

TRADE DESCRIPTIONS ACT
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Act
No. 18 of 1987

I assent

H.KAMUZU BANDA
LIFE PRESIDENT

28TH August, 1987

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An Act to prohibit false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade; to confer power to require information or instruction relating to goods or to be included in advertisements; to restate the law relating to forgery of trade marks; to repeal the Merchandise Marks Act; and for purposes connected therewith or incidental thereto

ENACTED by the Parliament of Malawi as follows-

PART 1- PRELIMINARY

Short title and commencement 1. This Act may be cited as the Trade Descriptions Act, 1987, and shall come into operation on a day to be appointed by the Minister by notice in the Gazette.

Interpretation 2.-(1) In this Act, unless the context otherwise requires-

“advertisement” include a catalogue, a circular and a price list;

“authorized officer” means a public officer appointed under section 12;

“false trade description” means-

(a) a trade description which is false to a material degree;

(b) a trade description which, though not false, is misleading, that is to say, likely, to be taken for such an indication of any of the matters specified in the definition of “trade description” as would be false to a material degree;

(c) anything which, though not a trade description, is likely to be taken for an indication of any of the matters specified in the definition of trade” description” and., as an indication, would be false to a material degree;

(d) a false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person if there is no such person or no standard so specified, recognized or implied; or

(e) a false indication, or anything likely to be taken as an indication which would be false, that any goods of any class or type-

(i) being goods in respect of which duty is payable under the laws of Malawi, are supplied free of the duty so payable in respect of that class or type of goods; or

(ii) not being goods in respect of which duty is payable under the laws of Malawi, are supplied free of the duty so payable.

“goods” includes vessel, aircraft, things attached to land and growing crops;

“goods in transit” means goods which-

- (a) are brought into Malawi solely for the purpose of taking them out of Malawi; and
- (b) remain at all times in or on the vessel, aircraft or vehicle in or on which they are brought into Malawi;

“import” means to bring into, cause to be brought, into Malawi;

“premises” includes any place and any stall, vehicle, vessel or aircraft;

“trade description” means an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods, that is to say-

- (a) quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge;
- (b) method of manufacture, production, processing and reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behavior or accuracy;
- (e) any physical characteristics not included in the preceding paragraphs;
- (f) testing by any person and results therefore;
- (g) approval by any person or conformity with type approved by any person;
- (h) place or date of manufacture, production, processing or reconditioning;
- (i) person by whom manufactured, produced, processed or reconditioned;
- (j) other history, including previous ownership or use;

“trade mark” means-

- (a) a trade mark registered in Malawi under the Trade Marks Act;
- (b) a trade mark registered in the register of trade marks kept under or preserved by the Trade Marks Act;
- (c) a trade mark-
 - (i) registered, or in respect of which an application for registration has been made, in a British territory or Convention country; and
 - (ii) capable of registration in Malawi under the Trade Marks Act.

(2) For the purposes of this Act-

(a) goods shall be deemed to have been-

- (i) manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture;
- (ii) produced in the country in which they were wholly grown or mined.

(b) the Minister may by order specify-

- (i) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this Act as resulting or not resulting in a permanent and substantial change in shape, nature, form or utility of the basic materials used in their manufacture;
- (ii) in relation to any description of goods different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of this Act as having been manufactured or produced.

(c) a trade description or statement published in any news paper, book or periodical or in any film or sound or televised broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement.

Making orders

3. (1) The Minister may by order require that any good specified in the order shall be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relation to the goods and, subject to the provisions of this Act, impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with; and the requirements may extend to the form an manner in which the information or instruction is to be given.

(2) Where an order under this section is in force with respect to goods of any description, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the order shall be guilty of an offence.

(3) An order under this section may make different provision for different circumstances and may, in the case of goods supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

Information to
be given in
advertisements

4. (1) The Minister may by order require that any description of advertisements of any goods specified in the order shall contain or refer to information (whether or not amounting or including a trade description) relating to such goods and subject to the provisions of this Act impose requirements as to the inclusion of that information or of an indication of the means by which it may be obtained.

(2) An order under this section may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make different provision for different circumstances.

(3) Where an advertisement of any goods to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement shall be guilty of an offence.

