

REPUBLIC OF SOUTH AFRICA

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# MERCHANDISE MARKS AMENDMENT BILL

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*(As amended by the Portfolio Committee on Trade and Industry (National Assembly))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF TRADE AND INDUSTRY)

[B 63B—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.
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## **BILL**

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.

**B**E 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

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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;

(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:

“ ‘protected event’ means an event designated as such under section 15A;”.

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### **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:

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#### **“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.

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(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.

## MEMORANDUM ON THE OBJECTS OF THE MERCHANDISE MARKS AMENDMENT BILL, 2002

### 1. Background and object

1.1 The global sponsorship market is expanding rapidly and rights and fees for events like the Olympic Games, the Rugby World Cup and the Soccer World Cup are now estimated to amount to millions and sometimes billions of rands. The organisers of such events approve the hosting of their events on condition that the intellectual property protection is of the highest standard. The aforementioned is currently of special importance since the World Cricket Board, jointly with the United Cricket Board of South Africa, will be hosting the Cricket World Cup in South Africa in 2003.

1.2 The main object of the Bill is to authorise the Minister of Trade and Industry to protect certain events, e.g. major sporting events, from what has internationally become known as "ambush marketing" — in particular ambush marketing by way of intrusion.

1.3 In ambush marketing the marketer has the objective of using the event as a springboard to promote his or her brand or product, without incurring the financial and other obligations of a sponsor. Ambush marketing by intrusion may include—

- (a) placing advertisements for a product on the outskirts of a stadium at which a sponsored event is taking place;
- (b) running advertisements making reference to a sponsored sporting event, without suggesting that the advertiser is a sponsor of the event; or
- (c) bringing a product or its promotion to the attention of people interested in a sponsored event but without suggesting or implying any form of sponsorship of the sponsored event.

1.4 In 2001 another form of ambush marketing, viz. by way of association, was catered for in section 9 of the Trade Practices Act, 1976 (Act No. 76 of 1976), by way of amendment. By means of "association" the ambush marketer creates the impression that he or she is an authorised sponsor or contributor associated with the event. This can be done by using the insignia of the event or insignia which are similar to those of the event. However, the said amendment does only half the job of protecting events and event organisers against ambush marketing, since events currently remain unprotected in respect of ambush marketing by intrusion. The Bill seeks to rectify this situation.

### 2. Financial implications for State

None.

### 3. Departments/bodies consulted

The South African Institute of Intellectual Property Law and certain firms of patent attorneys.

### 4. Parliamentary procedure

The State Law Advisers and the Department of Trade and Industry are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.