Government Gazette 22791

THE PRESIDENCY

No. 1077
30 October 2001

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:-

No. 25 of 2001: Counterfeit Goods Amendment Act, 2001.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

(English text signed by the President.)

(Assented to 24 October 2001.)

ACT

To amend the Counterfeit Goods Act, 1997, so as to amend the definition of "intellectual property right"; to make further provision regarding an inspector's powers in relation to counterfeit goods; and to effect a technical correction; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 37 of 1997

1. Section 1 of the Counterfeit Goods Act, 1997 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (a) of the definition of "intellectual property right" of the following paragraph:

"(a) means the rights in respect of a trade mark conferred by the Trade Marks Act, 1993 (Act No. 194 of 1993), *and includes rights in respect of a trade mark contemplated in section 35 of that Act*;".

Amendment of section 5 of Act 37 of 1997

2. Section 5 of the principal Act is hereby amended by-

(a) the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) any **steps taken by an inspector in accordance with paragraph (a), (b), (c) or (d) of subsection (1), or like steps taken by him or her** *acts performed by an inspector* by virtue of subsection (2) **will cease to have any legal effect whatsoever unless the court confirms such steps, either finally or pendente lite** *must be confirmed by a magistrate or a judge of the High Court having jurisdiction in the area where the acts were performed*, on the application of the inspector **or the relevant complainant (where applicable)** brought within 10 court days of the day on which those **steps had been taken** *acts were performed*,", and

(b) the insertion after subsection (4) of the following subsection:

"*(4A) If the magistrate or judge contemplated in subsection (4)(a) does not confirm the acts performed by the inspector, the inspector must return any goods seized forthwith and make good any damage caused*.".

Substitution of section 21 of Act 37 of 1997

3. The following section is hereby substituted for section 21 of the principal Act:

"Civil or criminal liability under other laws and institution of civil or criminal proceedings thereunder not affected by this Act

21. Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Criminal Procedure Act, 1977 *(Act No. 51 of 1977)*, the provisions of this Act **will** *do* not detract from a person's civil or criminal liability, in terms of any other law, on account of his or her infringement of any intellectual property right **and** *or* from the capacity or competence in terms of any law to institute civil or criminal proceedings in respect of such infringement.".

Short title

4. This Act is called the Counterfeit Goods Amendment Act, 2001.