PART II- FALSE TRADE DESCRIPTIONS OR REPRESENTATIONS AND FORGED TRADEMARKS

Applying a trade
description ,
trade mark or
mark to goods

5. (1) A person applies a trade description or trade mark or mark to goods if he-

(a) affixes or annexes it to or in any manner marks it on or incorporates it with-

(i) the goods themselves; or

(ii) anything in, on or with which the goods are supplied;

(b) places the goods in, on or with anything which the trade description or trade mark or mark has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods;

(c) uses the trade description or trade mark or mark in any manner likely to be taken as referring to the goods; or

(d) makes in any affidavit, declaration or writing any statement to the effect that a trade description or trade mark or mark is applicable to the goods.

(2) for the purpose of subsection (1) (c), an oral statement may amount to the use of a trade

description or trade mark or mark.

(3) Where goods are supplied in pursuance of a request in which a trade description or trade mark or mark is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that trade description or trade mark or mark, the person supplying the goods shall be deemed to have applied that trade description or trade mark or mark to the goods.

Offences in
respect of
trade
descriptions

6.(1) Subject to the provisions of this Act, any person who-

- (a) in the course of any trade or business-
 - (i) applies a false trade description to any goods; or
 - (ii) supplies or offers to supply any goods to which a false trade description is applied; or
- (b) has in his possession for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied,

shall be guilty of an offence.

(2) A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer to supply them.

(3) Subject to the provisions of this Act, any person who disposes of or has in his possession any die, block, machine, or other instrument for the purpose of making, or applying to goods a false trade description commits an offence unless he proves that he acted without intent to defraud.

Trade descriptions used in advertisements

7. (1) The following provisions of this section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

(2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published-

- (a) for the purpose of determining whether an offence has been committed under section 6(1) (a) (i); and
- (b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 6 (1) (a) (ii).

(3) In determining for the purpose of this section whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

Offences in
respect of

8. (1) Subject to the provisions of this Act, any person who-

- (a) forges any trade mark;
- (b) falsely applied to any goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive;
- (c) makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark;
- (d) disposes of or has in his possession any die, block machine or other instrument for the purposes of forging a trade mark; or
- (e) causes to be done anything referred to in paragraph (a),(b), (c) or (d),

shall be guilty of an offence unless he proves that he acted without intent to defraud.

(2) Subject to the provisions of this Act, any person who sells or exposes or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forged trade mark is applied, or to which any trade mark or mark so nearly resembling that trade mark as to be calculated to deceive is falsely applied, shall be guilty of an offence.

(3) For the purposes of this section, a person shall be deemed-

(a) to forge a trade mark who either-

(i) without the assent of the proprietor of the trade mark, makes that trade mark or mark so nearly resembling that trade mark as to be calculated to deceive; or

(iii) falsifies any genuine trade mark, whether by alternation, addition, effacement or otherwise;

(b) falsely to apply to goods a trade mark if, without the assent of the proprietor of that trade mark, applies that trade mark to goods, unless he proves that he acted without infringing the right of the proprietor of the trade mark conferred by section 9 and 10 of the Trade Marks Act, and the expression "forged trade mark" shall be construed accordingly.

Cap. 49:01

(4) In any prosecution for an offence under subsection (1) (a) or (b) the burden of providing the assent of the proprietor shall lie on the accused.

False
representa-
tions as to
supply of
goods
Prohibited
Import and
export of
certain goods

9. Subject to the provisions of this Act, any person who, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods supplied by him are of a kind supplied to any person, shall be guilty of an offence.

10. (1) Subject to section 11, no person shall import or export any goods to which a false trade description or forged trade mark, which expression shall be construed in accordance with section 8 (3), is applied.

(2) Any person who imports or exports any goods contrary to subsection (1) shall be guilty of an offence unless he proves that-

(a) he did not know, had no reason to suspect and could not with reasonable diligence have found out that the goods are goods to which a false trade description or forged trade mark is applied; or

(b) the goods are intended for trade or business.

(3) This section shall not apply to any goods in transit

Power to exempt
goods sold
for export

11. In relation to goods which are intended for dispatch to a destination outside Malawi, section 2 shall apply as if there were omitted from the matters included in the definition of "trade description" in section 2 those specified in paragraph (a) thereof, and if the Minister by order specifies any other of those matters for the purposes of this section 6 shall apply, in relation to goods of that description which are intended for dispatch to a destination outside Malawi, as if the matters so specified were also omitted from those included in the definition of "trade description" in section 2.

PART III- ENFORCEMENT

Appointment
of authorized officer

12. (1) The Minister may appoint any public officer to be an authorized officer for the purpose of this Act.

(2) The Minister may exercise any of the power conferred on an authorized officer under this Act.

