



INTELLECTUAL PROPERTY RIGHTS

When a Prefix Becomes Property: The UltraTech Ruling and the New Discipline of Trademark Protection

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Abstract

Trademarks are often described as source identifiers, but in modern commerce they perform a wider function: they compress reputation, quality assurance, advertising investment and consumer trust into a single sign. The Bombay High Court's decision in UltraTech Cement Limited & Anr. v. M/s. Shiv Cement Co. is an important reminder that trademark infringement is not merely a contest over words. It is a contest over market memory. The case concerned the use of marks such as UltraPlus, Ultra HiTouch and UltraPower in relation to cement, allegedly imitating the Plaintiffs' UltraTech marks and the distinctive Ultra element. The Court granted relief in a suit for infringement and passing off, emphasising the Plaintiffs' registration, long use, goodwill, well-known status, deceptive similarity, dishonest adoption and the Defendant's failure to contest the proceedings.

This article explains the court's decision in an educative and accessible manner. It examines how courts assess deceptive similarity, why the essential feature of a mark may matter, how Section 17 of the Trade Marks Act, 1999 operates in composite marks, why well-known marks receive broader protection, and how commercial courts may award costs where infringement is deliberate and undefended. The broader lesson is simple but powerful: a trader cannot adopt the remembered heart of another's mark and escape liability by adding decorative or descriptive variations.

The Case at a Glance

Aspect	Position
Court and citation context	Bombay High Court, Commercial Division, Commercial IP Suit No. 126 of 2016, pronounced on 28 April 2026.
Plaintiffs	UltraTech Cement Limited and another, asserting rights in registered UltraTech trade marks and the distinctive Ultra element.
Defendant	M/s. Shiv Cement Co., which did not appear despite service and the suit proceeded as undefended.
Impugned marks	UltraPlus Cement, Ultra HiTouch, Ultra HiTouch Cement Bemisal Majbuti and UltraPower, used for cement/building materials.
Core reliefs	Permanent injunction for infringement and passing off, delivery up/destruction of infringing material, and monetary orders for costs/expenses.

I. The Story Behind the Dispute: More Than a Fight Over the Word ‘Ultra’

The litigation arose from a familiar but commercially serious trademark problem: a market entrant using marks that captured the dominant idea and recall value of an established brand. The Plaintiffs sought protection for their registered UltraTech trade marks and complained of the Defendant’s use of UltraPlus Cement, Ultra HiTouch, Ultra HiTouch Cement Bemisal Majbuti and UltraPower in relation to cement and building materials. The Plaintiffs contended that these marks were nearly identical with, or deceptively similar to, their UltraTech marks and were used for the same class of goods.

The Court’s factual narrative is important. The Plaintiffs had obtained registrations for the UltraTech marks, had placed evidence of assignment, licensing, continuous use, sales, promotional expenditure and advertisements, and had also relied on recognition of UltraTech as a well-known trade mark. Against this, the Defendant did not appear, did not file a written statement, did not cross-examine the Plaintiffs’ witness and did not challenge the evidence. The litigation therefore became an example of how an uncontested record, if supported by cogent documentary proof, can lead to final relief in a commercial IP suit.

The case also carried a public interest dimension. The goods were cement. Unlike ordinary fast-moving consumer goods, cement is used in homes, buildings, bridges and infrastructure. A deceptively similar mark on such goods does not merely misdirect trade; it may create risk in a market where consumers depend heavily on brand assurance and perceived quality.

II. Why Trademarks Matter: The Law Protects Memory, Not Just Labels

A trademark is not protected because it is aesthetically pleasing. It is protected because it performs a market function. It tells consumers that goods originate from a particular commercial source. Over time, a successful mark acquires a mental association: consumers remember it, trust it and rely on it. The law of infringement and passing off protects that association from being misappropriated.

The UltraTech dispute demonstrates this principle in action. The Plaintiffs’ case was not simply that the Defendant had copied an entire mark letter-for-letter. Rather, the complaint was that the Defendant had adopted the leading and essential feature ‘Ultra’ and combined it with other expressions, while using a get-up and general presentation that created a likelihood of confusion. The Court accepted that deceptive similarity must be assessed through overall impression, not microscopic dissection.

The legal question in trademark cases is often not whether two marks are identical under a magnifying glass, but whether the ordinary purchaser, with imperfect recollection, is likely to be confused by the overall idea, sound, look and commercial impression of the rival marks.

III. The Evidence That Built the Plaintiffs’ Case

The court’s decision is educative because it shows the kind of evidence that can establish trademark strength. The Plaintiffs relied upon registration certificates, corporate history, assignment documentation, licensing arrangements, evidence of continuous use since 2003, sales invoices, chartered accountant certificates reflecting turnover and promotional expenditure, advertisements, annual reports, foreign registrations, prior protective orders and the inclusion of UltraTech in the list of well-known marks.

