

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMIP SUIT NO. 260 of 2015**

UltraTech Cement Limited & Anr.] ...Plaintiffs

Versus

Ultratech Solar Technologies Pvt. Ltd. & Anr.] ...Defendants

Mr. Amit Jamsandekar a/w Ms. Archita Gharat i/b V.A. Associates for the Plaintiffs.

None for the Defendants.

CORAM : S. J. KATHAWALLA J.

DATED : 18th July 2018

P.C.

1. This is an action for infringement of trademarks and passing off and unfair trading committed by the Defendants, *inter alia*, by using the mark 'Ultratech' (the impugned mark) in relation to solar water heater and also as their corporate name.
2. As per order dated 19th July 2016 passed by the Learned Prothonotary and Senior Master, this suit was transferred to the list of undefended suits as the Defendants chose not to participate in the proceedings despite the service of the Writ of Summons on them. Accordingly, this suit is listed today under the caption "For ex-parte decree". It appears from the record that the Defendants have remained absent even during the ad-interim and interim stage, despite the service of papers and proceedings on them.

3. Mr. Jamsandekar, the learned Counsel appearing for the Plaintiffs submitted that the trade marks 'UltraTech' are registered in the name of the Plaintiffs and the registration of the same is valid and subsisting; that by virtue of extensive use and heavy advertisements and promotions of the goods bearing the marks 'UltraTech' by the Plaintiffs, the same are exclusively and solely associated with the Plaintiffs; that the Plaintiffs have acquired tremendous goodwill and reputation in the marks; that the mark 'UltraTech' is a well-known mark in India and has acquired a secondary meaning and is a household mark; that the mark 'UltraTech' is solely and exclusively associated by the members of the public and the traders with the Plaintiffs and none else. He further submitted that the trademark 'UltraTech' has been held to be a well-known trademark by this Court in the case of UltraTech Cement Limited & Anr. V/s. Dinesh Kothari & Anr.¹. He submitted that even the Trade Marks Registry has notified the mark 'UltraTech' of the Plaintiffs as a 'well-known' mark under the Trade Marks Act, 1999.
4. Mr. Jamsandekar submitted that the use of the mark 'Ultratech', as depicted in Exhibits H to H-4 to the Plaint, by the Defendants, even though is in respect of goods which are admittedly different than the goods covered by the Plaintiff's registration, amounts to infringement in view of Section 29(4) of the Trade Marks Act, 1999. He submitted that the Defendants' mark is identical with the Plaintiff's registered trade marks. He submitted that the adoption and use of an identical mark by the Defendants is without due cause and is detrimental to the character and repute of the Plaintiffs well-known mark 'UltraTech'.
5. The Plaintiffs representative, Mr. Rajesh Lunawat, Senior Manager Central Commercial Coordinator, has led evidence in person by filing his Affidavit in

1 Suit No. 443 of 2012 Orders dated 12th December, 2011 & 30th January 2012

lieu of examination-in-chief. He confirms the correctness of the contents of the Affidavit as well as the plaint. In support of the Plaintiffs' case the witness has sought to rely upon documentary evidence, which is tendered in the form of a compilation of documents. Mr. Lunawat has verified the plaint on behalf of the Plaintiffs. The witness confirmed that he was authorized to file the suit by the Plaintiffs. The witness has in his affidavit of examination in chief led evidence to prove the admissibility of the documents contained in the compilation of the documents. The Defendants have not disputed the documents. The evidence of the witness is uncontroverted. In view of this evidence, the documents contained in the compilation of documents are duly proved and as the same are not disputed/contested by Defendants. The documents contained in the compilation of documents filed by the Plaintiffs are admitted in evidence. The compilation of documents filed by the Plaintiffs has been taken on record and marked Exhibit 'P' collectively.

6. After going through the original documents, Plaintiff and hearing the submissions of learned advocate for the Plaintiffs, I am satisfied with the submissions made on behalf of the Plaintiffs. The Plaintiffs, by leading the oral evidence and by filing the documentary evidence have proved that the Trade Marks 'UltraTech' are the registered trade marks in the name of the Plaintiffs. The certified copies of the entry made in the Register relating to the Trade Marks 'UltraTech' in the name of the Plaintiffs clearly proves that the marks Trade Marks 'UltraTech' are registered in the name of the Plaintiffs bearing the registration Nos.1244745, 1326528, 1575299, 1544648, 1544649, 1340606, 1525671, 1525672, 1908355, 1908356, 2080447 and 2080448 respectively and the same are valid and subsisting. There are series of UltraTech marks registered in the name of the Plaintiffs and there are many applications pending registration. The Plaintiffs have been selling the

said products bearing the registered trademarks 'UltraTech' continuously, extensively and exclusively on a growing scale which is evident from the turnover which rose from Rs.2,251 crores in the year 2003- 04 to Rs. 22,656 crores in the year 2014-2015 and the consolidated turnover of the Plaintiff No. 1 is Rs. 28,513.51 crores as on 31st March, 2016. The Plaintiffs have also produced in evidence the Chartered Accountant Statements of the Plaintiffs' turnover and the expenditures towards the advertisements and publicity in respect of the marks 'UltraTech'. The Plaintiffs have proved that the marks 'UltraTech' are solely and exclusively associated by the members of the public and the traders with the Plaintiffs and none else. The Plaintiffs have proved that the marks 'UltraTech' are distinctive of the Plaintiffs. The fact that the mark 'Ultra Tech' of the Plaintiffs has been notified as a 'well known' mark under the Trade Marks Act, 1999 by the Trade Mark Registry is a strong factor in favour of the Plaintiff. Considering the evidence on the record and the fact that the same is uncontroverted, it is clear that the Plaintiffs' mark 'UltraTech' is a well known mark and the same has acquired immense reputation in India.

