

CHAPTER 313

TRADE DESCRIPTIONS ACT

To make provisions prohibiting misdescriptions of goods, services, accommodation and facilities provided in the course of trade; to prohibit false information or misleading indications as to the price of goods and for other matters connected therewith or ancillary thereto.

1st September, 1986

ACT XXII of 1986, as amended by Acts XXVIII of 1994 and XIX of 2000; and Legal Notice 424 of 2007.

- 1.** The short title of this Act is the Trade Descriptions Act. Short title.
- 2.** (1) In this Act, unless the context otherwise requires - Interpretation.
 "advertisement" includes a catalogue, a circular and a price list; *Amended by:*
XXVIII.1994.45;
XIX.2000.22.
 "conformity mark" shall have the same meaning assigned to it in article 2 of the Malta Standards Authority Act; Cap. 419.
 "goods" means things offered for sale by way of trade in or from Malta;
 "Minister" means the Minister responsible for consumer affairs;
 "person" includes also a body corporate established by law and a government department;
 "premises" includes any place and any stall or vehicle;
 "registered consumer association" means a consumer association registered in accordance with the provisions of the Consumer Affairs Act; Cap. 378.
 "services" means any service offered by way of trade in or from Malta.
- (2) For the purpose of this Act, a trade description or statement published in any newspaper, book or periodical, or in any film or sound or television broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement.
- 3.** (1) Any person who, in the course of a trade or business - Prohibition of false trade descriptions.
 (a) applies a false trade description to any goods; or
 (b) supplies or offers to supply any goods to which a false trade description is applied,
 shall, subject to the provisions of this Act, be guilty of an offence.
- (2) Articles 4 to 8 of this Act shall have effect for the purposes of this article and for the interpretation of expressions used in this article, wherever they occur in this Act.
- 4.** (1) A trade description is an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods or as the case may be, in Trade description.
Amended by:
XIX.2000.22.

respect of any services or part of a service, that is to say:

- (a) quantity, size or gauge;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in the preceding paragraphs;
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a type approved by any person;
- (h) the use of any conformity mark, or of any imitation thereof likely to deceive, or of any other indication or statement likely to be construed as, indicating that the goods or services conform to standards issued by any body or authority;
- (i) place or date of manufacture, production, processing or reconditioning;
- (j) person by whom manufactured, produced, processed or reconditioned;
- (k) other history, including previous ownership or use;
- (l) guarantee as to repairs or substitution;
- (m) expiry date or shelf life.

(2) The matters specified in subarticle (1) of this article shall, in relation to any animal, be taken to include sex, breed or cross-breed, fertility and soundness.

(3) In this article "quantity" includes length, width, height, area, volume, capacity, weight and number.

False trade description.

5. (1) A false trade description is a trade description which is false to a material degree.

(2) A trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in article 4 of this Act as would be false to a material degree, shall be deemed to be a false trade description.

(3) Anything which, though not a trade description is likely to be taken for an indication of any of those matters and, as such an indication, would be false to a material degree, shall be deemed to be a false trade description.

(4) A false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognised by any person or implied by the approval of any person shall be deemed to be a false trade description, if there is no such person or no standard so specified, recognised or implied.

- 6.** (1) A person applies a trade description to goods if he - Application of trade description.
- (a) affixes or annexes it to or in any manner marks it on or incorporates it with -
 - (i) the goods themselves, or
 - (ii) anything in, on or with which the goods are supplied; or
 - (b) places the goods, in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or
 - (c) uses the trade description in any manner likely to be taken as referring to the goods.
- (2) An oral statement may amount to the use of a trade description.
- (3) Where goods are supplied in pursuance of a request in which a trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that trade description, the person supplying the goods shall be deemed to have applied that trade description to the goods.
- 7.** (1) The following provisions of this article shall have effect where in an advertisement a trade description is used in relation to any class of goods. Trade descriptions used in advertisements.
- (2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published -
- (a) for the purpose of determining whether an offence has been committed under article 3(1)(a) of this Act; and
 - (b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under article 3(1)(b).
- (3) In determining for the purposes of this article whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.
- 8.** A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer to supply them. Offer to supply.
- 9.** Where it appears to the Minister - Definition orders.
Amended by:
XIX. 2000.22.
- (a) that it would be in the interest of persons to whom any goods or services are supplied; or
 - (b) that it would be in the interest of persons by whom any

goods or services are exported and would not be contrary to the interest of persons to whom such goods or services are supplied in Malta;

that any expressions used in relation to the goods or services should be understood as having definite meanings, the Minister may by order assign such meanings either -

- (i) to those expressions when used in the course of a trade or business as, or as part of, a trade description applied to the goods or services; or
- (ii) to those expressions when so used in such circumstances as may be specified in the order;

and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when used as mentioned in paragraph (i) or, as the case may be, paragraph (ii) of this article.

