

Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

Effective from: 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

[User guide for this offence](#)**Offence seriousness (culpability and harm)****A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of counterfeit items	Band C fine	Band B fine to low level community order
Larger number of counterfeit items but no involvement in wider operation	Medium level community order, plus fine*	Low level community order to 12 weeks custody, plus fine*
High number of counterfeit items or involvement in wider operation e.g. manufacture or distribution	12 weeks custody	6 weeks custody to Crown Court
Central role in large-scale operation	<i>Crown Court</i>	<i>Crown Court</i>

***This may be an offence for which it is appropriate to combine a fine with a community order. Consult your legal adviser for further guidance.**

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)The following may be particularly relevant but **these lists are not exhaustive****Factors indicating higher culpability**

1. High degree of professionalism
2. High level of profit

Factor indicating greater degree of harm

1. Purchasers at risk of harm e.g. from counterfeit drugs

Factor indicating lower culpability

1. Mistake or ignorance about provenance of goods

Common aggravating and mitigating factors

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Offender mitigation

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

View guidance on available [ancillary orders](#) and [compensation](#).

Decide sentence

Give reasons