

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [***] Property and Other Marks

[s 478] [Omitted]

[Rep. by the [Trade and Merchandise Marks Act, 1958](#) (43 of 1958, section 135 and Sch. (w.e.f. 25-11-1959).]

108. *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

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Of **108.** [***] Property and Other Marks

[s 479] Property mark.

A mark used for denoting that movable property belongs to a particular person is called a property mark.

COMMENT.—

The distinction between 'trade mark' and 'property mark' is not recognised in English law.

108. *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

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CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [***] Property and Other Marks

[s 480] *[Omitted]*

[Rep. by the [Trade and Merchandise Marks Act, 1958](#) (43 of 1958), section 135 and Sch. (w.e.f 25-11-1959).]

108. *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

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CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of ¹⁰⁸. [***] Property and Other Marks

[s 481] Using a false property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

COMMENT.—

False property mark.—This section defines the offence of using a false property mark.

A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or of different kinds. So long as the person owns movable property, his property mark impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his. ¹⁰⁹.

The function of a property mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership.

[s 481.1] Ingredients.—

This section requires two essentials:—

1. Marking any movable property or goods, or any case, package or receptacle containing goods; or using any case, package or receptacle, with any mark thereon.
2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or the property or goods, contained in such receptacle, belonged to the person to whom they did not belong.

The Supreme Court in *Sumant Prasad's* case said that the concept of a trade mark under section 2(1)(g) of [Trade and Merchandise Marks Act, 1958](#), is distinct from that of a property mark under [section 479 of IPC, 1860](#). It means the concept of trade mark has not nullified the concept of property mark. Thus, where the accused finding that his 'Puspa Raj' scent could not capture the market copied the property mark from the carton of complainant's best-selling scent 'Basant Bahar' *in toto* and marketed his inferior product under the same name, it was held that he had committed the offence of both using a false property mark as well as of selling goods marked with a

counterfeit property mark. The fact that the complainant loosely mentioned in his complaint 'trade mark' did not make any difference, for despite this the complainant's allegations clearly made out that the accused tried to palm off his inferior scent as if it was manufactured by and belonged to the complainant. He was, therefore, rightly convicted under [sections 482](#) and [486, IPC](#).^{110.}

^{108.} *Amendment*.—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

^{109.} *Dahyabhai*, [\(1904\) 6 Bom LR 513](#) .

^{110.} *Sumant Prasad v Sheojanan*, [1972 Cr LJ 1707](#) (SC).

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Of ^{108.} [***] Property and Other Marks

[s 482] Punishment for using a false property mark.

Whoever uses ^{111.} [***] any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

To succeed on the charges under sections 482 and 486 the complainant had to establish that the appellant marked the scent manufactured and sold by him, or the packets and receptacles containing such scent or used packets or receptacles bearing that mark, and that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked or the scent contained in the packets and receptacles so marked belong to the complainant. ^{112.}

^{108.} *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

^{111.} The words "any false trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

^{112.} *Sumat Prasad Jain v Sheojanam Prasad*, [AIR 1972 SC 2488](#) [[LNIND 1972 SC 399](#)] : (1973) 1 SCC 56 [[LNIND 1972 SC 399](#)] .

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Of ^{108.} [***] Property and Other Marks

[s 483] Counterfeiting a property mark used by another.

Whoever counterfeits any ^{113.} [***] property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

^{108.} *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

^{113.} The words "trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

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CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [***] Property and Other Marks

[s 484] Counterfeiting a mark used by a public servant.

Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

The offence under this section is an aggravated form of the offence described in the preceding one. Enhanced punishment is inflicted where the mark used by a public servant is counterfeited.

108. *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

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CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [***] Property and Other Marks

[s 485] Making or possession of any instrument for counterfeiting a property mark.

Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

COMMENT.—

The making or possession of instruments for counterfeiting a property mark is hereby punished.

108. *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

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CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of ^{108.} [***] Property and Other Marks

[s 486] Selling goods marked with a counterfeit property mark.

^{114.} [Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section punishes those who sell or have in possession for sale goods marked with a counterfeit property mark. For the purpose of section 486, it is necessary to establish that the appellant had sold, or exposed for sale, or had in his possession for sale goods having a mark calculated to cause it to be believed that the scent was the scent manufactured by and belonging to the complainant. ^{115.}

^{108.} *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

^{114.} Subs. by Act 43 of 1958, section 135 and Sch, for certain words (w.e.f. 25 November 1959).