

**TRADE DESCRIPTIONS
ACT 1972 (ACT 87),
REGULATIONS & ORDERS**

(AS AT 15TH AUGUST 1999)

TRADE DESCRIPTIONS ACT, 1972

(Act 87)

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TRADE DESCRIPTIONS ACT, 1972*

(Act 87)

An Act to consolidate and amend the laws relating to merchandise marks with new provisions prohibiting misdescription of goods provided in the course of trade and false or misleading indications as to the price of goods to confer power to assign the meaning of any expression or indication used in relation to the prices of goods, charges or rates for services, accommodation or facilities and to regulate, control or prohibit the use thereof in the course of trade or business; to prohibit the making of false or misleading statements as to any services, accommodation or facilities provided in the course of a trade or business; to confer power to require information or instructions relating to goods to be marked on or to accompany the goods or to be included in advertisements; and for related purposes.

[Am. Act
A 672]

[3.11.1972]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:

PART I PRELIMINARY

1. Short title, commencement and application.

(1) This Act may be cited as the **Trade Descriptions Act, 1972**, and shall come into force on such date as the Minister may by notification in the *Gazette* appoint.

(2) This Act shall apply to the whole of Malaysia.

2. Interpretation.

In the interpretation of this Act, in addition to the definitions contained in sections 4 to 8, unless the context otherwise requires—

“advertisement” includes every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, circulars, labels, cards or other documents or materials or by the exhibition of films or of pictures or photographs, or by means of radio or television, or in any other way;

[Am. Act
A 539]

*Enacted in 1950 as *Merchandise Marks Ordinance 1950 (F.M. Ord. 10 of 1950)*. Revised in 1972 and published as *Trade Descriptions Act 1972, Laws of Malaysia Act 87*. As amended by Act A 539, A672 and A880.

“Controller”, “Deputy Controller” and “Assistant Controller” means respectively the Controller of Trade Descriptions, the Deputy Controller of Trade Descriptions and the Assistant Controller of Trade Descriptions appointed under section 26;

“goods” includes ships, aircraft, vehicles, animals, plants and growing crops and all kinds of movable property;

[*Ins. Act*
A880]

“precious metal” means gold, silver or platinum in its fine form or gold, silver or platinum alloy;

“premises” includes any place and any stall, vehicle, ship or aircraft;

[*Ins. Act*
A539]

“publish”, in relation to an advertisement, means to place the advertisement before the public or any member of the public by any means whatsoever, and “publication” shall be construed accordingly;

“ship” includes any boat and any other description of vessel used in navigation; and

[*Ins. Act*
A880]

“standard of fineness”, in relation to articles made of precious metals, means the number of parts by weight of fine gold, silver or platinum in one thousand parts by weight of precious metal;

“trade description order” means an order of the High Court made under section 16.

PART II

PROHIBITION OF FALSE TRADE DESCRIPTIONS

3. Prohibition of false trade descriptions.

(1) Any person who, in the course of a trade or business—

- (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 be guilty of an offence.

(2) The terms used in this section and wherever else they occur in this Act shall be interpreted in accordance with the provisions of sections 4 to 8.

4. Trade descriptions.

(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, that is to say—

- (a) nature or designation;
- (aa) quantity, size or gauge;

- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) the standard of fineness of articles made of precious metals; *[Subs. Act A880]*
- (f) any physical characteristics not included in the preceding paragraphs;
- (g) testing by any person and results thereof;
- (gg) quality otherwise than as specified in the preceding paragraphs;
- (h) approval by any person or conformity with a type approved by any person;
- (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.

(2) The matters specified in subsection (1) of this section shall be taken—

- (a) in relation to any animal, to include sex, breed or cross, fertility and soundness;
- (b) in relation to any semen, to include the identity and characteristics of the animal from which it was taken and measure of dilution.

(3) In this section “quantity” includes length, width, height, area, volume, capacity, weight and number.

(4) Where the application of any description is prohibited under the provisions of any of the laws specified in the First Schedule except where applied to goods which comply with the requirements of that law no such description applied in accordance with the requirements of that law shall be a false

trade description, and the Minister may by order add to, delete from amend or modify the First Schedule.

(5) For the purposes 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 a statement made in the course of a trade or business unless it is or forms part of an advertisement.

5. False trade descriptions.

(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 section 4 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 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. Applying a trade description to goods.

(1) A person applies a trade description to goods if he—

(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 description, the person supplying the goods shall be deemed to have applied that trade description to the goods.

