Trade Marks Act 1994

1994 CHAPTER 26

PART III

ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

Forfeiture of counterfeit goods, &c.

97 Forfeiture: England and Wales or Northern Ireland.

(1) In England and Wales or Northern Ireland where there has come into the possession of any person in connection with the investigation or prosecution of a relevant offence—

(a) goods which, or the packaging of which, bears a sign identical to or likely to be mistaken for a registered trade mark,

(b) material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or

(c) articles specifically designed or adapted for making copies of such a sign,

that person may apply under this section for an order for the forfeiture of the goods, material or articles.

(2) An application under this section may be made—

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the goods, material or articles, to that court;

(b) where no application for the forfeiture of the goods, material or articles has been made under paragraph (a), by way of complaint to a magistrates' court.

(3) On an application under this section the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles.

(4) A court may infer for the purposes of this section that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are

representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—

(a) in England and Wales, to the Crown Court;

(b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the [M1]Magistrates' Courts Act 1980 or Article 146 of the [M2]Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to subsection (7), where any goods, material or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this section the court may, if it considers it appropriate to do so, direct that the goods, material or articles to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

(a) causes the offending sign to be erased, removed or obliterated, and

(b) complies with any order to pay costs which has been made against him in the proceedings for the order for forfeiture.

(8) For the purposes of this section a "relevant offence" means

[[F1](a) an offence under section 92 above (unauthorised use of trade mark, &c in relation to goods),

(b) an offence under the Trade Descriptions Act 1968,

(c) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(e) any offence involving dishonesty or deception.**]**

Textual Amendments

F1 Words in s. 97(8) substituted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 55** (with reg. 28(2)(3))

Modifications etc. (not altering text)

C1 S. 97 applied (with modifications) (20.9.1995) by 1995 c. 32, **s. 11**; S.I. 1995/2472, **art. 2**
S. 97 applied (with modifications) (1.4.1996) by S.I. 1996/714, **art. 17**
S. 97 applied (with modifications) (14.8.1996) by S.I. 1996/1908, **reg. 7**

C2 S. 97 applied (with modifications) (29.4.2006) by Community Trade Mark Regulations 2006 (S.I. 2006/1027), regs. 1(1), **8**

Marginal Citations

M1 1980 c. 43.

M2 S.I. 1981/1675 (N.I. 26).

98 Forfeiture: Scotland.

(1) In Scotland the court may make an order for the forfeiture of any—

(a) goods which bear, or the packaging of which bears, a sign identical to or likely to be mistaken for a registered trade mark,

(b) material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or

(c) articles specifically designed or adapted for making copies of such a sign.

(2) An order under this section may be made—

(a) on an application by the procurator-fiscal made in the manner specified in **[**[F2]section 134 of the Criminal Procedure (Scotland) Act 1995**]**, or

(b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.

(3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles.

(4) The court may infer for the purposes of this section that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the goods, material or articles to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the goods, material or articles should not be forfeited.

(6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the **[**[F3]Criminal Procedure (Scotland) Act 1995**]**.

(7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, goods, material or articles to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the goods, material or articles should not be forfeited.

(8) The court shall not make an order following an application under subsection (2)(a)—

(a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved; or

(b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

(9) Where an order for the forfeiture of any goods, material or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why goods, material or articles should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension; and **[**[F4]section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995**]** shall apply to an appeal under this subsection as it applies to a stated case under Part II of that Act.

(10) An order following an application under subsection (2)(a) shall not take effect—

(a) until the end of the period of 21 days beginning with the day after the day on which the order is made; or

(b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.

(11) An order under subsection (2)(b) shall not take effect—

(a) until the end of the period within which an appeal against the order could be brought under the **[**[F5]Criminal Procedure (Scotland) Act 1995**]**; or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(12) Subject to subsection (13), goods, material or articles forfeited under this section shall be destroyed in accordance with such directions as the court may give.

(13) On making an order under this section the court may if it considers it appropriate to do so, direct that the goods, material or articles to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person causes the offending sign to be erased, removed or obliterated.

(14) For the purposes of this section—

"relevant offence" means

((a)) **[**[F6]an offence under section 92 above (unauthorised use of trade mark, &c in relation to goods),

((b)) an offence under the Trade Descriptions Act 1968,

((c)) an offence under the Business Protection from Misleading Marketing Regulations 2008,

((d)) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

((e)) any offence involving dishonesty or deception;**]**

"the court" means—

(a) in relation to an order made on an application under subsection (2)(a), the sheriff, and

(b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

Textual Amendments

F2 Words in s. 98(2)(a) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 92(1)(3)(a)**

F3 Words in s. 98(6) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 92(1)(3)(b)**

F4 Words in s. 98(9) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 92(1)(3)(c)**

F5 Words in s. 98(11) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 92(1)(3)(d)**

F6 Words in s. 98(14) substituted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 56** (with reg. 28(2)(3))

Modifications etc. (not altering text)

C3 S. 98 applied (with modifications) (20.9.1995) by 1995 c. 32, **s. 12**; S.I. 1995/2472, **art. 2**
S. 98 applied (with modifications) (1.4.1996) by S.I. 1996/714, **art. 17**
S. 98 applied (with modifications) (14.8.1996) by S.I. 1996/1908, **reg. 7**

Changes to legislation:
There are currently no known outstanding effects for the Trade Marks Act 1994, Cross Heading: Forfeiture of counterfeit goods, &c..