



# Trade Marks Act 1994

## 1994 CHAPTER 26

### PART III

#### ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

##### *Offences*

#### **92 Unauthorised use of trade mark, &c. in relation to goods.**

- (1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
  - (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or
  - (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or
  - (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).
  
- (2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
  - (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used—
    - (i) for labelling or packaging goods,
    - (ii) as a business paper in relation to goods, or
    - (iii) for advertising goods, or
  - (b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or
  - (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

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- (3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or
  - (b) has such an article in his possession, custody or control in the course of a business,
- knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.
- (4) A person does not commit an offence under this section unless—
- (a) the goods are goods in respect of which the trade mark is registered, or
  - (b) the trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.
- (5) It is a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark.
- (6) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.

**Modifications etc. (not altering text)**

- C1** S. 92 applied (with modifications) (1.4.1996) by [S.I. 1996/714, art. 17](#)  
S. 92 applied (with modifications) (14.8.1996) by [S.I. 1996/1908, reg. 7](#)
- C2** S. 92 applied (with modifications) (29.4.2006) by [Community Trade Mark Regulations 2006 \(S.I. 2006/1027\)](#), [regs. 1\(1\), 8](#)

**[<sup>F1</sup>92A Search warrants**

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—
- (a) that an offence under section 92 (unauthorised use of trade mark, etc. in relation to goods) has been or is about to be committed in any premises, and
  - (b) that evidence that such an offence has been or is about to be committed is in those premises,
- he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (certain classes of personal or confidential material).
- (3) A warrant under subsection (1)—

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- (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for [<sup>F2</sup>28 days][<sup>F2</sup>three months] from the date of its issue.
- (4) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 92 has been or is about to be committed.
- (5) In this section “ premises ” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft. ]

#### Textual Amendments

- F1** S. 92A inserted (20.11.2002) by 2002 c. 24, s. 6; S.I. 2002/2749, art. 2
- F2** Words in s. 92A(3)(b) substituted (E.W.) (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 16 para. 8; S.I. 2005/3495, art. 2(1)(s)

#### Modifications etc. (not altering text)

- C3** S. 92A applied (with modifications) (29.4.2006) by Community Trade Mark Regulations 2006 (S.I. 2006/1027), regs. 1(1), 8

### 93 Enforcement function of local weights and measures authority.

- (1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 92 (unauthorised use of trade mark, &c. in relation to goods).
- (2) The following provisions of the <sup>M1</sup>Trade Descriptions Act 1968 apply in relation to the enforcement of that section as in relation to the enforcement of that Act—  
section 27 (power to make test purchases),  
section 28 (power to enter premises and inspect and seize goods and documents),  
section 29 (obstruction of authorised officers), and  
section 33 (compensation for loss, &c. of goods seized).
- (3) Subsection (1) above does not apply in relation to the enforcement of section 92 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the <sup>M2</sup>Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

- (4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 92 above were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

#### Modifications etc. (not altering text)

- C4** S. 93 applied (with modifications) (1.4.1996) by S.I. 1996/704, art. 17  
S. 93 applied (with modifications) (14.8.1996) by S.I. 1996/1908, reg. 7

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**C5** S. 93 applied (with modifications) (29.4.2006) by [Community Trade Mark Regulations 2006 \(S.I. 2006/1027\)](#), regs. 1(1), 8

**Marginal Citations**

**M1** 1968 c. 29.

**M2** 1968 c. 29.

**94 Falsification of register, &c.**

- (1) It is an offence for a person to make, or cause to be made, a false entry in the register of trade marks, knowing or having reason to believe that it is false.
- (2) It is an offence for a person—
  - (a) to make or cause to be made anything falsely purporting to be a copy of an entry in the register, or
  - (b) to produce or tender or cause to be produced or tendered in evidence any such thing,
 knowing or having reason to believe that it is false.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

**95 Falsely representing trade mark as registered.**

- (1) It is an offence for a person—
  - (a) falsely to represent that a mark is a registered trade mark, or
  - (b) to make a false representation as to the goods or services for which a trade mark is registered
 knowing or having reason to believe that the representation is false.
- (2) For the purposes of this section, the use in the United Kingdom in relation to a trade mark—
  - (a) of the word “registered”, or
  - (b) of any other word or symbol importing a reference (express or implied) to registration,
 shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in the United Kingdom and that the trade mark is in fact so registered for the goods or services in question.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**96 Supplementary provisions as to summary proceedings in Scotland.**

- (1) Notwithstanding anything in [<sup>F3</sup>section 136 of the Criminal Procedure (Scotland) Act 1995], summary proceedings in Scotland for an offence under this Act may be begun at any time within six months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to his knowledge.

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For this purpose a certificate of the Lord Advocate as to the date on which such evidence came to his knowledge is conclusive evidence.

- (2) For the purposes of subsection (1) and of any other provision of this Act as to the time within which summary proceedings for an offence may be brought, proceedings in Scotland shall be deemed to be begun on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

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**Textual Amendments**

**F3** Words in s. 96(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 92(1)(2)

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