7. Trade descriptions used in advertisements.

(1) The following provisions of this section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

(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 paragraph (a) of section 3 (1); 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 paragraph (b) of section 3 (1).

(3) In determining for the purposes of this section 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.

7A. Presumption of liability on advertisers, etc.

The following persons shall, unless the contrary is proved, be deemed to have applied a trade description in any advertisement: [Ins. Act
A 539]

(a) the person who directly or indirectly offers to supply the goods or services;

(b) the person on whose behalf the advertisement is made.

8. Offer to supply.

A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer or supply them.

9. Trade marks containing trade descriptions.

A trade description which is or is contained in a trade mark within the meaning of any written law relating to trade marks or part of such a trade mark may be a false trade description when applied to any goods, except where all of the following conditions are satisfied—

- (a) that it could have been lawfully applied to the goods if this Act had not been passed;
- (b) that on the date of the publication of this Act the trade mark either is registered under the written law relating to trade marks or is in use to indicate a connection in the course of trade between such goods and the proprietor of the trade mark;
- (c) that the trade mark as applied is used to indicate such a connection between the goods and the proprietor of the trade mark or a person registered under the written law relating to trade marks as a registered user of the trade mark; and
- (d) that the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on the date of the publication of this Act.

PART III

POWERS TO DEFINE TERMS AND TO REQUIRE INFORMATION TO BE GIVEN

*10. Definition orders.

Where it appears to the Minister—

- (a) that it would be in the interest of persons to whom any goods are supplied; or
- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Malaysia,

that any expressions used in relation to the goods 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 trade or business as, or as part of, a trade description applied to the goods; 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 section.

* Trade Descriptions (Use of Expression "Halal") Order, 1975. See P.U. (A) 91 & 237/1975.

***11. Marking orders.**

(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 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 section 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 be guilty of an offence.

(3) An order under this section 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.

12. Information etc., to be given in advertisements.

(1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are to be supplied that any description of advertisements of the goods should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods the Minister may 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 as may be specified in the order.

(2) An order under this section 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 provision for different circumstances.

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

* Trade Descriptions (Marking of Food) Order, 1975. See P.U. (A) 298/1975.

13. Provisions supplementary to sections 11 and 12.

(1) A requirement imposed by an order under section 11 or section 12 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—

(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 Malaysia 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 Malaysia.

(2) Where any requirements with respect to any goods are for the time being imposed by such an order and the Minister is satisfied, on the representation of persons appearing to the Minister to have a substantial interest in the matter, that greater hardship would be caused to such persons if the requirements continued to apply than is justified by the interest of persons to whom such goods are supplied, the power of the Minister to relax or discontinue the requirements by a further order may be exercised without the consultation and notice required by section 38 (2).

PART IV

MISSTATEMENTS OTHER THAN FALSE TRADE DESCRIPTIONS

14. False and misleading indications as to price of goods.

(1) If any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than the recommended price, he shall be guilty of an offence. *[Subs. Act
A 672]*

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

(3) For the purposes of this section—

(a) an indication as to a recommended price—

(i) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended by the manufacturer or producer; and

(ii) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended generally for supply by retail in the area where the goods are offered;

(b) anything likely to be taken as an indication as to a recommended price shall be treated as such indication; and

(c) any person advertising goods as available for supply shall be taken as offering to supply them.

(4) Where any person is charged with an offence under this section the onus of proving the existence and terms of any recommended price relied upon or that the requirements of subsection (3) have been complied with shall be upon the person charged.

14A. Price deemed to include tax.

Where in any advertisement the price of any goods or services is quoted, such price shall, unless the contrary appears, be deemed to include all government taxes, duties and any other charges.

15. False representation as to supply or approval of goods or services.

(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 or are of a kind supplied to or approved by any person including any government or government department or agency or any international body or agency whether in Malaysia or abroad, he shall be guilty of an offence.

(2) The provisions of subsection (1) shall have effect without prejudice to the provisions of any written law prohibiting or restricting the use of any name, emblem, insignia, seal, flag, pennant, title, coat of arms, sign, words or letters or any other form of description in the course of trade, business, calling or profession.

15A. False or misleading statements as to services, etc.

