



# Grey goods

**Why are criminal prosecutions for selling of grey goods on the increase?  
What factors distinguish a successful prosecution?**

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# Costs of Criminal IP

The EUIPO estimates that:

1. 3.3% of world trade
2. 42% of EU GDP IP intensive
3. €60 billion direct loss within EU

But...



But... GREY GOODS

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Goods made with the owner's consent but sold without it.



So... DO WE CARE?

1. Morally?

2. Commercially?

3. Legally?



So what do we do?

1. Trade Mark Infringement;

2. Breach of Contract; or

3. Criminal Prosecution.

## s92 of the TM Act

1. A fine or 10 years in prison
2. The key elements of the offence:
  - a) without the consent of the proprietor;
  - b) with a view to gain or cause loss;
  - c) a sign identical to, or likely to be mistaken for, a registered TM; and
  - d) applies such a sign to goods/packaging or deals with such goods commercially.



s92 of the TM Act continued

A reasonable belief that it was not  
TM infringement is a defence

R v. Johnstone [2003] UKHL 28



s92 of the TM Act continued

R v. M, C & T [2017] UKSC 58





How do you Do it?

1. Trading Standards

2. The Police

3. Industry Body

4. Private Prosecution

# Private prosecution

## Why you should?

- The deterrent
- The scope
- Control
- Costs / compensation
- POCA

# Private prosecution

## Why you shouldn't?

1. You stand in the shoes of the CPS
2. But you do not have their powers
3. The criminal courts are not chancery



# Private prosecution

So...

Why are criminal prosecutions for selling of grey goods on the increase?

What factors distinguish a successful prosecution?

# tHANKS FOR LISTENING

## Questions?



## Get in Touch

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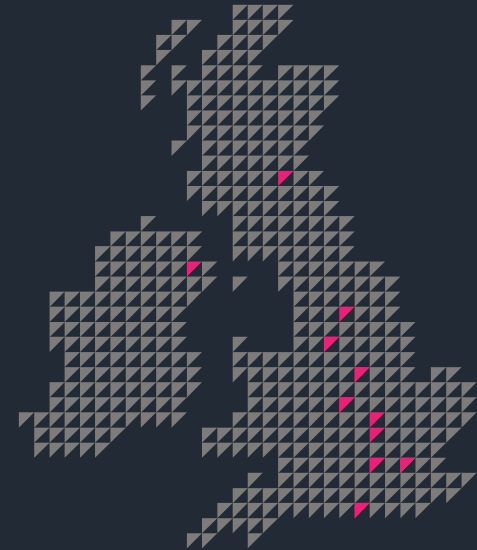
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