

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.76 OF 2014

IN

SUIT NO.42 OF 2014

Ultratech Cement Limited	...	Applicants
Grasim Industries Limited		(Original Plaintiffs)
Versus		
Dalmia Cement Bharat Limited	...	Defendant

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Dr. Veerendra Tulzapurkar, Senior Advocate, a/w. Mr. Amit Jamsandekar, Ms. Alka Parulekar and Ms. Esha Trivedi, i/b. V.A. Associates, for the Plaintiffs.

Mr. Ravi Kadam, Senior Advocate, a/w. Mr. Rashmin Khandekar, Mr. Rohan Kadam, Mr. Arun Mohan, Ms. Bhagwati Trivedi and Ms. Bijal Trivedi, i/b. Bhagwati Trivedi, for the Defendant.

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CORAM : S.C.GUPTE, J.
RESERVED ON : 20 JANUARY 2016
PRONOUNCED ON : 10 JUNE 2016

JUDGMENT:

. This Notice of Motion is taken out in a trade mark infringement and passing off suit in respect of the Plaintiffs' registered trade marks bearing the word 'UltraTech' as a part thereof. The Plaintiffs complain of the use by the Defendant of the word 'Ultra' in its trade marks as being an infringement and also amounting to passing off. Since there is a 9A issue framed in the suit regarding jurisdiction of this Court, which is pending hearing, the present Notice of Motion is taken out for consideration of ad-interim reliefs.

2. Plaintiff No.1, originally incorporated with the name 'L & T

Cement Limited' changed its name to 'UltraTech Cemco Limited' with effect from 19 November 2003 and to its present name 'UltraTech Cement Limited' with effect from 14 October 2004. In the year 2004, Plaintiff No.2 acquired a controlling stake in Plaintiff No.1. Plaintiff No.1 was the registered proprietor of several trade marks containing the word 'Ultra', such as 'UltraTech CEMENT The Engineer's Choice', 'UltraTech CONCRETE', ' UltraTech READY MIX', 'UltraCem' and 'UltraCem. The Engineer's Choice', in Class 19 in respect of cement, building materials, etc. By a Deed of Assignment dated 30 September 2009, the aforesaid trade marks were assigned by Plaintiff No.1 to Plaintiff No.2, along with goodwill. The relevant applications for bringing on record Plaintiff No.2 as the subsequent proprietor have been pending before the Trade Marks Registry. Plaintiff No.2 is the registered proprietor of the trade marks, namely, a Sun Device followed by 'UltraTech Cement', 'ULTRATECH WHITE CEMENT' (2 applications), also in Class 19 in respect of the same goods. Besides these registered trade marks, both the Plaintiffs are applicants for registration of various marks in Class 19 bearing the word 'UltraTech' as an intrinsic part. The trade marks applied for by Plaintiff No.1 have been subsequently assigned to Plaintiff No.2. Plaintiff No.2 is, thus, the present proprietor of all 'UltraTech' trade marks. By a licence agreement, the use of these trade marks has been licensed by Plaintiff No.2 to Plaintiff No.1, the latter continuing to use the trade marks under such licence.

3. It is the Plaintiffs' case that ever since their adoption in the year 2003, the 'UltraTech' trade marks have been used openly, continuously, extensively and exclusively by the Plaintiffs in respect of cement and other allied products. The Plaintiffs have produced statements

of sales and promotional expenses ever since inception and till 2012-13, duly certified by Chartered Accountants. The consolidated sales attained during the year 2012-13 were of about Rs.23,852 Crores, whereas the advertisement expenses incurred were over Rs.114 Crores. Besides, it is claimed that apart from use as a trade mark, the word 'UltraTech' has come to be associated with the corporate identity of Plaintiff No.1, whose stock in the market is identified as 'UltraTech' or 'UltraTech Cement', and whose corporate website is 'www.ultratechcement.com'. The Plaintiffs claim to have thus acquired tremendous goodwill and reputation not only in India, but even in several other jurisdictions.

