

- (c) makes any die, seal block, machine, or other instrument for the purpose of forging, or to be used for forging, a Mark ; or
- (d) applies any false trade description to goods ; or
- (e) disposes of, or has in his possession, any die, seal block, machine, or other instrument for the purpose of forging a Mark ; or
- (f) causes any of the things referred to in this subsection to be done,

shall, subject to the provisions of this Part, and unless he proves that he acted without intent to defraud, be guilty of an offence.

(2) Any person who sells or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged Mark or false trade description is applied, or to which any Mark so nearly resembling a registered Mark so as to be likely to mislead, is falsely applied, as the case may be, shall, unless he proves—

- (a) that having taken all reasonable precautions against committing an offence he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the Mark, or trade description ; and
- (b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or
- (c) that otherwise he had acted innocently,

be guilty of an offence.

(3) Any person who imports any piece-goods ordinarily sold by length or by the piece, manufactured outside Sri Lanka, or who sells or exposes for, or has in his possession for sale or any purpose of trade, any piece-goods ordinarily

sold by length or by piece, whether manufactured within or outside the territory of Sri Lanka, which do not have conspicuously stamped in English numerals on each piece, the length thereof in standard metres, or in standard metres and a fraction of such a metre, according to the real length of the piece, shall be guilty of an offence :

Provided that nothing contained in this subsection shall apply to any piece-goods manufactured within the limits of Sri Lanka by hand labour only.

(4) Any person found guilty of an offence under this section shall on conviction after trial before a Magistrate be liable to a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled.

(5) The Magistrate may, whether the alleged offender is convicted or not, order that every chattel, article, instrument or thing by means of or in relation to which the offence has or might have been committed shall be destroyed or declared forfeit to the State or otherwise dealt with as he may think fit.

187. Where an offence under this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a Director-General, Manager, Secretary or other similar officer of that body shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

Offences by
bodies corporate.

188. For the purposes of this Part, the definitions contained in section 101 shall apply, unless the context otherwise requires.

Interpretation.

False name or initials.

189. (1) The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods—

- (a) of any such figures, words, marks or arrangement or combination thereof, whether including a registered Mark or not, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are ;
- (b) of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description.

(2) For the purposes of this Part the expression “false name or initials” means, as applied to any goods, any name or initials of a person which—

- (i) are not a Mark, or part of a Mark ; and
- (ii) are identical with, or are a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having been authorized the use of such name or initials ; and
- (iii) are either those of a fictitious person or of some person not, *bona fide*, carrying on business in connection with such goods.

(3) A trade description which denotes or implies that in any goods to which it is applied which contains more metres or standard metres than contained therein, is a false trade description.

190. A person shall be deemed to forge a Mark who either— Forging marks.

- (a) without the assent of the owner of the Mark make that Mark, or a Mark so nearly resembling that mark as to be likely to mislead ; or
- (b) falsifies any genuine Mark, whether by alteration, addition, effacement or otherwise,

and any Mark so made or falsified is in this Part referred to as a forged Mark :

Provided that in any prosecution for forging a Mark the burden of proving the assent of the owner shall lie on the accused.

191. Any person who—

False declaration
to be an offence.

- (a) Makes a false declaration to the Director-General ;
- (b) Makes a false declaration in respect of geographical indication inclusive of Ceylon Tea and Ceylon Cinnamon,

shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding five hundred thousand rupees.

192. (1) Any person shall be deemed to apply a Mark or trade description to goods who—

Applying Marks
and descriptions.

- (a) applies it to the goods itself ; or
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture ; or
- (c) places, encloses, or annexes any goods which are sold or exposed, or had in possession for the purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a mark or trade description has been applied ; or

- (d) uses a Mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that Mark, or trade description.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover capsule, case, frame, or wrapper ; and the expression “label” includes any band or ticket.

(3) A Mark or trade description shall be deemed to be applied whether it is woven, impressed, stamped, branded, or otherwise worked into or annexed, or affixed to the goods, or any covering, label, reel, or other thing.

(4) A person shall be deemed to falsely apply to goods a mark who, without the assent of the owner of a Mark, applies such Mark or any Mark so nearly resembling it as to be likely to mislead, but in any prosecution for falsely applying a Mark to goods the burden of proving the assent of the owner shall lie on the accused.

Exemption certain persons employed in ordinary course of business.

