

The Trade Descriptions Act No. 7 of 1984

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1. AIM AND SCOPE OF THE LEGISLATION

Aim

This Act aims at encouraging high standards of truthfulness in describing goods and services. The Act creates two types of offences namely; the misdescription of goods and misdescription of services. Its provisions therefore overlap with laws regulating to labeling, advertising and promotional material.

Scope

1. The Act operates in the criminal arena only. It does not give any direct civil remedy to the consumer.
2. The Act only applies to suppliers in the course of trade or business, it does not apply to private suppliers.

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2. KEY TERMS DEFINED

1. A trade description

A trade description is defined in Section 4 as:

an indication of any of the following matters with respect to any goods or parts of goods:

1. quantity, size or gauge;
2. method of manufacture, production, processing or reconditioning;
3. composition;
4. fitness for purpose, strength, performance, behaviour or accuracy;
5. any physical characteristics not included in (a) to (d);
6. testing by any person and results thereof;
7. approval by any person or conformity with a type approved by any person;
8. place or date of manufacture, production, processing or reconditioning;
9. person by whom manufactured, produced, processed or reconditioned;
10. other history, including previous ownership or use.

According to Section 2(2) of the Act a trade description as defined in Section 4 of the Act if published in any newspaper, book or periodical or in any film or sound or television broadcast will only be deemed to be applied if it is part of an advertisement.

2. A false_ trade description_

False is defined by section 5 (1) as false to a material degree.

- A statement can be technically false but if it is not likely to mislead anyone, no offence is committed;

- A statement may be literally true but if it is misleading, that is, if it is one that is likely to be taken by the average person for an indication of a matter listed in Section 4, is deemed to be a false trade description;

- A statement may not amount to a trade description but if it is likely to be taken by the average man to be an indication of the matters listed in Section 4 is deemed to be a false trade description;

- An indication that any goods comply with a standard specified or recognized by any person or implied by the approval of any person when there is no such person or no standard so specified, recognized or implied is deemed to be a false trade description.

3. To apply a trade description

Applying a trade description is defined in section 6 as :

1. affixing or annexing a trade description to, or marking it on or incorporating it with the goods or with anything in, on or with which the goods are supplied.
2. placing the goods in, on or with anything which the trade description has been affixed, annexed to, marked on or incorporated with or places any such thing with the goods; or
3. using the trade description in any manner likely to be taken as referring to the goods.

3. OFFENCES CREATED

(a) Section 3

Section 3 makes it an offence for any person (which will include a corporate body) ?

a. to apply a false trade description to any good;

or

b. to supply or offer to supply any goods to which a false trade description is applied.

Offence (a) relates to the conduct of manufacturers or packagers.

Offence (b) relates to the conduct of suppliers, retailers who sell goods.

The seller must, however, be selling 'in the course of a business' and therefore, private persons who supply goods in a one-off transaction are not caught by these provisions.

The range of 'trade descriptions' applied to goods is circumscribed by the Act to ?

1. markings on the goods: e.g. labels;
2. markings on anything in which the goods are supplied e.g. packaging;
3. markings on anything in which the goods are placed e.g. display units, vending-machines and point-of-sale material;

4. oral statements

(b) Section 10

It is an offence for any person, in the course of trade or business, to supply goods in contravention of a Marking Order.

(c) Section 11

It is an offence for a person to publish an advertisement with respect to the supply of goods in the course of a trade or business which fails to comply with a Ministerial Order requiring that information or an indication of the means by which it may be obtained should be included in any advertisement of the goods.

(d) Section 13

It is an offence for a person to make false or misleading indications as to the price of goods. This section of the Act seeks to address a common practice among traders, of advertising bargain prices which were not genuine reductions, or making false comparative price claims.

(e) Section 14

It is an offence for any person, in the course of trade or business, to give any false indication that goods and services supplied by him or methods adopted by him are of a kind supplied to or approved by the President, the State, any Government Office or department or any public office or institution.

(f) Section 15

It is an offence for any person, in the course of trade or business, to give any false indication that goods and services supplied by him are of a kind supplied by him to any other person.

(g) Section 16

It is an offence for any person acting in the course of a business to make false statements as to the nature the location or the manner of the provision of any services, accommodation, or facilities.

(h) Section 22

It is an offence for any person to assist in or induce the commission of in any other country an act in respect of goods which, if the act was committed in Trinidad and Tobago would be an offence under Section 3.

(i) Section 29 & 32

These sections create offences related to the powers and functions of authorised officers.

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4. STATUTORY DEFENCES

It is a defence to any of the offences created by the Act for the person charged to prove that the commission of the offence was a result of:

a mistake, reliance of information supplied to him, the act or default of another person or an accident or some other cause beyond his control; and 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.

Where the offence is committed by a publication of an advertisement it is a defence for the person charged to prove that the publication was innocent.

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5. POWERS OF THE MINISTER

The Minister responsible Consumer Affairs is vested with the power to make Orders. All Orders made by the Minister are subject to affirmative resolution of Parliament.

1. Definition Orders

The Minister makes Definition Orders in accordance with Section 9 in relation to goods and Section 17 in relation to services, accommodation or facilities where it appears to him to be in the interest of persons to whom goods are supplied or by whom goods are exported or to whom services are provided. Definition Orders are made where it appears to the Minister that any expression used in relation to goods or services should be given a definite meaning. The effect of these Orders is to assign meanings to expressions when used in specified circumstances.

2. Marking Orders

Under Section 10 the Minister may impose Marking Orders requiring that certain goods should be marked with or accompanied by any information or instruction relating to those goods, in circumstances where he considers it necessary or in the interests of persons to whom those goods are supplied.

3. Information Orders requiring that information or an indication by which it may be obtained be included in advertisements of the specified goods

The Minister makes these Information Orders under Section 11 where it appears necessary

or expedient in the interests of persons to whom goods are supplied that advertisements of specified goods should contain or refer to any information relating to the goods.

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6. ENFORCEMENT

This is the role of 'authorised' officers appointed under Section 26 of the Act.

The powers vested in the Authorised officers by section 29 enable the authorised officers to enter premises to make spot checks and if reasonable cause for suspicion of an offence exists, to require production of the books and documents of the business.

To assist the officers in carrying out their duties, the Act gives them the power to check compliance with the Act by purchasing goods or securing the provision of services, accommodation or facilities.

Goods seized by officers in exercise of their powers are liable to forfeiture by Order of the Magistrate.

Offences Related to Authorised Officers

It is an offence for any person to:

1. disclose any information obtained by him in his capacity of an authorised officer for purposes other than for the performance of his functions under the Act: Section 29 (5)
2. act as an authorized officer when he is not authorised to do so: Section 29 (6)
3. obstruct an authorized officer: Section 32.

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7. PENALTIES

Offences created under this Act are triable either way. The penalty for a person guilty of any offence under this Act is \$10,000.00 and two (2) years imprisonment for a conviction in the High Court. The maximum fine to be imposed by a Magistrate is \$5,000.00 plus four (4) months in prison for a first offence and \$10,000.00 and imprisonment for six (6) months for any subsequent offence: Section 19