

ACT No. II OF 1941.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 11th
March, 1941.)

An Act further to amend the law relating to fraudulent
marks on merchandise.

WHEREAS it is expedient further to amend the
law relating to fraudulent marks on merchandise ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Merchandise Marks (Amendment) Act, 1941.

Short title
and commence-
ment.

(2) It shall come into force on such date as the
Central Government may, by notification in the official
Gazette, appoint.

2. In section 2 of the Indian Merchandise Marks
Act, 1889 (hereinafter, in sections 3 to 9 inclusive,
referred to as the said Act),—

Amendment of
section 2,
Act IV of
1889.

(a) for clause (1) the following clauses shall be
substituted, namely :—

(1) " mark " has the meaning assigned to that
expression in clause (f) of sub-section (1) of
section 2 of the Trade Marks Act, 1940 ;

(1A) " trade mark " means a " registered trade
mark " as defined in clause (j) of
sub-section (1) of section 2 of the Trade
Marks Act, 1940, or a mark used in re-
lation to goods for the purpose of indicat-
ing or so as to indicate a connection in
the course of trade between the goods and
some person having the right as proprietor
to use the mark ;

(b) in sub-clause (e) of clause (2), for the words
" numeral, word or mark " the word " mark "
shall be substituted.

3. In

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Price anna 1 or 1½d.

Shall apply to all the partially-excluded areas of the Province
of Orissa except the districts of Angul & the Khondwara
subject to certain modification, see Orissa Govt. Order
no. 2843-D.C. 68741-Cum 871-8-41.
Applies to Sr. Baluchistan, see Order No. 136-F, 873-9-41.
G. O. 9. 1941, Pt. I, p. 1245.

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Amendment of section 4, Act IV of 1889.

3. In section 4 of the said Act,—

- (a) in sub-section (1), for the words “ numerals, words or marks ”, in both places where they occur, the word “ marks ” shall be substituted ;
- (b) in sub-section (2), after clause (b) the following word and clause shall be added, namely :—
“ and
- (c) being the name or initials of a fictitious person or of a person not carrying on business in connection with goods of the same description.”

Amendment of section 7, Act IV of 1889.

4. In section 7 of the said Act,—

- (a) after the words “ things to which a false trade description is applied ” the following words shall be inserted, namely :—
“ or which, being required by notification under section 12A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification ” ;
- (b) in clause (a), after the words “ trade description ” the following words shall be inserted, namely :—
“ or that any offence against this section had been committed in respect of the goods ”.

Insertion of new section 7A in Act IV of 1889.

Penalty for tampering with, altering or effacing a mark applied in pursuance of section 12A.

5. After section 7 of the said Act the following section shall be inserted, namely :—

“ 7A. If a person tampers with, alters or effaces a mark which has been applied to any goods to which it is required to be applied by notification made under section 12A, he shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, and, in the case of a second or subsequent conviction, with imprisonment which may extend to two years, or with fine, or with both.”

Amendment of section 9, Act IV of 1889.

6. In sub-section (1) of section 9 of the said Act, after the words “ any goods or things to which a false trade description is applied ” the following words shall be inserted, namely :—

- “ or which, being required by notification under section 12A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification.”

7. For

7. For section 12 of the said Act and the heading preceding that section the following section and heading shall be substituted, namely :—

Substitution of new section and heading for section 12 and heading in Act IV of 1889.

“Stamping of Piece-goods, Cotton Yarn and Thread.

XXV of 1934. 12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1934, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and, except when the goods are sold from the factory for export from British India, without being conspicuously marked on each piece with the name of the manufacturer, or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece.

Stamping of piece-goods, cotton yarn and thread.

XXV of 1934. (2) Cotton yarn such as is ordinarily sold in bundles, and cotton sewing or darning thread, which have been manufactured, bleached, dyed or finished in premises which are a factory, as defined in the Factories Act, 1934, shall not be removed for sale from those premises unless, in accordance with any rules made under section 20 of this Act, in the case of yarn the bundles are conspicuously marked with an indication of the weight of yarn in each bundle and the count of the yarn contained in the bundle and in the case of thread each unit is conspicuously marked with the weight of thread in the unit and the grist number and, except where the goods are sold from the factory for export from British India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods.

(3) If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from such premises or sells or exposes or has in possession for sale any such piece-goods or any such cotton yarn or any cotton sewing or darning thread which is not marked as required by sub-section (1) and sub-section (2), every such piece and every such bundle of yarn and all such thread, and everything used for the packing thereof, shall be forfeited to His Majesty and such person shall be punished with fine which may extend to one thousand rupees.”

