



Jersey

# **MERCHANDISE MARKS (JERSEY) LAW 1958**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 11 January 2024 to Current



Jersey

## MERCHANDISE MARKS (JERSEY) LAW 1958

### Contents

#### Article

<b>PART 1</b>	<b>4</b>
INTRODUCTORY	4
1 Interpretation .....	4
2 Forging trade mark .....	6
3 Applying marks and descriptions.....	6
4 Provision as to watches .....	7
<b>PART 2</b>	<b>7</b>
FRAUDULENT MARKS AND REPRESENTATIONS	7
5 Offences as to trade marks and trade descriptions .....	7
6 Exemption of certain persons employed in ordinary course of business .....	8
7 False representation as to royal warrant .....	8
<b>PART 3</b>	<b>9</b>
IMPORTED GOODS	9
8 Interpretation of Part 3 .....	9
9 Exclusion of blends and mixtures .....	10
10 Imported goods bearing name or trade mark of British manufacturer or trader not to be sold unless accompanied by indication of origin .....	10
11 Power to require indication of origin in the case of certain imported goods.....	11
12 Penalty for removal of indication of origin from imported goods .....	12
13 Prohibition on importation.....	12
14 Imported goods bearing certification trade mark.....	13
15 Taking of samples .....	13
16 Offences.....	13
17 Power of employer to exempt himself or herself from penalty on conviction of the actual offender .....	15
18 Rules as to evidence .....	15
19 Provisions as to Orders and directions .....	15

<b>PART 4</b>	<b>16</b>
GENERAL	16
20 Trade mark, how described in proceedings and documents .....	16
21 Implied warranty on sale of marked goods.....	16
22 Power to order forfeiture of goods and things having no known owner .....	16
23 Disposal of forfeited goods.....	16
24 Punishment of accessories .....	16
25 Provisions of law as to false description not to apply in certain cases .....	17
26 Savings .....	17
27 Citation .....	17
<b>ENDNOTES</b>	<b>18</b>
Table of Legislation History.....	18
Table of Renumbered Provisions .....	18
Table of Endnote References .....	19



Jersey

## MERCHANDISE MARKS (JERSEY) LAW 1958<sup>1</sup>

A **LAW** to prevent the application to merchandise of fraudulent marks and to require an indication of origin to be given in the case of certain imported goods

Commencement [[see endnotes](#)]

---

### PART 1

#### INTRODUCTORY

#### 1 Interpretation

- (1) In this Law, unless the context otherwise requires –

“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 every 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, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Law;

“foreign country” does not include the Republic of Ireland;

“forged trade mark” has the meaning assigned thereto by Article 2;

“goods” means anything which is the subject of trade, manufacture or merchandise;

“name” includes any abbreviation of a name;

“person”, “manufacturer”, “dealer or trader” and “proprietor” include any body of persons corporate or unincorporate;

“trade description” means any description, statement or other indication, direct or indirect, –

- (a) as to the number, quantity, measure, gauge or weight of any goods;
- (b) as to the standard of quality of any goods, according to a classification commonly used or recognized in the trade;

- (c) as to the fitness for purpose, strength, performance or behaviour of any goods;
- (d) as to the place or country in which any goods were made or produced;
- (e) as to the mode of manufacturing or producing any goods;
- (f) as to the material of which any goods are composed; or
- (g) as to any goods being the subject of an existing patent, privilege or copyright,

and the use of any figure, word or mark which, according to the custom of the trade, 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 Law;

“trade mark” means –

- (a) a registered trade mark, Community trade mark or protected international trade mark; or
  - (b) a trade mark registered under the Trade Marks Act of the United Kingdom.<sup>2</sup>
- (2) Words and phrases used in this Law shall, unless the context otherwise requires, have the same respective meanings as in the [Trade Marks \(Jersey\) Law 2000](#).<sup>3</sup>
- (3) Without prejudice to the generality of the definitions of “trade description” and “false trade description” in paragraph (1), a trade description shall be deemed, for the purposes of this Law, to be a false trade description if, even though a true trade description, it is calculated to be misunderstood as, or mistaken for, a false trade description, and anything calculated to be misunderstood as, or mistaken for, an indication of any of the matters mentioned in the definition of “trade description” shall be deemed for these purposes to be a trade description.
- (4) The provisions of this Law respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.
- (5) The provisions of this Law respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this paragraph the expression “false name or initials” means, as applied to any goods, any name or initials of a person which –
- (a) are not a trade mark, or part of a trade mark;
  - (b) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and
  - (c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.
- (6) In relation to the classes of goods which under Article 13, are prohibited to be imported into Jersey as having a false trade description applied to them, this Article shall have effect as if there were omitted therefrom –

