

COMMERCE (TRADE DESCRIPTIONS) ORDINANCE 1950.⁽¹⁾

No. 21 of 1950.

An Ordinance relating to Trade Descriptions of Goods.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the Papua and New Guinea Act 1949, as follows:—

PART I.—PRELIMINARY.

1. *This Ordinance may be cited as the Commerce (Trade Short title. Descriptions) Ordinance 1950.⁽¹⁾*

2. *This Ordinance shall come into operation on a date to be Commencement. fixed by the Administrator by notice⁽¹⁾ in the Gazette.*

3. *This Ordinance shall, in relation to the Territory of Papua, Incorporation. be incorporated and read as one with the Customs Ordinance, 1909-1939⁽²⁾ of that Territory, and in relation to the Territory of New Guinea, be incorporated and read as one with the Customs Ordinance 1921-1941⁽³⁾ of that Territory.*

4. *The Ordinances specified in the Schedule to this Ordinance Repeal. are repealed.*

5. *This Ordinance is divided into Parts as follows:—*

Parts.

Part I.—Preliminary (Sections 1-7).

Part II.—Inspection of Imports and Exports (Sections 8-9).

Part III.—Importation and Sale (Sections 10-14).

Part IV.—Exportation (Sections 15-19).

Part V.—Miscellaneous (Sections 20-21).

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwlt'h. Gaz.</i>	Date on which took effect.
27.9.1950	5.10.1950	Not notified to commence before 1.1.1952 (a)

(a) The *Commerce (Trade Descriptions) Ordinance 1951* was not brought into operation before the date fixed under Section 35 of the *Papua and New Guinea Act 1949-1950*, and, *semble*, was not continued in force by Section 56 of that Act. Accordingly it is printed in italics.

(2) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. II., on pp. 1543-1595. Repealed and replaced by the *Customs Ordinance 1951*, printed in this Volume on pp. 307-361.

(3) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. II., on pp. 1763-1816. Repealed and replaced by the *Customs Ordinance 1951*, printed in this Volume on pp. 307-361.

PART A : CUSTOMS—

Definitions.

6. In this Ordinance, unless the contrary intention appears—
- “Chief Collector” means, in relation to the Territory of Papua, the Treasurer of the Territory, and, in relation to the Territory of New Guinea, the Chief Collector of Customs of that Territory;
 - “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;
 - “officer” means an officer of Customs;
 - “the Regulations” means the Regulations made under this Ordinance;
 - “trade description”, in relation to any goods, means any description, statement, indication, or suggestion, direct or indirect—
 - (a) as to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods;
 - (b) as to the country or place in or at which the goods were made or produced;
 - (c) 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;
 - (d) as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods;
 - (e) as to the material or ingredients of which the goods are composed, or from which they are derived; or
 - (f) as to the goods being the subject of an existing patent, privilege, or copyright,and includes a Customs entry relating to goods; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Ordinance.

When trade description deemed to be applied to goods.

- 7.—(1.) A false trade description shall be deemed to be applied to goods if—
- (a) it is applied to the goods themselves;
 - (b) it is applied to any covering, label, reel, or thing used in connexion with the goods; or
 - (c) it is used in any manner likely to lead to the belief that it describes or designates the goods.

(2.) A trade description which is required by the Regulations to be applied to any goods shall be deemed to be applied to the goods if—

- (a) it is applied to the goods themselves; or
- (b) it is used in relation to the goods in the manner prescribed.

(3.) For the purposes of this section—

- (a) “covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and
- (b) “label” includes any band or ticket.

PART II.—INSPECTION OF IMPORTS AND EXPORTS.

8.—(1.) An officer may inspect and examine all prescribed goods which are imported, or which are entered for export or brought for export to any wharf or place, or are in course of manufacture or preparation for export. Inspection of imports and exports.

(2.) The officer may where practicable take samples of any goods inspected by him pursuant to this section, and the samples so taken shall be dealt with as prescribed.

(3.) For the purposes of this section an officer may enter any ship, wharf or place, and may open any packages, and may do all things necessary to enable him to carry out his powers and duties under this section.

9. Every person who intends to export any goods of a kind or class required under this Ordinance to be inspected or examined by an officer, shall, if required to do so by the Regulations, before the goods are shipped, give notice, in accordance with the Regulations, to the Customs of his intention to export the goods and of the place where the goods may be inspected. Notice of intention to export.

Penalty: Twenty pounds.

PART III.—IMPORTATION AND SALE.

10.—(1.) The Regulations may prohibit the importation or introduction into the Territory of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed. Prohibition of imports not bearing prescribed trade description.