Marking orders.

10. (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are supplied that the goods should be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods, the Minister may, subject to the provisions of this Act, by order impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given.

(2) Where an order under this article is in force with respect to goods of any description, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the order shall, subject to the provisions of this Act, be guilty of an offence.

(3) An order under this article may make different provision for different circumstances and may, in the case of goods supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

Information, etc.,
to be given in
advertisements.
Amended by:
XIX. 2000.22.

11. (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods or services are to be supplied that any description of advertisements of the goods or services should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods or services the Minister may, subject to the provisions of this Act, by order impose requirements as to the inclusion of that information, or of an indication of the means by which it may be obtained, in such description of advertisements of the goods or services as may be specified in the order.

(2) An order under this article may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make

different provisions for different circumstances.

(3) Where an advertisement of any goods or services to be supplied in the course of any trade or business fails to comply with any requirement imposed under this article, any person who publishes the advertisement shall, subject to the provisions of this Act, be guilty of an offence.

12. A requirement imposed by an order under article 10 or article 11 of this Act in relation to any goods shall not be confined to goods manufactured or produced in any one country or any one of a number of countries or to goods manufactured or produced outside any one or more countries, unless -

Provisions supplementary to articles 10 and 11.

- (a) it is imposed with respect to a description of goods in the case of which the Minister is satisfied that the interest of persons in Malta to whom goods of that description are supplied will be sufficiently protected if the requirement is so confined; and
- (b) the Minister is satisfied that the order is compatible with the international obligations of Malta.

13. (1) If any person offering to supply goods or services of any description gives, by whatever means, any false indication to the effect that the price at which the goods or services are offered is equal to or less than -

False or misleading indications as to the price of goods.

- (i) the price fixed by the manufacturer, or by the importer or by any authority for such goods or services; or
- (ii) the price at which the goods or services, or goods or services of the same description were previously offered by him;

or is less than such a price by a specified amount, he shall, subject to the provisions of this Act, be guilty of an offence.

(2) If any person offering to supply any goods or services gives, by whatever means, any indication likely to be taken as an indication that the goods or services are being offered at a price less than that at which they are in fact being offered he shall, subject to the provisions of this Act, be guilty of an offence.

(3) For the purposes of this article an indication that goods or services were previously offered at a higher price or at a particular price -

- (a) shall be treated as an indication that they were so offered by the person giving the indication unless it is expressly stated that they were so offered by others and it is not expressed or implied that they were, or might have been, so offered also by that person; and
- (b) shall be treated, unless the contrary is expressed, as an indication that they were so offered within the preceding six months for a continuous period of not less than twenty-eight days.

False representation as to prize, award or approval.

14. (1) If any person, in the course of any trade or business gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him or any methods adopted by him are of a kind that has been awarded any prize or any award, or are of a kind supplied to or approved by any person or authority, he shall, subject to the provisions of this Act, be guilty of an offence.

(2) If any person in the course of any trade or business, uses without the proper authority any device or emblem signifying any award, prize or approval or anything so nearly resembling such a device or emblem as to be likely to deceive, he shall, subject to the provisions of this Act, be guilty of an offence.

False or misleading statements as to services, etc.

15. (1) It shall be an offence for any person in the course of any trade or business -

- (a) to make a statement which he knows to be false; or
- (b) recklessly to make a statement which is false, as to any of the following matters, that is to say:
 - (i) the provision in the course of any trade or business of any services, accommodation or facilities;
 - (ii) the nature of any services, accommodation or facilities provided in the course of any trade or business;
 - (iii) the time at which, manner in which or persons by whom any services, accommodation or facilities are so provided;
 - (iv) the examination, approval or evaluation by any person of any services, accommodation or facilities so provided; or
 - (v) the location or amenities of any accommodation so provided.

