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New Zealand.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. —.

ANALYSIS.

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| Title. Preamble. 1. Short Title. 2. Interpretation clause. 3. No mark to be recognized as a trade mark until registered. 4. Registrar to be appointed until when Colonial Secretary shall act. 5. Mode of registration. 6. Register to be kept and open to public inspection. 7. Certificate may be transferred wholly or in part. 8. Registration to extend to trade mark only and not to give any patent right. 9. Forging a trade mark or falsely applying any trade mark with intent to defraud a misdemeanour. 10. Applying a forged trade mark to any vessel case wrapper &c. in or with which any article is sold or intended to be sold a misdemeanour. 11. Selling articles with forged or false trade marks after 186 penalty equal to value of article sold and a sum not exceeding five pounds nor less than ten shillings. 12. Additions to and alterations of trade marks made with intent to defraud to be deemed forgeries. 13. Any person who after 186 shall have sold an article having a false trade mark to be bound to give information where he procured it. Power to Justices to summon parties refusing to give information. Penalty for refusal five pounds. 14. Marking any false indication of quantity &c. upon an article with intent to defraud penalty a sum equal to the value of the article and a further sum not exceeding five pounds and not less than ten shillings. 15. Selling or exposing for sale after the 186 articles with false statement of | quantities &c. penalty not more than five pounds nor less than ten shillings. 16. Proviso that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures. 17. Description of trade marks or forged trade marks in indictments &c. 18. Conviction not to affect any right or civil remedy. 19. Intent to defraud &c. any particular person need not be alleged in an indictment &c. or proved. 20. Persons who aid in the commission of a misdemeanour to be also guilty. 21. Punishment for misdemeanour under this Act. 22. Recovery of penalties. 23. Summary proceedings before Justices to be within 24. In actions penalties to be accounted for in like manner as other moneys payable to the Crown and plaintiffs to recover full costs of suit. 25. Limitations of actions &c. 26. After 186 vendor of any article with a trade mark to be deemed to contract that the mark is genuine. 27. After 186 vendor of an article with description upon it of its quantity to be deemed to contract that the description was true. 28. In suits at law or in equity against persons for using forged trade marks Court may order article to be destroyed and may award injunction &c. 29. Persons aggrieved by forgeries may recover damages against the guilty parties. 30. Defendant obtaining a verdict to have full indemnity for costs. 31. A plaintiff suing for a penalty may be compelled to give security for costs. |
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A BILL INTITLED

AN ACT to amend the Law relating to the Title. Fraudulent Marking of Merchandise and to provide for the Registration of Trade Marks.

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

I. The Short Title of this Act shall be "The Trade Marks Act Short Title.
1866."

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Interpretation clause.

II. In the construction of this Act the word "person" shall include any person whether a subject of Her Majesty or not and any body corporate or body of the like nature and also any company association or society of persons whether the members thereof be subjects of Her Majesty or not or some of such persons subjects of Her Majesty and some of them not and whether such body corporate body of the like nature company association or society be established or carry on business within Her Majesty's dominions or elsewhere or partly within Her Majesty's dominions and partly elsewhere and the word "Mark" shall include any name signature word letter device emblem figure sign seal stamp diagram label ticket or other mark of any other description and the expression "Trade Mark" shall include any and every such name signature word letter device emblem figure sign seal stamp diagram label ticket or other mark as aforesaid lawfully used by any person to denote any chattel or any article of trade manufacture or merchandise to be an article or thing of the manufacture workmanship production or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person.

No mark to be recognized as a trade mark until registered.

III. A mark shall not be recognized or considered to be the trade mark of any person until the same has been registered by or on behalf of the person claiming to be entitled thereto as his trade mark.

Registrar to be appointed until when Colonial Secretary shall act.

IV. The Governor with the advice and consent of the Executive Council may appoint some person to be the Registrar of Trade Marks and an office to be the place of registration for the purpose of this Act and until such appointment shall be made the Colonial Secretary shall be the Registrar of Trade Marks and the Colonial Secretary's Office of the Colony the place of registration.

Mode of registration.

V. Any person desirous of registering a trade mark shall deliver to the Registrar two copies of the trade mark proposed to be registered and shall at the same time pay to the Registrar for the public uses of the Colony a sum of three pounds and three shillings and shall also state in writing the nature of the article to which it is proposed that such trade mark shall apply and the Registrar shall within days of the payment of such fee publish in the *Government Gazette* a notice stating the name of the applicant a description of the trade mark as nearly as may be and the nature of the article to which it is proposed that such trade mark shall apply and after the expiration of fourteen days from the publication aforesaid the Registrar shall unless it be shewn to the satisfaction of the Registrar that such trade mark has been previously registered or that some other person is entitled to such trade mark or that such trade mark is so like some other trade mark that it may be mistaken for the same issue to the applicant a certificate setting forth that such trade mark to be described in such certificate has been duly registered and that the person named in such certificate is entitled to the use of the trade mark described therein.

