dat hy, toe hy daartoe versoek is deur 'n inspekteur, polisiebeampte of doeanebeampte, hom alle inligting verstrek het wat in sy vermoë was met betrekking tot die persone van wie hy die ware verkry het; of

(b) anders, dat hy te goeder trou gehandel het.

8. (1) Iemand wat ware in die Unie verkoop of, met die doel om ware te adverteer, ware in die Unie versprei, wat nie werklik in die Unie vervaardig of geproduseer is nie, en waarop 'n naam of merk aangebring is wat voorgee om die naam of merk van 'n fabrikant of handelaar in die Unie of die naam van 'n plek of distrik in die Unie te wees, is aan 'n misdryf skuldig, tensy die naam van die land waarin die ware werklik vervaardig of geproduseer is, op 'n ewe opvallende wyse as daardie naam of merk by daardie naam of merk gevoeg is, benewens 'n verklaring dat hulle aldaar vervaardig en geproduseer is.

(2) Hierdie artikel is nie van toepassing nie met betrekking tot die aanbring van 'n naam of handelsmerk op artikels wat gebruik word of bedoel is om gebruik te word vir enigeen van die volgende doeleindes, naamlik as bedekkings, etikette, tolletjies of ander artikels waarin of waarmee ware wat in die Unie vervaardig of geproduseer is, verkoop word of vir verkoop bedoel word, indien die naam of merk wat aldus aangebring is, die naam of handelsmerk van 'n fabrikant of handelaar in daardie ware in die Unie is, en die naam of handelsmerk met sy toestemming aangebring is.

9. Elkeen wat ware wat nie werklik in die Unie vervaardig of geproduseer is nie en waarop 'n handelsmerk, merk of handelsomskrywing in die Engelse of Afrikaanse taal aangebring is, in die Unie verkoop of, met die doel om ware te adverteer, sulke ware in die Unie versprei, is aan 'n misdryf skuldig, tensy die naam van die land waarin die ware werklik vervaardig of geproduseer is, op 'n ewe opvallende wyse as daardie merk of omskrywing, by die merk of omskrywing gevoeg is, benewens 'n verklaring dat hulle aldaar vervaardig of geproduseer is.

10. (1) Die Minister kan, na so 'n ondersoek as wat hy nodig ag, deur kennisgewing in die *Staatskoerant* die invoer en verkoop in die Unie van ware van 'n kategorie of soort in die kennisgewing omskrewe, hetsy binne die Unie of elders vervaardig of geproduseer, verbied, tensy een of meer van die volgende vereistes, wat in die kennisgewing vermeld word, met betrekking tot daardie ware nagekom is—

- (a) woorde wat duidelik die land waarin hulle vervaardig of geproduseer is aandui, moet op hulle aangebring word;
- (b) as hulle 'n merk dra wat in die kennisgewing omskryf word, moet hulle aan die standaard wat die kennisgewing voorskryf voldoen;

Verkoop van ware wat vervalste handelsmerke en valse handelsomskrywings dra.

Verkoop van ingevoerde ware wat die naam of handelsmerk van 'n fabrikant of handelaar in die Unie dra, sonder byvoeging van aanduiding van herkoms.

Verkoop van ingevoerde ware wat merke in Engels of Afrikaans dra sonder byvoeging van aanduiding van herkoms.

Bevoegdheid om aanduiding van herkoms en voldoening aan 'n vasgestelde standaard te vereis in geval van sekere soorte ware.

(c) there shall be applied to them words indicating clearly the material of which they are composed.

(2) The Minister may, if he is satisfied that the circumstances require it, by a notice in the *Gazette* withdraw, amend or qualify any notice issued in terms of sub-section (1).

(3) Any person who contravenes any such prohibition shall be guilty of an offence.

Unauthorized  
use of certain  
emblems.

11. (1) Any person who uses in connection with his trade, business, profession or occupation, or in connection with a trade mark, mark or trade description applied by him to goods made or sold by him—

(a) without authority in writing signed by or on behalf of His Majesty or of the Governor-General in person, the Royal Arms, or arms so nearly resembling the Royal Arms as to be likely to deceive; or

(b) without authority in writing signed on behalf of the Governor-General-in-Council, the Arms of the Union, or arms so nearly resembling the Arms of the Union as to be likely to deceive; or

(c) without authority in writing signed by or on behalf of the Minister—

(i) the style, title, name, portrait or image of the King, of a member of the Royal Family, of the Governor-General or of a Minister of State of the Union; or

(ii) the name or portrait of any President of the South African Republic or of the Orange Free State; or

(iii) a reproduction of the National Flag of the Union, shall be guilty of an offence.

