

(31 March 2011 – to date)

[This is the **current** version and applies as from **31 March 2011**, i.e. the date of commencement of the Consumer Protection Act 68 of 2008 – to date]

## **MERCHANDISE MARKS ACT 17 OF 1941**

*(Government Notice 547 in Government Gazette 2893 dated 17 April 1941. Commencement date:  
18 October 1941 [Proc. No. 89 in Gazette No. 2910 dated 16 May 1941])*

### **As amended by:**

*Merchandise Marks Amendment Act 3 of 1946 - Government Notice 669 in Government Gazette 3622 dated  
28 March 1946. Commencement date: 28 March 1946.*

*Merchandise Marks Amendment Act 26 of 1951 - Government Notice 1087 in Government Gazette 4601  
dated 4 May 1951. Commencement date: 4 May 1951.*

*Merchandise Marks Amendment Act 39 of 1952 - Government Notice 1520 in Government Gazette 4885  
dated 9 July 1952. Commencement date: 1 November 1952 [Proc. No. 239 in Gazette No. 4947 dated 24  
October 1952]*

*Merchandise Marks Amendment Act 47 of 1954 - Government Notice 1286 in Government Gazette 5302  
dated 30 June 1954. Commencement date: 30 June 1954 (unless otherwise indicated).*

*Merchandise Marks Amendment Act 55 of 1967 - Government Notice 668 in Government Gazette 1732  
dated 10 May 1967. Commencement date: 10 May 1967.*

*Merchandise Marks Amendment Act 54 of 1987 - Government Notice 2074 in Government Gazette 10921  
dated 18 September 1987. Commencement date: 18 September 1987.*

*General Law Amendment Act 49 of 1996 - Government Notice 1601 in Government Gazette 17477 dated 4  
October 1996. Commencement date: 4 October 1996.*

*Intellectual Property Laws Amendment Act 38 of 1997 - Government Notice 1285 in Government Gazette  
18325 dated 1 October 1997. Commencement date: 1 January 1998 [Proc. No. R.93 in Gazette No. 18573  
dated 19 December 1997]*

*Merchandise Marks Amendment Act 50 of 2001 - Government Notice 1359 in Government Gazette 22931  
dated 14 December 2001. Commencement date: 14 December 2001.*

*Merchandise Marks Amendment Act 61 of 2002 - Government Notice 114 in Government Gazette 24278 dated 17 January 2003. Commencement date: 17 January 2003.*

*Consumer Protection Act 68 of 2008 - Government Notice 467 in Government Gazette 32186 dated 29 April 2009. Commencement date: 31 March 2011 [General Notice No. 917 in Gazette No. 33581 dated 23 September 2010]*

**Publisher's note:**

- On 19 September 1941, published under Government Notice No. 1321 in Government Gazette 2944, the operation of sections 8 and 9 have been suspended until further notice.
- On 1 March 1946, published under Government Notice No. 451 in Government Gazette 3612, Government Notice No. 1321 has been withdrawn, suspending the operation of sections 8 and 9 with effect from a date six months from the date of publication of this notice.
- On 9 August 1946, published under Government Notice No. 1682 in Government Gazette 3688, Government Notice No. 451 has been withdrawn, suspending the operation of sections 8 and 9 until further notice.

**Publisher's Note:** The Act has been amended by section 18 of Act 38 of 1997 by the substitution for the word "Union", wherever it occurs, of the word "Republic", with the exception of section 14.

## ACT

**To make provision concerning the marking of merchandise and of coverings in or with which merchandise is sold and the use of certain words and emblems in connection with business.**

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*(Signed by the Governor-General in English.)*  
*(Assented to 7th April, 1941.)*

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## ARRANGEMENT OF SECTIONS

1. Definitions
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....
9. ....
10. ....

Prepared by:

11. ....
12. ....
13. ....
14. Unauthorized use of certain emblems
15. Use of certain marks may be prohibited
- 15A. Abuse of trade mark in relation to event
16. ....
17. ....
18. Evidence
19. ....
20. Penalties
21. Repeal of laws
- 21bis. ....
22. Short title and commencement of Act

## 1. Definitions

In this Act, unless the context indicates otherwise –

**"apply to"** means emboss, impress, engrave, etch or print upon or weave into or otherwise—

(a) work into or onto;

(b) annex or affix to; or

(c) incorporate in;

*(Definition of "apply to" substituted by section 1(a) of Act 38 of 1997)*

**"bottle"** .....

*(Definition of "bottle" deleted by section 1(b) of Act 38 of 1997)*

**"convention country"** means any country or group of countries declared a convention country or convention countries in terms of section 63 of the Trade Marks Act, 1993 (Act No. 194 of 1993);

*(Definition of "convention country" inserted by section 1(a) of Act 50 of 2001)*

