

Ala. Code 1975, § 13A-8-10.4
THEFT OF TRADEMARKS

The defendant is charged with theft of trademarks.

A person commits the crime of theft of trademarks if, without the owner's effective consent, he/she knowingly: **[Read as appropriate]**

- a. Makes a copy or reproduction of a trademark for any commercial purpose; **(OR)**
- b. Sells an article on which a trademark is reproduced knowing the trademark was used without the owner's consent.

To convict, the State must prove beyond a reasonable doubt each of the following elements of theft of trademarks:

- (1) The defendant **[Read as appropriate]**
 - a. Made a copy or reproduction of a trademark, **[Insert description of trademark]**, for any commercial purpose; **(OR)**
 - b. Sold an article on which a trademark, **[Insert description of trademark]**, was reproduced knowing the trademark was used without the owner's consent;
- (2) The defendant did so without the effective consent of the owner, **[Insert name of owner]; (AND)**
- (3) The defendant did so knowingly.

[Read as appropriate] A *copy* is a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article. [13A-8-10.4(a)(2)]

[Read as appropriate] An *article* is any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map. [13A-8-10.4(a)(1)]

A *trademark* is any word, name, symbol, or device adopted and used by any person or business entity to identify his/her goods or services, and to distinguish them from the goods or services of others. [13A-8-10.4(a)(5)]

An *owner* is a person, other than the defendant, who has possession of or any other interest in the property involved, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property. [13A-8-1(9)]

[Read as appropriate] A secured party, as defined in Section 7-9A-102(a)(72), is not an owner in relation to a defendant who is a debtor, as defined in Section 7-9A-102(a)(28), in respect of property in which the secured party has a security interest, as defined in Section 7-1-201(37). [13A-8-1(9)]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

[Read as appropriate] It is a defense to a prosecution for this offense that the defendant honestly believed that he/she had a claim to the property or services involved which he/she was entitled to assert in the manner which forms the basis of the charge against him/her. [13A-8-12(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of theft of trademarks, then you shall find the defendant guilty of theft of trademarks.

If you find that the State has failed to prove any one or more of the elements of the offense of theft of trademarks then you cannot find the defendant guilty of theft of trademarks.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Note

The burden of injecting the above-stated defense to this offense is on

the defendant, but this does not shift the burden of proof. [13A-8-12(b)] The jury should not be instructed that the defendant carries this burden.

[Approved 05-17-24]