

MERCHANDISE MARKS ACT 1970

LONG TITLE

AN ACT TO MAKE PROVISION IN RELATION TO THE INFORMATIVE MARKING OF CONTAINERS IN WHICH GOODS ARE PACKED FOR SALE BY RETAIL, TO REGULATE THE QUANTITIES OF GOODS WHICH MAY BE PACKED IN CONTAINERS FOR SUCH SALE, TO PROVIDE FOR MATTERS CONNECTED WITH THE MATTERS AFORESAID AND TO AMEND THE MERCHANDISE MARKS ACTS, 1887 TO 1931.
[28th July, 1970.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

SECT 1

Definitions.

1.—In this Act—

"container" means a container in which goods are packed at any time before being offered for sale by retail and which is suitable for such sale, and includes a bag, bottle, box, can, carton, envelope, net, sack or wrapper (whether or not such wrapper fully encloses its contents or portion of its contents are exposed) in which goods are so packed;

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

"the Minister" means the Minister for Industry and Commerce;

"sold" includes offered, exposed or kept for sale or distributed for reward and cognate words shall be construed accordingly.

SECT 2

Orders in relation to marking and contents of containers.

2.—(1) The Minister may by order provide that goods of a kind specified in the order—

(a) shall not be packed in a container unless the container or (if there is an inner container or containers and an outer container) at least one container bears a notice which is easily visible without removing or opening any container, is in such form as may be specified in the order and states clearly the quantity of the goods in the container by reference to such one or more of the following, that is to say, their weight, measure and number, as may be specified in the order, and, if the Minister so thinks fit, the name and address of the packer of the goods,

(b) shall not be packed in a container in any quantity other than a quantity specified in the order by reference to such one or more of the following, that is to say, the weight, measure and number of the goods, as may be specified in the order,

(c) shall not be imported by way of trade or sold by retail,

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(d) shall not be imported by way of trade or sold by retail, packed in any quantity in a container other than a quantity specified in the order by reference to such one or more of the following, that is to say, the weight, measure and number of the goods, as may be specified in the order.

(2) Where an order under this section requires the quantity of goods packed in a container to be indicated in a notice on the container or that goods shall not be packed in a container in any quantity other than a quantity specified in the order, the order may provide that the quantity of the goods to be indicated as aforesaid or the quantity of goods specified as aforesaid, as the case may be, shall not include any quantity of liquid or other substance added to the goods at the time at which they are packed in the container and may specify the manner in which it shall be ascertained whether the quantity of the goods in the container is in compliance with the provisions contained in the order by virtue of this subsection.

(3) An order under this section may specify the manner in which the quantity of goods packed in a container shall be ascertained.

(4) Where an order under this section requires a container to bear a notice, the order may specify the manner in which the notice is to be shown on the container.

(5) An order under this section may include such provisions as the Minister thinks desirable to ensure that a notice displayed on a container in pursuance of the order is clearly visible and legible and that it is not so displayed as to convey or be likely to convey false or misleading information in relation to the quantity of the contents of the container.

(6) An order providing for the matters specified in paragraph (a) or (b) of subsection (1) of this section shall not, in so far as it so provides, apply in relation to goods intended to be exported from the State.

(7) An order under this section shall not apply in relation to any goods in respect of which the Minister, being satisfied that the goods were, at the time they were being packed in containers, intended to be exported and that it is reasonable to allow the sale of the goods in the State without compliance with the provisions of this Act, grants an authorisation in writing permitting

such sale.

(8) An order under this section may provide that where the quantity of goods of any kind packed in a container is greater or less by not more than a specified amount or percentage than—

(a) the quantity of goods of that kind indicated in a notice of the kind specified in paragraph (a) or (c) of subsection (1) of this section on the container, or

(b) a quantity specified by order for the purposes of paragraph (b) or (d) of subsection (1) of this section in relation to goods of that kind,

the quantity so packed shall be deemed, for the purpose of those paragraphs, to be the same as the quantity so indicated or specified, as the case may be, and different amounts or percentages may be specified in relation to goods of different kinds, different quantities of goods and different kinds of containers.

(9) An order under this section may provide that the order shall not apply in circumstances or subject to conditions specified in the order.

(10) At least two months before the date of the making of an order under this section there shall be published in *Iris Oifigi il* and in at least one daily newspaper notice of the Minister's intention to make the order and a brief statement of the effect of the order.

