

TRADE DESCRIPTIONS ORDINANCE 1980

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HONG KONG

No. 69 OF 1980

I assent.

L.S.

MURRAY MACLEHOSE,
Governor.

4 December 1980.

*Amended not
discussed -
O.N. 452/81.*

An Ordinance 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 to be marked on or to accompany the goods or to be included in advertisements; [to prohibit the unauthorized use of devices or emblems signifying an award by the Queen or the Governor;] to restate the law relating to forgery of trade marks; to repeal the Merchandise Marks Ordinance; and for purposes connected therewith.

L.N. 64/81.

[1 April 1981]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I**PRELIMINARY**Short title and
commencement.

1. This Ordinance may be cited as the Trade Descriptions Ordinance 1980 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires—
“advertisement” includes a catalogue, a circular and a price list;

“authorized officer” means a public officer appointed under section 14;

(Cap. 43.)

“Convention country” has the meaning assigned to it by section 13A(6) of the Trade Marks Ordinance;

“Director” means the Director of Trade, Industry and Customs, and includes the Commissioner of Trade, Industry and Customs and any Deputy or Assistant Commissioner of Trade, Industry or Customs;

[cf. 1968 c. 29,
s. 3.]

“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 such 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 or implied by the approval of 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 Hong Kong, 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 Hong Kong, are supplied free of the duty so payable;

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

“goods in transit” means goods which—

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

“import” means to bring, or cause to be brought, into Hong Kong;

“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— [cf. 1968 c. 29.
s. 2(1).]

- (a) quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in the preceding paragraphs;
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a 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 Hong Kong under the Trade Marks (Cap. 43.) Ordinance;

(1938 c. 22.)

- (b) a trade mark registered in the register of trade marks kept under or preserved by the Trade Marks Act 1938;
- (c) a trade mark—
 - (i) registered, or in respect of which an application for registration has been made, in a British territory or a Convention country; and
 - (ii) capable of registration in Hong Kong under the Trade Marks Ordinance; and
 - (iii) in respect of which a period of 6 months has not expired since the date of the application for the registration thereof in a British territory or a Convention country.

[cf. 1968 c. 29, s. 36.]

- (2) (a) For the purposes of this Ordinance, 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; or
 - (ii) produced in the country in which they were wholly grown or mined.
- (b) The Director of Trade, Industry and Customs 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 Ordinance 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 Ordinance as having been manufactured or produced.
- (3) For the purposes of this Ordinance, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television 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.

[cf. 1968 c. 29, s. 39(2).]

Special provisions applicable to goldware.
[cf. 1973 c. 43, s. 1(4).]

3. (1) Notwithstanding the definition of "false trade description" in section 2, a trade description which indicates the fineness (whether in parts per thousand or in carats) of gold shall be a false trade description if that indication is false to any extent or degree, except by understating the fineness.

[cf. 1973 c. 43, Sch. 1.]

(2) For the purpose of construing descriptions relating to the fineness of gold—

- (a) a description indicating that an article, or the metal in an article, is so many carats shall be presumed to be an indication that the article or metal is of gold, and that its fineness is that specified in the table in the Schedule for that number of carats;
- (b) paragraph (a) shall not apply if (as in a case where the article is a precious stone) the word "carat" is used as a measure of weight for precious stones, and not as a measure of fineness.

Schedule

(3) Notwithstanding the definition of "false trade description" in section 2—

(a) a trade description which indicates that any article (other than an article of pure gold) is of gold shall be a false trade description unless the article consists solely of gold alloy and—

(i) contains not less than 8 carats of gold; or

(ii) bears a mark clearly indicating in carats, by number or by number and the letters "k", "c" or "ct", the fineness of the gold content; or

(iii) bears a mark clearly indicating in parts per thousand the fineness of the gold content; and

(b) a mark calculated to be taken as an indication of the fineness of gold of an article—

(i) which is plated with or enclosed in gold alloy or gilded; or

(ii) to which gold alloy is soldered or otherwise affixed,

shall be a false trade description unless it is manifest from the appearance of the article that the mark refers solely to the part of the article which consists of gold alloy.

(4) Any number of 1 or 2 digits on an article which indicates or purports to indicate, or is likely to be taken as an indication of, the fineness in carats of its gold content shall be a false trade description unless the article contains at least the same proportion of pure gold as the number bears to 24.

(5) Any number of 3 digits on an article which indicates or purports to indicate, or is likely to be taken as an indication of, the fineness in number of parts per thousand of its gold content shall be a false trade description unless the article contains gold of such a standard of fineness.

