INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 284.

Commerce (Trade Descriptions).

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Foreign Affairs and Trade.

Accordingly, except where some other intention is clearly indicated, by note or in the text, as at that date references in or in relation to this Chapter to—

"the Minister"—should be read as references to the Minister for Foreign Affairs and Trade;

"the Departmental Head"—should be read as references to the Secretary for Foreign Affairs and Trade[1];

"the Department"—should be read as references to the Department of Foreign Affairs and Trade[2].

REGULATIONS.

Regulations were made under this Act jointly with the *Customs Act*, and are printed in Chapter 101.

TABLE OF CONTENTS.

[1] Previously the Secretary, Department of Foreign Relations and Trade.
[2] Previously the Department of Foreign Relations and Trade.
[3] *See* above, "Regulations".

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 284.

Commerce (Trade Descriptions) Act.

ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 284.

Commerce (Trade Descriptions) Act.

Being an Act relating to trade descriptions of goods, to be incorporated and read as one with the *Customs Act.*

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

"false trade description"—

(*a*) means a trade description that, by reason of anything contained in it, or omitted from it, is false or likely to mislead in a material respect as regards the goods to which it is applied; and

(*b*) includes an alteration of a trade description, by way of addition, effacement or otherwise, that makes the description false or likely to mislead in a material respect;

"officer" means an officer of Customs;

"the regulations" means any regulations made under this Act;

"trade description", in relation to any goods, means a description, statement, indication, or suggestion, direct or indirect—

(*a*) as to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size or weight of the goods; or

(*b*) as to the country or place in or at which the goods were made or produced; or

(*c*) as to the manufacturer or producer of the goods or the person by whom they were selected, packed or prepared in any way for the market; or

(*d*) as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods; or

(*e*) as to the material or ingredients of which the goods are composed, or from which they are derived; or

(*f*) as to the goods being the subject of an existing patent, privilege or copyright,

and includes—

(*g*) a Customs entry relating to the goods; and

(*h*) and any mark that, according to the custom of the trade or common repute, is commonly taken to be an indication of any of the matters referred to in Paragraphs (*a*) to (*f*).

2. When trade description deemed to be applied to goods.

(1) In this section—

"covering" includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;

"label" includes a band or ticket.

(2) A false trade description shall be deemed to be applied to goods if—

(*a*) it is applied to the goods themselves; or

(*b*) it is applied to any covering, label, reel or thing used in connexion with the goods; or

(*c*) it is used in any manner likely to lead to the belief that it describes or designates the goods.

(3) A trade description that is required by the regulations to be applied to any goods shall be deemed to be applied to the goods if it is—

(*a*) applied to the goods themselves; or

(*b*) used in relation to the goods in the prescribed manner.

PART II.—INSPECTION OF IMPORTS AND EXPORTS.

3. Inspection.

(1) An officer may inspect and examine any prescribed goods that—

(*a*) are imported; or

(*b*) are entered for export; or

(*c*) are brought for export to any wharf or place; or

(*d*) are in course of manufacture or preparation for export.

(2) Where practicable, the officer may take samples of any goods inspected by him under this section, which shall be dealt with as prescribed.

(3) For the purposes of this section, an officer may—

(*a*) enter any ship, wharf or place; and

(*b*) open any packages; and

(*c*) do all things necessary to enable him to carry out his powers and duties under this section[1].

4. Notice of intention to export.

If required to do so by the regulations, a person who intends to export any goods of a kind or class required under this Act to be inspected or examined by an officer, must before the goods are shipped, give the prescribed notice to the Customs of—

(*a*) his intention to export the goods; and

(*b*) the place where the goods may be inspected.

Penalty: A fine not exceeding K40.00.

[1] But *see Constitution*, Section 44.

PART III.—IMPORTATION AND SALE.

5. Imports not bearing prescribed trade descriptions.

(1) the regulations may prohibit the importation of any goods unless there is applied to them a trade description—

(*a*) of such character; and

(*b*) relating to such matters; and

(*c*) applied in such manner,

as are prescribed.

(2) All goods imported in contravention of a regulation made for the purposes of Subsection (1) may be—

(*a*) detained by the Collector; and

(*b*) by direction of the Minister, seized as forefeit to the State.

(3) Subject to the regulations, the Comptroller—

(*a*) may; and

(*b*) if in his opinion the contravention has not occurred knowingly or negligently—shall,

permit any goods that are liable to be, or have been, seized as forfeit under this section to be delivered to the owner or importer on security being given to the satisfaction of the Comptroller that—

(*c*) the prescribed trade description will be applied to the goods; or

(*d*) the goods will be exported without delay.

(4) Regulations made for the purpose of this section shall not prescribe a trade description that discloses trade secrets of manufacture or preparation, unless, in the opinion of the Minister, the disclosure is necessary for the protection of the health or welfare of the public.

