

Merchandise Marks Act 17 of 1941 (MMA)

Topic: False Trade Descriptions, Prohibited Marks and Ambush Marketing

IN A CALABASH

Introduction

Certain emblems, such as the South African flag, words, such as 'South Africa' and trade descriptions, such as 'proudly South African' are protected due to their relevance and universal application and may not be used by any person for the purposes of describing, marketing or advertising their goods or services. These are commonly referred to as protected trade descriptions.

Objectives of the Act

The Merchandise Marks Act (MMA) is aimed at preventing and discouraging persons and trading entities from using and applying certain protected trade descriptions.

Application of the Act and its implication to Tourism

The MMA applies to everyone in South Africa and has a high impact on stakeholders within the tourism sector who market, advertise and sell goods or services.

Summary of the provisions of the Act

Unauthorised use of certain emblems

In terms of the MMA, a person may not use—



- the coat of arms of the Republic or of the former Union of South Africa or any former entity, the territory of which forms part of the Republic, or arms so nearly resembling the coat of arms of the Republic as to be likely to deceive;
- the style, title, name, portrait or effigy of the President, Deputy President or a Minister of the Republic;
- the name, portrait or effigy of any former President, other Head of State, representative of such Head of State, Deputy President or Minister of the Republic, the former Union of South Africa or any former entity, the territory of which forms part of the Republic;
- a reproduction of any monument, relic or antique as defined in the National Monuments Act 28 of 1969, the Union Building or any official residence of the President or Deputy President; or
- any device, emblem, title or words in such a manner as to be likely to lead other persons to believe that his or her trade, business, profession or occupation is carried on under the patronage of, or that he or she is employed by or supplies goods to, the President, any State Department or a provincial government.

The unauthorised use of any of the above emblems will amount to an offence in terms of this Act, unless a trade mark registered before and in existence on the first day of February, 1941 is used.

The only time one can lawfully use any references to the above will be with the authority in writing signed by or on behalf of the President, the Minister administering that department or the Premier of the province concerned.

The Minister may publish certain names, emblems, words and trade descriptions which may not be used or reproduced. This is published by way of a notice in the Government Gazette.

In the past, these have included the FIFA logos, the Olympic symbols, certain national emblems used by sporting teams, family emblems and emblems representing certain associations and trading entities in South Africa.

A person, trading entity or business may not use state emblems, official signs or hallmarks without the necessary authorisation or use a mark, word, letter or figure or any arrangement or combination which has been prohibited by the Minister.

Special/protected events and ambush marketing

The MMA gives the Minister the right to declare an event a 'protected event' if he or she is satisfied that the staging of the event is in the public interest.

'Event' means a show, exhibition or competition of a sporting, recreational or entertainment nature which is held in public as newsworthy or attracts public attention and is financed or subsidised by commercial sponsorship and includes a broadcast.

Once an event is declared as a 'protected event' for a specific time which may not be longer than the month after the termination of the event, no person may use any mark or

trademark in relation to that event in order to derive special promotional benefit from the event without the prior approval and permission of the organisers of the event.

This prohibition is wide and extends not only to any direct reference to the event but to the use of a visual reproduction of the trademarks or marks in promotional activities which directly or indirectly bring it into association with the event.

Examples of a protected event are the FIFA World Cup and the African Cup of Nations tournament.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Non-compliance with the Act amounts to a criminal offence.

In the case of a first conviction, the penalties include a fine of up to R5 000 per article or item or imprisonment for a period of up to three years, or both.

In the case of a second conviction, a fine of up to R10 000 may be imposed per article or item or imprisonment for a period of up to five years, or both.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Awareness of protected trade descriptions;
- A person or trading entity must not use protected trade descriptions; and
- Ambush marketing provisions and controls must be in place to ensure that one does not take advantage of a protected event.

FURTHER INFORMATION

Regulator

The Minister of Trade and Industry

Website

www.thedti.gov.za