(2) For the purposes of this article -

- (a) anything (whether or not a statement as to any of the matters specified in the preceding subarticle) likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; and
- (b) a statement made regardless of whether it is true or false shall be deemed to be made recklessly, whether or not the person making it had reasons for believing that it might be false.

(3) In relation to any services consisting of or including the application of any treatment or process or the carrying out of any repair, the matters specified in subarticle (1) of this article shall be taken to include the effect of the treatment, process or repair.

(4) In this article "false" means false to a material degree and "services" does not include anything done under a contract of employment, apprenticeship or other similar contract.

16. Where it appears to the Minister that it would be in the interest of persons for whom any services, accommodation or facilities are provided in the course of any trade or business that any expressions used with respect thereto should be understood as having definite meanings, the Minister may by order assign such meanings to those expressions when used as, or as part of, such statements as are mentioned in article 15 of this Act with respect to those services, accommodation or facilities; and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when so used.

Orders defining terms for purposes of article 15.

17. Where a false trade description is applied to any goods outside Malta and the false indication, or one of the false indications, given, or likely to be taken as given, thereby is an indication of the place of manufacture, production, processing or reconditioning of the goods or any part thereof, the goods shall not be imported into Malta.

Prohibition of importation of goods bearing false indication of origin.

18. (1) Without prejudice to any liability under any other law, a person guilty of an offence under this Act, other than an offence under article 23 or 24, shall, on conviction, be liable to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94) but not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Penalty for offences.
Amended by:
XIX. 2000.22;
L.N. 424 of 2007.

(2) In every case of conviction for an offence against this Act, the Court may, and at the request of the prosecution shall -

- (a) order the forfeiture of any goods to which the offence relates; and
- (b) suspend for a period of not more than three months as the court may deem proper any licences in the name of the person convicted relating to the provision of goods or the supply of services.

19. Where the act or omission constituting an offence under this Act which has been made or omitted by any person is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this article whether or not proceedings are taken against the first mentioned person.

Offences due to fault of other person.

20. (1) In any proceedings for an offence under this Act it shall, subject to subarticle (2) of this article, be a defence for the person charged to prove -

Defence of mistake or accident.

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by the foregoing

subarticle involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not be entitled to rely on that defence unless immediately after the reading out of the charge he shall have served the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In any proceedings for an offence under this Act of supplying or offering to supply goods to which a false trade description is applied it shall be a defence for the person charged to prove that he did not know, and could not with reasonable diligence, have ascertained that the goods did not conform to the description or that the description had been applied to the goods.

Innocent
publication of
advertisement.

21. In proceedings for an offence under this Act committed by the publication of an advertisement it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Act.

Power to enter
premises and
inspect and seize
goods and
documents.
Amended by:
XXVIII.1994.45.

22. (1) Without prejudice to the powers and duties of the Executive Police, any public officer in the Department of Consumer Affairs duly authorised by the Minister may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say -

- (a) he may, for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
- (b) if he has reasonable cause to suspect that an offence under this Act has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document;
- (c) if he has reasonable cause to believe that an offence under this Act has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;
- (e) he may, for the purpose of exercising his powers under this subarticle to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any order made

thereunder are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.

(2) A public officer duly authorised as aforesaid seizing any goods or documents in the exercise of his powers under this article shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietors or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) An officer entering any premises by virtue of this article may take with him such other persons authorised by the Minister and such equipment as may appear to him necessary.

23. Without prejudice to any other liability under this or any other law, if any person discloses to any person -

- (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this Act; or
- (b) any information obtained by him in pursuance of this Act,

Disclosure of information, etc.
Amended by:
L.N. 424 of 2007.

he shall, unless the disclosure was made in or for the purpose of the performance by him or any other person of functions under this Act, be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a term of not less than four months but not exceeding two years, or to both such fine and imprisonment.