(1) It shall be an offence for any person in the course of any trade or business— *[Ins. Act
A 539]*

- (a) to make a statement which he knows to be false;
- (b) recklessly to make a statement which is false; or
- (c) to make any statement which is likely to deceive or mislead any person,

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;
- (v) the location or amenities of any accommodation so provided; or
- (vi) the rates or charges for any services, accommodation or facilities so provided. *[Ins. Act
A 672]*

(2) For the purposes of this section—

- (a) anything (whether or not a statement as to any of the matters specified in the preceding subsection) 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 reason 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 subsection (1) shall be taken to include the effect of the treatment, process or repair.

(4) In this section, "false" means false to a material degree and "service" does not include anything done under a contract of service.

16. Trade mark infringement and passing off action.

(1) Where any person being a proprietor or registered user of a registered trade mark within the meaning of any written law relating to trade marks or being otherwise entitled at law to the protection of a trade or other mark or a get-up for any goods or services established—

- (a) in the case of a registered trade mark, that his rights in respect of such trade mark are being infringed in the course of trade within the meaning of the written law; or
- (b) in the case of a trade or other mark or get-up for any goods or services, that his rights in respect of such trade or other mark or get-up are being infringed in the course of trade as a result of which he has a right of action for passing off,

the High Court may on the application of such person make an order declaring that the infringing trade or other mark or get-up as the case may be is for purposes of this Act a false trade description in its application to such goods as may be specified in the order.

(2) An order of the High Court made under this section may be referred to as a trade description order.

(3) A subsisting trade description order made by any High Court in Malaysia shall be admissible in evidence in any proceedings under this Act in which it is relevant as conclusive proof of a false trade description.

(4) A trade description order shall expire at the end of five years from the date on which it is made unless it is renewed by the High Court upon such terms and for such further period of time as the High Court may decide on the application of the person referred to in subsection (1) or his successor in title.

(5) The Minister shall cause a public register of trade description orders to be established and maintained.

PART V

PROHIBITION OF IMPORTATION OF CERTAIN GOODS

17. Prohibition of importation of goods bearing false indication of origin.

Where a false trade description is applied to any goods outside Malaysia 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 Minister may make an order prohibiting the import of the goods into Malaysia.

PART VI

PROVISIONS AS TO OFFENCES

18. Penalty for offences.

(1) Any person, other than a body corporate, but including a director, manager, secretary or other similar officer of a body corporate, guilty of an offence under this Act or regulations made thereunder for which no other penalty is specified shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both and, for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding six years or to both.

*[Am. Act
A 539 &
A 672]*

(2) Any person being a body corporate guilty of an offence under this Act or regulations made thereunder for which no other penalty is specified shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit and, for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit.

*[Am. Act
A 672]*

19. Time limit for prosecution.

No prosecution for an offence under this Act shall commence after the expiration of—

- (a) three years from the commission of the offence; or
 - (b) one year from its discovery by the prosecutor,
- whichever is the earlier :

Provided that it shall not be a bar to the commencement of a prosecution for an offence under this Act notwithstanding the expiry of the period specified in the above paragraph (b) if the Public Prosecutor certifies in writing that the accused by his own conduct contributed to the delay in the commencement of the prosecution.

20. Offences by corporations.

[Am. Act
A 539]

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he and that body corporate shall both be guilty of that offence and shall be liable to be proceeded against and punished accordingly as specified in section 18 (1) and 18 (2).

(2) Where a body corporate is convicted of an offence in respect of which the provisions of this section are applied that conviction shall not be taken into account in assessing the penalty to be imposed upon that body corporate for any other offences under this Act.

[Am. Act
A 539]

(3) In this section and in section 18 (1) "director", in relation to any body corporate established by or under any law for the purpose of carrying on any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, includes a member of that body corporate.

20A. Principal liable for acts of servant or agent.

[Ins. Act
A 539]

Where the agent or servant of a person commits an offence or does anything or omits to do anything (which if done or omitted to be done by that person would constitute

an offence under this Act), that person shall, notwithstanding that he has no knowledge of the offence, be deemed to be guilty of the offence and shall be liable to punishment for the offence unless he proves that—

- (a) the act or omission complained of was not within the ordinary scope of the employment of the servant or of the agency of the agent; or
- (b) the act or omission complained of was done or omitted to be done without his consent or connivance and that he exercised all such diligence to prevent the commission or omission as he ought to have exercised having regard to all the circumstances of the case.

