

**THE TRADE DESCRIPTION BILL, 2020**

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**SCHEDULE**

**A Bill for**

**AN ACT of Parliament to prohibit false trade descriptions in the sale of goods, and provision of services, accommodation and facilities in the course of trade; to prohibit false or misleading indications as to price and the supply of goods; to prohibit the importation of goods bearing false indication of the place of origin and to confer powers for the enforcement and making of orders relating to the marking or to accompany the goods or to be included in advertisements; and for connected purposes**

**ENACTED** by Parliament of Kenya, as follows—

**PART I— PRELIMINARY**

Short title.                   **1.** This Act may be cited as the Trade Descriptions Act, 2020.

Interpretation.           **2.** (1) In this Act, unless the context otherwise requires—

“advertisement” includes a catalogue, a circular and a price list whether in digital format or not;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to trade;

“goods” includes ships and aircraft, things attached to land and growing crops;

No....of 2020.               “inspector” means a person appointed as an inspector under Section 54 of the Legal Metrology Act, 2020;

“premises” includes any place, any stall, vehicle, ship or aircraft;

“ship” includes any boat and any other description

of vessel used in navigation; and

“trade” includes business and profession.

(2) For the purpose of this Act—

- (a) a person exposing goods for supply or having goods in his or her possession for supply shall be deemed to offer to supply them;
- (b) a trade description or statement published in any newspaper, book or periodical, or in any film or sound or television broadcast or any other electronic media shall not be deemed to be a trade description applied or statement made in the course of trade unless it is or forms part of an advertisement; and
- (c) a description of goods in any customs entry shall be deemed to be a trade description.

**PART II—FALSE TRADE DESCRIPTION AND OTHER MIS-STATEMENTS**

Prohibition of false trade descriptions.

**3.** Any person who in the course of any trade—

- (a) applies a false trade description to any goods; or
- (b) supplies or offers to supply or has in his or her possession for supply any goods to which a false trade description is applied commits an offence.

False or misleading

**4.** (1) A person commits an offence if that person

indications as to price.

offers to supply goods of any description, gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than—

- (a) a recommended price; or
- (b) the price at which the goods, or goods of the same description, were previously offered by him or her, or is less than a price by a specified amount.

(2) If any person offering to supply any goods gives, by whatever means, any indication likely to be taken as an indication that the goods are being offered at a price less than that at which they are in fact offered, that person commits an offence.

(3) For the purpose of this section—

- (a) an indication that goods were previously offered at a higher price or at a particular price—
  - (i) shall be treated as an indication that they were so offered by the person giving the indication, unless it is expressly stated that they were so offered by others and it is not expressed or implied that they were, or might have been, so offered also by that person; and
  - (ii) shall be treated, unless the contrary is expressed, as an indication that they were so offered within the proceeding six months for a continuous period of not less than twenty-eight days and where, under this sub-paragraph, an indication is so treated, the burden of proving

that the indication so treated was not false shall lie upon the person by whom the indication was given;

- (b) an indication as to recommended price—
  - (i) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended by the manufacturer, producer or importer and;
  - (ii) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended generally for supply by retail in the area where the goods are offered;
- (c) anything likely to be taken as an indication as to a recommended price or as to the price at which goods were previously offered shall be treated as such an indication;
- (d) a person advertising goods as available for supply shall be taken as offering to supply them.

False representation as to the supply of goods or service.

**5.** A person commits an offence if that person, in the course of any trade, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him or her are of a kind supplied by or to any person.

False or misleading statements as to services, etc

**6.** (1) A person commits an offence if that person, in the course of any trade—

- (a) makes a statement which he or she knows to be false; or

- (b) recklessly makes a statement which is false, as to any of the following matters—
  - (i) the provision in the course of any trade of any services, accommodation or facilities;
  - (ii) the nature of any services, accommodation or facilities provided in the course of any trade;
  - (iii) the time at which, manner in which, or person by whom, any services, accommodation, or facilities are so provided;
  - (iv) the examination, approval or evaluation, by any person of any services, accommodation or facilities so provided; or
  - (v) the location or amenities of any accommodation so provided.