7. It is clear that the Defendants are using the mark 'Ultratech' for their products as well as its corporate name and or business name and or trading style. I have compared the Plaintiffs' products bearing the mark 'UltraTech' and the Defendants' products bearing the mark 'Ultratech' and there is no doubt in my mind that the rival trade marks are identical. The Defendants have copied all the essential and prominent features of the Plaintiffs' marks. Though the rival goods are certainly different, the same is inconsequential in case for infringement of a well-known trade mark. Since the Defendants have chosen to remain absent, there is nothing on record to suggest that the adoption of the mark 'UltraTech' by the Defendants is honest or is with due cause. Further, there is nothing on record to show that the Defendants have

any other defence available under the law. I am therefore of the opinion that the mark 'Ultratech' adopted by the Defendants is without any due cause and the use of the mark by the Defendants in respect of dissimilar goods is detrimental to the character and repute of the Plaintiffs well known mark. The Defendants are misrepresenting and creating confusion and deception in the market by using the mark 'Ultratech'. This is clear from the appearance, get up and visual impact of the Defendant's marks appearing on its product. I find that there is a clear attempt on the part of the Defendants to trade upon the goodwill and reputation of the Plaintiffs in the 'UltraTech' trademarks. The Plaintiffs have, therefore, successfully made out a case for infringement of their trade marks and passing off.

8. There is nothing on record that militates against anything that has been averred in the Plaint and deposed by the Plaintiffs' witness and proved by him by oral and documentary evidence.
9. The Defendants have not appeared in the proceedings despite service of the Writ of Summons. The evidence of the Plaintiffs/witness is uncontroverted. The Plaintiff is not pressing for damages other than punitive damages.
10. In the circumstances, suit is decreed in terms of Prayer Clauses (a), (b), and (d) of the plaint which reads as follows;

*(a) that the Defendants by themselves, their servants, agents and distributors or representatives or any person claiming through or under them and the like be restrained by a perpetual order and injunction from using in any manner in relation to solar water heater and or in any manner for any other goods and services or the corporate name or trading style the impugned mark "**Ultratech** and/or any mark containing word **Ultratech** and/or the word **Ultratech** by itself or in combination with any other word or device or any other deceptively similar marks containing the impugned mark written in a stylized manner or in any manner being Exhibit H-H4 which is identical with and/or deceptively similar to all the registered and well known "**UltraTech**"*

trademarks or parts thereof bearing Registration Nos.1244745, 1326528, 1575299, 1544648, 1544649, 1340606, 1525671, 1525672, 1908355, 1908356, 2080447 and 2080448 so as to infringe the Plaintiffs said registered and well-known trademarks

*(b) that the Defendants by themselves, their servants, agents, and distributors or representatives or any person claiming through or under them and the like be restrained by a perpetual order and injunction of this Hon'ble Court from using in any manner in relation to solar water heater and/or in any manner for any other goods and services or the corporate name or trading style containing the impugned mark "**Ultratech**" and/or any mark containing word **Ultratech** and/or the word **Ultratech** by itself or in combination with any other word or device or any other deceptively similar marks containing the impugned mark written in a stylized manner or in any manner being **Exhibit H-H4** so as to pass off and/or enable others to pass off the Defendants' goods and business as and for the goods and business of the Plaintiffs or in some way connected with the Plaintiffs;*

*(d) that the Defendants be ordered and decreed to deliver up to the Plaintiffs for destruction thereof all the stationery, brochures, pamphlets, forms and all promotional advertising, literature, packing material, poly bags and other materials, articles and effects of the Defendants bearing the impugned mark along with all stamps, dies, articles, papers and things, bearing the impugned marks "**Ultratech**" or any mark the containing word "**Ultratech**" by itself or in combination with any other word or device or any other deceptively similar marks containing the impugned mark written in a stylized manner or in any manner and/or any other articles or materials used for printing the impugned marks/labels or the corporate name containing the word "**Ultratech**" or any other similar word;*

11. Considering the nature of infringement and passing off and with a view to dissuade others from indulging into such activities it is imperative that some punitive damages be awarded to the Plaintiff. I, therefore award punitive

damages amounting to Rs.2,00,000/- to the Plaintiff and against the Defendants.

12. The office shall return the original documents to the Advocate for the Plaintiffs upon the Advocate for the Plaintiffs handing over Photostat copies of the said documents duly certified by them as true copies.

(S.J. KATHAWALLA, J)

Nitin
Dinkar
Jagtap

Digitally signed
by Nitin Dinkar
Jagtap
Date: 2018.08.02
14:43:41 +0530