

1917-18-19.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

Read 1° 30th July, 1919.

(Brought from the Senate.)

A BILL

FOR

AN ACT

To amend the *Trade Marks Act* 1905-1912.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

- 1.—(1.) This Act may be cited as the *Trade Marks Act* 1919. Short title and citation.
 5 (2.) The *Trade Marks Act* 1905-1912, as amended by this Act is in this Act referred to as the Principal Act.
 (3.) The Principal Act, as amended by this Act, may be cited as the *Trade Marks Act* 1905-1919.

2. Section eighteen of the Principal Act is amended by adding Amendment of s. 18.
 10 at the end thereof the following paragraph:—

“or (*h*) Any word or mark which is declared by the Governor-General by proclamation to be for the purposes of this section a prohibited word or mark, or any word or mark so nearly resembling any such word or mark as to be likely to deceive.”
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3. After section one hundred of the Principal Act the following section is inserted:—

“100A. Where any person claiming to be the proprietor of a trade mark, by circulars, advertisements, or otherwise, threatens any Remedy in case of groundless threats of legal proceedings.
 20 other person with any legal proceedings or liability in respect of any alleged infringement of the trade mark, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover

such damages (if any) as he has sustained thereby if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making the threats :

Provided that this section shall not apply if the person making the threats with due diligence commences and prosecutes an action for infringement of his trade mark.” 5

4. Section one hundred and thirteen of the Principal Act is repealed and the following section inserted in its stead :—

“113.—(1.) No person shall, without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of the Governor of a State, or of some Department of the Government of the Commonwealth or of a State (proof whereof shall lie upon the person accused), assume or use in connexion with any trade, business, calling, or profession the Royal Arms or Arms so nearly resembling the Royal Arms as to be likely to deceive. 10 15

“(2.) No person shall, without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of some Department of the Government of the Commonwealth (proof whereof shall lie upon the person accused), assume or use in connexion with any trade, business, calling, or profession the Arms of the Commonwealth or Arms so nearly resembling the Arms of the Commonwealth as to be likely to deceive. 20

Penalty : Twenty pounds.”

5. After section one hundred and fourteen of the Principal Act the following section is inserted :— 25

“114A. Where the Governor-General by proclamation declares any word or mark to be for the purposes of section eighteen of this Act a prohibited word or mark, the Governor-General may if he thinks fit by that or any subsequent proclamation declare that any such word or mark or any word or mark so nearly resembling that word or mark as to be likely to deceive shall not be used or registered as a trade mark or part of a trade mark, either at all or after a date to be specified by the Governor-General, and after the date of the proclamation, or the date specified in the proclamation, as the case may be, the word or mark, or any word or mark so nearly resembling the word or mark as to be likely to deceive, shall cease to be used or registered as a trade mark or part of a trade mark.” 30 35

Penalty on unauthorized assumption of Royal Arms or of Commonwealth Arms.
Cf. 46 and 47 Vict. c. 57 s. 106.

Power to prohibit by proclamation use of any word or mark.

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THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

NOTICE OF PROPOSED AMENDMENTS.

TRADE MARKS BILL (1919).

Mr. Finlayson—

Page 2, clause 4, line 16, after "deceive" insert "or the Union Jack or any ensign or standard of the United Kingdom, or any adaptation of the Union Jack or any such ensign or standard".

Page 2, clause 4, line 23, after "deceive" insert "or any ensign or flag of the Commonwealth of Australia or any adaptation thereof".

NEW CLAUSE.

"(4A.) After section one hundred and thirteen of the Principal Act the following section is inserted:—

'(113A.) No person shall, without the authority of the Governor-General, or of some Department of the Government of the Commonwealth (proof whereof shall lie upon the person accused), assume or use, for advertising purposes, in connexion with any trade, business, calling, or profession, a stamp or seal of, or a certificate issued by, any Department of the Government of the Commonwealth or a copy, or any colourable imitation, of the whole or of any substantial part of any such stamp, seal or certificate.

Penalty on unauthorized assumption or use of seal or certificate of Commonwealth Department.

Penalty: Twenty pounds.'"

7th August, 1919.

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