(6) For the purposes of this section "fineness" means the proportion of pure gold in accordance with subsection (4) or the number of parts by weight of gold in accordance with subsection (5) as the case may require.

4. (1) The Governor in Council may by order require that any goods 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 relating to the goods and, subject to the provisions of this Ordinance, 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 and manner in which the information or instruction is to be given.

Marking orders.
[cf. 1968 c. 29,
s. 8.]

(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 commits 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.
[cf. 1968 c. 29, s. 9.]

5. (1) The Governor in Council 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 to or including a trade description) relating to such goods and subject to the provisions of this Ordinance 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 commits an offence.

PART II

FALSE TRADE DESCRIPTIONS OR REPRESENTATIONS AND FORGED TRADE MARKS

Applying a trade description, trade mark or mark to goods.
[cf. 1968 c. 29, s. 4.]

6. (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) 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.
[cf. 1968 c. 29, s. 1.]

7. (1) Subject to the provisions of this Ordinance, 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,

commits 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 Ordinance 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.

8. (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.

Trade descriptions used in advertisements.
[cf. 1968 c. 29, s. 5.]

(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 7(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 7(1)(a)(ii).

(3) In determining for the purposes 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.

9. (1) Subject to the provisions of this Ordinance, any person who—

- (a) forges any trade mark;
- (b) falsely applies 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 purpose of forging a trade mark; or
- (e) causes to be done anything referred to in paragraph (a), (b), (c) or (d),

Offences in respect of trade marks.

commits an offence unless he proves that he acted without intent to defraud.

(2) Subject to the provisions of this Ordinance, 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 a trade mark as to be calculated to deceive is falsely applied, commits 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 a mark so nearly resembling that trade mark as to be calculated to deceive; or

(ii) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

(b) falsely to apply to goods a trade mark who without the assent of the proprietor of that trade mark applies that trade mark to good,

unless he proves that he acted without infringing the right of the proprietor of the trade mark conferred by section 27 of the Trade Marks Ordinance, and “forged trade mark” shall be construed accordingly.

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

False representations as to Royal approval or award, etc.
[cf. 1968 c. 29, s. 12.]

10. (1) Subject to the provisions of this Ordinance, 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 or are of a kind supplied to or approved by Her Majesty or any member of the Royal Family commits an offence.

(2) Subject to the provisions of this Ordinance, any person who, in the course of any trade or business, uses—

(a) without the authority of Her Majesty, any device or emblem signifying the Queen’s Award to Industry or anything so nearly resembling such a device or emblem as to be likely to deceive; or

(b) without the authority of the Governor, any device or emblem signifying the Governor’s Award for Hong Kong Design or anything so nearly resembling such a device or emblem as to be likely to deceive,

commits an offence.

False representations as to supply of goods.
[cf. 1968 c. 29, s. 13.]

11. Subject to the provisions of this Ordinance, 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, commits an offence.

Prohibited import and export of certain goods.

12. (1) Subject to section 13, 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 9(3), is applied

(2) Any person who imports or exports any goods contrary to subsection (1) commits 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 not intended for trade or business.

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

Power to exempt goods sold for export.
[cf. 1968 c. 29, s. 32.]

13. In relation to goods which are intended for despatch to a destination outside Hong Kong, section 7 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 Governor by order specifies any other of those matters for the purposes of this

section with respect to any description of goods, section 7 shall apply, in relation to goods of that description which are intended for despatch to a destination outside Hong Kong, as if the matters so specified were also omitted from those included in the definition of "trade description" in section 2.

PART III

ENFORCEMENT

14. (1) The Director may appoint any public officer to be an authorized officer for the purposes of this Ordinance.

Appointment of authorized officers.

(2) The Director may exercise any of the powers conferred on an authorized officer under this Ordinance.

15. (1) An authorized officer may, on production, if required, of evidence of his appointment—

Power to enter premises and inspect and seize goods and documents.
[cf. 1968 c. 29, s. 27 & s. 28.]

(a) make such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Ordinance are being complied with;

(b) for the purpose of ascertaining whether any offence under this Ordinance 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 Ordinance 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 Ordinance 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 Ordinance has been or is being committed—

(i) subject to section 16, enter and search such premises;

(ii) stop and search such vehicle; or

(iii) 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 Ordinance 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 Ordinance.