4. The grievance of the Plaintiffs is that in the month of September 2013, they learnt of the Defendant's use of marks called 'Dalmia ULTRA', 'DALMIA ULTRA', etc. containing as their essential feature the word 'ULTRA'; and that these marks are identical with and/or deceptively similar to the 'UltraTech' trade marks of the Plaintiffs. In an application submitted by the Defendant in August 2013, for registration of its mark 'Dalmia ULTRA' in Class 19 for cement, building materials, etc., the Defendant has claimed to be using the word/mark 'Dalmia' since January 1939, whilst the word/mark 'Dalmia ULTRA' as a whole is merely 'proposed to be used' as on the date of the application. The Plaintiffs claim that the addition of the word 'ULTRA' by the Defendant has been an afterthought and made with a view to establish a false nexus with the business of the Plaintiffs and trade on their reputation. It is claimed that such user not only amounts to infringement of the Plaintiffs' registered trade marks, but by its means the Defendant seeks to pass off its goods as those of the Plaintiffs.

5. The Defendant opposes the Plaintiffs' application for interim reliefs on the grounds that the Plaintiffs' registered marks are all label/device marks, containing the word 'Ultra' as only one part of the marks; that the Plaintiffs are statutorily precluded from claiming any monopoly for any particular part including the word 'Ultra'; that the word 'Ultra' anyway is descriptive and no trader can claim monopoly over the same; that the Defendant's marks contain the words 'Dalmia' and 'Ultra' as a combination, the prefix 'Dalmia' being exclusively associated with it; that the Defendant/its group was established in 1935 and its cement division in 1939; that most of its trade marks (both registered and pending) use the prefix 'Dalmia' as a prominent part; that the Defendant does not use the mark 'Dalmia Ultra' in relation to all its products, but only in relation to a particular product, namely, HALC Cement, HALC being an acronym for Higher Alite Lower Celite, i.e. cement with higher Alite to Celite ratio importing greater strength and rigidity albeit at a higher cost; and that there is no likelihood of any confusion or deception, having regard to various factors such as significant price difference between the two products, different trade channels, etc., apart from the significant difference between the marks themselves and the respective reputations of both manufacturers.

6. Dr. Tulzapurkar, learned Senior Counsel for the Plaintiffs, made the following submissions :

- (a) The word “Ultra” forms a significant part or essential feature of the Plaintiffs' registered trade marks. A mark is infringed by another

trader even if he, without using whole of it, uses one or more essential features of it. If a word forming part of a mark has come to be used to identify the goods of the owner of the mark, it is an infringement of the mark itself to use that word as a mark or part of a mark of another trader. He relies on the discussion in Kerly on Trade Marks and several judgments including the cases of **De Cordova vs. Vick Chemical Coy**¹, **Saville Perfumery Ltd. vs. June Perfect Ltd. And F.W. Woolworth & Co. Ltd.**², **Taw Manufacturing Coy. Ltd. vs. Notek Engineering Coy. Ltd.**³, **James Chadwick & Bros. Ltd. vs. The National Sewing Thread Co. Ltd.**⁴, **Reckitt & Colman of India Ltd. vs. Wockhardt Limited**⁵ and **Hindustan Embroidery Mills Pvt. Ltd. vs. K. Ravindra & Co.**⁶

- (b) The Defendant having itself applied for registration of trade marks bearing the word 'Ultra', cannot be heard to say that the word is not distinctive. He cites the case of **Automatic Electric Limited vs. R.K. Dhawan**⁷ and **Ultra Tech Cement Limited vs. Alaknanda Cement Pvt. Ltd.**⁸, in support;
- (c) The word 'or' appearing in Section 17 has to be used conjunctively and not disjunctively so that if the plaintiff falls in either of the two eventualities of clause (a) of sub-section (2) thereof, the particular part being either the subject of a separate application or separately

1 Reports of Patent, Design, And Trade Mark Cases Vol. LXVIII No.6, Pages 103-110

2 Reports of Patent, Design, And Trade Mark Cases Vol. LXVIII No.6, Pages 147-176

3 Reports of Patent, Design, And Trade Mark Cases Vol. LXVIII No.6, Pages 271-275

4 A.I.R. (38) 1951 Bombay 147 [C.N. 3Cc.]

5 Appeal/1180/91 in NMS/2141/91 in S/2970/91, dtd. July 8, 1992 (Per Pendse, J.)

6 1987 [Vol. LXX.] BomLR 146

7 1999 PTC (19) 81

8 2011 (5) BomCR 588

registered by him, he can claim exclusive right with respect thereto;

