

PATENTS, DESIGNS, AND TRADE-MARKS AMENDMENT
BILL

EXPLANATORY MEMORANDUM

This Bill amends the Patents, Designs, and Trade-marks Act, 1921-22.

Clause 2: The purpose of this clause is to protect the proprietors of trade-marks in respect of the non-use or reduced use of their trade-marks due to war circumstances. It follows a similar provision made in Australia (Commonwealth Statutory Rules 1943, No. 7, paragraphs 13 (2) and 13 (3)).

Clause 3: The importation of goods bearing marks infringing the rights of the proprietors of trade-marks in New Zealand would normally afford grounds for legal action by those proprietors. This clause provides that the use of such infringing marks on goods imported by the Government for war purposes is to be disregarded. While the clause takes away the proprietors' rights of action for infringement, it safeguards their trade-marks from loss of distinctiveness. This clause follows a somewhat similar provision which has been made in England (Statutory Rules and Orders 1941, No. 1780, Reg. 7, as amended by 1943, No. 746).

Hon. Mr. Mason

PATENTS, DESIGNS, AND TRADE-MARKS
AMENDMENT

Title.		ANALYSIS	
1. Short Title.	2. Protection of trade-marks under war circumstances.	3. Modification of law as to trade-marks in relation to essential imports.	

A BILL INTITULED

AN ACT to amend the Patents, Designs, and Trade-marks Act, 1921-22. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Patents, Designs, and Trade-marks Amendment Act, 1945, and shall be read together with and deemed part of the Patents, Designs, and Trade-marks Act, 1921-22 (hereinafter referred to as the principal Act). Short Title.
See Reprint of Statutes, Vol. VI, p. 656

2. (1) An applicant under section twenty-eight of the Patents, Designs, and Trade-marks Amendment Act, 1939, shall not be entitled to rely for the purposes of paragraph (b) of subsection one, or for the purposes of subsection two, of that section on any non-use of a trade-mark that is shown to have been due to circumstances attributable to any war in which His Majesty may be, or may have been, engaged. Protection of trade-marks under war circumstances. 1939, No. 26

(2) The reputation which a trade-mark possesses shall not be affected, or be deemed heretofore to have been affected, by any non-user or reduced user thereof which is due to circumstances attributable to any war in which His Majesty may be, or may have been, engaged. 5

Modification of
law as to
trade-marks
in relation to
essential
imports.

3. (1) The provisions of this section shall have effect with respect to goods imported into New Zealand, whether before or after the passing of this Act, on Government account (in this section referred to as essential imports), and with respect to any mark which any essential imports bear, or bore, at the time of their importation, or which was used in relation to any essential imports before their importation by an overseas supplier thereof, and any form of get-up in which any essential imports are, or were, at the time of their importation (in this section referred to as a mark or get-up applied overseas). 10 15

(2) For the purposes of proceedings for infringement of a registered trade-mark, or proceedings for passing-off, brought against any person in respect of the use in relation to any goods of a mark or in respect of the marking or getting-up of any goods in a particular way, it shall be a defence for that person to prove that the goods were essential imports and that that mark or get-up was, or was identical or nearly identical with, a mark or get-up applied overseas to the goods. 20 25

(3) Where a mark or get-up is used in such a way that, apart from the *last preceding* subsection, a person could have obtained relief in respect of that use in proceedings to which that subsection affords a defence, or could have obtained such relief but for any privilege or immunity of the Crown or of the Government of any allied Power or any Department or agent of such a Government or Department, the said use and any consequence thereof shall be disregarded for all purposes for which it might apart from this subsection have been material under the principal Act, or at common law, in ascertaining the rights of that person or any successor in title of his, or any rights claimed adversely to that person or any successor in 30 35 40

title of his by any other person, in relation to any trade-mark registered in that person's name, or any mark or get-up which he had used, before the time of the importation of the goods.

5 (4) For the purposes of any prosecution for an offence against the Patents, Designs, and Trade-marks Act, 1908, in relation to any goods, neither the applica-
10 tion to the goods of any mark nor the getting-up of the goods in any way shall be treated as a false application thereto of a mark, or as an application thereto of a false trade description, if the person charged proves that the goods were essential imports and that that mark or get-up was, or was identical or nearly identical with, a mark or get-up applied overseas to the goods.

See Reprint
of Statutes,
Vol. VI, p. 644

15 (5) For the purposes of any prosecution for an offence under the Patents, Designs, and Trade-marks Act, 1908, in relation to the forging of a trade-mark or to a forged trade-mark, the making of a mark shall not be treated as a forging of that trade-mark if the
20 person charged proves either that it was a mark applied overseas to essential imports or that it was identical or nearly identical with a mark applied overseas to essential imports and that the purpose of making it was for application to those imports.

25 (6) Section ninety-six of the Patents, Designs, and Trade-marks Act, 1908, shall not have effect in relation to essential imports.

(7) For the purposes of proceedings for breach of a warranty deemed by virtue of section ninety-four of
30 the Patents, Designs, and Trade-marks Act, 1908, to have been given in relation to any goods to which a trade-mark, or mark, or trade description had been applied, it shall be a defence for the person sued to prove that the goods were essential imports and that
35 that mark or description was, or was identical or nearly identical with, a mark or get-up applied overseas to the goods.

(8) A certificate issued by the Minister of Industries and Commerce to the effect that any goods are or were
40 essential imports, or that a mark or get-up was applied overseas to any goods, shall be conclusive for the purposes of this section:

Provided that this subsection shall not apply to any such goods as are mentioned in paragraph (c) of the definition of the expression "goods imported on Government account."

(9) In this section, unless the context otherwise requires,— 5

"Allied Power" means any power engaged, in alliance with His Majesty, in any war in which His Majesty is also engaged:

"Goods imported on Government account" 10 means—

(a) Goods the property in which was, at the time of their export from the country of supply, vested in, or which were at that time consigned directly to, His Majesty or a 15 Department of His Majesty's Government in New Zealand, or a person acting as agent for His Majesty or such a Department, being goods imported before the passing of this Act or being goods imported after the 20 passing of this Act in connection with any war purpose;

(b) Goods imported into New Zealand pursuant to any order placed overseas by or through the agency of any Department of His 25 Majesty's Government in New Zealand under any scheme whereby orders for goods of any particular class or classes are collected for the purpose of enabling the orders to be placed overseas to the best advantage, being 30 goods imported before the passing of this Act or being goods imported after the passing of this Act in connection with any war purpose;

(c) Goods the property in which was, at 35 the time of their export from the country of supply, vested in, or which were at that time consigned directly to, the Government of the United Kingdom and Northern Ireland or

5 any Dominion or allied Power or a Department of any such Government, or a person acting as agent for any such Government or a Department thereof, being goods imported for the purpose of being sold or supplied to members of the Forces of the United Kingdom and Northern Ireland or that Dominion or Power or to persons employed by the Government thereof:

10 “Overseas supplier”, in relation to any goods, means a person carrying on outside New Zealand a business in the course of which a connection in the course of trade between him and the goods subsisted:

15 “War purpose” means securing the public safety, the defence of New Zealand, the maintenance of public order, or the efficient prosecution of any war in which His Majesty may be engaged, or maintaining supplies and services essential to the life of the community:

20 Any reference to a mark or name being borne by goods includes a reference to its being upon a package in which the goods are enclosed, or on a label affixed to the goods or to such a package, and a reference to its being used in any other manner in physical relation to the goods:

25 References to a mark or get-up nearly identical with another shall be construed as references to one which differs from that other in respect only of variations, additions, or omissions which do not substantially affect its identity with that other.