

MERCHANDISE MARKS ORDINANCE

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 therefore 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", "manufacturer", "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 combination 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 initials 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 purposes 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 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 (hereafter: the Ministers) in regulations with approval by the Knesset Economic Committee, including conditions on the quality, method of production and of packaging of the products;
 - (2) the Ministers may, by regulations 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 commercial description under subsection (a), the Court shall not entertain any defence 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 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 party - 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 export; 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 discontinued.

- (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 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 caused 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 offense 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.
- (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 forged trade mark or a false commercial description, or falsely designated by a trade mark or by a mark that resembles a trade mark near enough to deceive, all as the case may be, shall be accused of an offense 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 offense 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 on 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 sale, commerce or manufacture; or
 - (d) used a trade mark or mark or commercial description in any 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, crate, 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 stationery 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 deemed 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. (a) The designation of a wine by a geographical name that is not the name of its place of origin, or by a designation that contains that name sounds like it shall be deemed a false commercial description, within its meaning in section 2; it does not matter whether words such as "kind", "category", "type" or "imitation", or their foreign language equivalents were added, or whether the actual place of the wine's origin is stated.
- (b) In a criminal prosecution for a false commercial description said in subsection (a), the Court shall not have regard to the defense provided in the closing passage of section 3(1) or to the provisions of section 15.
- (c) In this section, "wine" includes wine products, brandy, grape juice and any beverage that contains any of these.

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 employec, 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 of the things said in this section to be done, and if he proves that -

- (a) his ordinary business is to work for other persons in designating merchandise with marks or descriptions, and that in the pending case that is the subject of the charge he was so employed by a person resident in Israel and had 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 description,

then 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.