- (a) the words “or misleading” in both places where they occur in the definition of “false trade description” in paragraph (1) thereof;
- (b) sub-paragraphs (b) and (c) of the definition of “trade description” in paragraph (1) thereof; and
- (c) paragraph (2) thereof.

## **2 Forging trade mark**

For the purposes of this Law, a person shall be deemed to forge a trade mark who either –

- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise,

and any trade mark or mark so made or falsified is in this Law referred to as a forged trade mark:

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

## **3 Applying marks and descriptions**

- (1) For the purposes of this Law, a person shall be deemed to apply a trade mark or mark or trade description to goods who –
  - (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 mark or trade description has been applied; or
  - (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.
- (2) In paragraph (1), the expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression “label” includes any band or ticket.
- (3) For the purposes of this Law, a trade mark or mark or 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.
- (4) Goods delivered in pursuance of a request made by reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication shall, for the purposes of paragraph (1)(d), be deemed to be goods in connection with which the trade mark or trade description is used.

- (5) For the purposes of this Law, a person shall be deemed to falsely apply to goods a trade mark or mark, if, without the assent of the proprietor of the trade mark, the person applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

#### **4 Provision as to watches**

- (1) Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Law, and the provisions of this Law with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly.
- (2) In this Article, the expression “watch” means all that portion of a watch which is not the watch case.

## **PART 2**

### **FRAUDULENT MARKS AND REPRESENTATIONS**

#### **5 Offences as to trade marks and trade descriptions**

- (1) Any person who –
- (a) forges any trade mark;
  - (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive;
  - (c) makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark;
  - (d) applies any false trade description to goods;
  - (e) disposes of or has in the person’s possession any die, block, machine or other instrument for the purpose of forging a trade mark; or
  - (f) causes any of the aforesaid things to be done,
- shall, subject to the provisions of this Law, and unless the person proves that he or she acted without intent to defraud, be guilty of an offence against this Article.
- (2) Every person who sells, or exposes for, or has in his or her possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall be guilty of an offence against this Article, unless the person proves either –
- (a) that, having taken all reasonable precautions against committing an offence against this Article, he or she had at the time of the commission of the

alleged offence no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the police, he or she gave all the information in his or her power with respect to the persons from whom he or she obtained such goods or things; or

- (b) that otherwise he or she had acted innocently.
- (3) Paragraphs (1) and (2), so far as they relate to false trade descriptions, shall not apply to any description applied in pursuance of the Fertilizers and Feeding Stuffs (Jersey) Law 1950, to any article included in the first column of Schedule 1 to that Law.
- (4) Every person guilty of an offence against this Article shall be liable to imprisonment for a term of 2 years and to a fine; and the court before which the person is convicted may order that any article, instrument or thing by means of or in relation to which the offence has been committed shall be forfeited.<sup>4</sup>

## **6 Exemption of certain persons employed in ordinary course of business**

Where a defendant is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing to be done any of the things mentioned in this Article, and proves –

- (a) that in the ordinary course of the defendant's business the defendant is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making, or being used in making, trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge the defendant was so employed by some person resident in the British Islands, and was not interested in the goods by way of profit or commission dependent on the sale of such goods;
- (b) that the defendant took reasonable precaution against committing the offence charged;
- (c) that the defendant had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and
- (d) that the defendant gave to the police all the information in the defendant's power with respect to the persons on whose behalf the trade mark, mark or trade description was applied,

the defendant shall be discharged from the prosecution.