(2) Any person who uses in connection with his trade, business, profession or occupation any device, emblem, title or words in such a manner as to be likely to lead other persons to believe that his trade, business, profession or occupation is carried on under the patronage of, or that he is employed by or supplies goods to, His Majesty, any member of the Royal Family, the Governor-General, any Government department or a provincial administration, without authority in writing signed by or on behalf of His Majesty, that member of the Royal Family, the Governor-General, the Minister administering that department or the Administrator concerned, as the case may be, shall be guilty of an offence.

Use of certain  
marks may be  
prohibited.

12. (1) The Minister may, after such investigation as he may think fit, by notice in the *Gazette*, prohibit either absolutely or conditionally the use of any mark, word, letter or figure or any arrangement or combination thereof, in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods.

(2) The Minister may, if he is satisfied that the circumstances require it, by a notice in the *Gazette*, withdraw, amend or qualify any notice issued in terms of sub-section (1).

(3) Any person who contravenes any such absolute prohibition or fails to comply with any condition prescribed in any such notice shall be guilty of an offence.

Implied warranty  
on sale of  
marked goods.

13. Every person who sells any goods to which a trade mark or trade description has been applied 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, as the case may be, unless the contrary is expressed in writing signed by the seller or on his behalf and delivered at the time of the sale to and accepted by the purchaser.

Evidence.

14. (1) In any prosecution for forging or falsely applying a trade mark the burden of proving the assent of the registered proprietor shall lie on the accused.

(2) In any prosecution for an offence under the provisions of this Act evidence that any imported goods were shipped at any port shall be *prima facie* evidence that those goods were made or produced in the country within which that port is situated.

Limitation of  
prosecution.

15. No prosecution for any offence under the provisions of this Act shall be commenced after the expiration of a period of three years reckoned from the date upon which the offence was committed.

Penalties.

16. (1) Any person who is convicted of any offence under the provisions of this Act shall be liable to a fine not exceeding fifty pounds, or, if he has been previously convicted of any

(c) woorde wat duidelik die stof waaruit hulle saamgestel is aangee moet op hulle aangebring word.

(2) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-  
5 artikel (1) uitgevaardig is, deur kennisgewing in die *Staatskoerant* intrek, wysig of kwalifiseer.

(3) Elkeen wat 'n sodanige verbod oortree, is aan 'n misdryf skuldig.

11. (1) Elkeen wat in verband met sy handel, besigheid, beroep of ambag, of in verband met 'n handelsmerk, merk of handelsomskrywing, wat deur hom op ware wat hy vervaardig of verkoop aangebring word,—

Ongemagtigde gebruik van sekere embleme.

15 (a) die Koninklike Wapen, of 'n wapen wat soveel op die Koninklike Wapen gelyk dat dit waarskynlik misleidend sou wees, gebruik sonder skriftelike volmag geteken deur of ten behoeve van Sy Majesteit of die Goewerneur-generaal in eie persoon; of

20 (b) die Uniewapen of 'n wapen wat soveel op die Uniewapen gelyk dat dit waarskynlik misleidend sou wees, gebruik sonder skriftelike volmag geteken ten behoeve van die Goewerneur-generaal-in-Rade; of

25 (c) (i) die betiteling, titel, naam, portret of beeld van die Koning, 'n lid van die Koninklike Huis, die Goewerneur-generaal of 'n Staatsminister van die Unie; of

(ii) die naam of portret van 'n President van die Suid-Afrikaanse Republiek of die Oranje-Vrystaat; of

30 (iii) 'n weergawe van die Nasionale Vlag van die Unie, gebruik sonder skriftelike volmag deur of ten behoeve van die Minister geteken,

is aan 'n oortreding skuldig.

(2) Iemand wat in verband met sy handel, besigheid, beroep of ambag 'n tekening, beeld, embleem, titel of woorde op so  
35 'n wyse gebruik dat dit ander persone waarskynlik onder die indruk sal bring dat sy handel, besigheid, beroep of ambag gedryf word onder die beskerming van, of dat hy in diens is van, of ware lewer aan, Sy Majesteit, enige lid van die Koninklike Huis, die Goewerneur-generaal, enige Regeringsdepartement of 'n provinsiale administrasie, sonder skriftelike volmag  
40 geteken deur of ten behoeve van Sy Majesteit, daardie lid van die Koninklike Huis, die Goewerneur-generaal, die Minister wat daardie departement beheer of die betrokke Administrateur, na gelang van die geval, is aan 'n misdryf skuldig.