(2) For the purposes of this Section—

- (a) anything,—(whether or not a statement as to any of the matters specified in subsection (1) likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; and
- (b) a statement made regardless of whether it is true or false shall be deemed to be made recklessly, whether or not the person making it had reasons for believing that it might be false.

(3) In relation to any services consisting of or

including the application of any treatment or process or the carrying out of any repair, the matters specified in subsection (1) shall be taken to include the effect of the treatment, process of repair.

(4) Where it appears to the Cabinet Secretary that it would be in the interest of persons for whom any services, accommodation or facilities are provided in the course of any trade that any expressions used with respect thereto should be understood as having any definite meanings, the Cabinet Secretary may by order in the Gazette assign such meanings to those expressions when used as, or as part of such statements as are mentioned in this section with respect to those services, accommodation or facilities, and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when so used.

(5) In this section “false” means false to a material degree and “services” does not include anything done under a contract of service.

Prohibition of importation of goods bearing false indication of origin.

**7.** (1) Subject to Section 32 of this Act, a person shall not import into Kenya—

- (a) any goods to which there is applied a trade description which contains a direct or indirect reference to any country, town or place other than the country, town or place in which the goods were manufactured or produced; or
- (b) any goods which bear the name of any manufacturer, dealer or trader in Kenya, unless there is added to that name in a conspicuous manner, the name of the country in which such goods were made or produced and the name of the manufacturer of the goods in that

country.

(2) Any person who imports goods in contravention of this section and any person handling or dealing in such goods commits an offence.

**PART III—DEFINITION AND EXPANSION OF TERMS**

“Trade description” defined.

**8.** (1) For the purposes of this Act, “trade description” means any indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods—

- (a) identity, quantity, mileage, size or gauge;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in the proceeding paragraphs;
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a type approved by any person;
- (h) place or date of manufacture, production, processing or reconditioning;
- (i) person by whom manufactured, produced, processed or reconditioned;
- (j) their being subject to an existing patent, trade mark licence or copyright licence;

- (k) other history including previous ownership or use.

(2) The matters specified in subsection (1) shall be taken—

- (a) in relation to any animal, to include sex, breed or cross, fertility and soundness;
- (b) in relation to any semen, to include the identity and characteristics of the animal from which it was taken and measure of dilution.

(3) In this section “quantity” includes length, width, height, area, volume, capacity, weight and number.

(4) Notwithstanding the provisions of this section, any description or mark applied in pursuance of the Seeds and Plant Varieties Act shall be deemed not to be a trade description for the purposes of this Act.

Cap 326.

“False trade description” defined.

**9.** (1) For the purposes of this Act, “false trade description” includes—

- (a) any trade description which is false or misleading in a material respect as regards to the goods to which it is applied;
- (b) any trade description which, though not false, is misleading, that is to say, is likely to be taken for such an indication of any of the matters specified in section 8 as would be false to a material degree;
- (c) anything which, though not a trade description, is likely to be taken for an indication of any of those matters and, as such as indication, would be false to a

material degree;

- (d) any false indication, or anything which would be false which is likely to be taken as an indication, that any goods comply with a standard specified or recognized by, or implied by the approval of , any person, where there is no such person or no standard so specified, recognized or implied;
- (e) any mark made to so nearly resemble a registered trade mark or monogram as to be likely to deceive.

(2) The provisions of this Act in respect of the application of a false trade description to goods shall extend to the application to goods of any such figures, words, marks, or colours or arrangement or combination thereof, whether including a trade mark or not, or any name or initials as are likely to lead a person to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and provisions relating to goods to which a false trade description is applied shall be construed accordingly.

Applying a trade description to goods.

**10.** (1) For the purposes of this Act, a person shall be taken to apply a trade description to goods if that person—

- (a) affixes or annexes it to, or in any manner makes it on or incorporates it with—
  - (i) the goods themselves; or
  - (ii) anything in, on, or with which the goods are supplied; or
- (b) place the goods in, on, or with anything which the trade description has been

affixed or annexed to, marked on, or incorporated with, or places any such thing with the goods; or

- (c) uses the trade description in any manner likely to be taken as referring to the goods.

