

- “ ‘inspector’ means—
- (a) any member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), of or above the rank of sergeant;
  - (b) the Commissioner for Customs and Excise or any officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
  - (c) any officer appointed under section 3;”;
- (g) by the substitution for the definition of “Minister” of the following definition: “ ‘Minister’ means the Minister of [Economic Affairs and Technology, or any other Minister to whom the State President has assigned the administration of this Act, or any other Minister acting on behalf of any such Minister] Trade and Industry;”;
- (h) by the deletion of the definition of “police officer”;
- (i) by the insertion before the definition of “sell” of the following definition: “ ‘premises’ includes land, any building or structure, or any vehicle, ship, boat or aircraft or other conveyance;”;
- (j) by the deletion of the definition of “Territory”;
- (k) by the substitution for the definition of “trade mark” of the following definition: “ ‘trade mark’ means a registered trade mark [registered in the register of trade marks kept under] as defined in section 2(1) of the [Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or the Patents, Designs, Trade Marks and Copyright Proclamation, 1923 (Proclamation No. 17 of 1923 of the Territory) or an amendment thereof] Trade Marks Act, 1993 (Act No. 194 of 1993).”;
- and
- (l) by the deletion of the definition of “Union”.

**Substitution of section 2 of Act 17 of 1941**

2. The following section is hereby substituted for section 2 of the Merchandise Marks Act, 1941:

**“What acts amount to applying trade description**

2.(1) A person shall be deemed to apply a [trade mark or] trade description to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label or reel in or with which the goods are sold; or
- (c) places, encloses or annexes the goods in, with or to any covering, label, reel or other thing to which that [trade mark or] trade description has been applied; or
- (d) uses in connection with the goods a [trade mark or] trade description in such manner as to be likely to lead to the belief that the goods are designated or described by that [mark or] description.

(2) Goods delivered in pursuance of an offer or request in which reference is made to a trade description contained in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purposes of paragraph (d) of subsection (1), be deemed to be goods in connection with which that trade description is used.

[(3) A person shall be deemed to forge a trade mark who—

- (a) without the assent of the registered proprietor of that trade mark makes that trade mark or a mark so nearly resembling it as to be likely to deceive; or
- (b) alters, adds to or effaces any genuine trade mark.

(4) A person shall be deemed falsely to apply to goods a trade mark

who, without the assent of the registered proprietor of that trade mark, applies to goods that trade mark or a mark so nearly resembling it as to be likely to deceive.]

(5) Any person who sells goods which having been used have been reconditioned, rebuilt or remade, whether in the [Union] Republic or elsewhere, and which bear the trade mark of the original maker or seller of the goods, shall, unless there is applied to them in a conspicuous manner words stating clearly that the goods have been reconditioned, rebuilt or remade, as the case may be, be deemed to [have falsely applied the said trade mark] apply a false trade description to the goods.

(6) Any person who applies to goods any [such] word, name, letter, figure or mark, or arrangement or combination thereof, [whether consisting of or including] other than a trade mark [or part of a trade mark or not], as is likely to lead to the belief that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, shall be deemed to apply a false description to the goods.”.

#### Substitution of section 3 of Act 17 of 1941

3. The following section is hereby substituted for section 3 of the Merchandise Marks Act, 1941:

##### “Appointment of officers

3. Subject to the laws governing the public service, the Minister may appoint such [inspectors] officers as he or she may deem necessary for carrying out the provisions of this Act.”.

#### Substitution of section 4 of Act 17 of 1941, as amended by section 2 of Act 47 of 1954

4. The following section is hereby substituted for section 4 of the Merchandise Marks Act, 1941:

##### “Powers of inspectors to enter and search premises and seize certain articles

4. (1) If an inspector suspects that an offence in terms of this Act has been committed, is being or is likely to be committed or that preparations or arrangements for the commission of an offence in terms of this Act are being or are likely to be made on or in any premises (in this section referred to as the “alleged offence”), he or she may, on the authority of a warrant issued under subsection (3)—

- (a) enter the premises and search the premises or the person referred to in the warrant or the owner or person in control of the premises, and there make, subject to subsection (2), the enquiries he or she considers necessary;
- (b) examine any document or thing found on or in the premises, and make copies of or make extracts from that document;
- (c) subject to subsection (2), request the owner or person in control of the premises or any person in whose possession or control that document or thing is, or who may reasonably be expected to have the necessary information, to furnish information regarding that document or thing;
- (d) seize for further examination or safe custody any document or thing on or in the premises which has a bearing on the alleged offence;
- (e) seal or otherwise safeguard any premises on or in which any document or thing which has a bearing on an alleged offence is found;
- (f) take the steps that he or she considers necessary to terminate or prevent the commission of an offence in terms of this Act.