45 12. (1) Na so 'n ondersoek as wat hy nodig ag, kan die Minister die gebruik van 'n merk, woord, letter of syfer, of enige rangskikking of kombinasie daarvan, in verband met enige handel, besigheid, beroep of ambag of in verband met 'n handelsmerk, merk of handelsomskrywing wat op ware aange-  
50 bring is, deur kennisgewing in die *Staatskoerant* of geheel en al of voorwaardelik verbied.

Gebruik van sekere merke kan verbied word.

(2) Indien die Minister daarvan oortuig is dat die omstandighede dit vereis, kan hy 'n kennisgewing wat ingevolge sub-  
55 artikel (1) uitgevaardig is, deur kennisgewing in die *Staatskoerant* intrek, wysig of kwalifiseer.

(3) Elkeen wat 'n sodanige totale verbod oortree of versuim om aan 'n voorwaarde in sodanige kennisgewing voorskryf te voldoen, is aan 'n misdryf skuldig.

13. Iemand wat ware waarop 'n handelsmerk of handels-  
60 omskrywing aangebring is verkoop, word geag te waarborg dat die merk 'n egte handelsmerk is en nie vervals of valselyk aangebring nie, of, na gelang van die geval, dat die handelsomskrywing nie 'n valse handelsomskrywing is nie, tensy die teenoorgestelde in 'n geskrif uiteengesit is wat deur of ten  
65 behoeve van die verkoper geteken is en tydens die verkoop gelewer is aan en aangeneem is deur die koper.

Stilswyende waarborg by verkoop van gemerkte ware.

14. (1) By elke vervolging weens vervalsing of valse aan-  
bring van 'n handelsmerk rus die bewyslas, dat die geregi-  
streerde eienaar ingestem het, op die beskuldigde.

Getuienis.

70 (2) By elke vervolging weens 'n misdryf volgens die bepalings van hierdie Wet is getuienis dat ingevoerde ware uit een of ander hawe verskeep is, *prima facie* getuienis dat daardie ware in die land waarin daardie hawe geleë is, vervaardig of geproduseer is.

75 15. Geen vervolging weens 'n misdryf volgens die bepalings van hierdie Wet word ingestel nadat 'n tydperk van drie jaar, bereken vanaf die datum waarop die misdryf begaan is, verstryk het nie.

Beperking van vervolging.

80 16. (1) Elkeen wat skuldig bevind is aan 'n misdryf volgens die bepalings van hierdie Wet, is strafbaar met 'n boete van hoogstens vyftig pond, of, indien hy tevore skuldig bevind is

Strawwe.

offence under the provisions of this Act or any law repealed by section *eighteen*, to a fine not exceeding two hundred pounds.

(2) Whenever any person is convicted of an offence under the provisions of this Act, the Court by which he is convicted may, in addition to any other penalty which may be imposed, order the confiscation or destruction of all or any part of the goods forming the subject of the charge.

Savings.

17. If 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 that class or method, the provisions of this Act as to false trade descriptions shall not apply to that trade description when so applied: Provided that if that trade description includes the name of a place or country and is likely to lead to the belief that the goods to which it is applied were actually made or produced in that place or country, and the goods were not actually made or produced in that place or country, the exemption provided by this section shall not apply unless there is added to that 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 country in which the goods were actually made or produced, with a statement that they were made or produced there.

Repeal of laws.

18. The Merchandise Marks Act, 1888 (Act No. 12 of 1888), and the Merchandise Marks Amendment Act, 1889 (Act No. 14 of 1889), of the Cape of Good Hope, the Merchandise Marks Law, 1888 (Law No. 22 of 1888), and Law No. 11 of 1889 of Natal, and the Merchandise Marks Ordinance, 1903 (Ordinance No. 47 of 1903), of the Transvaal are hereby repealed.

Short title and commencement of Act.

19. This Act shall be called the Merchandise Marks Act, 1940, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

## BILL

**For the control of the export of scrap metal available for use in industries in the Union.**

*(Introduced by the MINISTER OF COMMERCE AND INDUSTRIES.)*

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly, of the Union of South Africa, as follows:—

Temporary prohibition or restriction of export of scrap metal.

