

criminal proceedings for the purposes of evidence or an order of court, it shall—

- (i) subject to paragraph (b), be returned to the person from whom it was seized or, if that person may not lawfully possess it, to the person who may lawfully possess it; or
- (ii) be released from the safeguarding on or in the relevant premises, as the case may be.

(b) The person in whose custody the document or thing is kept, shall 72 hours before the return notify every complainant (if any) in respect of the alleged offence to which the document or thing relates of the intended return of the document or thing.

(14) In criminal proceedings in connection with a document or thing seized under this section, the court concerned may, without limiting any other powers of the court, order that—

(a) if the document or thing is the subject of an offence in terms of this Act, it be destroyed;

(b) the document or thing be released to a specified person.

(15) When a court holds that imported goods which are destined for exportation and were seized under this section are the subject of an offence in terms of this Act, the court shall not allow the exportation of those goods in an unaltered state, except if it, after due regard to the circumstances regarding the offence, thinks it fit to allow that exportation.”.

Substitution of section 5 of Act 17 of 1941

5. The following section is hereby substituted for section 5 of the Merchandise Marks Act, 1941:

“Obstruction of inspectors

5. Any person who—

- (a) hinders or obstructs an inspector in the performance of any of his or her functions in terms of section 4;
- (b) refuses or fails without valid reason to—
 - (i) answer to the best of his or her ability, a question put to him or her by an inspector; or
 - (ii) furnish information to an inspector, after having been required to do so in terms of section 4; or
- (c) wilfully furnishes false or misleading information to an inspector, shall be guilty of an offence.”.

Substitution of section 6 of Act 17 of 1941, as amended by section 1 of Act 26 of 1951

6. The following section is hereby substituted for section 6 of the Merchandise Marks Act, 1941:

“Applying false trade description

6. (1) Any person who applies any false trade description to goods shall be guilty of an offence, if—

- (a) at the time of the commission of the alleged offence, the person knew or had reason to suspect that the trade description was not genuine; or
- (b) the person did not take all reasonable steps in order to avoid the commission of the alleged offence.

(2) Any person who alters any trade mark, whether by addition of effacement or in any other manner, shall be guilty of an offence, if the person did not take all reasonable steps in order to avoid the commission of the alleged offence.”.

Substitution of section 7 of Act 17 of 1941

7. The following section is hereby substituted for section 7 of the Merchandise Marks Act, 1941:

“Sale and hiring out of goods bearing false trade descriptions

7. Any person who sells or lets or offers for sale or hire any goods to which any false trade description is applied, shall be guilty of an offence, if— 5
(a) at the time of the commission of the alleged offence, the person knew or had reason to suspect that the trade description was not genuine: or
(b) the person did not take all reasonable steps in order to avoid the commission of the alleged offence.” 10

Amendment of section 8 of Act 17 of 1941

8. The following heading is hereby substituted for the heading of section 8 of the Merchandise Marks Act, 1941:

“Sale of imported goods bearing name or mark of South African manufacturer or trader, unaccompanied by indication of origin.” 15

Substitution of section 9 of Act 17 of 1941

9. The following section is hereby substituted for section 9 of the Merchandise Marks Act, 1941:

“Sale of imported goods bearing marks in official language, unaccompanied by indication of origin 20

9. Any person who sells or, for the purpose of advertising goods, distributes in the [Union] Republic any goods which were not made or produced in the [Union] Republic, and to which there is applied any trade mark, mark or trade description in [the English or Afrikaans] any official language of the Republic, shall be guilty of an offence, unless there is added to that mark or description, in a conspicuous manner, the name of the country in which the goods were made or produced, with a statement that they were made or produced there.” 25

Substitution of section 14 of Act 17 of 1941, as substituted by section 2 of Act 54 of 1987 30

10. The following section is hereby substituted for section 14 of the Merchandise Marks Act, 1941:

“Unauthorized use of certain emblems

14. (1) Any person who uses in connection with his or her trade, business, profession or occupation, or in connection with a trade mark or mark or trade description applied by him or her to goods made, produced or sold by him or her without authority in writing signed by or on behalf of the Minister— 35
(a) the coat of arms of the Republic, or of the former Union of South Africa or any former entity before or after Union, the territory of which forms part of the territory of the Republic, or arms so nearly resembling the coat of arms of the Republic as to be likely to deceive; 40
(b) the style, title, name, portrait or effigy of the President or Deputy President or a Minister of the Republic; 45
(c) the name, portrait or effigy of any former President or other Head of State or representative of such Head of State, Deputy President or Minister, of the Republic or of the former Union of South Africa or any

former entity before or after Union. the territory of which forms part of the territory of the Republic; or

(d) a reproduction of any monument, relic or antique as defined in the National Monuments Act, 1969 (Act No. 28 of 1969), or of the Union Building or of any official residence of the President or Deputy President of the Republic, 5

shall be guilty of an offence: Provided that this subsection shall not apply to a trade mark registered before and in existence on 1 February 1941.