## **7 False representation as to royal warrant<sup>5</sup>**

Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of His Majesty, or any of the Royal Family, or any department of the Government of the United Kingdom, shall be liable to a fine not exceeding level 3 on the standard scale.



## PART 3

### IMPORTED GOODS

#### 8 Interpretation of Part 3

- (1) In this Part, unless the context otherwise requires –

“empire or foreign goods” means imported goods manufactured or produced in any country outside the British Islands;

“His Majesty’s dominions” includes territories under His Majesty’s protection and the Republics of India and Pakistan:

Provided that, where an Order in Council has been made by His Majesty under section 10(1) of the Merchandise Marks Act 1926 of the United Kingdom directing that any territory shall be included in His Majesty’s dominions for the purposes of that Act and the Order in Council has been registered by the Royal Court, that territory shall be included in His Majesty’s dominions for the purposes of this Law:

Provided further that the Minister may by Order direct that a country which has ceased to be a part of His Majesty’s dominions shall be included in His Majesty’s dominions for the purposes of this Law;

“imported goods” means goods imported into Jersey but does not include –

- (a) goods which since the date of their importation have undergone in Jersey any treatment or process resulting in a substantial change in the goods; or
- (b) goods manufactured or produced in Jersey which after exportation are brought back into Jersey, including any such goods which have undergone abroad any treatment or process not resulting in a substantial change in the goods;

“indication of origin” means, at the option of the person applying the indication, either –

- (a) in the case of goods manufactured or produced in the British Islands, the word “British”, in the case of goods manufactured or produced in a part of His Majesty’s dominions outside the British Islands, the word “Empire”, and in the case of goods manufactured or produced in any foreign country the word “foreign”; or
- (b) a definite indication of the country in which the goods were manufactured or produced,

the indication being given, in either case, conspicuously:

Provided that, in the case of goods produced or manufactured in the British Islands which have undergone one or more treatments or processes resulting in a substantial change in the goods, the last of such treatments or processes having been undergone in any country outside the British Islands, the indication of origin may at the option of the person applying it be given either by using, in conjunction with the word “foreign” or the word “Empire”, as the case requires, words descriptive of the last treatment or process or by a definite indication that the treatment or process was undergone in that particular country;

“Minister” means the Chief Minister;

“sale” –

- (a) does not include –
  - (i) a sale of goods for consignment by the vendor to a person outside the British Islands, or
  - (ii) a sale of second-hand goods;
- (b) subject as hereinafter provided, includes sale wholesale as well as sale by retail, and the provisions of this Part of this Law and of any Order made thereunder shall have effect accordingly:

Provided that references to exposure for sale in Articles 10 and 16 or (unless the Order expressly provides to the contrary) in any Order made under this Part shall not include exposure for sale wholesale or by a person being a wholesale dealer;

- (c) does not include the sale of any foodstuffs at any hotel or restaurant or other premises for consumption thereon or the sale of any foodstuffs which have undergone a process of cooking, curing or preserving in the British Islands.<sup>6</sup>
- (2) For the purposes of this Part, imported goods shall be deemed to have been manufactured in the country in which they last underwent before importation a substantial change by reason of any treatment or process.

## **9 Exclusion of blends and mixtures**

- (1) Article 10 shall not extend to blends or mixtures and an Order made under this Part with respect to goods of any class or description shall not extend to blends or mixtures consisting of or containing those goods unless the Order expressly so provides, and, where any Order so provides, the indication of origin to be given in respect of the blends or mixtures shall, notwithstanding anything in this Law, be an indication in such form as the Order prescribes.
- (2) For the purposes of this Article, the expression “blend or mixture” does not include any blend or mixture produced by a process of manufacture from materials of different kinds.

