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Google vs. MakeMyTrip Trademark Infringement Case: Plea Rejected by Supreme Court

Ruchika Mohapatra · 07 Mar 2024

MakeMyTrip (MMT) in a plea to the Supreme Court alleged that its trademarks “Makemytrip” and “MMT” were being used as keywords in Google ads to display adverts and links from its competitor ‘Booking.com’. The plea challenged a Delhi High Court ruling wherein it had ruled in December 2023 that ‘using trademarks on Google Ads, an online advertising platform, did not constitute infringement under the Trade Marks Act, 1999.’

The Supreme Court refused to entertain the plea by MakeMyTrip. A bench comrpsing Chief Justice of India (CJI) DY Chandrachud, Justice JB Pardiwala and Justice Manoj Misra stated that no case for trademark infringement could be made out as there was no scope for confusion between the services offered by MakeMyTrip and Booking.com.

Booking.com had purchased the ‘MakeMyTrip’ keyword on the Google Ads Program by making the highest bid and therefore, searches for the keyword automatically came up with sponsored links for Booking.com. While Google gets paid each time an user clicks on one of the sponsored links that come up as a result of searching the aforementioned keywords, MakeMyTrip has alleged that this hampers their business and profits their direct competitor.

In the domain of Indian trademark law, the test to determine infringement is to see whether an average consumer is likely to get confused between two entities and in this case the Court held that consumers were not likely to be confused between MakeMyTrip and Booking.com since both were well-known names in their domain.

Safir Anand, Senior Partner at Anand and Anand opined ,“Strictly based on this order, a third party can pay for ads to be associated with a keyword so long as the nature of business of the third party and the proprietor of the keyword is similar and the respective parties have their own reputation and informed customer base that understands the distinction between the two companies”.

MakeMyTrip challenged the ruling before the Supreme Court arguing that the ruling would have ‘unimaginable and far-reaching negative consequences for the travel company’ as it is a online company.

The ruling offered by the Delhi High Court should not be construed as a broad endorsement for businesses to haphazardly employ rival trademarks as keywords. The court’s ruling is contingent on the specific circumstances and hinges on the assumption that online users can distinguish between sponsored and natural search outcomes.

Do you think such usage of keywords associated with MakeMyTrip by Booking.com amounts to unjust enrichment through unfair competition? Unjust enrichment under Tort law refers to a legal concept where one party is unjustly enriched at the expense of another, creating an obligation to make restitution. In tort law, this typically occurs when a person gains a benefit or advantage through wrongful or negligent actions that result in harm to another party.

Siddhant Chamola, an Associate Partner at Anand and Anand said, “In such cases, in my opinion, the tort of ‘unjust enrichment’ or ‘unfair competition’ may apply. How does one prove these wrongs in court, and what kind of tests need to be satisfied needs thorough analysis”.

Read more: MakeMyTrip India Private Limited v. Google LLC