1. If it appears to the Minister of Commerce and Industries, or to any other Minister of State to whom the Governor-General has assigned the administration of this Act (hereinafter called the Minister), that there is an existing or apprehended scarcity of scrap metal or of any class of scrap metal available for use in industries within the Union, the Minister may, after investigation and report by the Board of Trade and Industries, by notice in the *Gazette* prohibit or restrict the export of scrap metal or that class of scrap metal during any period stated in that notice.

Non-liability of persons prevented by this Act from fulfilling contracts.

2. If any person fails to fulfil in whole or in part any obligation undertaken by him in any contract entered into before the issue of any notice under section *one*, and his failure is due to the issue of that notice, he shall not be liable to any action or other legal proceeding based upon his said failure.

Regulations.

3. The Minister may make all such regulations as he deems necessary or expedient for the carrying out of any prohibition or restriction imposed under section *one*.

Short title.

4. This Act shall be called the Scrap Metal Exportation Restriction Act, 1940.

aan 'n misdryf volgens die bepalings van hierdie Wet of van 'n Wet wat deur artikel *agtien* herroep word, met 'n boete van hoogstens tweehonderd pond.

(2) Wanneer iemand skuldig bevind is aan 'n misdryf volgens die bepalings van hierdie Wet, kan die Hof waardeur hy skuldig bevind is, behalwe enige ander straf wat opgelê kan word, ook die verbeurdverklaring of vernietiging van die geheel of enige deel van die ware wat die onderwerp van die aanklag uitmaak, beveel.

10 17. Indien tydens die inwerkingtreding van hierdie Wet 'n handelsomskrywing regmatig en oor die algemeen op ware van 'n sekere soort of vervaardig op 'n sekere wyse aangebring word om daardie soort of vervaardigingswyse aan te dui, dan is die bepalings van hierdie Wet aangaande valse handelsomskrywings nie op daardie handelsomskrywing van toepassing nie wanneer dit aldus aangebring word: Met dien verstande dat indien daardie handelsomskrywing die naam van 'n plek of land insluit, en waarskynlik die indruk sal skep dat die ware waarop dit aangebring is werklik in daardie plek of land vervaardig of geproduseer is, en die ware nie in werklikheid in daardie plek of land vervaardig of geproduseer is nie, dan is die voorbehoud in hierdie artikel vervat nie van toepassing nie, tensy direk voor of na die naam van daardie plek of land, op 'n ewe opvallende wyse as daardie naam, die naam van die land waarin die ware werklik vervaardig of geproduseer is, tot daardie handelsomskrywing toegevoeg word, benewens 'n verklaring dat hulle aldaar vervaardig of geproduseer is.

Voorbehoude.

18. Die „Merchandise Marks Act, 1888” (Wet No. 12 van 1888), en die „Merchandise Marks Amendment Act, 1889” (Wet No. 14 van 1889), van die Kaap die Goeie Hoop, die „Merchandise Marks Law, 1888” (Wet No. 22 van 1888), en Wet No. 11 van 1889 van Natal, en die „Merchandise Marks Ordinance, 1903” (Ordonnansie No. 47 van 1903), van Transvaal word hiermee herroep.

Herroeping van wette.

35 19. Hierdie Wet heet die Handelswaremerkewet, 1940, en tree in werking op 'n datum wat die Goewerneur-generaal by proklamasie in die *Staatskoerant* vasstel.

Kort titel en inwerkingtreding van Wet.

## WETSONTWERP

**Om die uitvoer van oumetaal wat vir nywerheidsgebruik in die Unie beskikbaar is, te kontroleer.**

(Ingedien deur die MINISTER VAN HANDEL EN NYWERHEID.)

**DIT WORD BEPAAL** deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Wanneer na oordeel van die Minister van Handel en Nywerheid of 'n ander Staatsminister wat deur die Goewerneur-generaal met die uitvoering van hierdie Wet belas is (hierna die Minister genoem) daar 'n bestaande of dreigende skaarste is aan oumetaal, of enige soort oumetaal wat vir nywerheidsgebruik in die Unie beskikbaar is, kan die Minister na ondersoek en verslag deur die Handel- en Nywerheidsraad by kennisgewing in die *Staatskoerant* die uitvoer van oumetaal of daardie soort oumetaal gedurende 'n in daardie kennisgewing gemelde tydperk verbied of beperk.

Tydlike verbod op of beperking van uitvoer van oumetaal.

