

India- FAQ's on Criminal Enforcement Procedure/Raids through police

A complaint is filed with the Crime Branch of Police supported with copies of our registration certificates and further evidence in support of goodwill and reputation of our mark. Generally the complaint is filed against unknown persons infringing/counterfeiting the goods/mark, to avoid any leakage by the police.

Q1. How long criminal prosecution takes?

Generally police takes action within 3-4 days from the date of filing the complaint with them. Once a raid is carried out by the police it becomes a state matter. This means that the brand owner would have no control in the matter which would be pursued by the Public Prosecutor. It has been seen that for a state matter to reach the prosecution stage it generally takes around 4-5 years. During this period the brand owner could support the prosecution by providing the necessary documents whenever required.

Q2. Steps involved for criminal enforcement?

- Drafting of the complaint
- Coordination with the police in conducting raid
- Pre-raid check
- Actual attendance during the raid as complainant and witness
- Filing of FIR by police (First Information Report)
- After raid follow up with the Investigating Office/police and Public Prosecutor.

Once the matter moves forward, the complainant would be asked to appear as a witness (this stage generally reaches in 2-3 years) to record his statement and for cross examination. This generally gets wrapped up in 2-4 hearings.

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Q3. What is probable outcome for the defendant?

Once the raid is conducted and counterfeit goods seized, generally the accused would be immediately arrested. He would be then produced by the police within 24 hrs before the magistrate who would send him either to Police custody (PC) for further interrogation or Judicial custody (JC). The accused would apply for bail which generally is granted in IPR matters. Further the police would register the case under relevant act (Trade Marks and Copyright) combining with sections under Indian Penal Code (IPC). In case the accused is convicted he could be imprisoned for 3-7 years. In the Indian context the stigma attached to someone going behind bars is unimaginable.

Q4. What is probable outcome for the brand owner?

The prerequisite in matters related to all counterfeiting actions is to send out a strong deterrent to the market that the brand owner would take all necessary legal steps to stop such nefarious activities which hurt its statutory and proprietary rights. The ripple effect created through the raid would certainly dissuade others in the market to go this route.

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