**"covering"** includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, wrapper or container;

**"device"** means any visual representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark;

*(Definition of "device" inserted by section 1(c) of Act 38 of 1997)*

*(Definition of "device" substituted by section 1(b) of Act 50 of 2001)*

**"document"** means recorded information regardless of form or medium;

*(Definition of "document" inserted by section 1(c) of Act 38 of 1997)*

**"event"** means any exhibition, show or competition of a sporting, recreational or entertainment nature which is—

- (a) held or to be held in public;
- (b) likely to attract the attention of the public or to be newsworthy; and
- (c) financed or subsidised by commercial sponsorship,

and includes any broadcast of such exhibition, show or competition;

*(Definition of "event" inserted by section 1(a) of Act 61 of 2002)*

**"false trade description"** means any trade description 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;

*(Definition of "false trade description" substituted by section 1(d) of Act 38 of 1997)*

**"Gazette"** .....

*(Definition of "Gazette" inserted by section 1(a) of Act 39 of 1952)*

*(Definition of "Gazette" deleted by section 1 (Schedule) of Act 49 of 1996)*

*(Definition of "Gazette" again deleted by section 1(e) of Act 38 of 1997)*

**"goods"** means anything which is the subject of trade or manufacture;

**"inspector"** means—

- (a) any member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), of or above the rank of sergeant;
- (b) the Commissioner for Customs and Excise or any officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- (c) any officer appointed under section 3;

*(Definition of "inspector" substituted by section 1(f) of Act 38 of 1997)*

**"label"** includes any band or ticket;

**"mark"** means any sign capable of being represented graphically, and includes a device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or any combination of the aforementioned, but does not include a trade mark;

*(Definition of "mark" substituted by section 1(c) of Act 50 of 2001)*

**"Minister"** means the Minister of Trade and Industry;

*(Definition of "Minister" substituted by section 1 of Act 54 of 1987)*

*(Definition of "Minister" substituted by section 1(g) of Act 38 of 1997)*

**"name"** includes an abbreviation or addition to a name, but does not include a trade mark;

*(Definition of "name" substituted by section 1(d) of Act 50 of 2001)*

**"police officer"** .....

*(Definition of "police officer" deleted by section 1(h) of Act 38 of 1997)*

**"premises"** includes land, any building or structure, or any vehicle, ship, boat or aircraft or other conveyance;

*(Definition of "premises" inserted by section 1(i) of Act 38 of 1997)*

**"protected event"** means an event designated as such under section 15A;

*(Definition of "protected event" inserted by section 1(b) of Act 61 of 2002)*

**"sell"** includes expose for sale or have in possession for purposes of sale or any purpose of trade or manufacture, and the word **"sale"** has a corresponding meaning;

*(Definition of "sell" amended by section 1 of Act 47 of 1954, deemed to have come into operation on 18 October 1941)*

**"Territory"** .....

*(Definition of "Territory" inserted by section 1(b) of Act 39 of 1952)*

*(Definition of "Territory" deleted by section 1 (Schedule) of Act 49 of 1996)*

*(Definition of "Territory" again deleted by section 1(j) of Act 38 of 1997)*

**"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 name of the manufacturer or producer 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 consist, 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, but does not include a trade mark;

*(Definition of "trade description" substituted by section 1(e) of Act 50 of 2001)*

**"trade mark"** means a trade mark as defined in section 2(1) of the Trade Marks Act, 1993 (Act No. 194 of 1993), and includes a well-known trade mark contemplated in section 35 of that Act.