(2.) All goods imported in contravention of any regulation under this section may be detained by the Collector and may by direction of the Administrator be seized as forfeited to the Administration.

(3.) Subject to the Regulations, the Chief Collector, or on appeal from him the Administrator, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently, shall, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the

PART A : CUSTOMS—

owner or importer upon security being given to the satisfaction of the Chief Collector that the prescribed trade description will be applied to the goods or that they will be forthwith exported.

(4.) A regulation under this section shall not take effect until after the expiration of not less than three months from notification in the Gazette.

Imported goods found in Territory without prescribed trade description.

11. All imported goods to which a trade description is by the Regulations required to be applied, and which are found in the Territory without the prescribed trade description, shall until the contrary is proved be deemed, subject to the Regulations, to have been imported in contravention of the Regulations.

Importation and sale of falsely marked goods.

12.—(1.) A person shall not import, offer for sale, or sell any goods to which a false trade description is applied.

Penalty: One hundred pounds.

(2.) It shall be a defence to a prosecution for an offence against this section if the defendant proves that he did not knowingly import, offer for sale, or sell the goods in contravention of this section.

Imported goods found in Territory with false trade description.

13. All imported goods found in the Territory which bear a false trade description shall, until the contrary is proved, be deemed to have been imported in contravention of this Ordinance.

Forfeiture of falsely-marked goods.

14.—(1.) All goods to which any false trade description is applied are hereby prohibited to be imported, and shall if imported be forfeited to the Administration.

(2.) Notwithstanding anything contained in the last preceding sub-section, the Chief Collector, or on appeal from him the Administrator, may, if he is satisfied that any goods which have been seized as forfeited under this section were not knowingly imported in contravention of this Ordinance, permit the importer to correct the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the importer to the Customs of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

PART IV.—EXPORTATION.

Prohibition of exports not bearing the prescribed trade description.

15.—(1.) The Regulations may prohibit the exportation of any goods, unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

(2.) All such goods to which the prescribed trade description is not applied, which are exported or entered for export or put on board any ship or boat for export or brought to any wharf or place for export, may be detained by the Collector, and may by direction of the Administrator be seized as forfeited to the Administration.

(3.) Subject to the Regulations, the Chief Collector, or on appeal from him the Administrator, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or exporter, upon security being given to the satisfaction of the Chief Collector that the goods shall not be exported in contravention of the Regulations.

16. A person shall not—

- (a) knowingly apply any false trade description to any goods intended or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export; or
- (b) knowingly export or enter for export or put on any ship or boat for export any goods to which a false trade description is applied.

Penalty for applying false trade description to exports.

Penalty: One hundred pounds.

17.—(1.) All goods to which a false trade description is applied are hereby prohibited to be exported, and shall, if exported or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export, be forfeited to the Administration.

Exportation of falsely-marked goods.

(2.) Notwithstanding anything contained in the last preceding sub-section, the Chief Collector, or on appeal from him the Administrator, may, if he is satisfied that the owner of any goods, which have been seized as forfeited under this section, did not knowingly act in contravention of this Ordinance, permit the correction of the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the exporter of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

18. Any goods intended for export which have been inspected in pursuance of this Ordinance may in manner prescribed be marked with the prescribed trade description.

Marking of goods for export.

19. The Regulations under sections ten and fifteen of this Ordinance shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Administrator the disclosure is necessary for the protection of the health or welfare of the public.

Trade description disclosing trade secrets.

PART V.—MISCELLANEOUS.

20. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission of any offence against this Ordinance, shall be deemed to have committed that offence, and shall be punishable accordingly.

Aiding or abetting offences.

PART A: CUSTOMS—

Regulations.

21.—(1.) *The Administrator in Council may make regulations,⁽⁴⁾ not inconsistent with this Ordinance, prescribing all matters and things required or permitted by this Ordinance to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular, for or in relation to—*

(a) *the analysis of samples taken under this Ordinance; and*

(b) *the extent to which certificates of analysis shall be prima facie evidence in proceedings under this Ordinance of the facts therein stated.*

(2.) *The Regulations may prescribe a penalty not exceeding Fifty pounds for any offence against the Regulations for which a penalty is not provided by this Ordinance.*

THE SCHEDULE.

ORDINANCES OF THE TERRITORY OF NEW GUINEA.

Commerce (Trade Descriptions) Ordinance 1922.⁽⁵⁾

Commerce (Trade Descriptions) Ordinance (No. 2) 1922.⁽⁵⁾

Commerce (Trade Descriptions) Ordinance 1938.⁽⁵⁾

(4) No Regulations have been made before 1.1.1952.

(5) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. II., on pp. 985-1989.