(2) An oral statement shall amount to the use of a trade description.

(3) Where goods are supplied in pursuance of a request made by reference to a trade description appearing in any sign, advertisement, invoice, business letter, business paper or other commercial communication, such goods shall, for the purposes of this Act, be deemed to be goods to which the trade description is applied.

Trade descriptions used in advertisement.

**11.** (1) Where in any advertisement a trade description is used in relation to any class of goods, the trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published—

- (a) for the purpose of determining whether an offence has been committed under section 3(a); and
- (b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 3(b).

(2) In determining for the purpose of this section whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it

likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class to which the trade description is used in the advertisement.

(3) Where it appears to the Cabinet Secretary necessary or expedient in the interest of persons to whom any goods are to be supplied that any description of advertisements of the goods should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods, the Cabinet Secretary may, by order in the Gazette, impose requirements as to the inclusion of that information, or of an indication of the means by which it may be obtained, in such description of advertisements of the goods as may be specified in the order.

(4) An order under subsection (3) may specify the form and manner in which any information or indication is to be included in advertisements of any description and may make different provisions for different circumstances.

(5) Where an advertisement of any goods to be supplied in the course of any trade fails to comply with any requirement imposed under subsection (3), any person who publishes the advertisement commits an offence.

Definition orders.

**12.** (1) Where it appears to the Cabinet Secretary—

- (a) that it would be in the interest of persons to whom any goods are supplied; or
- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Kenya,

that any expressions used in relation to the goods should be understood as having definite meanings, the Cabinet Secretary may, by order in the Gazette, assign such meaning either—

- (i) to those expressions when used in the course of trade as, or as part of a trade description applied to the foods; or
- (ii) to those expressions when so used in such circumstances as may be specified in the order,

and where a meaning is assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when used as mentioned in the sub-paragraphs (i) and (ii).

Marking orders.

**13.** (1) Where it appears to the Cabinet Secretary necessary or expedient in the interest of persons to whom any goods are supplied that the goods should be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods, the Cabinet Secretary may, by order in the Gazette, impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with, and the requirements may be extended to the form and manner in which the information or instruction is to be given.

(2) Where an order under this section is in force with respect to goods of any description, any person who, in the course of any trade, supplies or offers to supply goods of that description in contravention of the order commits an offence.

(3) An order under this section may make different provisions for different circumstances and may, in the case of goods supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

Provisions

**14.** (1) A requirement imposed by an order under

supplemental to sections 11 and 13.

sections 11 or 13 in relation to any goods shall not be confined to goods manufactured or produced in any one country, or any one of a number of countries, or to goods manufactured or produced outside any one or more countries, unless—

- (a) it is imposed with respect to a description of goods in the case of which the Cabinet Secretary is satisfied that the interest of persons in Kenya to whom goods of that description are supplied will be sufficiently protected if the requirement is so confined; and
- (b) the Cabinet Secretary is satisfied that the order is compatible with the international obligations of Kenya.

(2) Where any requirements with respect to any goods are for the time being imposed by an order under sections 11 or 13 and the Cabinet Secretary is satisfied, on the representation of persons appearing to the Cabinet Secretary to have a substantial interest in the matter, that greater hardship would be caused to such persons if the requirements continued to apply than is justified by the interest of persons to whom the goods concerned are supplied, the power of the Cabinet Secretary to relax or discontinue the requirements by a further order may be exercised without the consultation and notice required by section 35(2).

Presumption concerning possession.

**15.** Where any goods bearing a false trade description are found in the possession or control of any person carrying on trade or are found on any premises, whether open or enclosed, which are used for trade, that person shall be deemed for the purpose of this Act to have the goods in his or her possession for trade and the onus of proving the contrary shall be upon that person.

**PART IV— GENERAL PROVISIONS AS TO  
OFFENCES**

General penalty.           **16.** A person who commits an offence under this Act shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

Offence by corporations.           **17.** Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributed to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate commits an offence and shall be liable upon conviction to be proceeded against and punished accordingly.