(11) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

(12) An order shall not be made under this section without prior consultation by the Minister with such persons as appear to him to be substantially interested in the general subject-matter of the order unless, in the case of an order under subsection (11) of this section, it is, in the opinion of the Minister, necessary to make the order without such consultation.

SECT 3

Implied warranty in relation to packing of goods.

3.—(1) In a contract of sale of goods of a kind in relation to which an order under section 2 of this Act applies, there is an implied warranty that the packing of the goods is not in contravention of the provisions of this Act or of an order under this Act and is not such as to occasion, in relation to the sale or importation of the goods, a contravention of those provisions.

(2) A contract of sale that has the effect, directly or indirectly, of depriving a person of the benefit of a warranty of the kind specified in subsection (1) of this section shall, insofar as it has the effect aforesaid, be void.

SECT 4

Powers of authorised officers.

4.—(1) In this section "authorised officer" means a person authorised in writing by the Minister or by the council of a county or corporation of a county or other borough in relation to its functional area to exercise for the purposes of the Merchandise Marks Acts, 1887 to 1931, and this Act, the powers conferred by this section.

(2) The authorisation of an authorised officer shall indicate the matters in respect of which he may act under this section.

(3) An authorised officer may, for the purpose of obtaining any information which may be required in order to enable the Minister or the council of a county or the corporation of a county or other borough, as the case may be, to exercise his or its functions under the Merchandise Marks Acts, 1887 to 1931, or this Act, on production of the officer's authorisation, if so required—

(a) at all reasonable times enter premises at which any activity in connection with the packing of goods in containers or the manufacturing, processing, supplying, distributing or importing of goods is carried on and inspect the premises and any containers or goods packed in containers on the premises and, on paying or making tender of payment therefor, take one or more of the containers (either with or without goods packed in it or them) and, if he so thinks fit, carry out inspections, tests and measurements thereof on the premises,

(b) require the person who carries on such activity and any person employed in connection therewith to produce to the officer any books, documents or records relating to such activity which are in that person's power or control and to give him such information as he may reasonably require in regard to any entries in such books, documents and records,

(c) inspect and copy or take extracts from such books, documents and records,

(d) require such a person to give to the officer any information he may require in regard to the persons carrying on such activity (including, in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith,

(e) require such a person to give to the officer any other information which the officer may reasonably require in regard to such activity.

(4) An authorised officer who takes a container pursuant to this section shall—

(a) notify forthwith the person on whose premises the container

is taken or his agent that the container is taken in pursuance of this section, and

(b) if so required by such person or agent at the time of the giving of the notification, take a second like container or select one container from the containers taken by him and mark and seal and leave with such person or agent the second container or the container so selected, as the case may be.

(5) Where an article is being tested or inspected under this section and other like articles were available at the time and place at which the article was obtained, such number of the articles as is reasonable in the circumstances shall be tested or inspected, as the case may be.

(6) A person who obstructs or impedes an authorised officer in the exercise of a power or does not comply with a requirement under this section shall be deemed to contravene this section.

SECT 5 Offences.

5.—(1) A person who contravenes or is deemed to contravene a provision of this Act or of an order under this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment or, in the case of a person who contravenes a provision of an order aforesaid, on conviction on indictment to a fine not exceeding two thousand pounds or, at the discretion of the court, to imprisonment for a term not exceeding two years or to both the fine and the imprisonment.

(2) Where a person is charged with an offence under this Act in relation to the quantity of goods packed in a container, it shall be a defence to the charge for him to show that the quantity of goods in the container at the time of the packing or importation of the goods was in compliance with the provisions of the Act and that any variation in such quantity was caused by matters for which reasonable allowance had been made at the time of the packing of the goods.

(3) Where, in relation to goods, a person other than the person who packed or imported the goods is charged with an offence under this Act, it shall be a defence to the charge for him to show that he dealt in the goods in good faith and took reasonable precautions to ensure that the quantities of the goods packed in containers complied with the provisions of this Act and (if the offence consists of the contravention of a provision of a kind specified in section 2 (1) (a) or section 2 (1) (c) of this Act) that the containers bore notices which complied with the provisions of this Act.

(4) Where a person is charged with an offence under this Act in relation to goods packed in a container, it shall be a defence to

the charge for him to show—

(a) that he took reasonable precautions against committing, in relation to the goods, an offence of the kind with which he is charged,

(b) that at the time of the commission of the alleged offence, he had no reason to suspect that the packing, importation or sale, as the case may be, of the goods was in contravention of the provisions of this Act or of an order under this Act, and

(c) that the packing, importation or sale, as the case may be, of the goods in contravention of the provisions of this Act or of an order under this Act, was due to a cause beyond his control.