*(Definition of "trade mark" amended by section 1(c) of Act 39 of 1952)*

*(Definition of "trade mark" amended by section 1 (Schedule) of Act 49 of 1996)*

*(Definition of "trade mark" substituted by section 1(k) of Act 38 of 1997)*

*(Definition of "trade mark" substituted by section 1(f) of Act 50 of 2001)*

**"Union"** .....

*(Definition of "Union" inserted by section 1(d) of Act 39 of 1952)*

*(Definition of "Union" deleted by section 1 (Schedule) of Act 49 of 1996)*

*(Definition of "Union" again deleted by section 1(l) of Act 38 of 1997)*

**2.** .....

*(Section 2 substituted by section 2 of Act 38 of 1997)*

*(Section 2 repealed by section 121(2)(a) of Act 68 of 2008)*

**3.** .....

*(Section 3 substituted by section 3 of Act 38 of 1997)*

*(Section 3 repealed by section 121(2)(a) of Act 68 of 2008)*

**4.** .....

*(Section 4 amended by section 2 of Act 47 of 1954)*

*(Section 4 substituted by section 4 of Act 38 of 1997)*

*(Section 4 repealed by section 121(2)(a) of Act 68 of 2008)*

**5.** .....

*(Section 5 substituted by section 5 of Act 38 of 1997)*

*(Section 5 repealed by section 121(2)(a) of Act 68 of 2008)*

**6.** .....

*(Section 6 amended by section 1 of Act 26 of 1951)*

*(Section 6 substituted by section 6 of Act 38 of 1997)*

*(Section 6 amended by section 2 of Act 50 of 2001)*

*(Section 6 repealed by section 121(2)(a) of Act 68 of 2008)*

**7.** .....

*(Section 7 substituted by section 7 of Act 38 of 1997)*

*(Section 7 substituted by section 3 of Act 50 of 2001)*

*(Section 7 repealed by section 121(2)(a) of Act 68 of 2008)*

**8.** .....

*(Section 8 amended by section 8 of Act 38 of 1997)*

*(Section 8 amended by section 4 of Act 50 of 2001)*  
*(Section 8 repealed by section 121(2)(a) of Act 68 of 2008)*

9. ....

*(Section 9 substituted by section 9 of Act 38 of 1997)*  
*(Section 9 substituted by section 5 of Act 50 of 2001)*  
*(Section 9 repealed by section 121(2)(a) of Act 68 of 2008)*

10. ....

*(Section 10 amended by section 1 of Act 3 of 1946)*  
*(Section 10 amended by section 2 of Act 26 of 1951)*  
*(Section 10 repealed by section 121(2)(a) of Act 68 of 2008)*

11. ....

*(Section 11 repealed by section 121(2)(a) of Act 68 of 2008)*

12. ....

*(Section 12 repealed by section 121(2)(a) of Act 68 of 2008)*

13. ....

*(Section 13 repealed by section 121(2)(a) of Act 68 of 2008)*

#### 14. **Unauthorized use of certain emblems**

(1) For purposes of this section, a person uses a mark or trade mark if he or she uses it—

- (a) in connection with his or her trade, business, profession or occupation; or
- (b) in connection with a mark, trade mark or trade description applied by him or her to goods made, produced or sold by him or her.

(1A)

- (a) No person may use a mark or trade mark which consists of or contains the national flag of a convention country, or an imitation from a heraldic point of view, without authorization of the competent authority of the convention country or without being in possession of an authorization in writing signed by or on behalf of the Minister.
- (b) Paragraph (a) does not apply if no authorization for the use of a mark or trade mark contemplated in that paragraph is required by the convention country.

(1B) No person may use a mark or trade mark which consists of or contains the armorial bearings or any other state emblem, of the Republic or a convention country, or an imitation from a heraldic point of

view, without authorization of the competent authority of the Republic or convention country, as the case may be.

(1C) No person may use a mark or trade mark which consists of or contains an official sign or hallmark adopted by the Republic or a convention country, or an imitation from a heraldic point of view, and which indicates control and warranty in relation to goods or services of the same or similar kind as those in relation to which such official sign or hallmark indicates control and warranty, without authorization of the competent authority of the Republic or convention country, as the case may be.

(1D)

(a) No person may use a mark or trade mark which consists of or contains the flag, armorial bearings or any other emblem, or an imitation from a heraldic point of view, or the name, or abbreviation of the name, of any international organization of which any convention country is a member, without authorization by such organization.

(b) Paragraph (a) does not apply if the use of the mark or trade mark contemplated in that paragraph does not suggest to the public that a connection exists between the organization and the mark or its proprietor, or is not likely to mislead the public as to the existence of a connection between the organization and the mark or its proprietor.

(1E) Any person who contravenes or fails to comply with any provision of subsection (1A), (1B), (1C) or (1D) shall be guilty of an offence.

(1F) This section does not apply to a trade mark registered before 1 February 1941.

(1G) Subsections (1B), (1C) and (1D) apply to a state emblem, official sign or hallmark of a convention country, and the emblem or name, or abbreviation of the name, of an international organization only and to the extent that—

(a) the convention country or international organization has notified the Republic in accordance with Article 6~~ter~~ of the Paris Convention that it desires to protect that emblem, sign, hallmark, name or abbreviation, as the case may be;

(b) the notification contemplated in paragraph (a) is in force; and

(c) the Republic has not objected to the notification contemplated in paragraph (a) in accordance with Article 6~~ter~~ of the Paris Convention.

(1H) Subsection (1B) or (1C) shall not prevent the use of a trade mark by any citizen of a country who is authorized to make use of a state emblem, official sign or hallmark of that country, notwithstanding the fact that it is similar to that of another country.



*(Section 14(1) substituted by section 6 of Act 50 of 2001)*

- (2) Any person who uses in connection with his or her 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—

- (a) his or her trade, business, profession or occupation is carried on under the patronage of; or
- (b) he or she is employed by or supplies goods to,

the President, any State department or a provincial government, without authority in writing signed by or on behalf of the President, the Minister administering that department or the Premier of the province concerned, as the case may be, shall be guilty of an offence.