193. Where a person is charged with of making any die, stamp block, machine, or other instrument for the purpose of forging or being used for forging, a Mark, or with falsely applying to goods any Mark or any Mark so nearly resembling a mark as to be likely to mislead, or with applying to goods any false trade description or causing any of the things in this section mentioned to be done, and such person proves—

- (a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, stamps blocks, machines, or other instruments for making, or to be used in making, Marks, or as the case may be, to apply Marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in Sri Lanka, and was not interested in the goods by way of profit or commission dependent on the sale of such goods ; and

- (b) that he took reasonable precautions against committing the offence charged with ; and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the Mark or trade description ; and
- (d) that he gave to the prosecutor all the information in his power with respect to the person on whose behalf the Mark or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he gives due notice to the prosecutor regarding his intention to rely on defence specified in this section.

194. In any indictment, charge, proceeding, or document in which any mark or forged mark is required to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that Mark or forged Mark to be a Mark or forged Mark.

Mark how described in pleading.

195. In any prosecution for an offence under this Part—

Rules as to evidence.

- (a) an accused, and his or her spouse as the case may be, may, if the accused thinks fit, be called as a witness, and if called, shall be sworn and examined and may be cross-examined and re-examined in like manner as any other witness ;
- (b) in the case of imported goods evidence of the port of shipment shall be, *prima facie*, evidence of the place or country in which the goods were made or produced.

196. Any person who, being within Sri Lanka, abets the commission outside Sri Lanka of any act which, if committed within Sri Lanka, would under this Part be an offence, shall be deemed to be guilty of that offence, and be liable to be indicted, proceeded against, tried and convicted in any district or place in Sri Lanka in which he may be as if the offence had been committed therein.

Punishment of accessories.

For the purpose of this section “abet” shall have the same meaning as in section 101 of the Penal Code.

Search warrant.

197. (1) (a) Upon receipt of information of an offence being committed under this Part, a Magistrate may issue either a summons requiring the person alleged to have committed such offence to appear in court and show cause or where such person fails to appear issue a warrant for the arrest of such person ;

(b) The Magistrate may upon being satisfied by information on oath that there are reasonable grounds to believe that any goods or things by means of, or in relation to, which such alleged offence has been committed are in any house or premises of the person charged on the basis of such information, or in his possession or under his control, in any place, such Magistrate may issue a warrant under his hand ;

(c) It shall be lawful for any police officer, or other person named or referred to in the warrant, to enter such house, premises, or place at any reasonable time of the day, and to search therefore and seize such goods or things ; and any goods or things seized under any such warrant shall be brought before the Magistrate’s Court for the purpose of determining whether such goods are liable to forfeiture under this Part.

(2) (a) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Part, is unknown or cannot be found, any information or complaint may be led for the purpose only of enforcing such forfeiture, and a Magistrate may cause notice to be published requiring reasons to be shown to the contrary at the time and place named in the notice, as to why such goods or things should not be forfeited.

(b) If the owner or any person on his behalf, or other person interested in the goods or things, fails to show sufficient cause to the contrary at the time and place named in the notice, Magistrate may order such goods or things or any of them to be forfeited. Every such order shall be subject to an appeal.

(3) Any goods or things forfeited under this section, or under any other provisions of this Part, may be destroyed or otherwise disposed of, in such manner as the Magistrate who ordered the forfeiture may direct, and the Magistrate out of any proceeds which may be realized by the disposition of such goods (all marks and trade descriptions being first obliterated), may make an award to an innocent party for any loss he may have sustained in dealing with such goods.

198. In any prosecution under this Part the Court may order costs to be paid to the accused by the prosecutor or to the prosecutor by the accused, having regard to the information given by, and the conduct of, the accused and prosecutor respectively, and the sum so awarded as costs shall be recoverable as if it were a fine.

Costs of defence
and of
prosecution.

199. Where, at the commencement of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Part with respect to false trade descriptions shall not apply to such trade description when so applied :

Provisions as to
false description
not to apply in
certain cases.

Provided that where such trade description includes the name of a place or country, which is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually

made or produced in that place or country, the provisions of this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

200. (1) The Provisions of this Part shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Part, be brought against him.

(2) Nothing in this Part shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this Part.

(3) Nothing in this Part shall be construed so as to make any servant of a master resident in Sri Lanka liable to a suit or prosecution due to disclosure of information regarding the servant of a master, when required by or on behalf of the prosecutor who, *bona fide*, acts in compliance with the instructions of such master.

Cognizable and
bailable offences.

201. All offences under this Part shall be cognizable and bailable, within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979. The provisions of the Code of Criminal Procedure Act shall apply to any offence committed under this Part.

Limitation of
prosecution.

202. No prosecution for an offence under this Act shall be commenced after the expiration of three years after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first occurs.