- (2) An authorized officer may—
- (a) break open any container or open any vending machine for the purpose of exercising his powers under subsection (1)(f) to seize goods;
 - (b) break open any outer or inner door of any place which he is empowered or authorized by or under this Ordinance to enter and search;
 - (c) forcibly board any vessel or aircraft which he is empowered by this Ordinance to stop, board or search;
 - (d) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;
 - (e) detain any person found in any premises which he is empowered or authorized by or under this Ordinance to search until such place has been so searched;
 - (f) detain any vessel or aircraft which he is empowered by this Ordinance to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been so searched;
 - (g) detain any vehicle which he is empowered by or under this Ordinance to stop and search until it has been so searched.

Restrictions on the entry and search of domestic premises.

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

- (a) a magistrate has issued a warrant under subsection (2); or
- (b) the Director 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 15(1)(f), issue a warrant authorizing an authorized officer to enter and search the premises.

(3) The Director 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 15(1)(f); and
- (b) that unless the premises are entered and searched immediately such goods or thing 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. [cf. 1968 c. 29, s. 29.]

17. (1) Without prejudice to any other Ordinance, any person who—

- (a) wilfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance;
- (b) wilfully 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 functions under this Ordinance,

commits 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 Ordinance; or
 (b) any information obtained by him in pursuance of this Ordinance,

commits 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 Ordinance, 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 commits 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 that person of an offence under this Ordinance—

- (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 or admission made by a person in answering a question put or complying with an order made shall, in proceedings for an offence under this Ordinance, 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.

18. (1) Any person who commits an offence under section 4, 5, 7, 9, 10, 11 or 12 shall be liable— Penalties.

- (a) on conviction on indictment, to a fine of \$500,000 and to imprisonment for 5 years; and
 (b) on summary conviction, to a fine of \$100,000 and to imprisonment for 2 years.

(2) Any person who commits an offence under section 17 shall be liable to a fine of \$10,000 and to imprisonment for 1 year.

19. No prosecution for an offence under this Ordinance shall be brought after— Time limit for prosecutions.

- (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 prosecutor,

whichever is the earlier.

Offences by corporations.

20. Where a body corporate is convicted of an offence under this Ordinance, 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 person.
1968 c. 29,
s. 23.

21. Where the commission by any person of an offence under this Ordinance 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 Hong Kong.

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

Samples.
(Cap. 132.)

23. (1) Where any act or omission constitutes both an offence under this Ordinance and an offence under the Public Health and Urban Services Ordinance, evidence on behalf of the prosecution concerning any sample procured for analysis shall be admissible in proceedings in respect of the offence under this Ordinance if, but only if, the provisions of section 63 of the Public Health and Urban Services Ordinance have been complied with.

(2) The Governor in Council may by regulations provide that in any proceedings for an offence under this Ordinance 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.
[cf. 1968 c. 29
s. 31.]

24. (1) The Governor in Council may by regulations provide that certificates issued by such persons as may be specified by the regulations in relation to such matters as may be so specified shall, subject to this section, be received in evidence of those matters in any proceedings under this Ordinance.

(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 a 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 a notice 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.

25. 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 state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Description of trade mark in pleading.

26. (1) In any proceedings for an offence under this Ordinance it shall, subject to subsection (2), be a defence for the person charged to prove—

Defence mistake, accident, etc. 1968 c. 29, s. 24.

(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 a period ending 7 clear days before the hearing, he has served on the prosecutor 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 7(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 9(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 or mark so nearly resembling a trade mark as to be calculated to deceive had falsely been applied to the goods.

27. In proceedings for an offence under this Ordinance 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 Ordinance.

Innocent publication of advertisements. 1968 c. 29, s. 25.

28. In any proceedings under this Ordinance, the magistrate or court hearing the proceedings may, notwithstanding any provision of any other Ordinance, make such order as to costs as he or it may think fit.

Costs in proceedings.

29. Where any property has come into the possession of the Crown or any authorized officer acting under this Ordinance, section 102 of the Criminal Procedure Ordinance shall, subject to this Ordinance, apply to such property in all respects as though such property had come into the possession of the police in connexion with a criminal offence and such section shall be construed as though references to the Crown or such authorized officer, as the case may be, were substituted therein for references to the police.

Power to make orders with respect to property in possession of the Crown. (Cap. 221.)

Goods liable to forfeiture.

30. (1) Any goods in respect of which an offence under this Ordinance has been committed shall be 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 15 the Director 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 31(1) the Director shall serve notice upon the owner of the goods requiring him to notify the Director in writing within the appropriate period under subsection (5) if he claims that the goods are not liable to 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) A notice under subsection (3) shall be deemed to have been duly served if—

- (a) it is delivered to the person on whom it is to be served;
- (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Director; or
- (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the head office of the Trade, Industry and Customs Department for a period of not less than 7 days.