Power to enter premises and inspect and seize goods and documents

13. (1) An authorized officer may, on production, if required, of evidence of his appointment-
- (a) make such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Act are being complied with;
 - (b) for the purpose of ascertaining whether any offence under this Act has been or is being committed, inspect any goods and enter any premises other than domestic premises;
 - (c) if he has reasonable cause to suspect that an offence under this Act has been committed, seize or detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
 - (d) if he has reasonable cause to suspect that an offence under this Act has been committed and for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connexion with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document;
 - (e) in the case of any premises, vehicle, vessel (other than a ship of war) or aircraft (other than a military aircraft) in which he has reasonable cause to suspect that there are goods in respect of which an offence under this Act has been or is being committed-
 - (i) subject to section 14, enter and search such premises;
 - (ii) stop and search such vehicle; or
 - (ii) stop, board and search such vessel or aircraft;
 - (f) seize, remove or detain-
 - (i) any goods in respect of which he has reasonable cause to suspect an offence under this Act has been or is being committed; and
 - (ii) anything which he has reason to believe may be required as evidence in proceedings for an offence under this Act.

(2) An authorized officer may-

- I. break open any container or open any vending machine for the purpose for exercising his powers under subsection (1) (f) to seize goods;
- II. break open any outer or inner door of any place which he is empowered or authorized by or under this Act to enter and search;
- III. forcibly board any vessel or aircraft which he is empowered by this Act to stop, board or search;
- IV. remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- V. detain any person found in any premises which he is empowered or authorized by or under this Act to search until such place has been so searched;
- VI. detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until has been so searched; and
- VII. detain any vehicle which he is empowered by or under this Act to stop, board and search, until it has been so searched.

Restrictions on

14. (1) No domestic premises shall be entered and searched by an authorized officer unless-

on the entry
and search of
domestic
premises

- (a) a magistrate has issued a warrant under subsection (2); or
- (b) the Minister has given an authorization under subsection (3)

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any goods or thing which may be seized, removed or detained under section 13 91) (f), issue a warrant authorizing and authorized officer to enter and search the premises.

- (3) The Minister may, if he is satisfied that there is reasonable ground for suspecting-
- (a) that there is in any domestic premises any goods or thing which may be seized, removed or detained under section 13 (1) (f); and
 - (b) that unless the premises are entered and searched immediately such goods or things are likely to be removed from the premises,
- authorize in writing an authorized officer to enter and search the premises.

(4) An authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may take with him such other persons and such equipment as may appear to him to be necessary.

Offences of
obstruction and
disclosure of
Information

15. (1) Without prejudice to any other Act, any person who-

- (a) willfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Act;
- (b) willfully fails to comply with any requirement properly made to him by any such authorized officer; or
- (c) without reasonable excuse, fails to give such authorized officer any other assistance or information which the authorized officer may reasonably require of him for the purpose of the performance of the officer's function under this Act,

shall be guilty of an offence.

(2) Any person who discloses to any other person-

- (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this Act; or
- (b) any information obtained by him in pursuance of this Act, shall be guilty of an offence unless the disclosure was made-
 - (i) in or for the purpose of the performance by him or any other person of functions under this Act, or
 - (ii) in the case of paragraph (b), under the direction or order of a court.

(3) Any person who, in giving any such information as is referred to in subsection (1) (c), makes any statement which he knows to be false shall be guilty of an offence.

(4) Subject to subsection (5), nothing in this section shall be taken to-

- (a) require a person to answer any question or give any information if to do so might incriminate that person or the wife or husband of that person; or
- (b) compel the production by a solicitor of a document containing a privileged communication made by or to him in that capacity or authorize the seizure of any such document in his possession.

(5) A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of the person of an offence under this Act-

- (a) from answering any question put to that person in any civil proceedings;
- (b) from complying with any order made in any such proceedings,

but no statement of admission made by a person in answering a question put or complying with an order made shall, in proceedings for an offence under this Act, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

Penalties

16. (1) Any person convicted of an offence under section 3,4,6,8,9 or 10 shall be to a fine of K50,000 and to imprisonment for three years.

(2) Any person convicted of an offence under section 15 shall be liable to a fine of K200 and to imprisonment for six months.

Time limit for prosecutions

17. No prosecution for an offence under this Act shall be brought after-

- (a) the expiration of 3 years from the date of commission of the offence; or
- (b) the expiration of 1 year from the date of discovery of the offence by the prosecution, whichever is the earlier.

