

Merchandise Marks Ordinance

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[Hebrew version is controlling]

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Short Title

1. This Ordinance shall be cited as the Merchandise Marks Ordinance.

Interpretation

2. (1) In this Ordinance the following terms shall have the following meaning, except when the written text requires a different interpretation:
“false commercial description” means a commercial description which is factually false in respect of the goods to which the description is applied, and it includes every alteration of a commercial description, whether by addition, erasure or otherwise, when that alteration makes the description factually

false; even if that description is a trade mark or part of a trade mark, it shall not therefor cease being a false commercial description within the meaning of this Ordinance;

“goods” means anything which is the subject of commerce, manufacture or merchandise;

“name” includes any abbreviation of a name;

“person”, “manufacture”, “dealer”, and “owner” include any body of persons, corporate or unincorporated;

“commercial description” means any description, statement or other indication, direct or indirect –

(a) About the number, quantity, measure, gauge or weight of merchandise;

Or

(b) About the place or country where any merchandise was made or produced; or,

(c) About the way merchandise was manufactured or produced; or,

(d) About the material of merchandise is composed; or

(e) About any merchandise that is the subject of an existing patent, privilege or copyright;

And the use of any drawing, word or mark which, according to commercial custom, is commonly taken to be an indication of any of the above matters shall be deemed to be a commercial description within its meaning in this Ordinance;

(2) The provisions of this Ordinance on the use of a false commercial description in respect of goods shall apply to the use of drawing, word, sign, improvement or packaging or wrapping format, or to any combinations of drawings, words or signs, whether they include a trade mark or not, which are likely to encourage people to believe that the goods are the manufacture or merchandise of a person other than the true owner or producer of that merchandise.

(3) The provisions of this Ordinance in respect of application of a false commercial description to goods, or in respect of goods to which a false commercial description was applied, shall apply to the application of a false name or of false initials of a person to goods and to goods to which a false name or false initial of a person were applied, just as if that name or those initials were a commercial description, and for purposes of this Ordinance the expression “false name” or “initials”, when used in respect of any merchandise, shall mean any person’s name or initials of any person’s name –

(a) which are not a trade mark or part of a trade mark; and also

(b) are identical with the name or initials of a person who carries on business in connection with merchandise of the same description and who

did not permit use of such name or initials, or they are a colored imitation of that name or initials, and also

(c) are the name or initials of a fictitious person or of a person who does not really carry on a business in connection with that merchandise.

Designating merchandise other than citrus fruit with appellation of origin of citrus fruit

2A. (a) The designation of merchandise other than citrus fruit with the appellation "Yafo", or "Yafa", "Yafas", "Jaffa", or "Jaffas" - which are appellations of origin registered in Israel under the appellations of Origin (Protection) Law 5725-1965 as appellations of origin for the designation of citrus fruit - or with an appellation that includes an aforesaid appellation or is likely to be understood as such (in this section: protected appellation) shall be deemed a false commercial description within its meaning in section 2.

(b) For purpose of this section, it shall not matter if the appellation is accompanied by expressions such as "kind", "class", "type", "imitation", "merchandise from...", "merchandise manufactured" or the like, in whatever the language.

(c) Notwithstanding the provisions of subsection (a) -

(1) It is permitted to use a protected appellation in respect of citrus fruit products produced from citrus fruit which the protected appellation is intended to designate, if they meet additional conditions prescribed by the Minister of Industry and Commerce and by the Minister of Agriculture (Hereinafter: the Ministers) in regulations with approval of the Knesset Economic Committee, including conditions on the quality, method of production and of packaging of the products;

(2) the Ministers may, by regulation with approval by the Knesset Economic Committee, prescribe special circumstances under which they may permit the use of a protected appellation in respect of products to which paragraph (1) does not apply.

(d) In a criminal action for a false description under subsection (a), the Court shall not entertain any defense under the closing passage of section 3(1) or under section 15.