2. Versuim iemand om 'n verpligting waartoe hy hom verbind het in 'n kontrak aangegaan voor die uitreiking van 'n kennisgewing ingevolge artikel *een*, in sy geheel of ten dele na te kom, en is sy versuim te wyte aan die uitreiking van daardie kennisgewing, dan is hy nie aanspreeklik in enige aksie of ander regsgeeding wat op gemelde versuim gegrond word nie.

Nie-aanspreeklikheid van persone wat deur hierdie Wet verhinder word om kontrakte na te kom.

3. Die Minister kan alle regulasies uitvaardig wat hy nodig of dienstig ag om 'n verbod of beperking ingevolge artikel *een* uit te voer.

Regulasies.

4. Hierdie Wet heet die Wet tot Beperking van Oumetaal-uitvoer, 1940.

Kort titel.

# BILL

**To amend the law relating to the incurrence of disabilities by members of Parliament and other persons by reason of service in the defence of the Union.**

(Introduced by the MINISTER OF THE INTERIOR.)

**BE IT ENACTED** by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Amendment of section 53 of the South Africa Act, as amended by section 2 of Act 17 of 1933.

1. Section *fifty-three* of the South Africa Act, 1909, as amended, is hereby amended by the addition at the end thereof of the following new sub-paragraph: 5

“(5) any person who, while the Union is at war, holds any rank in the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ”.

Amendment of section 54 of the South Africa Act.

2. Section *fifty-four* of the South Africa Act, 1909, is hereby amended by the insertion in paragraph (c) thereof, after the word “be” of the words “unless his absence is due to his serving, while the Union is at war, with the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912).” 15

Amendment of section 56 of the South Africa Act, as amended by section 1 of Act 51 of 1926, section 2 of Act 29 of 1933 and section 1 of Act 43 of 1935.

3. Sub-section (2) of section *fifty-six* of the South Africa Act, 1909, as amended, is hereby amended by the insertion after paragraph (c) thereof of the following new paragraph: 20

“(c)*bis*. when his absence is due to his serving, while the Union is at war, with the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ”.

Amendment of section 2 of Act 42 of 1925, as amended by section 2 of Act 38 of 1931.

4. Sub-section (4) of section *two* of the South-West Africa Constitution Act, 1925, as amended, is hereby amended by the insertion in paragraph (c) thereof, after the word “Administrator”, of the words “unless his absence is due to his serving, while the Union is at war, with the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ”. 30

Amendment of section 7 of Act 42 of 1925.

5. Sub-section (4) of section *seven* of the South-West Africa Constitution Act, 1925, is hereby amended— 35

(a) by the insertion in paragraph (d) thereof, after the word “Administrator”, of the words “unless his absence is due to his serving, while the Union is at war, with the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ”; 40  
and

(b) by the substitution in paragraph (e) thereof for the word “accepts” of the word “holds”, by the insertion in that paragraph, after the word “Committee”, of the words “or the holding, while the Union is at war, of any rank in the military, air or naval forces of the Union or any other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ”, and by the substitution for the word “houden” appearing in the Netherlands text of that paragraph of the word “bekleden”. 45 50

Amendment of section 17 of Act 42 of 1925.

6. Sub-section (2) of section *seventeen* of the South-West Africa Constitution Act, 1925, is hereby amended by the insertion in paragraph (d) thereof, after the word “Council”, of the words “or the holding, while the Union is at war, of any rank in the military, air or naval forces of the Union or any 55

# WETSONTWERP

Tot wysiging van die wet op onbevoegdheid waaraan  
parlementslede en ander persone onderhewig kan  
word uit hoofde van diens ter verdediging van  
die Unie.

(Ingedien deur die MINISTER VAN BINNELANDSE SAKKE.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die  
Senaat en die Volksraad van die Unie van Suid-Afrika,  
as volg :—