8. After

Insertion of
new heading
and section
12A in Act IV
of 1889.

8. After section 12 of the said Act the following heading and section shall be inserted, namely :—

‘ Power to require goods to show indication of origin.

Power to
require goods
to show
indication of
origin.

12A. (1) The Central Government may, by notification in the official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of British India and imported into British India, or which are made or produced within the limits of British India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced.

(2) The notification may specify the manner in which such indication shall be applied, that is to say whether to the goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in or manufacturers, producers, or users of the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, nor without such inquiry as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication. x of 1897.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of British India and imported into British India if in respect of those goods the Chief Customs Officer is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through British India or otherwise.”

Amendment of
section 20,
Act IV of
1889.

9. In section 20 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :—

“(1A) The Central Government may make rules providing for the manner in which for the purposes of section 12 cotton yarn and cotton sewing or darning thread shall be marked with the particulars required by that section.”

10. In

VIII of 1878.

10. In section 18 of the Sea Customs Act, 1878,—

Amendment of
section 18,
Act VIII of
1878.

(a) in clause (e),—

- (i) for the words “ the United Kingdom, British India and British Burma ”, in both places where they occur, and for the words “ the United Kingdom or in British India or in British Burma ” the words “ British India ” shall be substituted ;
- (ii) in sub-clause (ii), for the words “ in the same language and character as the name or trade mark ” the words “ in the English language ” shall be substituted ;

(b) in clause (f),—

- (i) sub-clauses (ii) and (iii) shall be re-numbered as sub-clauses (iii) and (iv), respectively, and the following shall be inserted as sub-clause (ii), namely :—

“ (ii) have not been conspicuously marked on each piece with the name of the manufacturer, exporter or wholesale purchaser in India of the piece, and ”, and

- (ii) in sub-clause (iv) as so re-numbered, for the words and figures “ Indian Factories Act, 1881 ” the words and figures “ Factories Act, 1934 ” shall be substituted ;

(c) after clause (g) the following clauses shall be added, namely .

“ (h) goods which are required by a notification under section 12A of the Indian Merchandise Marks Act, 1889, to have applied to them an indication of the country or place in which they were made or produced, unless such goods show such indication applied in the manner specified in the notification :

(i) cotton yarn such as is ordinarily imported in bundles, if—

(i) the bundle containing such yarn has not been conspicuously marked with the name of the manufacturer, exporter or wholesale purchaser in India of the goods, or

(ii) such bundle has not been conspicuously marked with an indication of the weight and the count of the yarn contained in it, in accordance with the rules made under section 20 of the Indian Merchandise Marks Act, 1889, and

(iii) the

IV of 1889.

IV of 1889.

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- (iii) the yarn has been manufactured beyond the limits of India, or
- (iv) having been manufactured within those limits, has been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Factories Act, 1934; XXV of 1934.

(j) cotton sewing or darning thread, if—

- (i) the units in which the thread is supplied have not been conspicuously marked with the name of the manufacturer, exporter or wholesale purchaser in India of the goods, or
- (ii) if each unit has not been conspicuously marked with an indication of the weight of thread contained in it and the grist number in accordance with the rules made under section 20 of the Indian Merchandise Marks Act, 1889, and IV of 1889.

- (iii) the thread has been manufactured beyond the limits of India, or
- (iv) having been manufactured within those limits, has been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Factories Act, 1934.” XXV of 1934.

Amendment of section 19A, Act VIII of 1878.

11. In sub-section (3) of section 19A of the Sea Customs Act, 1878,—

VIII of 1878.

- (a) for the words “British India”, in both places where they occur, the word “India” shall be substituted;
- (b) for the words “and in the same language and character” the words “in the English language” shall be substituted.

Substitution of new section for section 478, Act XLV of 1860.

12. For section 478 of the Indian Penal Code the following section shall be substituted, namely :—

XLV of 1860.

Trade mark.

- ‘478. For the purposes of this Code, the expression “trade mark” includes a trade mark registered under the Trade Marks Act, 1940, and any mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right to use the mark.’ V of 1940.

13. In

OF 1941.] *Indian Merchandise Marks (Amendment).*

XLV of 1860.

13. In section 480 of the Indian Penal Code, for the words "are the manufacture or merchandise of a person whose manufacture or merchandise they are not" the following words shall be substituted, namely :—

Amendment
of section 480,
Act XLV of
1860.

"have a connection in the course of trade with a person with whom they have not any such connection".