

REPUBLIC OF SOUTH AFRICA

TRADE PRACTICES AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 22249 of 24 April 2001) (The English text is the
official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 34—2001]

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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.

BILL

To amend the Trade Practices Act, 1976, so as to provide for the prohibition of certain practices relating to sponsored events and to increase the penalties for the contravention of, or failure to comply with, the provisions of the said Act; and to provide for matters connected therewith.

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

Amendment of section 9 of Act 76 of 1976

1. Section 9 of the Trade Practices Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the addition of the word “or” at the end of paragraph (c) and the addition of the following paragraph: 5

“(d) in connection with a sponsored event, make, publish or display any false or misleading statement, communication or advertisement which represents, implies or suggests a contractual or other connection or association between that person and the event, or the person sponsoring the event, or cause such statement, communication or advertisement to be made, published or displayed.” 10

Substitution of section 19 of Act 76 of 1976

2. The following section is hereby substituted for section 19 of the principal Act:

“Offences and penalties 15

19. Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall be liable upon conviction—

(a) in the case of a first conviction, to a fine [not exceeding two thousand rand] or to imprisonment for a period not exceeding two years or to both [such] a fine and such imprisonment; 20

(b) in the case of a second or subsequent conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.”

Short title

3. This Act is called the Trade Practices Amendment Act, 2001. 25

MEMORANDUM ON THE OBJECTS OF THE TRADE PRACTICES AMENDMENT BILL, 2001

1. The Bill seeks to amend the Trade Practices Act, 1976 (Act No. 76 of 1976) (“the Act”), so as to prohibit certain practices known as “ambush marketing” in respect of sponsored events, and to increase penalties which may be imposed for the contravention of or failure to comply with the provisions of the Act.

2. The proposed amendment to section 9 of the Act is aimed at prohibiting the making, publishing or displaying of any statement, communication or advertisement which is false or misleading, and which represents, implies or suggests a contractual or other connection or association between the person who made, published or displayed the statement, communication or advertisement and a sponsored event or person sponsoring the event.

3. This type of conduct has become known as “ambush marketing” colloquially. The Criminal Procedure Act, 1977 (Act No. 51 of 1977), the Merchandise Marks Act, 1941 (Act No. 17 of 1941), the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), the Trade Marks Act, 1993 (Act No. 194 of 1993), and the common law do not offer any assistance. When the aforementioned Acts were enacted the concept of “ambush marketing” did not exist and the offences created in those Acts were not intended to cater for this type of practice. The courts do not view “ambush marketing” as a crime under the common law principle of passing-off, and as a result there has been no criminal sanction against this type of practice.

4. The proposed amendment to section 19 of the Act is aimed at increasing penalties for contravention of or failure to comply with the provisions of the Act.

5. CONSULTATION

The following organisations or bodies were consulted:

The Association of South African Marketers, which includes corporations such as:

- * Vodacom, MTN and Nike
- * British American Tobacco (Bat)
- * Coca Cola
- * Nestlé
- * University of South Africa (Unisa)
- * Rothmans
- * South African Breweries (SAB)

6. FINANCIAL IMPLICATIONS FOR STATE

None.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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