Register to be kept and open to public inspection.

VI. The Registrar shall keep a proper register of all certificates issued and of all acts done by him in pursuance of this Act and such register shall be open to the inspection of any person during office hours on payment of the sum of sixpence.

Certificate may be transferred wholly or in part.

VII. Any certificate may be transferred either wholly or in part by any document in writing signed by the transferor provided that no transfer shall be valid against the person named in such certificate until after such transfer shall have been duly registered and the Registrar is required to register such transfer on payment of the sum of one pound one shilling.

Registration to extend to trade mark only and not to give any patent right.

VIII. The registration of any trade mark shall not confer any patent right over or any sole right to manufacture any article to which it is

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proposed to apply such trade mark but the certificate of the registration of any trade mark shall be a proof of the right of the person named in such certificate or of the registered transferee of such certificate to use such trade mark except in case of any suit instituted to try the right of any person to have had such trade mark registered.

IX. Every person who with intent to defraud or to enable another to defraud any person shall forge or counterfeit or cause or procure to be forged or counterfeited any trade mark or shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any chattel or article not being the manufacture workmanship production or merchandise of any person denoted or intended to be denoted by such trade mark or denoted or intended to be denoted by such forged or counterfeited trade mark or not being the manufacture workmanship production or merchandise of any person whose trade mark shall be so forged or counterfeited or shall apply or cause to procure to be applied any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of manufacture workmanship production or merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark shall be guilty of a misdemeanour and every person so committing a misdemeanour shall also forfeit to Her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied or caused or procured to be applied any such trade mark or forged or counterfeited trade mark as aforesaid and every instrument in the possession or power of such person and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been so applied and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid shall be forfeited to Her Majesty and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

Forging a trade mark or falsely applying any trade mark with intent to defraud a misdemeanour.

X. Every person who with intent to defraud or to enable another to defraud any person shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing in on or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale or intended for any purpose of trade or manufacture or shall enclose or place any chattel or article or cause or procure any chattel or article to be enclosed or placed in upon under or with any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing to which any trade mark shall have been falsely applied or to which any forged or counterfeited trade mark shall have been applied or shall apply or attach or cause or procure to be applied or attached to any chattel or article any case cover reel ticket label or other thing to which any trade mark shall have been falsely applied or to which any forged or counterfeited trade mark shall have been applied or shall enclose place or attach any chattel or article or cause or procure any chattel or article to be enclosed placed or attached in upon under with or to any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing having thereon any trade mark of any other person shall be guilty of a misdemeanour and every person so committing a misdemeanour shall also forfeit to Her Majesty every such chattel and article and also every such cask bottle stopper vessel case cover wrapper band reel ticket label or other thing as aforesaid in the possession or power of such

Applying a forged trade mark to any vessel case wrapper &c. in or with which any article is sold or intended to be sold a misdemeanour.

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person and every other similar cask bottle stopper vessel case cover wrapper band reel ticket label or other thing made to be used in like manner as aforesaid and every instrument in the possession or power of such person and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid shall be forfeited to Her Majesty and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

Selling articles with forged or false trade marks after 186 penalty equal to value of article sold and a sum not exceeding five pounds nor less than ten shillings.

XI. Every person who after the day of one thousand eight hundred and sixty- shall sell utter or expose either for sale or for any purpose of trade or manufacture or cause to procure to be sold uttered or exposed for sale or other purpose as aforesaid any chattel or article together with any forged or counterfeited trade mark which he shall know to be forged or counterfeited or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse knowing such trade mark of another person to have been so applied or used as aforesaid and that whether any such trade mark or forged or counterfeited trade mark as aforesaid together with which any such chattel or article shall be sold uttered or exposed for sale or other purpose as aforesaid shall be in upon about or with such chattel or article or in upon about or with any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing in upon about or with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold uttered offered or exposed for sale or other purpose as aforesaid and a further sum not exceeding five pounds and not less than ten shillings.

Additions to and alterations of trade marks made with intent to defraud to be deemed forgeries.

