

## Statistical Bulletin

### Unauthorised use of a trade mark

#### Introduction

This bulletin provides information on volumes and sentence outcomes for adult offenders<sup>1</sup> and organisations sentenced for the single offence covered by the Sentencing Council's draft revised guideline on unauthorised use of a trade mark. There are two draft guidelines covering this offence, one for individuals and another for organisations:

- Individuals: Trade mark, unauthorised use of etc., Trade Marks Act 1994, (section 92); and
- Organisations: Trade mark, unauthorised use of etc., Trade Marks Act 1994, (section 92).

The Court Proceedings Database (CPD), maintained by the Ministry of Justice, is the data source for this bulletin.

Additional figures are available to download as Excel spreadsheets or Open Document spreadsheets at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s&cat=statistical-bulletin>.

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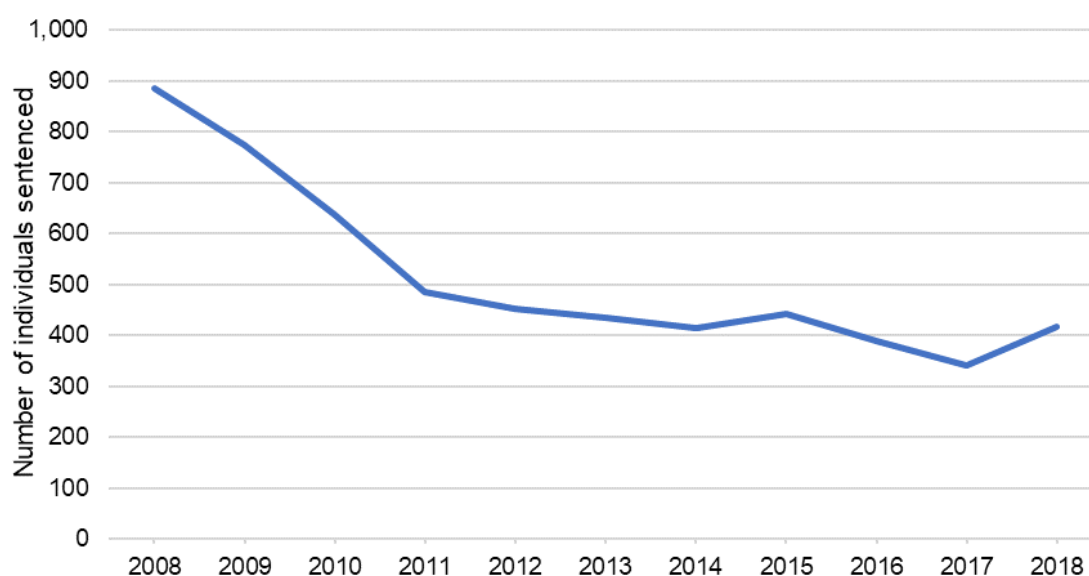
<sup>1</sup> Offenders aged 18 or over at the time of conviction.

## Individuals

### Sentence volumes

Unauthorised use of a trade mark is a reasonably low volume offence. Since 2008, the number of individuals sentenced for this offence has generally been decreasing, from 890 in 2008 to 420 in 2018 (see figure 1).

**Figure 1: Number of adult individuals sentenced for the offence of unauthorised use of a trade mark, 2008-2018**



### Sentence outcomes

In 2018 the most frequently used sentence outcome for individuals was a community sentence, comprising 44 per cent of adult offenders sentenced. A further 33 per cent of offenders received a fine, 11 per cent received a suspended sentence, 5 per cent were sentenced to immediate custody and 3 per cent were given a discharge. The remaining 3 per cent of offenders were otherwise dealt with<sup>2</sup>. The proportion of offenders receiving immediate custody has decreased substantially, from 27 per cent of outcomes in 2008.

The statutory maximum sentence for the offence of unauthorised use of a trade mark for an individual is ten years' custody, although in 2018 no sentences exceeded 36 months. In 2018 the average custodial sentence length (ACSL)<sup>3</sup> was ten months. The highest ACSL over the past decade was in 2017, with an average of one year.

After a community sentence, the second most common sentencing outcome in 2018 for individuals was a fine. For individuals sentenced in 2018, the average (mean) fine value was £286 and fine values ranged between £60 and £1,125.<sup>4</sup> Of the adult offenders sentenced in 2018, 99 per cent were given a fine of £1,000 or less.

<sup>2</sup> The category 'Otherwise dealt with' includes: order for forfeiture of property; one day in police cells; victim surcharge; confiscation order; compensation; and other miscellaneous disposals.