- (2) An inspector requesting information from a person in terms of subsection (1)(a) or (c) or (4)(a) shall, before so requesting information, inform the person in a language that the person understands of—
- (a) the right to remain silent; and
  - (b) the consequences of not remaining silent.
- (3) (a) A warrant referred to in subsection (1) shall be issued by a magistrate or a judge of a High Court, if it appears to the magistrate or judge from information on oath or affirmation that there are reasonable grounds for believing that a document or thing that has a bearing on the alleged offence—
- (i) is or will be in the possession or under the control of any person or on or in any premises within the area of jurisdiction of that magistrate or judge; and
  - (ii) cannot reasonably be obtained otherwise.
- (b) The warrant shall specify which of the acts contemplated in subsection (1)(a) to (f) may be performed thereunder by the inspector to whom it is issued.
- (c) The warrant may be issued on any day and shall be of force until—
- (i) it is executed;
  - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
  - (iii) the expiry of three months from the day of its issue; or
  - (iv) the purpose for which the warrant was issued no longer exists, whichever may occur first.
- (d) An inspector shall, immediately before commencing the execution of the warrant—
- (i) identify himself or herself to the person referred to in the warrant or the owner or person in control of the premises, if such person is present;
  - (ii) hand to such person a copy of the warrant or, if the person is not present, affix that copy to a prominent place on the premises;
  - (iii) supply such person at his or her request with particulars regarding his or her authority to execute the warrant.
- (4) (a) Subject to paragraph (b) of this subsection and subsections (2) and (5) to (10), any inspector may, without a warrant—
- (i) enter any premises, if the person who is competent to do so consents to that entry, and perform such of the acts contemplated in subsection (1)(a) to (f) which the person who is competent to do so consents to; or
  - (ii) enter any premises other than a private dwelling and perform any of the acts contemplated in subsection (1)(a) to (f), except the search of any person, if there are reasonable grounds for believing that—
    - (aa) a warrant would be issued to the inspector under subsection (3) if the inspector were to apply for that warrant; and
    - (bb) the delay in obtaining that warrant would defeat the purpose of the entry.
- (b) An inspector shall, immediately before entering premises in accordance with paragraph (a), identify himself or herself.
- (c) Any acts performed by an inspector by virtue of paragraph (a)(ii) will cease to have any legal effect unless a magistrate or a judge of a High Court having jurisdiction in the area where the acts were performed, confirms those acts on the application of an inspector brought within 10 days of the day on which those acts had been performed.
- (5) An entry, search and seizure under this section shall be—
- (a) conducted with strict regard to decency and order, including the protection of a person's right to dignity, to freedom and security and to privacy; and
  - (b) executed by day unless the execution thereof by night is justifiable and necessary.

(6) The seizure of a document or thing under this section shall be effected by removing it from the premises concerned or, if that removal is not reasonably practicable, by sealing or otherwise safeguarding it on or in the premises.

(7) An inspector who may under this section enter and search any premises—

(a) shall, immediately before the entry, audibly demand admission to the premises and make known the purpose of the entry and search, unless there are reasonable grounds for believing that a document or thing in respect of which the search occurs, may be destroyed, disposed of or tampered with if that admission is first demanded and that purpose is made known;

(b) may use the force that is reasonably necessary to overcome resistance to the entry or search or the seizure of a document or thing under this section;

(c) may utilize or request the assistance of any person to identify any document or thing which has a bearing on the alleged offence or to otherwise conduct the entry or search or the seizure of any document or thing under this section.

(8) A person from whose possession or control a document has been removed under this section may, at his or her own expense and under the supervision of an inspector, make copies thereof or excerpts therefrom.

(9) (a) An inspector who removes a document or thing from any premises under this section shall issue a receipt to the person who is the owner or in possession or in control thereof or, if that person is not present, affix it to a prominent place on the premises.

(b) If an inspector who is not a member of the South African Police Service removes a document or thing under this section, he or she shall forthwith hand it over to any member of that Police Service.

(10) (a) If, during the conduct of a search under this section, a person claims that a document or thing found on or in the premises contains privileged information and refuses the examination or removal of the document or thing, the inspector conducting the search shall, if he or she is of the opinion that the document or thing contains information which has a bearing on the alleged offence, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize the document or thing for safe custody until a court of law has made a ruling on the question whether the information is privileged or not.

(b) If that information is held not to be privileged, the document or thing concerned shall be available for inspection and testing or analysis under subsection (12).

(11) Subject to subsections (12) to (15), any document or thing seized under this section shall be disposed of in accordance with the applicable provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as if it has been seized in terms of that Act.

(12) Subject to subsection (10), a document or thing seized under this section shall—

(a) be open for inspection by any interested person during normal office hours;

(b) on request of any interested person, be made available for testing or analysis, if the person in whose custody the document or thing is kept or any inspector is satisfied, after taking into account the nature of the document or thing and of the testing or analysis, the purpose of the testing or analysis and the suitability of the person by whom the testing or analysis is to be conducted, that the request is reasonable.

(13) (a) If criminal proceedings are not instituted in connection with a document or thing seized under this section within a reasonable time after the seizure or, if it appears that the document or thing is not required in