21. Abetting of offences committed abroad.

(1) Any person who, in Malaysia, assists in or induces the commission in any other country of an act in respect of goods which, if the act were committed in Malaysia, would be an offence under section 3 of this Act shall be guilty of an offence, except as provided by subsection (2) of this section, but only if either—

[Ins. Act
A 539]

- (a) the false trade description concerned is an indication (or anything likely to be taken as an indication) that the goods or any part thereof were manufactured, produced, processed or reconditioned in Malaysia; or
- (b) the false trade description concerned—
 - (i) consists of or comprises an expression (or anything likely to be taken as an expression) to which a meaning is assigned by an order made by virtue of section 10 (b) of this Act; and
 - (ii) where that meaning is so assigned only in circumstances specified in the order, the trade description is used in those circumstances.

(2) A person shall not be guilty of an offence under subsection (1) if, by virtue of section 31, the act, though committed in Malaysia, would not be an offence under section 3 had the goods been intended for despatch to the other country.

(3) Any person who, in Malaysia, assists in or induces the commission outside Malaysia of an act which, if committed in Malaysia, would be an offence under section 15 shall be guilty of an offence.

21A. Compounding of offences.

[Ins. Act
A 880]

(1) The Controller or a Deputy Controller may compound any offence under this Act or any regulations made thereunder which is prescribed to be a compoundable offence by making a written offer, to the person reasonably suspected of having committed such offence, to compound the offence upon payment to the Controller or Deputy Controller such sum of money within such time as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Controller or Deputy Controller may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted against such person in respect of such offence and where possession has been taken of any goods or documents under this Act or any regulations made thereunder such goods or documents may be released, subject to such conditions as may be imposed.

(4) The power to compound offences under subsection (1) shall be exercised by the Controller or the Deputy Controller personally.

22. Taking of samples.

*[Ins. Act
A 539]*

(1) Subject to any order under subsection (2), where any goods which are the subject-matter of an offence under this Act are found in two or more packages or receptacles of the same description, it shall be presumed until the contrary is proved that all the packages or receptacles contain goods of the same nature, quantity and quality.

(2) The Minister may by order provide that in proceedings for an offence under this Act in relation to such goods as may be specified in the order evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible unless the sample has been dealt with in such manner as may be specified in the order.

PART VII DEFENCES

23. Offences due to fault of another person.

Where the commission by any person of an offence under this Act 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 section whether or not proceedings are taken against the first-mentioned person.

24. Defence of mistake, accident, etc.

(1) In any proceedings for an offence under this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake on his part 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:

Provided that where a body corporate is charged with an offence under this Act, such body corporate shall not be entitled to rely on the defence referred to in this subsection.

(2) If in any case the defence provided by the last foregoing subsection 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, without leave of the Court, be entitled to rely on that defence unless, within a period of fourteen clear days of his being charged in Court, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of that other person. *[Am. Act
A 539]*

(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.

25. Innocent publication of advertisement.

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.

PART VIII ENFORCEMENT

26. Appointments of Controller, Deputy Controllers and Assistant Controllers.

(1) The Yang di-Pertuan Agong may appoint from amongst persons who hold offices in the public services a Controller of Trade Descriptions, and such number of Deputy Controllers and Assistant Controllers of Trade Descriptions as may be necessary or expedient for purposes of this Act.

[*Am. Act
A 539*]

(2) The Controller shall subject to the general direction and control of the Minister have supervision in all matters relating to the enforcement of this Act and the Controller and the Deputy Controller shall perform such duties and exercise such powers and functions conferred upon them and upon an Assistant Controller by this Act.

(3) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code applicable.

(4) The powers and functions of the Controller and the duties required to be discharged by him may be exercised and discharged by any Deputy Controller.

(5) Every officer appointed under this section when acting against any person under this Act shall on demand declare his office and produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such officer.

27. Power to make test purchases.

The Controller shall have power to make, or to authorise any person to make on his behalf, such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Act and any order made thereunder are being complied with.

28. Power to enter premises and inspect and seize goods and documents.

(1) Any Assistant Controller may, at all reasonable hours 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 subsection 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) An Assistant Controller seizing any goods or documents in the exercise of his powers under this section 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 proprietor's 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.

(2A) Where the goods or documents seized by the Assistant Controller in the exercise of his powers under this section are by reason of their nature, size or amount not practical to be removed from where they are found, he may by any means seal such goods or documents in the premises or container in which they are found and it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or to remove such goods or documents or to attempt to do so. [Ins. Act
A 539]

(3) If a Magistrate, on sworn information in writing—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which an Assistant Controller has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or

(ii) that an application for admission or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the Magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorise an Assistant Controller to enter the premises, if need be by force.