- (d) The Registrar of trade marks has not put any limitation on the use of the word 'Ultra' as part of the Plaintiffs' registered trade marks. So also, by reason of the long, continuous and extensive user of the Plaintiffs' marks bearing the word 'Ultra', the word has come to acquire a distinctive secondary meaning associated with the Plaintiffs' goods. Counsel relies on the judgment of the Court of Appeal in the matter of **An application by Joseph Crosfield & Sons Ld. To Register a Trade Mark ("Perfection")**⁹, the judgments of our Court in the case of **I.T.C. Limited Company vs. GTC Industries Ltd.**¹⁰ and **Indchemie Health Specialties Pvt. Ltd. vs. Intas Pharmaceuticals Ltd.**¹¹, and the judgment of Delhi High Court in **Proctor & Gamble Manufacturing (Tianjin) Co. Ltd. ("ALLROUND PROTECTION")**¹², in support.

7. Mr. Kadam, learned Senior Counsel for the Defendant, made the following submissions :

- (a) The two marks, when compared as a whole, do not bear any deceptive similarity;
- (b) The word 'Ultra' being of a laudatory and descriptive, or non-distinctive character, the Plaintiffs do not have any exclusive right to the use of the same;

9 Reports of Patent, Design, And Trade Mark Cases Vol. LXVIII No.6, Pages 837-846

10 2002 (25) PTC 465 (Bom)

11 NMSL/2540/14 dtd. 24 June 2015.

12 2014 (59) PTC 421 [Del][DB]

- (c) There are other proprietors using the word/mark 'Ultra' as part of their trade marks;
- (d) The Plaintiffs' registered trade marks are device/label marks, registration of which has been obtained on the basis that the word 'Ultra' is merely a part and the marks are distinctive only in combinations in which they appear;
- (e) There is no material placed before the Court that the Plaintiffs' marks are known by the word 'Ultra'; and
- (f) The existence of the word 'Dalmia' as a part of the Defendant's mark is sufficient to put the traders and purchasing public to notice of the distinctive origin of the Defendant's goods.

Learned Counsel relies on the cases of **Application by Joseph Crosfield & Sons Ltd. (“Perfection”), ITC Limited Vs. GTC Industries Ltd., and Indchemie Health Specialties Pvt Ltd. Vs. Intas Pharmaceuticals Ltd.**, in support.

8. In the first place, the word 'ultra' is clearly a laudatory and descriptive word commonly used in English language either as an adjective suggesting an extreme or extravagant quality or, more commonly, as a prefix - suggesting 'beyond in space' as in ultra-galactic or ultra-lunar, or 'surpassing' as in ultra-atomic or ultra-molecular, or 'beyond what is usual or natural' as in ultra-liberal or ultra-strict or ultra-modern. If used in

relation to a particular quality of goods, it may mean an 'unusual' or 'extraordinary' quality. Since we are here concerned with 'cement', a manufacturer may commonly describe his goods as ultra-tough or ultra-strong. No individual trader can possibly monopolize the term 'ultra' *per se*. *Prima facie* the word cannot be distinctive of any particular trader's goods.

9. Let us now see if the registration of their marks containing the word 'ultra' as a part may be said to be giving any monopoly to the Plaintiffs to the use of the part. In the first place, the registered marks contain many features in a combination, the word 'ultra' forming but one such feature. The registered marks are all device/label marks with words such as 'UltraTech Cement', 'UltraTech Cement The Engineer's Choice', 'UltraTech concrete we make good concrete better', 'UltraTech readymix', 'Ultracem', 'UltraTech white cement Pure White Cement', etc. forming part of the device/label. Though the word 'Ultra' does form an important feature of all these marks, it is not used in any of them as a single word, but always as a prefix as in 'Ultratech' or 'Ultracem'. Secondly, even as a prefix the Plaintiffs can hardly claim any monopoly in it. The Plaintiffs' application for registration of the mark 'UltraTech Cement' as part of a device/label mark was objected to by the Registry, which considered the words to be descriptive in nature. Far from joining issues with this objection, what the Plaintiffs appear to have submitted in justification was (i) that the words 'UltraTech Cement' only formed a part of the mark applied for, (ii) that the words were used in conjunction with Aditya Birla Group Label, (iii) that these words and others in the label were to be considered together and (iv) that when so considered, the mark was capable of distinguishing the Plaintiffs' goods. Satisfied with this