Employer answerable for acts of servant etc.           **18.** Any person who employs in his or her shop, store, or other place of business any agent, servant, or other person shall be answerable for the acts or omissions of the agent, servant or other person in so far as they concern the business of the employer and if such agent, servant or other person commits any act or makes any omission which is an offence if committed or made by such employer, such employer and his agent, servant or other person commits an offence and shall be jointly and severally liable upon conviction to the penalties provided by this Act.

Liability of partners in a firm.           **19.** Any partner in any firm shall be answerable for the acts or omissions of any other partner in the same firm in so far as they concern that firm, and if any partner commits any act or makes any omission which is an offence under this Act, every partner in the firm shall be jointly and severally liable to the penalties provided by this Act.

Accessories to offence           **20.** Any person who, in Kenya, assists in or induces the commission in any other country of an act in respect of

committed  
abroad.

goods which, if the act were committed in Kenya, would be an offence under section 3, commits an offence, but only if—

- (a) the false trade description concerned is an indication or anything likely to be taken as an indication that the goods or any part thereof were manufactured, produced, processed or reconditioned in Kenya; or
- (b) the false description concerned—
  - (i) consists of or comprises an expression ( or anything likely to be taken as an expression) to which a meaning is assigned by an order made under section 12(b); and
  - (ii) where that meaning is so assigned only in circumstances specified in the order, the trade description is used in those circumstances.

Offence due to  
default of other  
person.

**21.** Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person commits an offence and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first- mentioned person.

#### **PART V—DEFENCES**

Defence of  
mistake, accident,  
etc.

**22.** (1) In any proceedings for an offence under this Act it shall, save as hereinafter provided, be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake, or to reliance on information supplied to him or her, or to the act or default of another person, or to

an accident or other cause beyond his or her control; and

- (b) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or any person under his or her control.

(2) Where a defence under subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person or to information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he or she has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

(3) In any proceedings under this Act for an offence, of supplying or offering to supply or having in possession for supply or handling or dealing in goods to which a false trade description is applied, it shall be a defence for the person charged to prove that he or she did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description, or that the description had been applied.

Innocent  
publication of  
advertisement.

**23.** In proceedings for an offence under this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he or she is a person whose business it is to publish, or to arrange for the publication of, advertisements and that he or she received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Act.

**PART VI—ENFORCEMENT**

Power of  
inspectors.

**24.** (1) An inspector, may at any time and on production, if required, of his or her credentials—

- (a) make impromptu visits to traders' premises within his or her area of jurisdiction for the purpose of inspecting, examining, testing and analyzing goods therein to ensure compliance with the provisions of this Act;
- (b) for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises other than those used only as a dwelling;
- (c) if he or she has reasonable cause to suspect that an offence under this Act has been committed and for the purpose of ascertaining whether it has been committed, require any person carrying on a trade, or employed in connection with a trade, to produce any books or documents relating to the trade and may take copies of, or of any entry in, any such book or document; take still photos digital or not or video and oral recording that shall be used as evidence in any proceedings.
- (d) if he or she has reasonable cause to believe that an offence under this Act has been committed, seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (e) seize and detain any good or documents which he or she has reason to believe

may be required as evidence in proceedings for an offence under this Act;

- (f) for the purpose of exercising his or her power under this subsection, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any order made thereunder are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, the inspector may do so himself or herself.

(2) An inspector seizing any goods and or documents under this Act shall complete a seizure note of the prescribed form as in the Schedule and leave a copy with the person from whom the goods are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being those of the proprietor or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) If a magistrate, on sworn information by an inspector in writing—

- (a) is satisfied that there is reasonable ground to believe either—
  - (i) that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being, or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return,

the magistrate may by warrant under his or her hand which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.

(4) An inspector entering any premises by virtue of this section may take with him or her such other persons and such equipment as may appear to him or her to be necessary, and on leaving any premises which he or she has so entered by virtue of a warrant he or she shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he or she found them.

(5) If any person discloses to any other person—

(a) any information with respect to any manufacturing process or trade secret obtained by him or her in premises which he or she has entered by virtue of this section; or

(b) any information obtained by him or her in pursuance of this Act, that person commits an offence unless the disclosure was made in or for the purposes of the performance by him or her or any other person of function under this Act.