[Ins. Act
A 539]

(3A) Notwithstanding subsection (3), where an Assistant Controller specially authorised in writing by the Minister for the purposes of this section has reasonable grounds for believing that by reason of the delay in obtaining a warrant, any goods, books or documents in the premises are likely to be removed, he may exercise in, upon and in respect of such premises, goods, books and documents all the powers in as full and ample a manner as if he were authorised by a warrant issued under that subsection.

(4) An Assistant Controller entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(5) If any person discloses to any other 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 section; or
- (b) any information obtained by him in pursuance of this Act,

he shall be guilty of an offence unless the disclosure was made in or for the purpose of the performance of functions under this Act.

28A. Statement to be admissible in evidence.

(1) Where any person is charged with an offence under this Act any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time; whether before or after the person is charged and whether in the course of investigations under this Act or not and whether or not wholly or partly in answer to questions, by the person to or in the hearing of an Assistant Controller and whether or not interpreted to him by an Assistant Controller or any other person concerned or not in the case shall, notwithstanding the provisions of any written law to the contrary, be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that—

(a) no such statement shall be admissible or used as aforesaid—

(i) if the making of the statement appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from the person in authority and sufficient in the opinion of the Court to give a person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any

evil of a temporal nature in reference to the proceeding against him; or

(ii) in the case of a statement made by the person after his arrest, unless the Court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question but anything you say, whether in answer to a question or not, may be given in evidence.”; and

(b) a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible.

(2) Notwithstanding the provisions of any written law to the contrary, a person accused of an offence to which subsection (1) applies shall not be bound to answer any question relating to the case after he has been cautioned.

28B. Power of arrest, investigation and prosecution.

(1) An Assistant Controller may arrest without warrant any person whom he has reason to believe to have committed an offence under this Act if the person refuses to furnish his name and address or furnishes an address out of Malaysia or there are reasonable grounds for believing that he has furnished a false name or address or that he is likely to abscond:

Provided that when any person has been arrested as aforesaid he shall thereafter be dealt with as provided by the Criminal Procedure Code.

(2) An Assistant Controller may in relation to any investigation in respect of any offence under this Act without the order of the Public Prosecutor exercise the special powers in relation to police investigation given by the Criminal Procedure Code in any seizable case.

(3) Any prosecution in respect of an offence under this Act may be conducted by an Assistant Controller.

29. Obstruction of officers.

(1) Any person who—

(a) wilfully obstructs any officer appointed under section 26 acting in pursuance of this Act; or

(b) wilfully fails to comply with any requirement properly made to him by such an officer under section 28; 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,

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) If any person, in giving any such information as is mentioned in the preceding subsection, makes any statement which he knows to be false, he shall be guilty of an offence and liable on conviction to the penalty as mentioned in that subsection.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

30. Notice of test and intended prosecution.

Where any goods seized or purchased in pursuance of this Act are submitted to a test, then—

(a) if the goods were seized, the person mentioned in section 28 (2) of this Act shall be informed of the result of the test;

(b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Act, the Controller 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 section 28 (2) of this Act, of the result of the test,

and shall, where as a result of the test proceedings for an offence under this Act are instituted against any person, allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

PART IX

MISCELLANEOUS AND SUPPLEMENTAL

31. Exemption.

The Minister may by order specify that any of the matters included in section 4 (1) shall not apply with respect to any description of goods which are intended—

- (a) for despatch to a destination outside Malaysia; or
- (b) for any specific use or purpose as mentioned in the order.

32. Forfeiture of goods.

(1) All goods seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any goods seized in exercise of any power conferred under this Act shall be made by the Court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods shall be made if it is proved to the satisfaction of the Court that an offence under this Act has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

(3) If there be no prosecution with regard to any goods seized in exercise of any power conferred under this Act, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto is made before the date in the manner hereinafter set forth.

(4) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or by his agent authorised in writing give written notice to an Assistant Controller that he claims the same.

(5) On receipt of such notice the Assistant Controller shall refer the claim to the Controller who may direct that such goods be released or may direct the Assistant Controller to refer the matter to a Court for decision.

(6) The Court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before it and upon his appearance or default to appear, due service of the summons being proved, the Court shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such goods were the subject matter or were used in the commission of such offence shall order the same to be forfeited or may in the absence of such proof order their release.

(7) All things forfeited or deemed to be forfeited shall be delivered to the Assistant Controller and shall be disposed of in accordance with the directions of the Controller.