## **10 Imported goods bearing name or trade mark of British manufacturer or trader not to be sold unless accompanied by indication of origin**

- (1) It shall not be lawful to sell, expose for sale, or, by way of advertising goods of some other kind, distribute, in Jersey, any empire or foreign goods to which there is applied any name or trade mark being, or purporting to be, the name or trade mark of any manufacturer, dealer or trader or the name of any place or district within the British Islands unless the name or trade mark is accompanied by an indication of origin.
- (2) For the purposes of this Article –
  - (a) a name or trade mark shall be deemed to be applied to goods if it is applied either to the goods themselves or to any covering, label, reel or other thing in or with which the goods are sold or exposed for sale; and
  - (b) the expression “trade mark” means a mark which is used upon or in connection with goods for the purpose of indicating that they are the goods

of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

- (3) If the Minister is satisfied, after considering such representations (if any) as may be made to him or her by any persons appearing to the Minister to have a substantial interest in the matter, that, having regard to the special circumstances of the trade, difficulties would arise if this Article applied to goods of any class or description, or goods sold under any particular designation, and that public interests would not be materially prejudiced by exempting such goods from the operation of this Article, the Minister may direct that this Article shall not apply to such goods, or that goods shall not be treated as falling under this Article by reason only that they are so designated.
- (4) This Article shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes, that is to say, as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in the British Islands are or are to be sold or exposed for sale if the name or mark so applied is the name or trade mark of a manufacturer of, or of a dealer or trader in, those goods in any part of the British Islands and the name or mark was applied with his or her consent.

## **11 Power to require indication of origin in the case of certain imported goods**

- (1) In any case in which it appears to the Minister desirable in the interests of manufacturers, producers, dealers, traders, users or consumers, or of any body of work-people, so to do, and that the trade of Jersey would not be prejudiced, the Minister may, by Order, prohibit the sale, or the exposure for sale, in Jersey, of imported goods of any class or description (being goods to which it is practically possible to apply an indication of origin effectively and without injury to the goods) unless they bear an indication of origin.
- (2) If it appears to the Minister to be desirable that any imported goods should bear an indication of origin at the time of importation and that, having regard to all the circumstances of the case including the re-export trade of Jersey in that class or description of goods, such action is not unreasonable, the Minister, without prejudice to his or her powers under paragraph (1) of this Article, may, by Order, make provision accordingly, and if any such goods required by any such Order to bear an indication of origin at the time of importation do not at that time bear such an indication, they shall be deemed to be goods which are prohibited to be imported by virtue of Article 13:

Provided that –

- (a) subject to compliance with such conditions as to security for the re-exportation of the goods as the Minister may impose, an Order under this paragraph shall not apply to goods imported by way of transshipment or to goods declared on importation to be for re-exportation; and
  - (b) nothing in this paragraph shall be taken to be in derogation of anything contained in the said Article 13.
- (3) Every Order made under this Article shall specify –
  - (a) the manner in which the indication of origin is to be applied to the goods;
  - (b) the date on which the Order is to come into force not being a date earlier than 3 months after the date of the making of the Order, except in the case of

an Order revoking a previous Order either entirely or as respects some of the goods to which that Order relates;

- (c) whether the goods are to bear an indication of origin at the time of importation or of exposure for sale wholesale,

and any such Order may contain such other provisions as appear to the Minister to be necessary or expedient for carrying this Article into effect.

- (4) Any Order under this Article may be made to apply to empire or foreign goods to the exclusion of other imported goods.

## **12 Penalty for removal of indication of origin from imported goods**

If any person removes, alters or obliterates an indication of origin which in compliance with the requirements of an Order made under this Part was borne by the goods at the time of their importation or exposure for sale wholesale, the person shall be deemed to have acted in contravention of an Order made under this Part, unless he or she proves to the satisfaction of the court that the removal, alteration or obliteration was not for the purpose of concealing the origin of the goods at the time of their sale or exposure for sale.

## **13 Prohibition on importation**

- (1) This Article applies to –

- (a) goods which, if sold, would be liable to forfeiture under this Law; and
- (b) goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the British Islands, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

- (2) Subject to the provisions of this Law, if any goods to which this Article applies are imported into Jersey, the importer of the goods, or the importer's agent, shall be liable to a fine not exceeding level 3 on the standard scale and the court before which the importer is convicted may order that the goods shall be forfeited.<sup>7</sup>

- (3) Paragraph (2) shall not have effect if the Agent of the Impôts is satisfied that the goods which are imported are for the private and domestic use of the person importing them.<sup>8</sup>

- (4) Where on any goods to which this Article applies there is a name which is identical with or a colourable imitation of the name of a place in the British Islands, that name unless accompanied by the name of the country in which such place is situated shall be treated for the purposes of this Article as if it were the name of a place in the British Islands.