XII. Every addition to and every alteration of and also every imitation of any trade mark which shall be made applied or used with intent to defraud or to enable any other person to defraud or which shall cause a trade mark with such alteration or addition or shall cause such imitation of a trade mark to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive shall be and be deemed to be a false forged and counterfeited trade mark within the meaning of this Act and every act of making applying or otherwise using any such addition to or alteration of a trade mark or any such imitation of a trade mark as aforesaid done by any person with intent to defraud or to enable any other person to defraud shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Any person who after 186 shall have sold an article having a false trade mark to be bound to give information where he procured it.

XIII. Where any person who at any time after the day of one thousand eight hundred and sixty- shall have sold uttered or exposed for sale or other purpose as aforesaid or shall have caused or procured to be sold uttered or exposed for sale or other purpose as aforesaid any chattel or article together with any forged or counterfeited trade mark or together with the trade mark of any other person used without lawful authority or excuse as aforesaid and that whether any such trade mark or such forged or counterfeited trade mark as aforesaid be in upon about or with such chattel or article or in upon about or with any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing in upon about or with which such chattel or article shall have been sold or exposed for sale such person shall be bound upon demand in writing delivered to him or left for him

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Proviso that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures.

XVI. Provided always that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article or to any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing with which such chattel or article shall be sold or intended to be sold any name word or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only or so as to make it any offence for any person to sell utter or offer or expose for sale any chattel or article to which or to any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing sold therewith any such generally used name word or expression as aforesaid shall have been applied.

Description of trade marks or forged trade marks in indictments &c.

XVII. In every indictment pleading proceeding and document whatsoever in which any trade mark shall be intended to be mentioned it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark or setting forth any copy or fac-simile thereof and in every indictment pleading proceeding and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark without further or otherwise describing such forged or counterfeit trade mark or setting forth any copy or fac-simile thereof.

Conviction not to affect any right or civil remedy.

XVIII. The provisions in this Act contained of or concerning any act or any proceeding judgment or conviction for any act hereby declared to be a misdemeanour or offence shall not nor shall any of them take away diminish or prejudicially affect any suit process proceeding right or remedy which any person aggrieved by such act may be entitled to at law in equity or otherwise and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding. Provided always that no evidence statement or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanour at common law or otherwise or of any proceeding under the provisions of this Act.

Intent to defraud &c. Any particular person need not be alleged in an indictment &c. or proved.

XIX. In every indictment information conviction pleading and proceeding against any person for any misdemeanour or other offence against the provisions of this Act in which it shall be necessary to allege or mention an intent to defraud or to enable another to defraud it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanour or other offence did such act with intent to defraud or with intent to enable some other person to defraud without alleging or mentioning an intent to defraud any particular person and on the trial of any such indictment or information for any such misdemeanour and on the hearing of any information or charge of or for any such other offence as aforesaid and on the trial of any action against any person to recover a penalty for any such other offence as aforesaid it shall not be necessary to prove an intent to defraud any particular person or an intent to enable any particular person to defraud any particular person but it shall be sufficient to prove with respect to every such misdemeanour and defence that the person accused did the act charged with intent to defraud or with the intent to enable some other person to defraud or with the intent that any other person might be enabled to defraud.

Persons who aid in the commission of a misdemeanour to be also guilty.

XX. Every person who shall aid abet counsel or procure the commission of any offence which is by this Act made a misdemeanour shall also be guilty of a misdemeanour.

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XXI. Every person who shall be convicted or found guilty of any offence which is by this Act made a misdemeanor shall be liable at the discretion of the Court and as the Court shall award to suffer such punishment by imprisonment for not more than two years with or without hard labour or by fine or both by imprisonment with or without hard labour and fine and also by imprisonment until the fine (if any) shall have been paid and satisfied.

Punishment for misdemeanor under this Act.

XXII. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay any of the penalties or sums of money mentioned in the provisions of this Act every such penalty or sum of money shall or may be recovered in an action of debt which any person may as plaintiff for and on behalf of Her Majesty commence and prosecute to judgment in any Court of Record and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any) sworn to try any issue in such action and if there shall be no such jury then by the Court or some other jury as the Court shall think fit or instead of any such action being commenced such penalty or sum of money shall or may be recovered by a summary proceeding before two Justices of the Peace having jurisdiction in the district or place where the party offending shall reside or have any place of business or in the district or place in which the offence shall have been committed.

Recovery of penalties.

XXIII. In every case in which any such penalty or sum of money forfeited as hereinbefore mentioned shall be sought to be recovered by a summary proceeding before two Justices of the Peace the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of "The Justices of the Peace Act 1866" and the information conviction of the offender and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said Act.

Summary proceedings before Justices to be within "The Justices of the Peace Act, 1866."