24. Without prejudice to any other liability under this or any other law any person who -

- (a) wilfully obstructs a Police officer or a public officer acting in pursuance of this Act; or
- (b) wilfully fails to comply with any requirement properly made to him by any such officer under this Act; or
- (c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act; or
- (d) gives such information as is mentioned in the last preceding paragraph which he knows to be false,

Obstruction of authorised officers.
Amended by:
L.N. 424 of 2007.

shall be guilty of an offence and liable, on conviction, to a fine (*multa*) of not less than twenty-three euro and twenty-nine cents (23.29) but not exceeding one hundred and sixteen euro and forty-seven cents (116.47) and where the act or omission constituting the offence subsist for more than a day, the court shall in addition impose a fine (*multa*) of not less than twenty-three euro and twenty-nine cents (23.29) and not more than one hundred and

	sixteen euro and forty-seven cents (116.47) for each day in which such act or omission subsist.
Notice of test and intended prosecution.	<p>25. Where any goods seized or otherwise acquired by an officer in pursuance of this Act are submitted to a test, then -</p> <p>(a) if the goods were seized, the officer shall inform the person from whom the goods were seized of the result of the test;</p> <p>(b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Act, the officer shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in article 22(2) of this Act, of the result of the test.</p>
Trade marks containing trade descriptions.	<p>26. The fact that a trade description is a trade mark, or part of a trade mark, does not prevent it from being a false trade description when applied to any goods.</p>
Country of origin.	<p>27. (1) For the purposes of this Act goods shall be deemed to have been manufactured or produced in the country in which they last underwent a treatment or process resulting in a substantial change.</p> <p>(2) The Minister may by order specify -</p> <p>(a) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this article as resulting or not resulting in a substantial change;</p> <p>(b) in relation to any description of goods, different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of this Act as having been manufactured or produced.</p>
Market research experiment.	<p>28. (1) Articles 3 and 10 of this Act shall not apply in relation to goods supplied or offered to be supplied, whether to a participant or any other person, in the course of a market research experiment to which this article applies.</p> <p>(2) In this article "market research experiment" means any activities conducted for the purpose of ascertaining the opinion of persons (in this article referred to as "participants") of -</p> <p>(a) any goods; or</p> <p>(b) anything in, on or with which the goods are supplied; or</p> <p>(c) the appearance or any other characteristic of the goods or of any such thing; or</p> <p>(d) the name or description under which the goods are supplied.</p> <p>(3) This article applies to any market research experiment with</p>

respect to which the following conditions are satisfied, that is to say:

- (a) that any participant to whom any goods are supplied in the course of the experiment is informed, at or before the time at which they are supplied to him, that they are supplied for such a purpose as is mentioned in subarticle (2) of this article, and
- (b) that no consideration in money or money's worth is given by a participant for the goods or any goods supplied to him for comparison.

29. Criminal action for offences under this Act, other than offences under articles 23 and 24 of this Act shall be barred by prescription after the lapse of one year.

Limitation of actions and prosecutions.

30. (1) Criminal proceedings for any offence against any provision of this Act shall be instituted by the Police *ex officio*, provided that in proceedings other than for an offence under articles 23 and 24 of this Act, a representative of a registered consumer association, duly appointed for the purpose, shall be deemed to be an injured party for the purposes of the provisions of article 410(3) of the Criminal Code, and such representative may assist the prosecuting officer in such proceedings.

Criminal proceedings.
Amended by:
XXVIII. 1994.45;
L.N. 424 of 2007.

Cap. 9.

(2) Where the evidence of such representative is to be given in any case in which he is to assist the prosecuting officer, such evidence shall be given before other evidence, unless the need for his evidence arises at a later stage of the proceedings.

(3) Where any offence under or against any provision contained in this Act, is committed by a body corporate established by law or by a Government department, every person who, at the time of the commission of the offence, was chairman, manager, secretary, head or other similar officer of the body corporate or department, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that he exercised due diligence to prevent the commission of the offence, or that notwithstanding that he exercised such diligence the offence was committed without his knowledge.

(4) Where an offence under this Act has been committed by the publication of an advertisement, the court may in the judgment order, order in the case of a newspaper or other similar publication, that in a subsequent issue thereof not later than the next but one, and in the case of a broadcasting medium within a week immediately following the day on which the judgment is given, the judgment itself or a comprehensive summary thereof be published or broadcast, as the case may require, in the same language in which the offence was committed, at the expense of the offender; and if at the time of the judgment or immediately thereafter the newspaper or other similar publication had ceased publication or the broadcasting medium has ceased to operate, or in the case of any other printed matter, the court may in the judgment or in a subsequent order, order that that judgment or summary be published or broadcast, at the expense of the party convicted, in

another newspaper or on another medium within a period not exceeding one month.

(5) In default of compliance with any order referred to in subarticle (4) of this article the party convicted shall be liable to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