- (5) Where any goods imported into Jersey bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the British Islands, and the Minister is, upon representations made to him or her, satisfied that the use of the name or trade mark is fraudulent, the Minister may require the importer of the goods, or the importer's agent, to produce any documents in the importer or agent's possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to Jersey and the name and address of the person to whom the

goods were sent in Jersey; and, if the importer or the importer's agent fails within 14 days to comply with any such requirement, the importer or agent shall, for each offence, be liable to a fine not exceeding level 3 on the standard scale.<sup>9</sup>

- (6) Any information obtained from the importer of the goods or the importer's agent under paragraph (5) or from any other source, may be communicated by the Minister to any person whose name or trade mark is alleged to have been used or infringed.

#### **14 Imported goods bearing certification trade mark**

Article 10(1), and Article 13(1) and (5), shall apply to a mark being or purporting to be, a certification mark registered under Article 4 of the [Trade Marks \(Jersey\) Law 2000](#) or a certification mark registered or deemed to be registered under the Trade Marks Act, in the name, as proprietor thereof, of a person in the British Islands, as they apply to the trade mark of a manufacturer, dealer or trader in the British Islands:

Provided that the said Article 10(1), as extended by this Article, shall not have effect in respect of the application of a certification mark to articles used or to be used for any of the following purposes, that is to say, as coverings, labels, reels or otherwise as articles in or with which goods manufactured or produced in the British Islands are or are to be sold or exposed for sale, if the mark relates or is to relate to those goods, and were so applied by or with the consent of the proprietor of the mark or by another in accordance with his or her authorization under the regulations relating to the mark.<sup>10</sup>

#### **15 Taking of samples**

- (1) Any officer in an administration of the States for which the Minister is assigned responsibility, being an officer duly authorized in that behalf, may, on production if so required of the officer's authority at any time during the hours when the premises are open for business, enter any premises on which the officer has reason to believe that there are kept for sale any imported foodstuffs to which an Order under this Part applies and, on paying or making tender of payment therefor, take samples of any goods which appear to the officer to be such imported foodstuffs, and any person who obstructs an officer so authorized in the execution of the powers conferred on the officer by this Article shall be deemed to have acted in contravention of an Order made under this Part.
- (2) An officer taking a sample under this Article shall forthwith notify the person on whose premises the sample is taken or the person's agent, that the sample is taken in pursuance of the provisions of this Law, and shall, if required so to do at the time of giving such notification, select a second like sample or divide the sample into 2 parts, and shall mark and seal and leave with that person or agent either the second sample or one part of the divided sample.

#### **16 Offences**

- (1) If any person –
  - (a) sells, exposes for sale, or distributes by way of advertisement, any goods in contravention of the provisions of this Part; or

- (b) acts in contravention of or fails to comply with any Order made under this Part,

the person shall, subject to the provisions of this Article, be liable to a fine not exceeding level 3 on the standard scale, and the court before which the person is convicted may, in the case of a second or subsequent conviction, order that the goods in relation to which the offence has been committed shall be forfeited:

Provided that, in the case of the sale wholesale of any goods, other than goods which by virtue of an Order made under this Part are required to bear an indication of origin at the time of importation or of exposure for sale wholesale, it shall be a good defence to proceedings under this paragraph if the person charged with the offence satisfies the court that the goods were sold to the purchaser on an undertaking in writing that they would be exported or sold for exportation to a place outside the British Islands, and any such undertaking in writing, if it purports to be signed by the purchaser and specifies the usual business address of the purchaser, shall be admissible as evidence of the facts appearing therein.<sup>11</sup>

- (2) If any person advertises or offers for sale as being goods of a particular brand or make or otherwise under a specific designation, whether by means of an illustration or by means of any written matter, any imported goods of a class or description to which an Order made under this Part applies, the person shall, if he or she does not include in the advertisement or offer an indication of the origin of the goods, and subject to the provisions of this Article, be deemed to have acted in contravention of an Order made under this Part:

Provided that this paragraph shall not apply in the case of any advertisement made, issued or published before the date on which the Order was made.