(8) Where any goods seized in exercise of the power conferred by this Act are of a perishable nature or where the custody of such goods involves unreasonable expense and inconvenience such goods may be sold at any time and the proceeds of the sale held to abide by the result of any prosecution or claim under this section.

33. Goods seized may be delivered to owner or other persons.

The Minister may upon application made to him in writing through the Controller direct any goods seized in exercise of the power conferred by this Act whether forfeited or taken and deemed to be forfeited to be delivered to the owner or other person entitled thereto upon such terms and conditions as he may deem fit:

Provided that any such application shall be made before the expiration of one calendar month from the date of forfeiture of such goods or from the date on which such goods shall be taken and deemed to be forfeited as the case may be.

34. No costs or damage arising from seizure to be recoverable.

No person shall in any proceedings before any Court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act be entitled to the costs of such proceedings or subject to section 32 to any damages or other relief unless such seizure was made without reasonable or probable cause.

35. Savings for civil rights.

A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

36. Country of origin.

(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.

(2) The Minister may by order specify—

- (a) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this section as resulting or not resulting in a substantial change;
- (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 purpose of this Act as having been manufactured or produced.

37. Market research experiments.

(1) In this section “market research experiment” means any activities conducted for the purpose of ascertaining the opinion of persons (in this section referred to as “participants”) of—

- (a) any goods; or
- (b) anything in, on or with which the goods are supplied; or
- (c) the appearance or any other characteristic of the goods or of any such thing; or

(d) the name or description under which the goods are supplied.

(2) This section applies only to any market research experiment with 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 subsection (1) of this section; 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.

(3) Neither section 3 nor section 11 of this Act shall 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 section applies.

38. Consultation prior to making of orders.

(1) An order made under sections 10, 11, 12, 22 (2), 31 and 36 which relates to any agricultural, horticultural or fishery produce, whether processed or not, food, feeding stuffs or ingredients of food or feeding stuffs, medicine, drugs, fertilisers or any goods used as pesticides or for similar purposes shall be made by the Minister only after consultation with the Minister charged with responsibility for the respective things mentioned hereinbefore.

(2) The following provisions shall apply to the making of an order under section 10, 11, 12 or 36 of this Act, except in the case mentioned in section 13 (2) thereof, that is to say—

(a) before making the order the Minister shall consult with such organisations as appears to him to be representative of interests substantially affected by it and shall publish, in such manner as the Minister thinks appropriate, notice of his intention to make the order and of the place where copies of the proposed order may be obtained;

(b) the order shall not be made until the expiration of a period of twenty-eight days from the publication of the notice and may then be made with such modifications (if any) as the Minister thinks appropriate having regard to any representations received by him.

38A. Power of Minister to make regulations.

The Minister may make regulations to carry out the purposes of this Act and, without prejudice to the generality of the foregoing words, may—

(a) assign the meaning of any expression or indication used in the course of trade or business in relation to the prices of goods or to the charges or rates for services, accommodation or facilities;

(b) prohibit, restrict or otherwise regulate or control the use of any expression or indication used in the course of trade or business in relation to the prices of goods or to the charges or rates for services, accommodation or facilities;

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A 880*]

(ba) prescribe the fee to be imposed in respect of the use of any expression or indication used in the course of trade or business in relation to the prices of goods or to the charges or rates for services, accommodation or facilities;

(c) provide for the maintenance of a register or records in relation to the goods, services, accommodation or facilities and prescribing the particulars to be recorded in such register or records;

(d) prescribe forms for the purposes of paragraph (b);

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A 880*]

(e) prescribe the standard of fineness of articles made of precious metals and regulate or control the use of any expression or indication used in the course of trade or business in relation to such standard of fineness; and

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(f) prescribe the offences under this Act or the regulations made thereunder which may be compounded, the amount of such compound and the procedure to be followed on compounding:

39. Repeal.

The Merchandise Marks Ordinance, 1950, the Merchandise Marks Ordinance of Sabah, and the Merchandise Marks Ordinance of Sarawak are hereby repealed.

FIRST SCHEDULE

(Section 4 (4))

Ord. No. 28 of 1952 1. Sale of Food and Drugs Ordinance, 1952

SECOND SCHEDULE

(Section 22 (1))

Column One

Column Two

Ord. No. 28 of 1952	1. Sale of Food and Drugs Ordinance, 1952	Sections 8, 9, subsections (3) and (4) of section 20, sections 23 and 24
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