1. Artikel drie-en-vyftig van die Suid-Afrika Wet, 1909, soos gewysig, word hiermee gewysig deur aan die end daarvan die volgende nuwe sub-paragraaf toe te voeg :  
„(5) iemand die wanneer de Unie in oorlog betrokken is, een rang bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), ingesteld, bekleedt”.
2. Artikel vier-en-vyftig van die Suid-Afrika Wet, 1909, word hiermee gewysig deur in paragraaf (c) daarvan na die woord „respektievelik” die woorde „tenzij zijn afwezigheid veroorzaakt wordt door zijn dienst bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), ingesteld, wanneer de Unie in oorlog betrokken is,” in te voeg.
3. Sub-artikel (2) van artikel ses-en-vyftig van die Suid-Afrika Wet, 1909, soos gewysig, word hiermee gewysig deur na paragraaf (c) daarvan die volgende nuwe paragraaf in te voeg :  
„(c)bis indien zijn afwezigheid veroorzaakt wordt door zijn dienst bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), ingesteld, wanneer de Unie in oorlog betrokken is”.
4. Sub-artikel (4) van artikel twee van die „Zuidwest-Afrika Konstitusie Wet, 1925”, soos gewysig, word hiermee gewysig deur in paragraaf (c) daarvan na die woord „geweest” die woorde „tenzij zijn afwesigheid veroorzaakt wordt door zijn dienst bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), ingesteld, wanneer de Unie in oorlog betrokken is” in te voeg.
5. Sub-artikel (4) van artikel sewe van die „Zuidwest-Afrika Konstitusie Wet, 1925”, word hiermee gewysig—  
(a) deur in paragraaf (d) daarvan na die woord „Administrateur” die woorde „tenzij zijn afwezigheid veroorzaakt wordt door zijn dienst bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), ingesteld, wanneer de Unie in oorlog betrokken is” in te voeg ; en  
(b) deur in paragraaf (e) daarvan die woord „aanneemt” te vervang deur die woord „bekleedt”, deur in daardie paragraaf na die woord „Komitee” die woorde „of het bekleden van een rang bij de land-, lucht- of zeemachten van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), wanneer de Unie in oorlog betrokken is”, in te voeg, en deur die woord „houden” wat voorkom in die Nederlandse teks van daardie paragraaf, te vervang deur die woord „bekleden”.
6. Sub-artikel (2) van artikel sewentien van die „Zuidwest-Afrika Konstitusie Wet, 1925” word hiermee gewysig deur in paragraaf (d) daarvan na die woord „Raad” die woorde „of het bekleden van een rang bij de land-, lucht- of zeemachten

Wysiging van artikel 53 van die Suid-Afrika Wet, soos gewysig deur artikel 2 van Wet 17 van 1933.

Wysiging van artikel 54 van die Suid-Afrika Wet.

Wysiging van artikel 56 van die Suid-Afrika Wet, soos gewysig deur artikel 1 van Wet 51 van 1926, artikel 2 van Wet 29 van 1933 en artikel 1 van Wet 43 van 1935.

Wysiging van artikel 2 van Wet 42 van 1925, soos gewysig deur artikel 2 van Wet 38 van 1931.

Wysiging van artikel 7 van Wet 42 van 1925.

Wysiging van artikel 17 van Wet 42 van 1925.

other force or service established by or under the South Africa Defence Act, 1912 (Act No. 13 of 1912) ", and by the substitution for the word "houden" appearing in the Netherlands text of that paragraph of the word "bekleden".

Repeal of Act 10 of 1915.

7. So much of the Removal of Disabilities (War and Rebellion) Act, 1915, as is unrepealed is hereby repealed. 5

Short title.

8. This Act shall be called the Constitution (Prevention of Disabilities) Act, 1940.

van de Unie of een andere macht of dienst door of krachtens de Zuid Afrika Verdedigings Wet, 1912 (Wet No. 13 van 1912), wanneer de Unie in oorlog betrokken is" in te voeg, en deur die woord „houden" wat voorkom in die Nederlandse 5 teks van daardie paragraaf, te vervang deur die woord „bekleden".

7. Wat nog nie van die „Wegneming van Onbekwaam- Herroeping van heden (Oorlog en Rebelle) Wet, 1915" herroep is nie, word Wet 10 van 1915. hiermee herroep.

10 8. Hierdie Wet heet die Wet op die Konstitusie (Voor- Kort titel. koming van Onbevoegdhede), 1940.

Gazette No. 2725  
dated 26th  
January, 1940.

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No.150

Appointment of Medical  
Practitioners.

| SEEN BY     |       |
|-------------|-------|
| R.B.H.      | ..... |
| A.C.W.      | ..... |
| J.B.        | ..... |
| J.E.L.      | ..... |
| E.A.B.      | ..... |
| H.C.K.      | ..... |
| H.A.E.      | ..... |
| <i>Ind.</i> | ..... |

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Rand Mines, Limited:  
Declaration of Dividends.

*He*      *RBH*      *Ind*  
*h*