SECT 6

Prosecution of offences.

6.—(1) Proceedings in relation to an offence under this Act may be brought and prosecuted by the Minister or by the council of the county or the corporation of the county or other borough in which the offence is alleged to have been committed.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within twelve months from the date of the offence.

(3) Any expenses incurred by a council of a county or the corporation of a county or other borough under this section shall be defrayed in the same manner as expenses incurred under section 19 of the Merchandise Marks Act, 1931, by a local authority specified in that section.

SECT 7

Transfer of certain functions under Merchandise Marks Act, 1931, to Minister.

7.—The functions, powers and duties conferred or imposed on the Government under sections 7 of the Merchandise Marks Act, 1931, are hereby transferred to the Minister and, accordingly, references in those sections to the Executive Council (other than the first such reference and the third such reference in the said section 7) shall be construed as references to the Minister and references in the said section 12 to a restriction order shall be construed as references to an order under the said section 8.

SECT 8

Offences in relation to bodies corporate and unincorporated bodies.

8.—Where an offence under this Act which is committed by a body corporate or an unincorporated body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary, member of the committee of management or other controlling authority of any such body or being any other

similar officer of any such body, that person shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

SECT 9

Increase of certain penalties.

9.—(1) Section 2 (3) of the Merchandise Marks Act, 1887, is hereby amended by the substitution for paragraph (ii) of the following paragraph:

"(ii) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds; and".

(2) Section 8 (3) of the Merchandise Marks Act, 1887, is hereby amended by the substitution of "one hundred pounds" for "twenty pounds".

(3) Section 23 of the Merchandise Marks Act, 1931, is hereby amended by the substitution of "to a fine not exceeding one hundred pounds" for ",in the case of a first offence to a fine not exceeding five pounds, and in the case of a second or any subsequent offence to a fine not exceeding twenty pounds".

SECT 10

Amendment of section 6 of Merchandise Marks Act, 1931.

10.—(1) Section 6 of the Merchandise Marks Act, 1931, is hereby amended by—

(a) the deletion in subsection (3) of "in accordance with regulations to be made by the Minister for Finance" and ", having regard to the length of time and the expense which in the opinion of the Commission will be involved in the consideration of the application ", and

(b) the substitution of "Minister for Finance," for "said Minister".

(2) Subsection (1) of this section shall be deemed to have come into operation on the 1st day of April, 1968.

SECT 11

Import licences.

11.—(1) Where, in the case of any goods the importation of which is prohibited by or under this Act, or the Merchandise Marks Acts, 1887 to 1931, the Minister is of opinion that enforcement of the prohibition would cause undue hardship, the Minister may, at his discretion on application being duly made to him, grant a licence (in this section referred to as a licence) authorising the importation by the person named in the licence of those goods.

(2) The Minister may attach to a licence such conditions as he shall think proper and shall specify in the licence.

(3) The Minister may revoke a licence.

(4) Every person who, for the purpose of obtaining for himself or any other person a licence, makes any statement or representation which is to his knowledge false or misleading in any material respect or who fails to comply with a condition attached to a licence shall be guilty of an offence under this section.

(5) An application for a licence shall be in such form and contain such particulars as the Minister may from time to time direct.

(6) Notwithstanding anything in this Act or in an order under section 2 of this Act, a person named in a licence for the time being in force may, subject to compliance with any conditions attached to the licence, import the goods specified in the licence.

SECT 12

Temporary importation.

12.—Where the Revenue Commissioners are satisfied that any goods the importation of which is prohibited under this Act are goods imported for export after transit through the State or by way of transshipment or are goods declared on importation to be for re-exportation, the Revenue Commissioners may, subject to compliance with such conditions as they may think fit to impose, permit the goods to be imported.

SECT 13

Laying of orders before Houses of the Oireachtas.

13.—Every order made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House, within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

SECT 14

Expenses of Minister.

14.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

SECT 15

Short title and collective citation.

15.—(1) This Act may be cited as the Merchandise Marks Act, 1970.

(2) The Merchandise Marks Acts, 1887 to 1931, and this Act may be cited together as the Merchandise Marks Acts, 1887 to 1970.

