Australian Customs Notice 2002 44

# Commerce markings on imported goods General

Customs administers the *Commerce (Trade Descriptions) Act 1905* (the Act) and the subordinate *Commerce (Imports) Regulations 1940* that set out the requirements for labelling on goods imported into Australia. This Notice is intended to clarify the current operation of this legislation in relation to imported goods that require labelling. The Act and regulations are being reviewed under Competition Principles Agreement and any changes arising from the review will be promulgated separately.

# Legislation

## Commerce (Trade Descriptions) Act 1905

A trade description in relation to any goods, means any description, statement, indication or suggestion, direct or indirect

1. as to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods; or
2. as to the country or place in or at which the goods were made or produced; or
3. as to the manufacturer or producer of the goods or the person by whom they were selected, packed, or in any way prepared for the market; or
4. as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods; or
5. as to the material or ingredients of which the goods are composed, or from which they are derived; or
6. as to the goods being the subject of an existing patent, privilege, or copyright.

A false trade description means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

The Act prohibits the import or export of goods bearing a false trade description, or not bearing a prescribed trade description. The *Commerce (Imports) Regulations* prescribe the required trade description for imported goods. There are currently no prescribed trade descriptions for exported goods.

## Commerce (Imports) Regulations 1940

The regulations set out the labelling requirements for goods imported into Australia. Regulation 7(1)(a) to (s) lists the goods that are required to be marked with a trade description. These goods are required to be marked with the name of the country in which the goods were made or produced and in some circumstances with a true description. The term "true description" is not defined in the Act or Regulations. Advice on what constitutes a true description will vary according to the goods being imported. However, a general guide is to provide a factual description that will help inform the consumer about the goods. For example, a description of 100% leather on a leather wallet. Current policy on the markings required for goods listed in Regulation 7(1)(a) to (s) is expanded in the section headed "Goods requiring labelling" below.

The trade description must be: in the English language,

in prominent and legible characters, and

on a principal label or brand affixed in a prominent position and in as permanent manner as practicable.

Any matter included on the label, brand or package that is in addition to the matter required shall not be such as will, by illustration, wording or size of lettering tend to contradict or obscure the matters required to be included.

Where goods are imported in the packages in which they are customarily exposed for sale, the trade description should be applied to the packaging. It is not necessary to mark both the packaging and the goods. For other goods, the trade description should be on the goods, or if not practical, applied to the coverings containing the goods. For example, where olives are imported in large containers, the trade description cannot be on individual olives and therefore should be on the container. Any labels that are affixed to imported goods should be in a position that is readily accessible to the purchaser.

## Goods requiring labelling

The following goods are required to be labelled with a trade description in accordance with the Regulations*.*

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|  | Goods | Marking Requirements |
| (a) | Articles used for food or drink by humans, or from which food or drink for use by humans is manufactured or prepared. | Country in which the goods were made or produced. A true description. |
| (b) | Medicines or medicinal preparations for internal or external use. | Country in which the goods were made or produced. A true description. |
| (c) | Fertilizer. | Country in which the goods were made or produced. A true description. |
| (d) | Agricultural seeds. | Country in which the goods were made or produced. A true description. |
| (e) | Plants. | Country in which the goods were made or produced. A true description. |
| (f) | Textile products and articles of apparel including shoes. | Country in which the goods were made or produced. A true description. |
| *Note : Labels in shirts should be located in the collar facing outwards and not obscured by any other label. Skirts trousers and shorts should have the label in the waistband. Labels for coats and jackets should be in the inner chest area.* | | |
| ***Additional marking requirements for shoes***  The material of which the sole, uppers and quarter linings are made is to be marked in letters not less than 2.5mm in height. The marking is to be positioned in one of the following places: \* on the waist of the outer sole of the shoe \* on the inside of the upper above the waist of the shoe \* on the heel seat or waist area of the sock lining or, if there is no sock lining, on the heel seat or waist area of the inner sole on the tongue of the shoe. *Any person intending to import footwear should refer to regulation 15B for full details of the required markings.* | | |
| (h) | Jewellery. | Country in which the goods |