<sup>3</sup> The average custodial sentence lengths presented in this report are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

<sup>4</sup> Note that these figures are based on the fine imposed for the principal offence only. Any fines imposed for secondary (other) offences for adult offenders have not been included in these analyses.

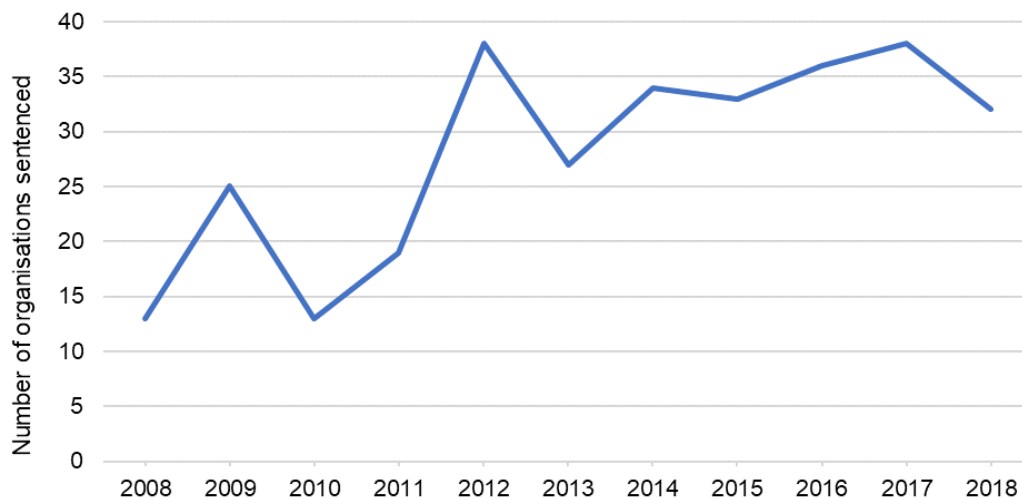
## Organisations

### Sentence volumes

The volumes for organisations sentenced for the offence of unauthorised use of a trade mark are much smaller than those for individuals and, in contrast to the volumes for individuals, have generally been increasing since 2008 (see figure 2).

In 2008, 13 organisations were sentenced, all in magistrates' courts. By comparison, in 2018, 32 organisations were sentenced for unauthorised use of a trade mark, 25 per cent of which were sentenced in the Crown Court.

**Figure 2: Number of organisations sentenced for the offence of unauthorised use of a trade mark, 2008-2018**



### Sentence outcomes

While the most frequently used sentence outcome for individuals sentenced for unauthorised use of a trade mark was a community sentence, organisations cannot receive this outcome; nor are they able to receive a custodial sentence, suspended or otherwise. Instead, in 2018, the majority (87 per cent) received a fine. A further 6 per cent of organisations were given a discharge, and the remaining 6 per cent were recorded as otherwise dealt with<sup>5</sup>.

For organisations sentenced in 2018, the average (mean) fine value was £954<sup>6</sup>. Fine values ranged between £5 and £4,000, with the most common fine amount for an organisation at £500. Due to the low volumes involved, the average (mean) fine value has fluctuated a lot over the past decade, peaking at around £4,500 in 2011.

Of the organisations sentenced in 2018, 70 per cent were given a fine of £1,000 or less. Just over half of all organisations sentenced for unauthorised use of a trade mark in 2018 (54 per cent) were sentenced for one trade mark offence; the remainder were sentenced for multiple trade mark offences and therefore received multiple fine outcomes. The majority (56 per cent) of these aggregate fine totals were also £1,000 or less, with a third of organisations receiving a combined fine total for multiple unauthorised use of a trade mark offences exceeding £1,500.

<sup>5</sup> The category 'Otherwise dealt with' includes: order for forfeiture of property; confiscation order; and other miscellaneous disposals.

<sup>6</sup> Note that this is based on the fine imposed for the principal offence only. Any fines imposed for secondary (other) offences have not been included in this average.

## Further information

### Volumes of sentences

The data presented in this bulletin only include cases where the offence detailed was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in this bulletin.

### Sentence outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This is because the sentence length information available in the Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea.

### General conventions

Actual numbers of sentences have been rounded to the nearest 100 when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

### Data sources and quality

The source of data for this bulletin is the Court Proceedings Database (CPD), which is maintained by the Ministry of Justice (MoJ). Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Further details of the processes by which MoJ validate the records in the CPD can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

### Contact points for further information

We would be very pleased to hear your views on our statistical bulletins. If you have any feedback or comments, please send them to:

<mailto:research@sentencingcouncil.gov.uk>

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Further information on the Sentencing Council and its work can be found at:

<http://www.sentencingcouncil.org.uk/>