(5) A regulation made for the purposes of this section shall not take effect until after the expiration of not less than three months after notification of its making is published in the National Gazette.

6. Falsely marked imported goods.

(1) A person who imports, offers for sale or sells any goods to which a false trade description is applied is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he did not knowingly import, offer for sale or sell the goods in contravention of that subsection.

7. Forfeiture of falsely marked imported goods.

(1) All goods to which a false trade description is applied—

(*a*) are prohibited to be imported; and

(*b*) if imported, are forfeit to the State.

(2) Notwithstanding Subsection (1), the Comptroller may—

(*a*) if he is satisfied that any goods that have been seized as forfeit under this section were not knowingly imported in contravention of this act, permit the importer to correct the false trade description; and

(*b*) when the correction has been made to his satisfaction, order the release of the goods, subject to payment by the importer to the Customs of the expenses of the seizure.

(3) On the making of an order under Subsection (2)(*b*) in relation to any goods, the forfeiture of the goods is remitted.

8. Presumption from marking of goods.

(1) All imported goods found in the country that bear a false trade description shall, until the contrary is proved, be deemed to have been imported in contravention of this Act.

(2) All imported goods—

(*a*) to which a trade description is required by the regulations to be applied; and

(*b*) that are found in the country without the prescribed trade description,

shall, until the contrary is proved, be deemed, subject to the regulations, to have been imported in contravention of the regulations.

PART IV.—EXPORTATION.

9. Exports not bearing prescribed trade description.

(1) The regulations may prohibit the exportation of any goods unless there is applied to them a trade description—

(*a*) of such character; and

(*b*) relating to such matters; and

(*c*) applied in such manner,

as are prescribed.

(2) All goods that are—

(*a*) exported; or

(*b*) entered for export; or

(*c*) put on board a ship or boat for export; or

(*d*) brought to a wharf or place for export,

in contravention of a regulation made for the purposes of Subsection (1) may be—

(*e*) detained by the Collector; and

(*f*) by direction of the Minister, seized as forfeit to the State.

(3) Subject to the regulations, the Comptroller—

(*a*) may; and

(*b*) if in his opinion the contravention has not occurred knowingly or negligently—shall,

permit any goods that are liable to be, or have been, seized as forefeit under this section to be delivered to the owner or exporter on security being given to the satisfaction of the Comptroller that the goods shall not be exported in contravention of the regulations.

(4) Regulations made for the purpose of this section shall not prescribe a trade description that discloses trade secrets of manufacture or preparation, unless, in the opinion of the Minister, the disclosure is necessary for the protection of the health or welfare of the public.

10. Falsely marked goods for export.

A person who—

(*a*) knowingly applies a false trade description to any goods—

(i) intended or entered for export; or

(ii) put on a ship or boat for export; or

(iii) brought to a wharf or place for the purpose of export; or

(*b*) knowingly—

(i) exports; or

(ii) enters for export; or

(iii) puts on a ship or boat for export,

any goods to which a false trade description is applied,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

11. Forfeiture of falsely marked goods for export.

(1) All goods to which a false trade description is applied—

(*a*) are prohibited to be exported; and

(*b*) if—

(i) exported; or

(ii) entered for export; or

(iii) put on a ship or boat for export; or

(iv) brought to a wharf or place for the purpose of export,

are forfeit to the State.

(2) Notwithstanding Subsection (1), the Comptroller may—

(*a*) if he is satisfied that the owner of any goods that have been seized as forfeit under this section did not knowingly act in contravention of this Act, permit the correction of the false trade description; and

(*b*) when the correction has been made to his satisfaction, order the release of the goods, subject to payment by the exporter of the expenses of the seizure.

(3) On the making of an order under Subsection (2)(*b*), the forfeiture of the goods is remitted.

12. Marking of goods for export.

Any goods intended for export that have been inspected under this Act may be marked in the prescribed manner with the prescribed trade description.

PART V.—MISCELLANEOUS.

13. Appeals.

A person aggrieved by a decision of the Comptroller under Section 5(3), 7(2), 9(3) or 11(2) may appeal to the Minister against the decision.

14. Regulations.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary and convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for—

(*a*) the analysis of samples taken under this Act; and

(*b*) the extent to which certificates of analysis are prima facie evidence in proceedings under this Act of the facts stated in them; and

(*c*) prescribing penalties of fines not exceeding K100.00 for offences against the regulations.

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APPENDIX.

SOURCE OF THE COMMERCE (TRADE DESCRIPTIONS) ACT.

Part A.—Previous Legislation.

Commerce (Trade Descriptions) Act 1952 (No. 46 of 1952).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference[1].
1	6
2	7
3	8
4	9
5	10, 19
6	12
7	14
8	11, 13
9	15, 19
10	16
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13	—
14	21

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[1] Unless otherwise indicated, references are to the Act set out in Part A.