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|  |  | were made or produced. A true description. |
| *Note : The number of carats is not a required trade description. Labelling requirements also apply to costume and imitation jewellery.* | | |
| (ha) | Goods, the total outside area of which is not less than one hundred and fifty-five square centimetres, specified in the Fourth Schedule to these regulations, being: (i) goods made from leather or a material resembling leather: (ii) goods made from fibre or vulcanite or a material resembling fibre or vulcanite; or (iii) goods made from plastic. | Country in which the goods were made or produced. A true description. |
| *Note : Goods specified in the Fourth Schedule of the Regulations are: attach cases, bicycle saddles, boxing gloves, bridles, brief cases, cases for gramophones, musical instruments, television sets or wireless sets, document cases, folio cases, footballs, gloves, golf bags, harness, hat boxes, hat cases, horse collars, kit bags, ladies' handbags, leggings, machine belting, men's belts, pouches, punching bags, punching balls, purses, razor strops, saddles, schoolbags, school cases, shopping bags, sporting goods, suit cases, trunks, wallets.* | | |
| (i) | Brushware | Country in which the goods were made or produced. A true description. |
| (j) | China, porcelain, earthenware and enamelled hollowware of the following kinds: (i) articles of a description commonly used in connection with the serving of food or drink for man; and (ii) kitchenware and kitchen utensils. | Country in which the goods were made or produced. |
| *Note : Markings on ceramic ware must be permanent, i.e. indelible print, etching or under the glaze. If the items are imported and offered for sale as individual items, the markings are to be on the article, if the items are imported as pre-packed (as they are sold) the marking is only required on the package in which they are offered for sale.* | | |
| (k) | Electrical appliances, apparatus and accessories, including electric incandescent lamps. | Country in which the goods were made or produced. A true description. |
| (l) | Powder puffs. | Country in which the goods were made or produced. |
| (m) | Toys. | Country in which the goods were made or produced. |
| (n) | Cigars, cigarettes, manufactured tobacco, cigarette papers and cigarette tubes. | Country in which the goods were made or produced. A true description. |
| (o) | Portland cement. | Country in which the goods were made or produced. |
| (p) | Sanitary and lavatory articles of earthenware, fireclay, vitreous china or similar substances or materials. | Country in which the goods were made or produced. |
| (q) | Wall, hearth and floor tiles. | Country in which the goods were made or produced. |
| (r) | Watches and clocks and movements for watches and clocks. | Country in which the goods were made or produced. |
| *Note : The following markings are acceptable on imported watches; [country] "cased in", "made in" [country], "assembled in" [country], "movement/cased in" [country], the word* | | |

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| *[country] provided the entire item is manufactured and cased in that country.* | | |
| (s) | Goods that are imported in the packages in which they are customarily exposed or offered for sale, other than: (i) goods of a kind referred to in a preceding paragraph; [ie Reg 7(1)(a)-(r)] (ii) goods of a kind specified in Part 1 of the Fifth Schedule; or (iii) goods contained in packages included in a class of packages specified in Part II of that Schedule. | Country in which the goods were made or produced. A true description. |
| *Note : Part 1 of the Fifth Schedule of the Regulations lists the goods that are not considered to be pre-packed articles. Part 2 of the Fifth Schedule of the Regulations lists the goods that do not contain pre-packed articles.* | | |

This ACN replaces ACN Nos 92/194, 93/134, 93/197 and 95/41.

Although the Act provides the general requirements for labelling, some imported goods may require specific labelling not covered by this legislation or administered by Customs. Further consultation with other Federal, State or Territory departments may be required.

Further information on marking requirements on imported goods may be directed to the Customs Information Centre on 1 300 363 263. Ken Riordan

National Manager

Import / Export Management Branch July 2002.