explanation, the Registry proceeded to register the mark. The subsequent request of the Plaintiffs to amend the application by deleting Aditya Birla Group Label from the mark was not accepted by the Registry. Thus, the Plaintiffs' application and the Registry's acceptance of that application were on an express footing that the words 'UltraTech Cement' were distinctive only in the combination in which they were being used. No doubt, subsequently the Plaintiffs did manage to get registrations of the marks 'UltraTech Ready Mix', 'UltraTech White Cement', 'UltraTech Concrete' and 'UltraCem' minus the Aditya Birla Logo/Label, but that does not detract from the fact that all registrations were as device/label marks in combination and cannot entitle the Plaintiffs to any monopoly over the word "Ultra". So much for the Plaintiffs' right acquired out of the registrations.

10. As for the Plaintiffs' case that word 'Ultra' has come to be associated exclusively with the Plaintiffs' goods by reason of a long, continuous and exclusive use, the record of the case does not justify this assertion. The corporate identity as well as stock and goods of the Plaintiffs may be said to be associated with the word 'UltraTech' but not the word 'Ultra' itself. If someone uses the word 'Ultra' as a prefix or in combination with other words/features, the Plaintiffs cannot have any cause to complain, on account of the alleged secondary meaning acquired by the word 'UltraTech' as a result of the Plaintiffs' use.

11. The case of **Proctor & Gamble Manufacturing (Tianjin) Co. Ltd.** ("ALLROUND PROTECTION") cited by Dr. Tulzapurkar is clearly distinguishable. There, the Court considered the words "Allround

Protection” claimed in relation to toothpaste by the Plaintiffs not as descriptive but distinctive of the unique feature, quality or character of the Plaintiffs' goods not claimed by any other trader of toothpaste till date. The Court said, the words would classify as distinctive “*so long as none other till then has described those as unique to the product*”. In our case, there is no such case pleaded by the Plaintiffs. On the other hand, the Defendant's avowed case is that their cement is of a particular grade, suggestive of more strength and rigidity, i.e. 'HACL' - Higher Alite Lower Celite - and only for this particular grade of cement, it uses the mark 'Dalmia Ultra'.

12. Even as a matter of statutory rights, under Section 17, when a trade mark contains any “matter” which is of a non-distinctive character, forming only a part of the whole, the registration of the mark does not confer any exclusive right in the “matter”. Dr. Tulzapurkar contended that the Plaintiffs having applied for separate registration of the 'part', are entitled to claim such exclusive right with respect to it, the word 'or' in the Section being conjunctive. I am afraid that is not a correct reading of the Section. Sub-section (2) of Section 17 operates notwithstanding anything contained in Sub-section (1). Sub-section (1) provides that when the trade mark consists of several matters, its registration confers on the proprietor exclusive right to the use of the mark 'taken as a whole'. Sub-section (2) is cast in negative terms. It provides that when either of the conditions in clauses (a)(i) or (ii) or (b) obtains, the registration of the mark “*shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.*” If such “matter” forms only a part of the whole of the trade mark, the registration of such trade mark does not

confer any exclusive right in the “matter” to its proprietor. The word “Ultra”, as I have explained above, is a part of the whole of the Plaintiffs' registered trade marks; it is of a non-distinctive character, and therefore, the registration of the mark as a whole does not, by reason of Sub-section (2) of Section 17, confer any exclusive right on the proprietor to the use of the the word 'Ultra'.

13. Dr. Tulzapurkar laid great stress on the submission that The word 'ultra' forms a prominent and essential feature of the Plaintiff's registered trade marks and that even if that feature is used by another trader, without using the whole of the registered trade marks, such user amounts to an infringement and that to the extent the prominent and essential feature in the present case, namely, the word 'ultra' is used by the Defendant as a prominent part of its trade mark, there is an infringement of the Plaintiff's registered trade mark. As I have noticed above, the prominent or essential feature of most of the Plaintiff's registered trade marks, which are noticed above, is the word 'UltraTech' and not the word 'ultra' *per se*. Secondly, even when the word 'ultra' appears in the Plaintiff's registered trade marks without the word 'tech', it is used mostly as a prefix and never as a stand alone or as a prominent or essential feature. Thirdly, quite apart from these facts, as I have noticed above, it is the Plaintiff's own case before the Registry that the words 'Ultra' or 'UltraTech' are not *per se* distinctive and are entitled to be registered as part of the trade mark only because they appear in combination and particularly as part of a device or label mark. If the words 'UltraTech' or 'Ultra' are not *per se* distinctive and their existence is justified only because they appear in the particular combinations as depicted by the respective trade marks, there is no

