

Enclosure.

SIR,—

Board of Trade (Railway Department), London, S.W., 26th August, 1887.

Referring to previous correspondence on the subject of the Merchandise Marks Act of this session, I am directed by the Board of Trade to enclose herewith, for the information of the Secretary of State, copy of a memorandum that has been drawn up at the request of the Foreign Office for the purpose of showing the nature and extent of the protection granted by the Act to foreign subjects, together with the general effect of its provisions in regard to foreign countries.

I have, &c.,

The Under-Secretary of State, Colonial Office.

COURTENAY BOYLE.

MEMORANDUM.

“THE Merchandise Marks Act, 1887,” has been passed with the object, *inter alia*, of giving effect to the International Convention signed at Paris on the 20th March, 1883, for the protection of industrial property, and also of giving effect to a certain extent to the recommendations made at the second meeting of the Conference, held in Rome in the early part of 1886.

Her Majesty's Government have been assured that a habit largely prevails in various parts of the world of marking goods with false indications of origin, which habit tends to defraud not only the purchaser who buys articles produced in one place believing them produced in another, but also those trade communities who, having justly attained a high reputation for excellence, find their name pirated by makers of inferior goods, not only in their own but also in foreign countries. It is believed that any enactment which tends to discourage this habit and to afford to the purchaser reasonable assurance that the goods he buys are what they purport to be will be for the benefit not only of the whole body of the consumers, but also of trading communities both in the United Kingdom and in foreign countries.

The Act deals with two principal classes of offences—those connected with forged or imitated trade-marks, and those connected with false trade-descriptions. It is an offence under the Act to forge a trade-mark, or to make or have in possession any machine or other instrument for the purpose of forging a trade-mark. It is also an offence to apply any false trade-description to, or to be in possession for sale of, any goods to which a false description or trade-mark has been applied.

A “trade-mark” is defined so as to include foreign trade-marks entitled to protection in the United Kingdom as well as trade-marks registered in the United Kingdom. A “trade-description” is defined as meaning any description, statement, or other indication, direct or indirect—(1) as to the number, quantity, measure, gauge, or weight of any goods; (2) as to the place or country in which the goods were produced; (3) as to the mode of manufacture of such goods; (4) as to the material of which they are composed; or (5) as to their being the subject of any existing patent or copyright. A “false trade-description” means a trade-description which is false in a material respect as regards the goods to which it is applied. An application includes not only a direct application, but an application to any cover, label, &c., in or with which the goods are sold, and also placing goods in any covering, label, &c., to which a trade-mark or trade-description has been applied.

The several offences of marking and applying forged marks, applying false descriptions, and selling goods so falsely marked, are punishable under the Act with imprisonment and fine, according to the two British methods of procedure by indictment and by summary conviction. It is competent for any foreigner in the United Kingdom, whether he be the proprietor of a pirated trade-mark or a member of an injured community, to set the law in motion for the punishment of an offender. Provision is also made under the Act for the forfeiture and disposal of falsely-marked goods, whether found in the possession of an accused person or otherwise.

It is apparent, however, that much of the existing injury occasioned to traders and communities by false marking may be obviated by the prohibition of importation into the several countries of falsely-marked goods, and the attention of the representatives at the Conferences of Paris and Rome was largely devoted to the formulation of principles upon which the countries of the Union respectively should frame their Customs regulations. As to the precise limits of prohibition, complete unanimity was not, indeed, attained at the Conferences. It was distinctly recognised that goods falsely marked, whether by means of forged trade-marks, false names or descriptions, should throughout the countries of the Union be seized at the port of importation, but the Conference at Rome made an exception to the effect that the consent of the manufacturer should be taken as showing absence of fraudulent intent.

Her Majesty's Government are assured, however, that trading communities suffer much injury to their commercial reputation through the importation by their own members of inferior goods made elsewhere, and they are aware that the same feeling is entertained in other countries. Her Majesty's Government therefore decided in the Bill which they submitted to Parliament, and which has now passed into law, that no such exception shall be made, and the Act accordingly provides for the issue of Customs regulations under which all goods which are falsely marked in any manner specified in the Act, and whether imported with the consent of the manufacturer or not, will be seized and forfeited.

Inasmuch as the existing mischief largely consists in marking goods made in one country with the names of manufacturers and places in another, and in the exportation of these goods to a third, it is evident that the interests of the injured manufacturer or community can be safeguarded only in the country of manufacture, and in that to which the goods are exported. Under the present Act and the forthcoming Customs regulations, the rights of all foreign manufacturers and trading communities will be protected alike in British Courts of justice and at British ports. While Her Majesty's Government therefore believe that the evils complained of cannot be altogether suppressed without international harmony of legislation and Customs regulations, they entertain a confident opinion that, under the Merchandise Marks Act, foreign traders and communities will obtain in the United Kingdom a very ample protection.