This chapter is about the various defences that are available to a person who has been accused of infringing a trade mark under the Trade Marks Act 1994. A prominent limitation on the scope of protection, which operates defensively, is whether the defendant has made a legally relevant use of the mark. Besides this, the defendant is excused if the mark has been used (i) as the defendant’s own name or address, (ii) for descriptive purposes, or (iii) to indicate the intended purpose of a product or service. These three uses are subject to a proviso testing for whether the use has been in accordance with honest practices in industrial and commercial matters. Additional defences facilitate comparative advertising and permit parallel importation via the exhaustion of the trade mark owner’s rights upon first sale.
41. Trade mark defences

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