question of the Plaintiffs seeking to injunct others from using these words as part of the latter's trade marks. Dr. Tulzapurkar's argument that the Defendant itself having applied for registration of marks containing the word 'ultra' cannot be heard to say that the word was not distinctive, does not take the matter any further. It is not the Defendant's case that the word 'Ultra' in its trade marks is distinctive, but that the words 'Dalmia Ultra' are distinctive of the Defendant's goods. The cases of **Automatic Electric** (supra) and **Ultra Tech Cement Limited vs. Alaknanda Cement** (supra) are, thus, of no avail to the Plaintiffs.

14. In **De Cordova** (supra), the Privy Council particularly held that the word "VapoRub" was a fancy word coined originally to serve as a trade appellation of the respondents' product; there was an inherent likelihood that in a course of time it would come to be used in the market as a distinctive name or one of the distinctive names of that product; and that was what the evidence in that case showed to have happened in the concerned territory. The Court held that the appellants had infringed the trade mark by selling their ointment under the designation "Karsote Vapour Rub". The Court held the word 'Karsote', which prefaced the words 'Vapour Rub', to be quite insufficient in itself to dissolve the impression that was bound to arise from associating the appellants' goods with a word so distinctive as 'Vapour Rub'. The appellants in that case sought to establish before the Privy Council that the word 'VapoRub' in the respondents' mark was merely descriptive. They compared it to descriptive words such as "sheen", "cellular cloth", "malted milk" and "shredded wheat". The Privy Council held that it would be an abuse of language to place a fancy word such as "VapoRub" in the same descriptive class as such

phrases as “malted milk” or “shredded wheat”. The Privy Council held that the word might have a descriptive element, it being a compound of two ordinary English words which were chosen for the purpose of suggesting to the reader leading characteristics of the substance sold; but the word itself was no description of the substance. In other words, the Court held that the word “VapoRub” was adopted to distinguish the respondents' goods and that, in the premises, a same or a deceptively similar expression such as Vapour Rub' cannot be used to distinguish the goods of another trader even if the same were prefixed by the word 'Karsote'. The facts of that case are clearly distinguishable from the facts of our case. In our case, it cannot be said by any stretch of imagination that the word 'ultra' is a fancy word, which evokes an association with the Plaintiffs' goods by reason either of its being part of the Plaintiffs' registered trade marks or of the extensive sales and advertisements of the Plaintiffs' goods. It is a common English word mostly used as a prefix, as I have noted above, and cannot be described as a prominent or essential feature of the Plaintiff's mark, affording the Plaintiffs a monopoly of its use.

15. In **Saville Perfumery's** case, the offending word 'June', which the plaintiff in that case had used continuously and extensively for a number of years, was part of the plaintiff's trade mark written in characters of a special form across the bar with the garland of flowers depending from the bar. There was a disclaimer of the exclusive right to the floral device. The defendants used the word 'June' as part of their trade mark. The question was whether the mark 'June' used by the defendants so nearly resembled the plaintiff's registered mark as to be likely to cause confusion. The House of Lords came to the conclusion that the essential

feature of the plaintiff's mark had been taken by the defendants and used as a mark for the goods of the class for which the plaintiff's mark was registered. The Court came to the conclusion that the defendants' use of the word 'June' as a mark in question on the goods so nearly resembled the plaintiff's mark as to be likely to deceive or cause confusion in the minds of purchasers with a normally imperfect recollection of the picture representing or containing the registered mark. The Court held that the injunction against the infringement of the trade mark was, therefore, rightly granted. The discussion of House of Lords in **Saville Perfumery's** case does not apply to the facts of our case. There is nothing distinguishing about the word 'ultra' as used by the Plaintiffs here and it cannot possibly be suggested that any essential or prominent feature of the Plaintiffs' mark is used by the Defendant so as to cause confusion or deception in the minds of the purchasing public or traders.

