

**TRADEMARK COUNTERFEITING
WITH A SPECIFIED VALUE
(Committed on or after Nov. 1, 1995)**

**TRADEMARK COUNTERFEITING
SECOND DEGREE
(E Felony)
(Value Exceeds One Thousand
Dollars [\$1,000])
PENAL LAW 165.72**

**TRADEMARK COUNTERFEITING
FIRST DEGREE
(C Felony)
(Value Exceeds One Hundred Thousand
Dollars [\$100,000])
PENAL LAW 165.73**

The _____ count is Trademark Counterfeiting in the
Second [First] Degree.

Under our law, a person is guilty of Trademark
Counterfeiting in the Second [First] Degree when, with the
intent to deceive or defraud some other person or with the
intent to evade a lawful restriction on the sale, resale, offering
for sale, or distribution of goods, he or she

[NOTE: Select appropriate alternative:

manufactures, distributes, sells, or offers for sale goods
which bear a counterfeit trademark,

or possesses a trademark knowing it to be counterfeit for
the purpose of affixing it to any goods,]

and the retail value of all such goods bearing counterfeit trademarks exceeds

[*NOTE: Select appropriate alternative:*
one thousand dollars (\$1,000).

or one hundred thousand dollars (\$100,000).]

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," ["possess,,"] ["knowing,,"] "goods," "trademark," and "counterfeit trademark."

INTENT means conscious objective or purpose.¹ Thus, a person acts with intent to deceive or defraud some other person or to evade a lawful restriction on the sale or resale or offering for sale or distribution of goods if that person's conscious objective or purpose is to do so.

[POSSESS means to have physical possession or otherwise exercise dominion and control over tangible property.]²

[KNOWING a trademark to be counterfeit means being aware that such trademark is counterfeit.]³

GOODS means any products, services, objects, materials, devices or substances which are identified by the use of a trademark.⁴

¹See Penal Law § 15.05(1).

²See, Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the "Additional Charges" section at the end of this chapter.

³See Penal Law § 15.05(2).

⁴See Penal Law § 165.70(4).

TRADEMARK means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made by a person and which distinguishes them from those manufactured or sold by others which is in use and which is registered, filed, or recorded under the laws of this state [or of any other state] [or is registered in the principal register of the United States patent and trademark office].⁵

COUNTERFEIT TRADEMARK means a spurious trademark or an imitation of a trademark that is (a) used in connection with trafficking in goods; and (b) used in connection with the sale, offering for sale, or distribution of goods that are identical with or substantially indistinguishable from a trademark.⁶

[NOTE: Add if authorization to use the trademark is in issue:

The term counterfeit trademark does not include any mark used in connection with goods for which the person using such mark was authorized to use the trademark for the type of goods so manufactured or produced by the holder of the right to use such mark or designation, whether or not such goods were manufactured or produced in the United States or in another country.]⁷

[NOTE: Add if packaging is in issue:

The term counterfeit trademark does not include imitations of trade dress or packaging such as color, shape, and the like unless those features have been registered as trademarks.]⁸

⁵See Penal Law § 165.70(1)(a). For Olympic symbols and emblems, see Penal Law § 165.70(1)(b).

⁶See Penal Law § 165.70(2).

⁷See Penal Law § 165.70(2).

⁸See Penal Law § 165.70(2).

The term TRAFFIC means to transport, transfer, or otherwise dispose of goods to another, as consideration for anything of value [*or* to obtain control of goods with intent to so transport, transfer, or otherwise dispose of them].⁹

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

[*NOTE: Select appropriate alternative:*

manufactured, distributed, sold, or offered for sale goods which bore a counterfeit trademark;

or possessed a trademark knowing it to be counterfeit for the purpose of affixing it to any goods;]

2. That the defendant did so with the intent to deceive or defraud some other person or evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods; and
3. That the retail value of all such goods bearing counterfeit trademarks exceeded

[*NOTE: Select appropriate alternative:*

one thousand dollars (\$1,000).

or one hundred thousand dollars (\$100,000).]

Therefore, if you find that the People have proven beyond

⁹See Penal Law § 165.70(3).

a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Trademark Counterfeiting in the Second [First] Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Trademark Counterfeiting in the Second [First] Degree as charged in the _____ count.