*(Section 14 amended by section 2 of Act 39 of 1952)*

*(Section 14 amended by section 1 of Act 55 of 1967)*

*(Section 14 substituted by section 2 of Act 54 of 1987)*

*(Section 14 amended by section 1 (Schedule) of Act 49 of 1996)*

*(Section 14 substituted by section 10 of Act 38 of 1997)*

## **15. Use of certain marks may be prohibited**

- (1) The Minister may, after such investigation as he or she may think fit, by notice in the *Gazette*, prohibit either absolutely or conditionally the use of—

- (a) the National Flag, or any former National Flag, of the Republic; or
- (b) any mark, word, letter or figure or any arrangement or combination thereof,

in connection with any trade, business, profession, occupation or event, or in connection with a trade mark, mark or trade description applied to goods.

*(Section 15(1) substituted by section 11 of Act 38 of 1997)*

- (2) The Minister may, if he is satisfied that the circumstances require it, by 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.

## **15A. Abuse of trade mark in relation to event**

- (1)

- (a) The Minister may, after investigation and proper consultation and subject to such conditions as may be appropriate in the circumstances, by notice in the *Gazette* designate an event as a protected event and in that notice stipulate the date—
    - (i) with effect from which the protection commences; and
    - (ii) on which the protection ends, which date may not be later than one month after the completion or termination of the event.
  - (b) The Minister may not designate an event as a protected event unless the staging of the event is in the public interest and the Minister is satisfied that the organisers have created sufficient opportunities for small businesses and in particular those of the previously disadvantaged communities.
- (2) For the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organiser of such event.
- (3) For the purposes of subsection (2), the use of a trade mark includes—
- (a) any visual representation of the trade mark upon or in relation to goods or in relation to the rendering of services;
  - (b) any audible reproduction of the trade mark in relation to goods or the rendering of services; or
  - (c) the use of the trade mark in promotional activities,
- which in any way, directly or indirectly, is intended to be brought into association with or to allude to an event.
- (4) Any person who contravenes subsection (2) shall be guilty of an offence.
- (5) For the purposes of this section “trade mark” includes a mark.

*(Section 15A inserted by section 2 of Act 61 of 2002)*

**16.** ....

*(Section 16 substituted by section 12 of Act 38 of 1997)*

*(Section 16 repealed by section 121(2)(a) of Act 68 of 2008)*

**17.** ....

*(Section 17 amended by section 2 of Act 55 of 1967)*

*(Section 17 substituted by section 13 of Act 38 of 1997)*  
*(Section 17 repealed by section 121(2)(a) of Act 68 of 2008)*

## 18. Evidence

(1) .....

*(Section 18(1) amended by section 3 of Act 26 of 1951)*  
*(Section 18(1) deleted by section 14(a) of Act 38 of 1997)*

(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.

(3) If in the prosecution of any person for an offence referred to in section 7 it is proved that—

(a) the accused conducts business in goods of the same or similar type as the goods to which any false trade description was applied; and

(b) the goods—

(i) were found in possession of the accused; or

(ii) the existence of which the accused was aware of or could reasonably be expected to have been aware of, were found on or in premises of which the accused was on the particular day the owner, occupier, manager or person in charge,

it shall be presumed, until the contrary is proved, that the accused offered for sale or hire the goods.

*(Section 18(3) added by section 14(b) of Act 38 of 1997)*

19. ....

*(Section 19 repealed by section 15 of Act 38 of 1997)*

## 20. Penalties

(1)

(a) Any person convicted of an offence in terms of this Act, except section 5, shall be liable—

(i) in the case of a first conviction, to a fine not exceeding R5 000 for each article to which the offence relates or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;

- (ii) in any other case, to a fine not exceeding R10 000 for each article to which the offence relates or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

- (b) Any person convicted of an offence referred to in section 5 shall be liable to a fine or to imprisonment for a period not exceeding six months.

*(Section 20(1) substituted by section 16 of Act 38 of 1997)*

- (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 of all or any part of the goods in respect of which the offence was committed, and goods so ordered to be confiscated shall be disposed of as the Minister may direct.

## **21. Repeal of laws**

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.

### **21bis.....**

*(Section 21bis inserted by section 3 of Act 39 of 1952)*

*(Section 21bis substituted by section 3 of Act 55 of 1967)*

*(Section 21bis repealed by section 1 (Schedule) of Act 49 of 1996)*

*(Section 21bis again repealed by section 17 of Act 38 of 1997)*

## **22. Short title and commencement of Act**

This Act shall be called the Merchandise Marks Act, 1941, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*, which date shall not be earlier than six months after the date on which this Act is first published in the *Gazette* as a law.