16. In **Taw Manufacturing Coy. Ltd.**(supra), the registered trade mark consisted of a pictorial device comprising of a representation of a full-faced view of a cat's head, wherein the eyes were drawn in the form of motor car headlamps, the whole superimposed upon an open body motor car viewed from the front in a manner so as to substitute cat's head for the bonnet and radiator as normally present. The offending mark was a cat's device with a full-faced view of a cat's head and with the eyes drawn as a motor car headlamps, beneath which was the caption "Let Notek be your eyes in fog and darkness". The disposition and lettering selected was such as to lead the leader to take particular notice of the device with the word "Notek" beneath it. The Court particularly held that it would appear unlikely that anyone acquainted generally with the registered trade mark

of the plaintiffs would fail to regard as its characteristic feature the substitution of headlamps for eyes in a representation of a cat's head. This was a significant detail which any recollection of the mark would retain. The Court, accordingly, granted injunction against the defendant and held that the essential part of the registered mark did not consist merely of a cat's head but included headlamp treatment of the eyes and this had been the monopoly of the plaintiffs and that the plaintiffs had accordingly established infringement of their registered trade mark and were entitled to relief against such infringement. Once again, the entire discussion has no bearing on the facts of our case, where the Plaintiffs cannot be said to have monopoly in the word 'utlra' and allowed any injunction against rival traders using the same.

17. Even in the cases of **James Chadwick & Bros. Ltd.**, **Reckitt & Colman of India Ltd.** and **Hindustan Embroidery**, the facts are clearly distinguishable from the facts of our case. In **James Chadwick**, the registered trade marks bore a legend "Eagely Sewing Machine Thread" with a representation of an eagle in one and a representation of an eagle without any writing in the other. The Court held that the goods sold under this trade mark were well known and commonly asked for as 'Eagley' or 'Eagle' and therefore, the particular feature of the trade marks by which the goods were identified in the minds of the purchaser was the representation of the Eagle appearing on the trade mark. The Court, accordingly, did not permit registration of a rival mark using a representation of a bird of prey which the proprietors had chosen to call during the relevant period 'Eagle Brand'. The Court held that the narrow question which arose in the appeal was whether the trade mark sought to be registered contained a similar or

identical distinguishing or essential feature. “If it does, if the trade mark conveys the idea of an Eagle & if an unwary purchaser is likely to accept the goods of the respondents as ensuring the requisition for Eagle goods, then undoubtedly the trade mark of the respondents is one which would be likely to deceive or cause confusion”, held the Court. In other words, what the Court noted was that it was important to find out what was the distinguishing or essential feature of the trade mark already registered and what was the main idea underlying it and if it would find that the trade mark whose registration was sought contained the same distinguishing or essential feature or conveyed the same idea, it should rather refuse registration. **Reckitt & Colman** was a case where the essential or distinguishing feature of the mark was the device of a “sword”. The defendants had also adopted the device of the “sword”, which device was identical or deceptively similar to the plaintiff's registered trade mark. The Court held that it was not necessary that the mark complained of should be identical with that of the device registered by the plaintiffs; that a mere look at the mark of the defendants left no manner of doubt that the prominent feature of the mark adopted by the defendants was the 'sword', which was a special or distinguishing feature of the plaintiff's registered trade mark. In our case, the word 'ultra' is neither a distinguishing nor a special feature of the mark, the copying of which may amount to an infringement on the part of the Defendant. Even in **Hindustan Embroidery**, the word 'Hemla', which was held to be an essential feature of the plaintiffs' registered trade mark, was a coined and special word and not an ordinary word of common use.

18. Considering the fact that the existence of the word 'Dalmia' as

part of the Defendant's mark, which has *prima facie* been associated with the Defendant's trade name and reputation built over the years, was sufficient to put the traders and purchasing public to notice of the distinctive origin of the Defendant's goods, and the fact that the word 'ultra' appears in the Defendant's trade marks in juxta-position with the word 'Dalmia' displayed prominently, there is no likelihood of anyone being deceived or any confusion ensuing in the minds of any traders or purchasing public as to the origin of the goods on account of the Defendant's use of the word 'ultra'.

19. In the premises, there is no *prima facie* merit in the Plaintiffs' case of infringement. For the same reasons and on the basis that there is no concrete likelihood of any deception or confusion, there is no *prima facie* merit even in the case of passing off.

20. The Plaintiffs' application for ad-interim reliefs is, accordingly, rejected.

(S.C.GUPTE, J.)