

Trade mark

Using a trade mark without consent

Section 92

The prosecution must prove so that you are sure five things

1. The defendant was distributing goods - principally **DVD s. In his interview and when giving evidence D** admitted this.
2. Some or all of the goods bore Trade Marks which were registered and published. It is sufficient for the prosecution to prove that one **DVD in each count bore a registered trade mark. In fact, the defendant accepted in interview and when giving evidence that he supplied **films which bore trademarks.
3. The **DVDs were counterfeit. Again, this does not appear to be in dispute. D** accepted when cross-examined that they were counterfeit.
4. He was distributing the **DVDs with a view to making money. With a view to making money speaks for itself. The important thing is that the defendant was in business.
5. He did not have the consent of C**, the proprietor of the trade marks. It has never been suggested that either C** agreed to him distributing counterfeit **DVDs, and again, this is not really an issue.

It appears that none of those five elements is disputed by the Defence.

You may think that the prosecution have made you sure about all the things which they have to prove.

So, the most important issues in this case are the two matters which D** has to satisfy you about, matters which he has to satisfy you are more likely than not.

1. That he believed that all the **DVDs with trade marks were genuine; and
2. Even if he believed they were genuine, that it was reasonable for him to believe that they were genuine.

In relation to the second issue, whether or not it was reasonable for him to believe that they were genuine, it is your view about what was reasonable which counts, not his. Do you think that it was reasonable for him to believe that they were genuine?

So, there are two key questions for you to answer, having regard to all the evidence and the directions which I give you:

Is it more likely than not that D** believed that all the **DVDs with trade marks were genuine?

Even if he believed they were genuine, is it more likely than not that it was reasonable for him to believe that they were genuine?

If the crown have made you sure about the five things that they have to prove - and as I said, they have not been disputed - and if the answer to either of the question that I have just asked is "no", the defendant is guilty.

However if you are satisfied both that it is more likely than not that D** believed the **DVDs were genuine and that it was reasonable for him to believe that they were genuine, he is not guilty.