(6) If any person who is not an inspector purports to act as such under this section that person commits a cognizable offence.

(7) Nothing in this section shall be taken to compel the production by an advocate of a document containing a privileged communication made by or to him or her in that capacity or to authorize the taking possession of any such document, which is in his or her possession.

Power of arrest, search and seizure.

**25.** In addition to any powers conferred by this Act, an inspector—

(a) may stop and detain any ship, aircraft, or vehicle or may arrest without warrant, any person suspected of an offence under this Act or being in possession of any goods and or documents in respect of which he or she has reason to believe that such offence has been committed and may search any ship, aircraft, vehicle and any person so stopped and detained or arrested.

(b) may seize and detain goods and or things or documents in respect of which he or she has reason to believe that an offence under this Act has been committed or which he or she has reason to believe to be evidence of such an offence:

Provided that no person shall be arrested under this section unless he or she obstructs or hinders an inspector or it appears to the inspector that such a person is likely to fail to answer to a summons, or such a person

refuses to give his or her name and address to the inspector and to produce to him or her satisfactory evidence of his or her identity, or such person gives a name and address which the inspector has reason to believe to be false.

Power to make test purchase.

**26.** (1) An inspector may make such test purchase of goods as may appear expedient for the purposes of determining whether or not the provisions of this Act are being complied with.

(2) An inspector may, in connection with the investigation of any alleged offence arising out of a test purchase involving payment with money, search any person for the money, or enter and search premises, or search any box or receptacle and the contents thereof at the place at which such test purchase has been made, and may seize the money so found and retain any change received for the purchase together with the goods as evidence of the transaction.

(3) Any goods purchased in pursuance of subsection (1) in respect of which no court proceedings are instituted shall be disposed of in such a manner as the Cabinet Secretary may prescribe.

(4) For the purpose of this section, the expenses incurred by an inspector in making any such purchase shall be met from public funds by way of standing imprest, which shall be accounted for at the conclusion of any proceedings arising from such purchase.

Obstruction of inspector.

**27.** (1) Any person who—

- (a) willfully obstructs an inspector acting in pursuance of this Act; or
- (b) willfully fails to comply with any requirement properly made to him or her by an inspector under section 24; or

(c) without reasonable cause fails to give an inspector so acting any other assistance or information which the inspector may reasonably require of him or her for the purposes of this Act, commits an offence.

(2) Any person who, in giving any such information as is mentioned in subsection (1), makes any statement which he or she knows to be false, that person commits an offence.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him or her.

Notice of tests.

**28.** Where any goods seized by an inspector under this Act are submitted to any test, the inspector shall inform the person mentioned in subsection (2) of section 24 of the result of such test, and shall, where as a result of the test proceedings for an offence under this Act are instituted against any person, allow that person to have the goods tested on his or her behalf if it is reasonably practicable to do so.

Evidence by certificate.

**29.(1)** The Cabinet Secretary may by Regulations provide that certificates issued by such persons as may be specified in the Regulations in relation to such matters as may be so specified shall, subject to this section, be received in evidence of those matters in any proceedings under this Act.

(2) A certificate under Regulations made in pursuance of this section shall not be received in evidence—

(a) unless the party against whom it is to be given in evidence has been served with a copy of the certificate not less than seven days before the hearing; or

- (b) if that party has, not less than three days before the hearing, served on the other party a notice requiring the attendance of the person issuing the certificate.

(3) For the purposes of this section, any document purporting to be a certificate shall be deemed to be such unless the contrary is shown.

#### **PART VII—MISCELLANEOUS**

Trademarks  
containing trade  
description.  
Cap.506.

**30.** (1) The fact that a trade description is, or is part of, a Trade Mark, within the meaning of the Trade Marks Act does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied—

- (a) that it could have been lawfully applied to the goods if this Act had not been passed; and
- (b) that at the relevant date the trade mark either is registered under the Trade Marks Act or is in use to indicate a connection in the course of trade, between such goods and the proprietor of the trademark; and
- (c) that the trade mark is applied to indicate such a connection between the goods and the proprietor of the trademark or a person registered under section 31 of the Trade Marks Act as a registered user of the trade mark; and
- (d) that the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor at the relevant date.