(2) Any person who uses in connection with his or her trade, business, profession or occupation any device, emblem, title or words in such a manner as to be likely to lead other persons to believe that— 10

(a) his or her trade, business, profession or occupation is carried on under the patronage of; or

(b) he or she is employed by or supplies goods to, 15

the President, any State department or a provincial government, without authority in writing signed by or on behalf of the President, the Minister administering that department or the Premier of the province concerned, as the case may be, shall be guilty of an offence.”

Amendment of section 15 of Act 17 of 1941

11. Section 15 of the Merchandise Marks Act, 1941, is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The Minister may, after such investigation as he or she may think fit, by notice in the *Gazette*, prohibit either absolutely or conditionally the use of—

(a) the National Flag, or any former National Flag, of the Republic; or 25

(b) any mark, word, letter or figure or any arrangement or combination thereof, in connection with any trade, business, profession, [or] occupation or event, or in connection with a trade mark, mark or trade description applied to goods.”

Substitution of section 16 of Act 17 of 1941

12. The following section is hereby substituted for section 16 of the Merchandise Marks Act, 1941: 30

“Implied warranty on sale of marked goods

16. Every person who sells any goods to which a [trade mark or] trade description has been applied shall be deemed to warrant that [the mark is a genuine trade mark and not forged or falsely applied, or that] the trade description is not a false trade description [as the case may be] unless the contrary is expressed in writing signed by the seller or on his or her behalf and delivered at the time of the sale to and accepted by the purchaser.” 35

Substitution of section 17 of Act 17 of 1941, as amended by section 2 of Act 55 of 1967 40

13. The following section is hereby substituted for section 17 of the Merchandise Marks Act, 1941:

“Containers marked with owner’s name not to be sold

17.(1) Any person—

(a) who buys or sells any [bottle] container or [screw stopper] closure therefor to which have been indelibly applied words in [the English or Afrikaans] any official language of the Republic stating plainly that 45

- the [bottle] container or [screw stopper] closure is the property of a named person; or
- (b) who sells any goods contained in any such [bottle] container without the consent in writing of the person so named, unless those goods are the property of or have been produced or manufactured by the person so named, shall be guilty of an offence. 5
- (2) Subsection (1) shall not apply to any transaction whereby any such [bottle] container or [screw stopper] closure is sold—
- (a) by the manufacturer thereof to the person named thereon; or 10
- (b) with the whole of the business in connection with which it is used.”.

Amendment of section 18 of Act 17 of 1941, as amended by section 3 of Act 26 of 1951

14. Section 18 of the Merchandise Marks Act, 1941, is hereby amended— 15
- (a) by the deletion of subsection (1); and
- (b) by the addition of the following subsection:
- “(3) If in the prosecution of any person for an offence referred to in section 7 it is proved that—
- (a) the accused conducts business in goods of the same or similar type as the goods to which any false trade description was applied; and 20
- (b) the goods—
- (i) were found in possession of the accused; or
- (ii) the existence of which the accused was aware of or could reasonably be expected to have been aware of, were found on or in premises of which the accused was on the particular day the owner, occupier, manager or person in charge, 25
- it shall be presumed, until the contrary is proved, that the accused offered for sale or hire the goods.”.

Repeal of section 19 of Act 17 of 1941

15. Section 19 of the Merchandise Marks Act, 1941, is hereby repealed. 30

Amendment of section 20 of Act 17 of 1941

16. Section 20 of the Merchandise Marks Act, 1941, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) (a) Any person convicted of an offence in terms of this Act, except section 5, shall be liable— 35
- (i) in the case of a first conviction, to a fine not exceeding R5 000 for each article to which the offence relates or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;
- (ii) in any other case, to a fine not exceeding R10 000 for each article to which the offence relates or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment. 40
- (b) Any person convicted of an offence referred to in section 5 shall be liable to a fine or to imprisonment for a period not exceeding six months.”.

Repeal of section 21bis of Act 17 of 1941, as inserted by section 3 of Act 39 of 1952 and substituted by section 3 of Act 55 of 1967 45

17. Section 21bis of the Merchandise Marks Act, 1941, is hereby repealed.

Substitution of certain word in Act 17 of 1941

18. The Merchandise Marks Act, 1941, except section 14, is hereby amended by the substitution for the word “Union”, wherever it occurs, of the word “Republic”.