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## Travel portal to face trial in criminal proceedings for trademark infringement

India - [Khaitan & Co](#)

- Ezeego initiated criminal proceedings for trademark infringement against Make My Trip due to the registration of domain names similar to the EZEEGO mark
- The Magistrate's Court passed an order for issuance of summons against Make My Trip and the High Court did not deem it appropriate to interfere with the order
- The case shows that criminal remedies are likely to become more popular in coming years

In [Make My Trip v The State of Maharashtra](#) (Criminal Application Nos 312/313/314 of 2017), the Bombay High Court has refused to quash an order for issuance of summons passed by the Magistrate's Court (court of first instance) in criminal proceedings for trademark infringement.

### Background

After noticing the registration of domain names by Make My Trip which were similar to the mark EZEEGO, Ezeego twice brought this issue to the notice of Make My Trip. Make My Trip alleged that it had no knowledge of the same, and immediately blocked and transferred the domain names to Ezeego.

Ezeego still initiated criminal proceedings for trademark infringement, claiming that it had suffered huge losses and that Make My Trip had made wrongful gains. It also argued that there was dishonest intention and intent to deceive on Make My Trip's part; therefore, an offence under the Trademarks Act 1999 had been committed. Further, it argued that Make My Trip was guilty of misleading internet users by using EZEEGO1.COM, therefore committing an offence under the Penal Code.

The Magistrate's Court passed an order for issuance of summons against Make My Trip, following which Make My Trip preferred an appeal with the Court of Session. The Court of Session dismissed the appeal, and the case was further appealed to the High Court. Before appealing to the High Court, Make My Trip had argued only that there was a lack of jurisdiction since mere accessibility to a website does not lend jurisdiction to a court.

### High Court decision

In its decision, the High Court observed that:

- the offences had been committed not once, but twice;
- Make My Trip had raised only the issue of jurisdiction before the lower court; its new arguments were raised before the High Court only to delay the trial; and
- Make My Trip's intent could be considered only by the trial court.

### Comment

The Trademarks Act and Copyright Act 1957 provide for offences and penalties in relation to infringement. These are cognisable offences (where an arrest can be made without a warrant) which are punishable with

imprisonment for a term of up to three years and a fine up to Rs200,000. Criminal proceedings can be initiated either by way of a private complaint with the magistrate or by filing a complaint directly with the police authorities (known as a 'First Information Report' or 'FIR').

The table below provides a snapshot of civil and criminal remedies in India in IP proceedings:

	Civil	Criminal
Admissibility	All IP matters	<ul style="list-style-type: none"> <li>• Not for design and patent infringement</li> <li>• Trademarks - the opinion of the registrar of trademarks is necessary, which may delay the proceedings</li> </ul>
Initiation	Through an authorised signatory/constituted attorney	At times, initiation through constituted attorneys is not permissible and the actual complainant or its representative is required
Search/seizure	Through the court commissioner, with local police assistance	Search and seizure only by police officials
Injunctions/costs/damages	Injunctions and costs/damages are available	Injunctions and costs/damages are not available. However, fines and enhanced penalties are possible
Imprisonment	Limited to disobedience or contempt	Largely possible
Courts	Through the Commercial Courts - in certain courts with dedicated courts for hearing IP matters	No dedicated IP benches

Although obtaining criminal remedies can be tedious, they do create a deterrent with a possibility of imprisonment. The government of India has taken several initiatives to train police officials to deal with IP matters, through bodies such as Cell for IPR Promotion and Management (CIPAM). CIPAM has taken successful initiatives which have had positive effects. Additionally, the International Trademark Association and its committees (such as the Anti-counterfeiting Committee and the Enforcement Committee) have also made efforts to bring reform. Therefore, criminal remedies are likely to become popular in coming years.

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## TAGS

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