This evidentiary architecture enabled the Court to conclude that the Plaintiffs had proved extensive commercial use and that UltraTech had acquired distinctiveness. It also helped the Court recognise that the goodwill attached to the mark extended to the Ultra element in the context of cement in Class 19. The case therefore illustrates that trademark litigation is often won or lost not only on legal doctrine but on the quality of evidence demonstrating use, reputation, recognition and enforcement history.

IV. Registered Rights and Passing Off: Twin Weapons, Different Foundations

The Plaintiffs combined two causes of action: infringement and passing off. Though they often travel together, they rest on different foundations. Infringement is a statutory claim based on registered rights. Passing off is a common law remedy based on goodwill, misrepresentation and damage. A registered proprietor may succeed in infringement by showing unauthorised use of a deceptively similar mark in relation to similar goods. Passing off additionally focuses on whether the defendant’s conduct is likely to misrepresent its goods as those of the plaintiff or as commercially connected with the plaintiff.

In the present case, the overlap was strong. The rival goods were the same: cement. The impugned marks used the Ultra prefix. The Plaintiffs showed extensive goodwill and recognition. The Court held that the Defendant's marks were visually, structurally and phonetically virtually identical to, and in any event deceptively similar to, the Plaintiffs' registered and well-known marks. The result was a finding of both infringement and passing off.

V. The Essential Feature Doctrine: Why a Part of a Mark May Dominate the Whole

A recurring issue in trademark law is whether a plaintiff can complain about the copying of a part of a composite mark. Defendants often argue that the plaintiff's registration protects only the whole mark and not individual components. Section 17 of the Trade Marks Act, 1999 is frequently invoked for this proposition. However, Indian courts have consistently held that while a mark must be considered as a whole, courts may identify and compare the essential or dominant features of the rival marks.

The Bombay High Court relied on earlier UltraTech litigation, including *Ultra Tech Cement Ltd. v. Alaknanda Cement (P) Ltd.* (2011 SCC OnLine Bom 783), and the Division Bench decision in *Alaknanda Cement (P) Ltd. v. Ultratech Cement Ltd.* (2011 SCC OnLine Bom 1487), to explain that Section 17 does not prevent protection of a distinctive component where that component forms the dominant or essential feature of the mark. The Court accepted that Ultra was not a casual or insignificant syllable in this context; it was a leading and essential feature of the Plaintiffs' UltraTech marks in relation to cement.

This is the central doctrinal lesson of the case: a defendant cannot escape liability merely by adding suffixes such as Plus, HiTouch or Power if the resulting mark appropriates the source-identifying core of an established mark and creates a similar commercial impression.

VI. Deceptive Similarity: The Law Looks Through the Eyes of the Consumer

The Court referred to the principles in *Hiralal Prabhudas v. Ganesh Trading Company* (AIR 1984 BOM 218), which remain highly influential in trademark comparison. Those principles emphasise that marks are remembered by general impression, not photographic recollection; overall similarity is the touchstone; the perspective is that of a person of average intelligence and imperfect recollection; visual, structural and phonetic similarity matter; and the nature of goods, class of purchasers and mode of purchase are relevant.

Applying this approach, the Court did not place the rival marks side-by-side to hunt for small differences. Instead, it examined the overall structure and impression created by the impugned marks. The marks UltraPlus, Ultra HiTouch and UltraPower carried the common Ultra feature and were used on cement bags. The Court also considered the get-up, placement, colour scheme and general idea of the impugned packaging. These elements collectively supported the finding that the Defendant's adoption was not coincidental.

Trademark comparison is not a spelling test. It is an exercise in consumer psychology, market context and commercial impression.

VII. Well-Known Marks: When Reputation Travels Beyond Ordinary Confusion

The court's decision also highlights the significance of well-known marks. A well-known mark enjoys a heightened level of recognition because its reputation is not confined to a narrow circle of traders. The Plaintiffs relied on earlier orders recognising UltraTech's status and on its inclusion in the list of well-known marks maintained by the Trade Marks Registry. This reinforced the Court's view that the Plaintiffs had established substantial goodwill and reputation.

The well-known status of a mark is relevant because imitation of such a mark can unfairly exploit its distinctive character and reputation. In the present case, the Court held that the Defendant's use was without due cause and was likely to take advantage of the distinctive character and goodwill associated with the Plaintiffs' marks. The reasoning reflects the protective function of trademark law against free-riding.