Cap.506.

Cap.506.

(2) In this section “relevant date” means the date on

which this Act is published in the Gazette.

Saving for civil rights.

**31.** A contract for the supply of goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

Country of origin.

**32.**(1) For the purposes of this Act goods shall be deemed to have been manufactured or produced in the country in which they last underwent a treatment or process resulting in a substantial change.

(2) The Cabinet Secretary may, by order in the Gazette specify—

- (a) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this section as resulting in a substantial change;
- (b) in relation to any description of goods of which different parts were manufactured or produced in different countries, or goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of this Act as having been manufactured or produced.

Market research experiments.

**33.**(1) In this section, “market research experiment” means any activities conducted for the purpose of ascertaining the opinion of person (in this section referred to as “participants”) of —

- (a) any goods; or
- (b) anything in, on, or with which, the goods are supplied; or
- (c) the appearance or any other characteristic of the good or of any such thing; or

- (d) the name or description under which the goods are supplied.

(2) This section applies to any market research experiment with respect to which the following conditions are satisfied—

- (a) that any participant to whom any goods are supplied in the course of the experiment is informed, at or before the time at which they are supplied to him, that they are supplied for such a purpose as is mentioned in subsection (1); and
- (b) that no consideration in money or money's worth is given by a participant for the goods or any goods supplied to him for comparison.

(3) Neither section 3 nor section 13 shall apply in relation to goods supplied or offered to be supplied, whether to a participant or any other person, in the course of a market research experiment to which this section applies.

Exemption of goods for Export.

**34.** The Cabinet Secretary may, by order in the Gazette, exempt any goods which are intended for dispatch to a destination outside Kenya from any or all of the provisions of this Act.

General provisions relating to orders.

**35.** (1) The Cabinet Secretary shall not make any order under this Act which relates to agricultural or horticultural produce, whether processed or not, or to animal feeding stuffs or ingredients thereof, or to fertilizers, or for similar purposes, without the concurrence of the Cabinet Secretary for the time being responsible for matters relating to agriculture.

(2) The following provisions shall, save as otherwise expressly provided, apply to the making by the Cabinet

Secretary of any order made under this Act—

- (a) before making the order the Cabinet Secretary shall consult with such organizations as appears to him or her to be representative of interests substantially affected by it, and shall publish, in such manner as the Cabinet Secretary thinks appropriate, notice of his or her intention to make the order;
- (b) the order shall not be made until the expiration of a period of twenty-eight days from the publication of the notice and may be then made with such modifications, if any, as the Cabinet Secretary may think appropriate having regard to any representations received by him or her;
- (c) despite any other written law, no order shall be made with retrospective application.

Disposal of seized goods.

**36.** (1) Where any goods are seized and detained under section 24 they shall be returned, less any portion thereof which has been reasonably utilized for the propose of any test, to the person from whom they were seized within a period of ninety days after the date of seizure unless within such period some person is charged with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods.

(2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1) and any person is convicted of that offence, the court may order that any goods seized and detained under Section 24 in relation to or in connection with which such offence was committed shall be forfeited to the State, but in the absence of any such order such goods shall be returned at the conclusion of the proceedings to the person

from whom they were seized.

(3) Where the owner of seized goods cannot reasonably be traced either during proceedings and before conclusion of the case or before court proceedings are commenced, upon sworn information in writing before a magistrate by the investigating officer, the magistrate may order forfeiture of the goods to the State and give appropriate orders for disposal.

Prosecutorial  
powers.

**37.** All offences committed under this Act may be prosecuted by an inspector.

Cap. 75

**PART VIII—REPEAL, SAVINGS AND  
TRANSITION PROVISIONS**

Repeal of Cap.  
505, etc.

**38.**(1) The Trade Descriptions Act is repealed.

(2) Despite subsection (1) —

- (a) any proceedings taken against or pending against any person immediately before the commencement of this Act may be continued by or against that person as if instituted under this Act:

Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.