(e) If a person used a merchandise designation said in subsection (A) not in accordance with the provisions of this section, or if he deviated from the conditions set in the regulations made under subsection (c) or from the conditions of a permit granted under them, then the court may - on application by the Attorney-General or by an interested part - order that use of the designation to be discontinued, and it may make the order subject to conditions or stay its execution for a period of not more than six months, on conditions such as it deems appropriate.

- (f) If the Director of Customs and Excise or a person empowered by him for that purpose finds that merchandise designated in violation of this section is about to be exported, then the Director or that person may order a stay of its exports; notice of the stay order shall be given to the Attorney-General and to any person who – in the opinion of the person who makes the order has an interest that use of the designation be discounted.
- (g) A stay order under subsection (f) shall become void seven days after the day on which it was made, unless an action for designation of the merchandise in violation of this section or an application under subsection (e) in respect of the merchandise was submitted to the Court before then.
- (h) When an action or application said in subsection (g) has been submitted, then the stay order shall remain in effect until they are decided; however if a person deems himself injured by the stay order, then he may – at any stage of the proceedings – apply to the Court before which the action or the application is pending for cancellation of the order, and the Court may cancel the order or confirm it, with or without change, and it may make its effect conditional on surety being given for any damage to the applicant by upholding the order.

Offenses in respect of trade marks and commercial descriptions

- 3. (1) Every person –
 - (a) Repealed
 - (b) Repealed
 - (c) Repealed
 - (d) Who caused any of the things said above in this section to be done, shall be accused of an offence and be liable to imprisonment for one year or to a fine of one hundred pounds or to both penalties, subject to the provisions of this Ordinance and if he did not prove that he acted without intent to defraud.
 - (e) Repealed.
- (2) Every person who sells, exhibits for sale, or holds for sale or for any of the purposes of commerce or manufacture, any merchandise or thing designated by a trade mark or by a mark which resembles a trade mark near enough to deceive, all as the case may be, shall be accused of an offence and shall be liable to the penalties said in subsection (a), unless he proves that –
 - (a) after he took all reasonable precautions against committing an offence against this Ordinance, he had – when the offense of which he is accused was committed – no reason to suspect the genuineness of the trade mark, mark or commercial description, and that –

(b) when required by the prosecutor, he gave all the information he was able to give about the persons from whom he obtained that merchandise or those things, and that

(c) he otherwise acted in good faith.

4. Repealed

5. Repealed

Designating by mark or description

6. (1) A person shall be deemed to have designated merchandise by a trade mark or mark or commercial description, if he -

(a) Used it in respect of the merchandise itself; or

(b) Used it in a cover, label, reel or other thing in which the merchandise is sold, displayed or kept for purposes of sale, commerce or manufacture; or

(c) Placed, enclosed or attached it to a cover, label, reel or other thing designated by a trade mark or mark or commercial description of any merchandise which is sold, displayed, or kept for purposes of sold, commerce or manufacture; or

(d) Used a trade mark or mark or commercial description in any a manner likely to cause people to believe that the merchandise in respect of which the trade mark is used is designated or described by that trade mark or mark or commercial description.

(2) The term "cover" includes every stopper, jar, bottle, vessel, box, create, covering, capsule, case, frame or envelope, and the term "label" includes any band or card.

(2a) Merchandise delivered to an order made in reference to a trade mark or commercial description that appears on any sign advertisement, invoice, wine, list, business letter, business stationary or other commercial letter shall be deemed - for purposes of paragraph (d) in subsection (1) of this section - merchandise in respect of which a trade mark or commercial description is used.

(3) a trade mark or mark or commercial description shall be deems to have been used, whether it is woven into, stamped into or otherwise attached to the merchandise or to any cover, label, reel or other thing.