VIII. Same Goods, Same Market, Higher Risk

The probability of confusion becomes particularly strong where the rival marks are used for identical goods. Here, both parties were concerned with cement. This meant that the average consumer, dealer or construction participant encountering Ultra-formative cement marks could reasonably assume association, extension or connection with UltraTech. The Court expressly noted that the rival goods were the same and that the Defendant's use was more than likely to cause confusion, deception and

misrepresentation among consumers and members of the trade.

The cement context also made the matter more serious. The Plaintiffs argued that the Defendant's goods were of inferior or spurious quality and that misleading use of marks in relation to cement could jeopardise public interest. The Court's award of relief must be understood against this background: trademark deception in essential construction goods carries consequences beyond ordinary diversion of sales.

IX. Dishonest Adoption and Litigation Conduct

Dishonesty is not always necessary to prove trademark infringement, but when present, it materially strengthens the plaintiff's case. The Court found the Defendant's conduct lacking in bona fides. The Defendant did not appear despite service, did not file a written statement, did not lead evidence and did not cross-examine the Plaintiffs' witness. The Plaintiffs' evidence therefore went unchallenged.

The Court also considered the history of attempted notices, trademark applications by the Defendant, and continued market activity. The Defendant's failure to participate in proceedings did not help it; rather, it allowed the Court to draw adverse inferences and ensured that the Defendant did not escape liability by remaining absent.

X. Damages, Costs and the Commercial Courts Act

One of the most important features of the court's decision is its treatment of monetary consequences. The Plaintiffs claimed damages and costs. While the Court noted that the Plaintiffs had not led evidence to establish the entire damages claim of Rs. 1 crore, it also observed that in appropriate trademark infringement and passing off cases, courts may award compensatory and punitive damages, particularly where infringement is deliberate, dishonest or calculated to unjustly enrich the defendant.

The Court also relied on the cost regime applicable to commercial suits. Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015, reflects the principle that costs ordinarily follow the event and that the court may consider the conduct of parties. The Court ultimately directed payment of Rs. 50 lakh as costs and Rs. 16,48,006 towards expenses incurred by the Plaintiffs. This is a strong signal that commercial IP litigation is not intended to be cost-neutral for an infringer who chooses to remain absent while the rights holder bears investigative and litigation expenses.

XI. Delivery Up and Destruction: Why Injunction Alone May Not Be Enough

The Court did not stop at restraining future use. It also ordered delivery up of infringing materials for destruction. This remedy matters because infringing goods, labels, bags, dies, stationery and promotional material can otherwise re-enter the market. In cases involving physical goods and packaging, especially cement bags bearing infringing marks, removal and destruction of infringing material is essential to make the injunction effective.

The Court Receiver's earlier seizure of more than 1102 cement bags bearing Ultra-formative impugned marks had already shown that the matter involved tangible infringing stock. Delivery up and destruction therefore served the practical purpose of cleaning the marketplace of infringing material.

XII. A Teaching Case on Trademark Enforcement

The UltraTech ruling is valuable as a teaching case because it brings together multiple strands of trademark law in one factual setting. It covers registration, assignment, licensing, well-known status, essential features, deceptive similarity, passing off, undefended suits, adverse inference, costs and destruction of infringing materials. It also illustrates how courts protect a mark not only against exact duplication but against imitation that captures the remembered commercial identity of the brand.

The court's decision demonstrates that trademark protection is strongest where the plaintiff can show a consistent chain: valid registration, long and continuous use, extensive sales, promotional investment, public recognition, prior enforcement and a clear similarity between the defendant's mark and the plaintiff's distinctive features. When that chain is established, minor modifications by an infringer are unlikely to save the impugned mark.

XIII. Conclusion: The Law Protects the Commercial Soul of a Mark

The decision in UltraTech Cement Limited & Anr. v. M/s. Shiv Cement Co. is not merely about the word Ultra. It is about the legal protection of accumulated reputation. It teaches that the essence of a mark may reside in a dominant feature; that consumers

remember impressions rather than exact details; that well-known marks command broader respect; and that courts will not reward a defendant who adopts a confusingly similar mark and then avoids the litigation.

The ruling offers a clear principle: trademark law protects the commercial soul of a mark. The test is not whether the infringer has made a few alterations, but whether the impugned mark travels too close to the plaintiff's identity in the marketplace. Where the answer is yes, the law can respond with injunctions, delivery up, destruction, costs and monetary consequences.

For more details, write to us at: contact@indialaw.in

Reference:

[\[2026:BHC-OS:11103\] UltraTech Cement Limited & Anr Vs. M/s. Shiv Cement Co., 28th APRIL 2026](#)

Related Practice Areas

Intellectual Property Rights (IPR)