- (b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;
- (c) all disciplinary proceedings which immediately before the commencement of

this Act were pending shall be continued or concluded as if instituted under this Act; and

- (d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act.

**SCHEDULE (s. 24(2))**

**THE TRADE DESCRIPTIONS ACT  
SEIZURE NOTICE**

I hereby certify that I .....being an Inspector under the  
Act, have today the .....day of  
.....year .....visited  
the premises of ..... (name of owner/s) located at.....  
.....(place/town/market).....(address),..... (plot number) and have  
Seized the following : equipment/goods/documents,;

.....  
.....  
.....  
.....

The above items have been seized for the purpose of  
.....  
.....

The items have been tested/examined in the presence of the  
trader/attendant/agent/manager

Remarks/observation:  
.....  
.....  
.....

Seizing officer's name .....Name of trader/attendant/manager/agent

Designation..... Title & Address.....

*The Trade Descriptions Bill, 2020*

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Signature.....

Signature.....

Time.....

Time.....

Witnesses:-

<b>Name</b>	<b>Title</b>	<b>Address</b>	<b>Signature</b>
(i).....	.....	.....	.....
(ii).....	.....	.....	.....
(iii).....	.....	.....	.....

*Notes: If the space/s provided above is not adequate, an attachment hereto shall be deemed to be part of this certificate.*

**TO BE COMPLETED IN TRIPLICATE**

**ORIGINAL** – To be retained by seizing officer as evidence of seizure  
**DUPLICATE** – To be left with the person from whom the goods are seized  
**TRIPLICATE** – To be filed

**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to repeal the Trade Descriptions Act (Cap. 505) and replace therefor the Trade Descriptions Act to take on board the substantive changes in conduct of business that have taken place for the last 38 years from the time the current Act was enacted. The Bill further seeks to address the emerging market trends in false trade descriptions, misrepresentations and other mis-statements by criminalising such acts.

**PART I (CLAUSES 1-2)** of the Bill provides for preliminary matters that includes the short title and the interpretation provisions of the Act.

**PART II (CLAUSES 3-7)** of the Bill contains provisions prohibiting false trade descriptions and other mis-statements. These includes—

- (a) prohibition of false trade descriptions (Clause 3);
- (b) false or misleading indications as to price (Clause 4);
- (c) false representation as to the supply of goods or service (Clause 5);
- (d) false or misleading statements as to services (Clause 6); and
- (e) prohibition of importation of goods bearing false indication of origin (Clause 7).

**PART III (CLAUSES 8-15)** of the Bill further contains provisions defining the terms “trade description” and “false trade description”. It also explains in what circumstances the Cabinet Secretary may give orders in respect of certain goods.

**PART IV (CLAUSES 16-21)** of the Bill provides for the general penalty for offences under the Act. It also states the parties that are liable for offences under the Act.

**PART V (CLAUSES 22-23)** of the Bill contains provisions relating to defences that an accused party under this legislation may rely on including the innocent publication of advertisements

**PART VI (CLAUSES 24-29)** of the Bill deals with the enforcement of the provisions of the Act. It provides for the powers of the inspectors to enter

a premises, arrest, search, seizure and make a test purchase. It also creates an offence for any person who obstructs an inspector.

**PART VII (CLAUSES 30-37)** of the Bill contains miscellaneous provisions on trademarks containing trade descriptions, country of origin of goods and market research experiments. It makes provisions for the power of the Cabinet Secretary to make orders exempting certain goods from application of this law and the manner of disposal of goods seized by inspectors as exhibits.

**PART VIII (CLAUSE 38)** of the Bill deals with the transitional provisions, including the repeal of Cap. 505.

The Schedule details the provisions relating to the Trade Description Act seizure notice.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill confers on the Cabinet Secretary the powers to make Regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

The Bill does not concern county governments.

**Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a Money Bill within Article 114 of the Constitution.

Dated the ....., 2020.

**ADEN DUALE AMOS KIMUNYA**  
*Leader of the Majority Party  
National Assembly*