



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

Changes to legislation: There are currently no known outstanding effects for the Trade Marks Act 1994, Section 97. (See end of Document for details)

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 \(N.I. 26\)](#).

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