XXIV. In every case in which judgment shall be obtained in any such action as aforesaid for the amount of any such penalty or sum of money forfeited the amount thereof shall be paid by the defendant to the Sheriff or the Officer of the Court who shall account for the same to the Colonial Treasurer and if it be not paid may be recovered or the amount thereof levied or the payment thereof enforced by execution or other proper proceeding as money due to Her Majesty and the plaintiff suing on behalf of Her Majesty upon obtaining judgment shall be entitled to recover and have execution for all his costs of suit which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in about or for the purposes of the action unless the Court or a Judge thereof shall direct that costs of the ordinary amount only shall be allowed.

In actions penalties to be accounted for in like manner as other moneys payable to the Crown and plaintiffs to recover full costs of suit.

XXV. No person shall commence any action or proceeding for the recovery of any penalty or procuring the conviction of any offender in manner hereinbefore provided after the expiration of one year next after the committing of the offence.

Limitations of actions &c.

XXVI. In every case in which at any time after the day of one thousand eight hundred and sixty any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon or upon any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing together with which such chattel or article shall be sold or contracted to be sold the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the

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vendor to or with the vendee that every trade mark upon such chattel or article or upon any such cask bottle stopper vessel case cover wrapper band reel ticket label or other thing as aforesaid was genuine and true and not forged or counterfeit and not wrongfully used unless the contrary shall be expressed in some writing signed by or on behalf of the vendor and delivered to and accepted by the vendee.

After

186 vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

XXVII. In every case in which at any time after the day of one thousand eight hundred and sixty any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which or upon any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing together with which such chattel or article shall be sold or contracted to be sold any description statement or other indication of or respecting the number quantity measure or weight of such chattel or article or the place or country in which such chattel or article shall have been made manufactured or produced the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description statement or other indication was in any material respect false or untrue unless the contrary shall be expressed in some writing signed by or on behalf of the vendor and delivered to and accepted by the vendee.

In suits at law or in equity against persons for using forged trade marks Court may order article to be destroyed and may award injunction &c.

XXVIII. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark or for fraudulently applying any trade mark to any chattel or article or for selling exposing for sale or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto or with any forged or counterfeit trade mark applied thereto or for preventing the repetition or continuance of any such wrongful act or the committal of any similar act in which the plaintiff shall obtain a judgment or decree against the defendant the Court shall have power to direct every such chattel and article to be destroyed or otherwise disposed of and in every such suit in Court of law the Court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of Court. And in every such suit at law or in equity it shall be lawful for the Court or a Judge thereof to make such order as such Court or Judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark or any such trade mark as aforesaid shall be alleged to be used or applied as aforesaid and of every or any chattel article and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark or any trade mark falsely or wrongfully applied and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark or trade mark alleged to be forged or counterfeit or falsely or wrongfully applying any trade mark and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of Court.

Persons aggrieved by forgeries may recover damages against the guilty parties.

XXIX. In every case in which any person shall do or cause to be done any of the wrongful acts following (that is to say) shall forge or counterfeit any trade mark or for the purpose of sale or for the purpose of any manufacture or trade shall apply any forged or

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counterfeit trade mark to any chattel or article or to any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale or for any purpose of trade or manufacture or shall enclose or place any chattel or article in upon under or with any cask bottle stopper vessel case cover wrapper band reel ticket label or other thing to which any trade mark shall have been falsely applied or to which any forged or counterfeit trade mark shall have been applied or shall apply or attach to any chattel or article any case cover reel wrapper band ticket label or other thing to which any trade mark shall have been falsely applied or to which any forged or counterfeit trade mark shall have been applied or shall enclose place or attach any chattel or article in upon under with or to any cask bottle stopper vessel case cover reel wrapper band ticket label or other thing having thereon any trade mark of any other person every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or of causing or procuring the same to be done and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

XXX. In every action which any person shall under the provisions of this Act commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money if the defendant shall obtain judgment he shall be entitled to recover his costs of suit which shall include a full indemnity for all the costs charges and expenses by him expended or incurred in about or for the purposes of the action unless the Court or a Judge thereof shall direct that costs of the ordinary amount only shall be allowed.

Defendant obtaining a verdict to have full indemnity for costs.

XXXI. In any action which any person shall under the provisions of this Act commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money if it shall be shown to the satisfaction of the Court or a Judge thereof that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum of money is alleged to have become payable and also that the person so suing as plaintiff is not resident within the jurisdiction of the Court or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action the Court or Judge shall or may order that the plaintiff shall give security by the bond or recognizance of himself and a surety or by the deposit of a sum of money or otherwise as the Court or Judge shall think fit for the payment to the defendant of any costs which he may be entitled to recover in the action.

A plaintiff suing for a penalty may be compelled to give security for costs.