(4) a person shall be deemed to be designating merchandise falsely with a trade mark or mark, if he - without the consent of the owner of a trade mark - used the trade mark or a mark that resembles a trade mark near enough to deceive; but in any trial for the false use of a trade mark or mark on

merchandise, the burden of proving the owner's consent shall lie on the defendant.

Designation of Wine

6A. Repealed.

Onus of proof in respect of the name Jerusalem

6B. Affixing the name Jerusalem to merchandise or the use of a commercial description that includes the name Jerusalem shall be deemed a false commercial description, unless the person who affixes the name or uses the commercial description proves that he is lawfully entitled to do so.

Committee for approval of use of the name Jerusalem

6C. (a) The Minister of Industry and Commerce shall appoint a committee of three persons, at least one of them a resident of Jerusalem who is not a State employee, to certify that -

- (1) A certain merchandise was made or produced in Jerusalem;
- (2) That it is permissible to affix the name Jerusalem to any merchandise, otherwise than as a commercial description, when - even though the merchandise was not made or produced in Jerusalem - special conditions and special circumstances justify doing so.

(b) If a person was granted certification under subsection (a), then he may affix the name Jerusalem or use it in accordance with the said certification.

(c) The Committee may, on application by an interested person, cancel certification given under this section, if it finds that the certification should not have been given or that circumstances have changed justifying its cancellation, on condition that it give the person who acts under the certification an opportunity to state his arguments.

(d) The committee shall give reasons for its decision, give notice of it to the persons who were parties before it and make it public.

(e) If the committee refused a person's application for giving or cancelling a certification, or if his certification was cancelled, then he may object to the Committee's decision - within thirty days after the day on which the decision came to his knowledge - object to it before the Minister of Industry and Commerce, and the Minister may uphold, cancel or change the decision.

Saving of other Provisions

6D. The provisions of sections 6B and 6C shall add to, and not derogate from the provisions of any enactment.

Exemption of certain persons employed in ordinary course of business

7. If a defendant is charged with falsely designating any merchandise with a trade mark or with a mark that resembles a trade mark near enough to deceive, with applying a false commercial description to merchandise, or with causing any other things said in this section to be done, and if proves that –
 - (a) His ordinary business is to work for other person in designating merchandise with marks or description, and that in the pending case that is the subject of the charge he was so employed by a person resident of Israel and has no interest in the merchandise in order to obtain profits or commissions that depend on the sale of the merchandise, and that –
 - (b) He took sufficient precautions against committing the offense with which he is charged, and that –
 - (c) When the alleged offense was committed he had no reason to suspect that the trade mark, or mark or commercial description is not genuine, and that
 - (d) He gave to the prosecutor all the information he could give in connection with the persons in whose name he designated with the trade mark, mark or commercial descriptionThen he shall be discharged from the criminal trial, but shall be liable to pay the costs incurred by the prosecutor, unless he gave him due notice that he will rely on the above defense arguments.

8. Repealed

9. Repealed

Rule on testimony

10. In a trial under this Ordinance in respect of imported merchandise, testimony about the port of shipment shall be prima facie testimony of the place or country in which the merchandise were made or produced.

Penalty of an accomplice

11. Any person within Israel, and he performs, helps or assists or becomes an accomplice in the performance of an act outside the territory of Israel, which had it been performed within Israel would be considered an offense according to this Ordinance, shall be charged with such offense as a principal offender and shall be liable to be sued, tried and complete his sentence in Israel, as though the offense was committed in Israel.

Search Warrant

12. (1) Where charges were brought against a person for an offense according to this Ordinance and it became clear to the judge on the basis of information given to him under oath that there is reasonable grounds to believe that the

merchandise or thing through which or to which such offence was committed is found in one of the houses or places of residence of the defendant or that they he is in the possession or in care thereof in any other way, then the judge may issue a search warrant in accordance with the provisions of the Penal Procedure Ordinance (Imprisonment and Searches) and any merchandise or thing seized vis-à-vis such warrant shall be brought before the judge to decide whether they are confiscatable under this Ordinance.

