

# FALSE TRADE DESCRIPTIONS BILL, 2013

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## FALSE TRADE DESCRIPTIONS BILL, 2013

### A BILL FOR AN ACT RELATING TO FALSE TRADE DESCRIPTIONS

#### Enacted by the Parliament of The Bahamas

#### 1. Short title and commencement.

- (1) This Act may be cited as the False Trade Descriptions Act, 2013.
- (2) This Act shall come into operation on such day as the Minister may by notice published in the Gazette, appoint.

#### 2. Interpretation.

In this Act —

**“false trade description”** means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes any figure, word or mark, or arrangement or combination thereof together with any alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect;

**“trade description”** means any description, statement or other indication direct or indirect as to —

- (a) the number or quantity, measure, gauge or weight of any goods;
- (b) the standard of quality of any goods, according to a classification commonly used or recognised in the trade;
- (c) the fitness for purpose, strength, performance or behaviour of any goods;
- (d) the place or country in which any goods were made or produced;
- (e) the mode of manufacturing or producing any goods;

- (f) the material of which any goods are composed; or
- (g) any goods being the subject of an existing patent, privilege or copyright, and any figure, word or mark which according to the custom of the trade is commonly taken to be an indication of a patent, privilege or copyright.

### **3. Lawful application of trade descriptions.**

- (1) A trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method, where it indicates the particular class or method of manufacture of such goods and in such case the provisions of this Act with respect to false trade descriptions shall not apply.
- (2) Where —
  - (a) a trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced; and
  - (b) the goods are not actually made or produced in that place or country,  
the name of the place or country in which the goods were actually made or produced, shall be added to the trade description immediately before or after the name of the place or country, in an equally conspicuous manner.
- (3) The fact that a trade description is a trade mark whether registered or not, or part of a trade mark, shall not prevent such trade description from being a false trade description within the meaning of this Act.

### **4. Applying trade descriptions.**

- (1) A person applies a trade description to goods if he —
  - (a) applies it to the goods themselves;
  - (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;
  - (c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with, or to any covering, label, reel or other thing to which a trade description has been applied; or
  - (d) uses a trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are described by that trade description.
- (2) In the case of imported goods, the trade description applied to such goods shall be that provided to customs at the time the goods are entered into the Customs territory.

- (3) For the purposes of this section, “covering” includes any stopper, cork, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression “label” includes any band or ticket.
- (4) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to the goods or to any covering, label, reel or other thing.

## **5. Offences.**

- (1) A person who —
  - (a) with intent to defraud, applies any false trade description to goods or causes such a description to be so applied; or
  - (b) sells or exposes for sale, or otherwise has in his possession for sale or for any other purpose any goods to which any false trade description is applied,commits an offence.
- (2) Notwithstanding subsection (1), a person who satisfies the court that —
  - (a) in the ordinary course of his business he is employed to apply descriptions to goods and had no interest in the goods by way of profit or commission;
  - (b) he took reasonable precautions against committing the offence;
  - (c) he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade description; and
  - (d) he provided to the relevant authority all the information in his possession with respect to the persons on whose behalf the trade description was applied,shall not be guilty of an offence under this Act.
- (3) A person who commits an offence under this Act shall be liable on summary conviction to —
  - (a) a penalty not exceeding four hundred dollars and in the case of a second or subsequent conviction to a penalty not exceeding one thousand dollars; and
  - (b) forfeiture of all goods in respect of which the offence was committed.

## **6. Limitation of prosecution.**

No prosecution for an offence against the provisions of this Part shall be commenced after the expiration of three years from the date of the commission of the offence.

### **OBJECTS AND REASONS**

This Bill seeks to create an offence in relation to the use of false or misleading trade descriptions in relation to goods sold in The Bahamas and provides for specific penalties in the event that the court determines that an offence has been committed.

The Bill also seeks to define false trade descriptions and provides for exemptions from liability for innocent parties.