(5) Where a notice is served under subsection (3) in respect of any goods seized or detained under this Ordinance any person (hereinafter in this section and in section 31 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—

- (i) the date of the notice, if it is served under subsection (4)(a) or (b); or
- (ii) the first day on which it is exhibited, if it is served under subsection (4)(c),

give notice in writing to the Director that he claims that the goods are not liable to forfeiture.

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

(7) Where goods seized or detained under section 15 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 Director shall, wherever reasonably practicable, notify the proprietor of the trade mark or his agent.

Application for forfeiture.

31. (1) Where a notice of claim is given under section 30(5) and the Director does not release the goods to the claimant, the Attorney

General on behalf of the Director may apply to a magistrate, the District Court 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 District Court or the High Court, it shall be made and proceeded with in accordance with rules of court, and may be begun by 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 Director.

(4) Subject to the provisions of this Ordinance an application to a magistrate under subsection (1) shall be deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance.

(Cap. 227.)

(5) If, on the hearing of the application under subsection (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 Crown.

(6) If, on the hearing of the application under subsection (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 Crown;

(ii) the goods be destroyed;

(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 any 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.

(7) On the hearing of an application under subsection (1) a certified true copy of the record of any proceedings in respect of an offence under this Ordinance shall be admissible in evidence.

PART IV

MISCELLANEOUS

32. The fact that a trade description is a trade mark, or part of a 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—

Trade marks containing trade descriptions.
[cf. 1968 c. 29, s. 34.]

(Cap. 43.)

- (a) that it could have been lawfully applied to the goods if this Ordinance had not been enacted;
- (b) that the trade mark as applied is used to indicate such a connexion between the goods and the proprietor of the trade mark or a person registered under section 58 of the Trade Marks Ordinance 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 Ordinance.

Definition
Orders.[cf. 1968 c. 29,
s. 7.]**33. Where it appears to the Governor in Council—**

- (a) that it would be in the interest of persons 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 Hong Kong,

that any expressions used in relation to the goods should be understood as having definite meanings, the Governor in Council may by regulations 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 Ordinance to have that meaning when used as referred to in paragraph (i) or, as the case may be, paragraph (ii) of this section.

Saving for
civil rights.[cf. 1968 c. 29,
s. 35.]

34. 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 Ordinance.

Compensation
for loss of
goods seized
under section
15(1)(f).[cf. 1968 c. 29,
s. 33.]

35. (1) Where any goods are seized or detained by an authorized officer under section 15 the Government shall, subject to this section, be liable to compensate the owner of the goods for any loss suffered by him by reason of the seizure or detention thereof or by reason that the goods, during the detention, are lost or damaged or deteriorate; but the owner shall not be entitled to compensation for any such loss if—

- (a) the goods are forfeited;
- (b) he is convicted of an offence under this Ordinance committed in relation to the goods; or
- (c) an order has been made in respect of the goods under section 31(6).

(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 recoverable 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 officers and other persons concerned.

(3) No proceedings shall be maintainable in respect of any claim for compensation on any of the grounds referred to 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.

36. (1) The Merchandise Marks Ordinance is repealed.

Repeal.
(Cap. 41.)
(Cap. 41,
sub. leg.)

(2) The Merchandise Marks (Official Prosecutions) Regulations and the Merchandise Marks (Seizure of Prohibited Goods) Regulations are revoked.

37. (1) Section 20 of the Agriculture Pesticides Ordinance is amended by deleting “the Merchandise Marks Ordinance” and substituting the following—

Consequential
amendments.
(Cap. 133.)

“the Trade Descriptions Ordinance 1980”.

(2) The Second Schedule to the Customs and Excise Service Ordinance is amended by deleting “Merchandise Marks Ordinance” and substituting the following—

(Cap. 342.)

“Trade Descriptions Ordinance 1980”.

SCHEDULE

[s. 3.]

TABLE

<i>Number of carats</i>	<i>Indicates gold of fineness of</i>
8	333 parts per thousand
9	375 parts per thousand
12	500 parts per thousand
14	585 parts per thousand
15	625 parts per thousand
18	750 parts per thousand
22	916.6 parts per thousand

and so in proportion for any other number of carats.

Passed by the Hong Kong Legislative Council this 3rd day of December 1980.

LORNA LEUNG,

Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

LORNA LEUNG,

Clerk to the Legislative Council.