# IPC Section 492

## Section 492 of the Indian Penal Code: Sale of Counterfeit Trademark Goods by Agents  
  
Section 492 of the Indian Penal Code (IPC) deals with a specific facet of trademark infringement: the sale of goods bearing counterfeit property marks by agents. This provision builds upon the general offences of counterfeiting and selling counterfeit goods (Sections 483 and 486) by targeting agents who facilitate the distribution of such goods, often acting on behalf of manufacturers or larger distributors. This comprehensive analysis delves into the intricacies of Section 492, examining its essential elements, judicial interpretations, penalties, its relationship with other provisions, and its significance in protecting consumers and upholding fair trade practices.  
  
\*\*I. The Text of Section 492:\*\*  
  
Section 492 of the IPC states:  
  
"Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which any forged or counterfeit property mark or false trade description is applied, or to which any forged or counterfeit property mark or false trade description is used, intending to deceive any person, knowing such property mark or trade description to be forged or counterfeit, or that such trade description is false, shall, if he is an agent employed by another person to sell such goods or things and does so knowingly, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."  
  
  
\*\*II. Deconstructing the Elements of the Offence:\*\*  
  
To secure a conviction under Section 492, the prosecution must establish the following elements beyond reasonable doubt:  
  
1. \*\*Sale, Exposure for Sale, or Possession for Sale/Trade/Manufacture:\*\* Similar to Section 486, this element encompasses various stages of the distribution process. The accused agent could be charged for actively selling the goods, displaying them for sale, or merely possessing them with the intention to sell, trade, or use them in the manufacturing of other goods.  
  
2. \*\*Goods Bearing a Forged/Counterfeit Property Mark or False Trade Description:\*\* The goods involved must bear a forged or counterfeit property mark, which is a fraudulent imitation of a genuine trademark, or a false trade description, which is any misleading statement or representation about the goods.  
  
3. \*\*Intent to Deceive:\*\* The accused agent must have intended to deceive others by selling or possessing the goods bearing the counterfeit mark or false description. This establishes the fraudulent purpose behind the act.  
  
4. \*\*Knowledge of Counterfeit Nature:\*\* Crucially, the agent must be aware that the property mark is forged or counterfeit or that the trade description is false. This element of knowledge distinguishes Section 492 from Section 486, which does not explicitly require such knowledge on the part of the seller.  
  
5. \*\*Acting as an Agent:\*\* The accused must be acting as an agent employed by another person to sell the goods in question. This element specifies the capacity in which the individual must be operating to fall under the purview of this section.  
  
  
\*\*III. Understanding "Property Mark" and "False Trade Description":\*\*  
  
\* \*\*Property Mark:\*\* As in other related sections, "property mark" is interpreted broadly to encompass trademarks, which are marks used to identify and distinguish the goods or services of one person from those of others.  
  
\* \*\*False Trade Description:\*\* This refers to any statement or representation, written or oral, that is false or misleading regarding the nature, quality, quantity, manufacturing process, or other characteristics of the goods. It includes false claims about certifications, endorsements, or geographical origin.  
  
  
\*\*IV. Distinguishing Section 492 from Related Provisions:\*\*  
  
It's vital to differentiate Section 492 from related sections in the IPC:  
  
\* \*\*Section 486, IPC:\*\* Section 486 deals with the general offence of selling goods bearing counterfeit marks. Section 492 is a more specific provision, targeting agents who sell such goods \*knowingly\*. While Section 486 can be applied to any seller, Section 492 specifically applies to agents who are aware of the counterfeit nature of the goods.  
  
\* \*\*Section 483, IPC:\*\* Section 483 addresses the act of counterfeiting the property mark itself. Section 492 deals with the subsequent sale of goods bearing the counterfeit mark by an agent.  
  
\* \*\*Section 485, IPC:\*\* Section 485 concerns counterfeiting devices or marks used for authenticating documents. Section 492 focuses specifically on counterfeit trademarks applied to goods.  
  
  
\*\*V. Judicial Interpretations and Case Law:\*\*  
  
Judicial pronouncements regarding Section 492 have often focused on:  
  
\* \*\*Proof of Knowledge:\*\* The prosecution must provide compelling evidence that the agent knew the goods bore counterfeit marks or false trade descriptions. This can be established through circumstantial evidence, such as the agent's involvement in the supply chain, the price of the goods, and any communications related to the goods.  
  
\* \*\*Establishing Agency:\*\* The prosecution must prove the existence of an agency relationship between the accused and another person who employed them to sell the goods.  
  
  
\*\*VI. Penalties under Section 492:\*\*  
  
Section 492 prescribes the same punishment as Section 486: imprisonment of either description for a term which may extend to three years, or with fine, or with both. This reflects the seriousness of knowingly selling counterfeit goods, even when acting as an agent.  
  
  
\*\*VII. Significance of Targeting Agents in Counterfeit Trade:\*\*  
  
Targeting agents involved in the sale of counterfeit goods is crucial for several reasons:  
  
\* \*\*Disrupting Supply Chains:\*\* Prosecuting agents can help disrupt the supply chains involved in the distribution of counterfeit goods, making it more difficult for counterfeiters to reach consumers.  
  
\* \*\*Deterrent Effect:\*\* Holding agents accountable can have a deterrent effect on others who might be tempted to engage in such activities.  
  
\* \*\*Protecting Consumers:\*\* By preventing the sale of counterfeit goods, Section 492 ultimately protects consumers from being deceived and potentially harmed by substandard or dangerous products.  
  
  
\*\*VIII. Conclusion:\*\*  
  
Section 492 of the IPC plays a significant role in combating the trade of counterfeit goods by specifically targeting agents who knowingly sell or possess such goods for sale. This provision complements other related sections by focusing on the intermediary role played by agents in the distribution of counterfeit goods. The emphasis on knowledge ensures that those who knowingly participate in the deceptive trade of counterfeit goods are held accountable. While the Trade Marks Act, 1999 now provides a more comprehensive framework for addressing trademark infringement, Section 492 remains relevant in demonstrating the historical development of trademark law and the ongoing effort to protect consumers and businesses from the harmful effects of counterfeit trade. By targeting agents and disrupting supply chains, the law seeks to create a more fair and transparent marketplace where consumers can have confidence in the authenticity and quality of the goods they purchase.