(2) a merchandise or any other thing which would have been expected to be confiscated under this Ordinance had their owners been so required under the law, and the owner thereof are unknown or cannot be found, then it shall be permissible to file a statement of charges or a complaint for purpose of confiscation only, and a judge of the Magistrates Court may order to publish a notification stating that the merchandise or things shall be confiscated a time and place enumerated in such notification, except if doing so is impossible; and where the owner of the merchandise or things or any other person who may be interested in such merchandise or things did not appear and gave reason to not confiscate the things, then the judge may order to confiscate the merchandise or things, in whole or in part, in the time and place enumerated in the notification.

(3) Any merchandise or thing confiscated under this section or under any other provision under this Ordinance may be destroyed or sold in any other manner first after any trade marks and commercial marks are erased or blurred in such a manner as the court may find suitable; the court may, out of the revenue received through such sale, award any party that vindicated from guilt any compensation for loss unjustly incurred due to handling the merchandise.

Trial Restriction

13. No person shall be brought to trial for an offense under this Ordinance after three years from the date of offense, or after one year from the date it was first discovered by the plaintiff, and all before the end of the earlier period.

Prohibition on import of merchandise liable to confiscation under this Ordinance

14. (1) It shall be prohibited to import to Israel any merchandise which, if sold, shall be liable to confiscation under this Ordinance, and any foreign made merchandise bearing a mark or a trade mark which are or intended to be the mark or trade mark of a trader or dealer in Israel, where such mark or trade mark was not affixed by a clear indication of the country in which such merchandise was manufactured or produced; subject to the provisions of this section such merchandise shall be included in the total of merchandise prohibited to import to Israel as though such prohibition was expressly

extended to the importer in Custom laws in force at the time in Israel, and where the merchandise was imported or brought into Israel, the Commissioner of Customs and Excise may, according to his discretion, confiscate it or deliver it to its owners after they have met the conditions which the Commissioner of Customs and Excise deems to be appropriately applicable, and where the merchandise has been confiscated, it shall be possible to confiscate it or do with it any other action as so ordered by the Minister of Industry and Commerce.

(2) The Commissioner of Customs and Excise and any other person which the Minister of Industry and Commerce empowered by an order, are entitled to convert the punishment of a person who committed an offense under the provisions of this Ordinance or which committed an act in contrary thereto, in receiving monetary ransom, not exceeding the maximum fine imposed for such an offense under this Ordinance.

(3) The Minister of Industry and Commerce may enact regulations with regards to the stopping or confiscating merchandise whose import is prohibited under this section, and with regards to conditions necessary to meet prior to any stopping or confiscating; and the regulations which prescribe the details, the notifications and the guarantee to be delivered, and the necessary testimony for any requirement of the requirements under this section and the manner of compliance with such testimony.

15. The provisions of this Ordinance with regards to false description shall not apply in certain cases, such as where on the date of commencement of this Ordinance, the false description was used in a general manner and in good faith with regards to a category or description of merchandise to indicate that such merchandise is of a certain category or was manufactured in a unique method, then such thing shall not be considered to be a false description within the meaning of the provisions of the Ordinance; provided that if such description as used on the merchandise may still mislead persons as to the country or place in which the merchandise is manufactured or produced, the above provisions shall not apply, unless such description was affixed, in proximity to the name of such place or country , before or after which, an indication of the origin of the merchandise, where such merchandise is imported, or a notification aimed at preventing a fraudulent act, where such merchandise is different.

15A-15F. Repealed

Reservations

16. Nothing stated in this Ordinance shall –

- (a) Exempt any person from trial or a legal negotiation which would have been brought before them had it not been for the provisions of the Ordinance; or
- (b) be interpreted in such a way that an official of a person who acts in good faith and in obeying the instructions of his employer and in accordance with a request by the plaintiff, or that on whose behalf he delivered complete news of his employer, be subject to trial or punishment.