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THE PRESIDENCY

No. 114 17 January 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 61 of 2002: Merchandise Marks Amendment Act, 2002.

DIE PRESIDENSIE

No. 114 17 Januarie 2003

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 61 van 2002: Wysigingswet op Handelswaremerke, 2002.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 30 December 2002.)*

ACT

To amend the Merchandise Marks Act, 1941, so as to define “event” and “protected event”; to prohibit the abuse of a trade mark in relation to an event; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 17 of 1941, as amended by section 1 of Act 39 of 1952, section 1 of Act 47 of 1954, section 1 of Act 54 of 1987, section 1 of Act 49 of 1996, section 1 of Act 38 of 1997 and section 1 of Act 50 of 2001 5

1. Section 1 of the Merchandise Marks Act, 1941, is hereby amended—
- (a) by the insertion after the definition of “document” of the following definition:
- “ ‘event’ means any exhibition, show or competition of a sporting, recreational or entertainment nature which is—
- (a) held or to be held in public; 10
- (b) likely to attract the attention of the public or to be newsworthy; and
- (c) financed or subsidised by commercial sponsorship,
- and includes any broadcast of such exhibition, show or competition;”;
- and
- (b) by the insertion after the definition of “premises” of the following definition: 15
- “ ‘protected event’ means an event designated as such under section 15A;”.

Insertion of section 15A in Act 17 of 1941

2. The following section is hereby inserted in the Merchandise Marks Act, 1941, after section 15: 20

“Abuse of trade mark in relation to event

- 15A.** (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 or termination of the event. 25

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 30 Desember 2002.)

WET

Tot wysiging van die Handelswaremerke-Wet, 1941, ten einde “byeenkoms” en “beskermd byeenkoms” te omskryf; die misbruik van 'n handelsmerk met betrekking tot 'n byeenkoms te verbied; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 17 van 1941, soos gewysig deur artikel 1 van Wet 39 van 1952, artikel 1 van Wet 47 van 1954, artikel 1 van Wet 54 van 1987, artikel 1 van Wet 49 van 1996, artikel 1 van Wet 38 van 1997 en artikel 1 van Wet 50 van 2001 5

1. Artikel 1 van die Handelswaremerke-Wet, 1941, word hierby gewysig deur die volgende omskrywings na die omskrywing van “bedekking” in te voeg:

“ ‘beskermd byeenkoms’ ’n byeenkoms kragtens artikel 15A as sodanig
aangewys;
‘byeenkoms’ enige uitstalling, vertoning of kompetisie van 'n sport-,
ontspannings- of vermaaklikheidsaard wat—
(a) in die openbaar gehou word of gehou gaan word;
(b) waarskynlik die aandag van die publiek sal trek of nuuswaardig sal
wees; en
(c) deur kommersiële borgskap gefinansier of gesubsidieer word,
en ook enige uitsending van sodanige uitstalling, vertoning of
kompetisie;”.

Invoeging van artikel 15A in Wet 17 van 1941

2. Die volgende artikel word hierby na artikel 15 in die Handelswaremerke-Wet, 1941, ingevoeg: 20

“Misbruik van handelsmerk met betrekking tot byeenkoms

15A. (1) (a) Die Minister kan, na ondersoek en behoorlike raadpleging en behoudens die voorwaardes wat in die omstandighede toepaslik is, by kennisgewing in die *Staatskoerant* 'n byeenkoms as 'n beskermd byeenkoms aanwys en in daardie kennisgewing die datum bepaal—
(i) met ingang waarvan die beskerming 'n aanvang neem; en 25

(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 organisers 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 organiser of such event. 5

(3) For the purposes of subsection (2), the use of a trade mark includes— 10

(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. 15

(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." 20

Short title

3. This Act is called the Merchandise Marks Amendment Act, 2002.

(ii) waarop die beskerming eindig, welke datum nie later mag wees nie as een maand nadat die byeenkoms afgehandel of beëindig is.

(b) Die Minister mag nie 'n byeenkoms as 'n beskermde byeenkoms aanwys nie tensy die aanbieding van die byeenkoms in die openbare belang is en die Minister tevrede is dat die organiseerders voldoende geleentede geskep het vir klein besighede en in besonder dié van die voorheen benadeelde gemeenskappe.

(2) Gedurende die tydperk waartydens 'n byeenkoms beskerm word, mag geen persoon 'n handelsmerk met betrekking tot sodanige byeenkoms gebruik op 'n wyse wat bereken is om publisiteit vir daardie handelsmerk te verkry, en om daardeur spesiale reklamevoordeel uit die byeenkoms te trek nie, sonder die vooraf magtiging van die organiseerder van sodanige byeenkoms.

(3) By die toepassing van subartikel (2) sluit die gebruik van 'n handelsmerk in —

(a) enige visuele aanbieding van die handelsmerk op of met betrekking tot goedere of in verband met die lewering van dienste;

(b) enige hoorbare reproduksie van die handelsmerk in verband met goedere of die lewering van dienste; of

(c) die gebruik van die handelsmerk in reklame aktiwiteite, wat op enige wyse, regstreeks of onregstreeks, opsetlik met 'n byeenkoms in verband gebring word of daarna verwys.

(4) Enige persoon wat subartikel (2) oortree, is aan 'n misdryf skuldig.

(5) By die toepassing van hierdie artikel sluit 'handelsmerk' 'n merk in."

Kort titel

3. Hierdie Wet heet die Wysigingswet op Handelswaremerke, 2002.