Offences by corporations

18. Where a body corporate is convicted of an offence under this Act, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

Offences due to fault of other persons

19. Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

Accessory to offences committed outside Malawi

20. Subject to the provisions of this Act, any person who, in Malawi, procures, counsels aids, abets or is accessory to the commission outside Malawi of an act which if committed in Malawi, would be an offence under this Act, commits that offence as a principal and shall be liable to be prosecuted in Malawi as if the offence had been committed within Malawi.

Samples
Cap. 34:01

21. (1) Where any act or omission constitutes both an offence under this Act and an offence under the Public Health Act, evidence on behalf of the prosecution concerning any sample procured for analysis shall be admissible in proceedings in respect of the offence under this Act if, but only if, the provisions of section 107 of the Public Health Act have been complied with.

(2) The Minister may by regulations made under section 33 provide that in any proceedings for an offence under this Act, in relation to such goods as may be specified in the regulations (other than proceedings for an offence referred to in subsection (1), evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible unless the sample has been dealt with in such manner as may be specified in the regulations.

Evidence by certificate

22. (1) The Minister may by regulations made under section 33 provide that certificates issued by such persons, in relation to such matters, as are specified in the regulations shall, subject to this

section, be received in evidence of those matters in any proceedings under this Act.

(2) Such a certificate shall not be received in evidence-

- (a) unless the party against whom it is to be given in evidence has been served with copy thereof not less than 7 days before the hearing; or
- (b) if that party has, not less than 3 days before the hearing, served on the other party requiring the attendance of the person issuing the certificate.

(3) For the purposes of this section any document purporting to be such a certificate as is referred to in this section shall be deemed to be such a certificate unless the contrary is shown.

Description of a trade mark in pleading, etc	23. In any information, indictment, pleading, proceeding or document in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to declare that trade mark or forged trade mark to be a trade mark or forged trade mark.
Defence mistake, Accident, etc	24. (1) In any proceedings for an offence under Act it shall, subject to subsection (2), be a defence for the person charged to prove- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control. (2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within period ending 7 clear days before the hearing, he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession. (3) In any proceedings for an offence under section 6 (1) (a) (ii) or (b) it shall be a defence for the person charged to prove that he did not know, had no reason to suspect and could not with reasonable diligence have ascertained that the goods did not conform to the description or that the description had been applied to the goods. (4) In any proceedings for an offence under section 8 (2) it shall be a defence for the person charged to prove that he did not know, had no reason to suspect and could not with reasonable diligence have ascertained that a forged trade mark had been applied to the goods or that a trade mark so nearly resembling a trade mark as to be calculated to deceive had falsely been applied to the goods.
Innocent publication of advertisements	25. In any proceedings for an offence under this Act committed by the publication of an advertisement it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Act.
Costs in proceedings	26. In any proceedings under this Act, the magistrate or court hearing the proceedings may, notwithstanding any provision of any other Act, make such order as to costs as he or it may think fit.
Goods liable	27.-(1) Any goods in respect of which an offence under this Act has been committed shall be

to forfeiture

liable to forfeiture, whether or not any person has been convicted of any such offence.

(2) Where goods are seized or detained by an authorized officer under section 13 the Minister may at any time release such goods to the person who appears to him to be the owner thereof or to the authorized agent of the owner.

(3) Where the goods have not been released and an application for their forfeiture is to be made under section 28(1) the Minister shall serve notice upon the owner of the goods requiring him to notify the Minister in writing within the appropriate period under subsection (4) if he claims that the goods are not liable forfeiture:

Provided that, if there is more than one owner of the goods, it shall be sufficient for the purposes of this subsection to give notice to one such owner.

(4) Where a notice is served under subsection (3) in respect of any goods seized or detained under this Act any person (hereinafter in this section and in section 28 referred to as the claimant)

(a) who is the owner thereof or the authorized agent of the owner; or

(b) who was in possession of the goods when they were seized or detained, may, within 30 days of the date of the notice, give notice in writing to the Minister that he claims that the goods are not liable to forfeiture.

(5) If, on the expiry of the period of time specified in subsection (4) for the giving of a notice of claim under that subsection, no such notice is given in writing to the Minister, and the goods in respect of which notice is given under subsection (3) have not been released, they shall be forfeited to the Government.

(6) Where goods seized or detained under section 13 are goods to which a forged trade mark is applied, or to which a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, the Minister shall, wherever reasonably practicable, notify the proprietor of the trade mark or his agent.

Applications
for forfeiture

28. (1) Where a notice of claim is given under section 27 (4) and the Minister does not release the goods to the claimant, the Attorney General on behalf of the Minister may apply to a magistrate, or the High Court as the Attorney General thinks fit for the forfeiture of the goods.