- (3) Where any person sells or exposes for sale any goods of which any imported goods, being goods to which an Order made under this Part applies, form a distinguishable part, and that part is reasonably capable of having applied to it an indication of origin in manner required by the Order, the person shall, for the purposes of this Article, be deemed to have sold, or exposed for sale, that part, and the provisions of this Article shall apply accordingly.
- (4) It shall not, within Jersey, be lawful to sell or offer for sale by sample goods of a class or description to which an Order made under this Part applies unless the required indication of origin is applied to the samples or unless particulars corresponding to the particulars which would be contained in such an indication are communicated in writing to the person to whom the samples are submitted, and if any person acts in contravention of the provisions of this paragraph he or she shall, subject to the provisions of this Article, be deemed to have acted in contravention of an Order made under this Part.
- (5) A person shall not be treated as being guilty of an offence against this Part if he or she proves –
- (a) that, having taken all reasonable precautions against committing such an offence, the person had at the time of the commission of the alleged offence no reason to suspect that the goods were goods to which this Part or an Order made thereunder applied, and that on a demand made by or on behalf of the police the person gave all the information in his or her power with respect to the persons from whom he or she obtained the goods; or
- (b) that otherwise the person had acted innocently.

## **17 Power of employer to exempt himself or herself from penalty on conviction of the actual offender**

Where an employer or principal is charged with the offence of having acted in contravention of, or failed to comply with, the provisions of this Part or any Order made thereunder, the employer or principal shall be entitled, on giving not less than 3 days' notice of the employer or principal's intention to the prosecution, to have any other person whom the employer or principal alleges to be the actual offender brought before the court at the time appointed for the hearing of the charge, and, if after the commission of the offence has been proved, the employer or principal proves to the satisfaction of the court that the employer or principal has used due diligence to enforce compliance with the provisions of this Part or of the Order, and that the said other person had committed the offence in question without the employer or principal's consent, connivance or wilful default, the said other person shall, subject to the provisions of Article 16(5), be convicted of the offence, and the employer or principal shall be exempt from any penalty.

The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings:

Provided that the prosecution shall in any such case have the right to cross-examine the employer or principal if the employer or principal gives evidence, and any witnesses called by the employer or principal in support of the charge, and to call rebutting evidence.

## **18 Rules as to evidence**

In any prosecution for an offence against this Part, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced:

Provided that, in the case of goods imported after transshipment in the British Islands or after transit through the British Islands, the reference in this Article to the port of shipment shall be construed as a reference to the port from which the goods were shipped to the British Islands.

## **19 Provisions as to Orders and directions**

(1) <sup>12</sup>

(2) The Greffier of the States shall cause every Order made, and direction given, under this Part to be printed and shall cause to be published in 2 newspapers circulating in Jersey, one being a publication in French and the other a publication in English, a notice stating that the Order or direction has been made or given, the date of the coming into force thereof and the place at which printed copies thereof may be purchased.

## PART 4

### GENERAL

#### 20 Trade mark, how described in proceedings and documents

In any proceedings or in any document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

#### 21 Implied warranty on sale of marked goods

On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Law, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the purchaser.

#### 22 Power to order forfeiture of goods and things having no known owner

If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Law, is unknown or cannot be found, the Connétable of the parish in which those goods or things are discovered, may cause to be published, in 2 newspapers circulating in Jersey, one being a publication in French and the other a publication in English, a notice stating that on the date specified in the notice (being at least 21 days after the date of the publication thereof) an application will be made to the Magistrate's Court for an Order that such goods or things be forfeited, and, unless the owner or any person on the owner's behalf, or other person interested in the goods or things, shows cause to the contrary, the court may order that such goods or things or any of them shall be forfeited.

