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# GENERAL NOTICE

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## NOTICE 683 OF 2006

### FINAL NOTICE

#### DEPARTMENT OF TRADE AND INDUSTRY MERCHANDISE MARKS ACT, 1941 (ACT 17 OF 1941)

#### DESIGNATION OF 2010 FIFA WORLD CUP AS A PROTECTED EVENT IN TERMS OF SECTION 15A OF THE MERCHANDISE MARKS ACT, 1941

I, Mandisi Mphahla, Minister of Trade and Industry, pursuant to the Notice published 17 November 2005, in Government Gazette No 28243, Notice No 1259) hereby designate 2010 FIFA World Cup (the World Cup) as a "protected event" in terms of section 15A of the Merchandise Marks Act, 1941 (Act) from the date of publication of this Notice in the Government Gazette to six calendar months after the date of commencement of the World Cup. For ease of reference section 15A is attached and the public should pay particular attention to the provisions of subsections 2, 3, 4 and 5 of the section.

The "protected event" status is conferred on the World Cup on the understanding that the World Cup is in the **public interest** and that the Local Organising Committee (LOC) has **created opportunities for South African businesses, in particular those from the previously disadvantaged communities.**

The “protected event” status is further conferred on the understanding that:

- The Procurement Policy of LOC shall apply public sector procurement principles such as procedural and substantive fairness, equity, transparency and competitiveness.
- The Procurement Policy of LOC shall apply constitutional procurement principles, the Preferential Procurement Policy Framework Act, 2000, the Department of Trade and Industry (**the dti**) codes of good practice for Broad Based Black Economic Empowerment (BBBEE) when evaluating suppliers and administrative law principles of fair procedure.
- The LOC must submit an impact assessment of the World Cup on communities in South Africa to the Minister six months after termination of the “protected event”.

The date of termination of the “protected event” status is six (6) calendar months (as envisaged in the Special Measures Act, 2006) after the date of commencement of the World Cup.

**MANDISI MPAHLWA, MP**

**MINISTER OF TRADE AND INDUSTRY**

## **15A Abuse of trade mark in relation to event**

(1) (a) The Minister may, after investigation and proper consultation and subject to such conditions as may be appropriate in the circumstances, by notice in the *Gazette* designate an event as a protected event and in that notice stipulate the date-

- (i) with effect from which the protection commences; and
- (ii) on which the protection ends, which date may not be later than one month after the completion of termination of the event.

(b) The Minister may not designate an event as a protected event unless the staging of the event is in the public interest and the Minister is satisfied that the organizers have created sufficient opportunities for small businesses and in particular those of the previously disadvantaged communities.

(2) For the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organizer of such event.

(3) For the purposes of subsection (2), the use of a trade mark includes-

(a) any visual representation of the trade mark upon or in relation to goods or in relation to the rendering of services;

(b) any audible reproduction of the trade mark in relation to goods or the rendering of services; or

(c) the use of the trade mark in promotional activities, which in any way, directly or indirectly, is intended to be brought into association with or to allude to an event.

(4) Any person who contravenes subsection (2) shall be guilty of an offence.

(5) For the purposes of this section 'trade mark' includes a mark.

[S. 15A inserted by s. 2 of Act 61 of 2002.]

## **16 Implied warranty on sale of marked goods**

Every person who sells any goods to which a trade description has been applied shall be deemed to warrant that the trade description is not a false trade description unless the contrary is expressed in writing signed by the seller or on his or her behalf and delivered at the time of the sale to and accepted by the purchaser.

[S. 16 substituted by s. 12 of Act 38 of 1997.]

## **17 Containers marked with owner's name not to be sold**

(1) Any person-

- (a) who buys or sells any container or closure therefore to which have been indelibly applied words in any official language of the Republic stating plainly that the container or closure is the property of a named person; or

- (b) who sells any goods contained in any such container without the consent in writing of the person so named, unless those goods are the property of or have been produced or manufactured by the person so named,

shall be guilty of an offence.

(2) Subsection (1) shall not apply to any transaction whereby any such container or closure is sold-

- (a) by the manufacturer thereof to the person named thereon; or  
 (b) with the whole of the business in connection with which it is used.

[S. 17 amended by s. 2 of Act 55 of 1967 and substituted by s. 13 of Act 38 of 1997.]

## 18 Evidence

(1)...

[sub-s. (1) amended by s. 3 of Act 26 of 1951 and deleted by s. 14(a) of Act 38 of 1997.]

(2) In any prosecution of an offence under the provisions of this Act evidence that any imported goods were shipped at any port shall be *prima facie* evidence that those goods were made or produced in the country within which that port is situated.

(3) If in the prosecution of any person for an offence referred to in section 7 it is proved that-

- (a) the accused conducts business in goods of the same or similar type as the goods to which any false trade description was applied; and  
 (b) the goods-
- (i) were found in possession of the accused; or
  - (ii) the existence of which the accused was aware of or could reasonably be expected to have been aware of, were found on or in premises of which the accused was on the particular day the owner, occupier, manager or person in charge, it shall be presumed, until the contrary is proved, that the accused offered for sale or hire the goods.

[Sub-s (3) added by s. 14(b) of Act 38 of 1997.]

19...

[S. 19 repealed by s. 15 of Act 38 of 1997.]

## 20 Penalties

(1) (a) Any person convicted of an offence in terms of this Act, except section 5, shall be liable-

- (i) in the case of a first conviction, to a fine not exceeding R5 000 for each article to which the offence relates or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;

(ii) in any other case, to a fine not exceeding R10 000 for each article to which the offence relates or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(b) Any person convicted of an offence referred to in section 5 shall be liable to a fine or to imprisonment for a period not exceeding six months.

[Sub-s. (1) substituted by s. 16 of Act 38 of 1997.]

(2) Whenever any person is convicted of an offence under the provisions of this Act, the court by which he is convicted may, in addition to any other penalty which may be imposed, order the confiscation of all or any part of the goods in respect of which the offence was committed, and goods so ordered to be confiscated shall be disposed of as the Minister may direct.

## **21 Repeal of laws**

The Merchandise Marks Act, 1888 (Act 12 of 1888), and the Merchandise Marks Amendment Act, 1889 (Act 14 of 1889), of the Cape of Good Hope, the Merchandise Marks Law, 1888 (Law 22 of 1888), and Law 11 of 1889 of Natal, and the Merchandise Marks Ordinance, 1903 (Ordinance 47 of 1903), of the Transvaal are hereby repealed.

*21bis...*

[S21 *bis* inserted by s. 3 of Act 39 of 1952, substituted by s. 3 of Act 55 of 1967 and repealed by s. 1 of Act 49 of 1996.]

## **22 Short title and commencement of Act**

This Act shall be called the Merchandise Marks Act, 1941, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*, which date shall not be earlier than six months after the date on which this Act is first published in the *Gazette* as a law.

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