(2) Where an application under subsection (1) is made to the High Court, it shall be made and proceeded with in accordance with rules of court, and may be begun motion.

(3) Where an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant requiring him to appear before a magistrate on the hearing of the application and shall cause a copy of such summons to be served upon the Attorney General.

(4) If, on the hearing of the application under section (1)-

(a) neither the claimant nor any other person appears before the court or magistrate to make a claim and the court or magistrate is satisfied that notice of the date of the hearing issued in accordance with rules of the court under subsection (2) or the summons issued under subsection (3), as the case may be, was duly served on the claimant; or

(b) neither the claimant nor any person satisfies the court or magistrate that he has a claim,

and the court or magistrate is satisfied that the goods are liable to forfeiture, the court or magistrate shall order that the goods be forfeited to the Government.

- (5) If, on the hearing of the application under section (1), the court or magistrate is satisfied that-
- (a) the goods are liable to forfeiture,; and
 - (b) a person has a claim thereof,

the court or magistrate may order that-

- (i) the goods be forfeited to the Government; or
- (ii) the goods be destroyed; or
- (iii) any false trade description or forged trade mark applied to the goods be obliterated and thereafter the goods be disposed of in such manner and subject to such condition as the court or magistrate may specify in the order; or
- (iv) any false trade description or forged trade mark applied to the goods be obliterated and thereafter the goods be released to the owner thereof or the authorized agent of the owner subject to any condition which the court or magistrate may specify in the order.

(6) On the hearing of an application under subsection 91), a certified true copy of the record of any proceedings in respect of an offence under this Act shall be admissible in evidence.

PART IV- MISCELLANEOUS

Trade marks
containing
trade
description

Cap. 49:01

29. The fact that a trade description is a trade mark, or part of trade mark, does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied, that is to say-

- (a) that it could have been lawfully applied to the goods if this Act had not been entered;
- (b) that the trade mark as applied is used to indicate such a connection between the goods and the proprietor of the trade mark or a person registered under section 9 and 10 of the Trade Marks Act as a registered user of the trade mark; and
- (c) that the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on the commencement of this Act.

Definition
orders

30. Where it appears to the Minister-

- (a) that it would be in the interest of person to whom any goods are supplied; or
- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Malawi, that any expressions used in relation to the goods should be understood as having defined meanings, the Minister may by regulations made under section 33 assign such meanings either-
 - (i) to those expressions when used in the course of a trade or business as, or as part of, a trade description applied to the goods; or
 - (ii) to those expressions when so used in such circumstances as may be specified in the regulations,

and where such a meaning is so assigned to an expression, it shall be deemed for the purposes of this Act to have that meaning when used as is referred to in paragraph (i) or, as the case may be, paragraph (ii) of this section.

Saving for
contractual
Rights

31. A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

Compensation
for loss of
goods seized
under section 13

32.-(1) Where any goods are seized or detained by an authorized officer under section 13, the Government shall, subject to this section, be liable to compensate the owner of the goods for any loss suffered by him by reason that the goods, during the detention, are lost or damaged or have deteriorated; but the owner shall not be entitled to compensate for any such loss if-

- (a) the goods are forfeited;
- (b) he is convicted of an offence under this Act committed in relation to the goods; or
- (c) an order has been made in respect of the goods under section 28 (5).

(2) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (1), the amount of the compensation shall be such amount as is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of-

- (a) the owner of the goods;
- (b) the person in charge or control of the goods at the time they were seized;
- (c) the agents of the person specified in paragraphs (a) and (b); and
- (d) authorized officers, public officer and other persons concerned.

(3) No proceedings shall be maintainable in respect of any claim for compensation on any of the grounds referred in subsection (1) unless the proceedings are commenced-

- (a) in the case of a claim for compensation in respect of goods released to their owner by order of a court or magistrate or by any person having authority to release the goods to him, not later than 6 months after the release thereof;
- (b) in the case of a claim for compensation on the ground that any goods were lost during the detention thereof, not later than 6 months after-
 - (i) the discovery by the owner of the existence of such ground; or
 - (ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of such ground,
 whichever is the earlier.

Regulations 33. The Minister may make regulations for carrying out, or giving effect to, the provision of this Act

Repeal 34. The Merchandise Marks Act is repealed.

Passed in Parliament this thirtieth day of July, one thousand, nine hundred and eight –seven.

P.J.S. Mpaso
Clerk of Parliament