#### 23 Disposal of forfeited goods

- (1) Any goods or things forfeited under this Law may be destroyed or otherwise disposed of in such manner as the court may direct, and the court may, out of any proceeds which may be realized by the disposal of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss the party may have innocently sustained in dealing with such goods.
- (2) Subject to the provisions of paragraph (1), any proceeds realized by the disposal of goods forfeited under this Law may be retained by the States.<sup>13</sup>

#### 24 Punishment of accessories

Any person who, being within Jersey, procures, counsels, aids, abets or is accessory to the commission outside Jersey, of any act which, if committed in Jersey, would under this Law be an offence, shall be guilty of that offence as a principal, and be liable to be



proceeded against, tried and convicted in Jersey as if the offence had been committed in Jersey.

## **25 Provisions of law as to false description not to apply in certain cases**

Where, at the commencement of this Law, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Law with respect to false trade descriptions shall not apply to such trade description when so applied:

Provided that where such 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 applied were actually made or produced, and the goods are not actually made or produced in that place or country, this Article shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

## **26 Savings**

- (1) This Law shall not exempt any person from any action, suit or other proceeding which might, but for the provisions of this Law, be brought against him or her.
- (2) Nothing in this Law shall entitle any person to refuse to disclose any matter or answer any question in any action, but such disclosure or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Law.
- (3) Nothing in this Law shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Jersey who bona fide acts in obedience to the instructions of such master and, on demand made by or on behalf of the police, has given full information as to the identity of the servant's master.

## **27 Citation**

This Law may be cited as the Merchandise Marks (Jersey) Law 1958.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Merchandise Marks (Jersey) Law 1958	<a href="#">L.10/1958</a>	1 July 1958 ( <a href="#">R&amp;O.3919</a> )
Merchandise Marks (Amendment) (Jersey) Law 1989	<a href="#">L.21/1989</a>	8 December 1989
Merchandise Marks (Amendment No. 2) (Jersey) Law 1995	<a href="#">L.6/1995</a>	20 January 1995
Trade Marks (Jersey) Law 2000	<a href="#">L.15/2000</a>	1 October 2000 ( <a href="#">R&amp;O.66/2000</a> )
Subordinate Legislation (Amendment No. 2) (Jersey) Law 2001	<a href="#">L.2/2001</a>	23 February 2001
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	<a href="#">R&amp;O.44/2005</a>	9 December 2005
Public Finances (Consequential Amendments) (Jersey) Regulations 2005	<a href="#">R&amp;O.126/2005</a>	9 December 2005
States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) (Jersey) Regulations 2015	<a href="#">R&amp;O.158/2015</a>	1 January 2016
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	<a href="#">L.1/2016</a>	20 September 2016 ( <a href="#">R&amp;O.98/2016</a> )
Legislation (Jersey) Law 2021	<a href="#">L.8/2021</a> ( <a href="#">R&amp;O.112/2021</a> )	28 September 2021

### Table of Renumbered Provisions

Original	Current
PART I	PART 1
1(1A)	1(2)
(2)	(3)
(3)	(4)
(4)	(5)
(5)	(6)
PART II	PART 2
PART III	PART 3
13(2A)	13(3)
(3)	(4)
(4)	(5)
(5)	(6)

Original	Current
PART IV	PART 4
27(1)	27
(2)	spent, omitted from this revised edition

### Table of Endnote References

- 
- <sup>1</sup> *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- <sup>2</sup> *Article 1(1) definition “trade mark” substituted by L.15/2000*
- <sup>3</sup> *Article 1(2) inserted by L.15/2000*
- <sup>4</sup> *Article 5(4) amended by L.6/1995, L.1/2016*
- <sup>5</sup> *Article 7 amended by L.6/1995, revised on 11 January 2024 by Law Revision Board item [2023/1](#)*
- <sup>6</sup> *Article 8(1) amended by R&O.158/2015, revised on 11 January 2024 by Law Revision Board item [2023/1](#)*
- <sup>7</sup> *Article 13(2) amended by L.6/1995*
- <sup>8</sup> *Article 13(3) inserted by L.21/1989*
- <sup>9</sup> *Article 13(5) amended by L.6/1995*
- <sup>10</sup> *Article 14 amended by L.15/2000*
- <sup>11</sup> *Article 16(1) amended by L.6/1995*
- <sup>12</sup> *Article 19(1) amended by L.2/2001, deleted by L.8/2021*
- <sup>13</sup> *Article 23(2) amended by R&O.126/2005*