



## HIGH COURT OF AUSTRALIA

13 May 2026

ZIP CO LIMITED & ANOR v FIRSTMAC LIMITED  
[2026] HCA 16

Today, the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the defences of honest concurrent use arising from ss 122(1)(f) and 122(1)(fa), read with s 44(3), of the *Trade Marks Act 1995* (Cth).

Subsections (1)(f) and (1)(fa) of s 122 relevantly provide that a person does not infringe a registered trade mark when the court is of the opinion that "the person would obtain registration of the trade mark in his or her name if the person were to apply for it", or when the person uses a trade mark that is substantially identical with, or deceptively similar to, the first-mentioned trade mark and the court is of the opinion that "the person would obtain registration of the substantially identical or deceptively similar trade mark in his or her name if the person were to apply for it". For the purposes of ss 122(1)(f) and 122(1)(fa), a person can establish that they would obtain registration of a trade mark that is substantially identical with, or deceptively similar to, an earlier registered mark if they satisfy the conditions in s 44(3), which relevantly provides that an application for registration of the applicant's trade mark may be accepted if the Registrar of Trade Marks is satisfied that "there has been honest concurrent use of the 2 trade marks".

In 2004, the respondent, Firstmac Ltd ("Firstmac"), registered the word mark "ZIP" ("the Firstmac Mark") in respect of "financial affairs (loans)" in Class 36. From November 2013, the appellants – Zip Co Ltd and Zipmoney Pty Ltd (renamed Zipmoney Payments Pty Ltd) ("the Zip Companies") – used, as trade marks, signs containing the word "ZIP" which were substantially identical with, or deceptively similar to, the Firstmac Mark.

The Zip Companies claimed to have defences of honest concurrent use to their potential infringements of the Firstmac Mark. The trial judge in the Federal Court of Australia held that the Zip Companies had established those defences to their potential infringements. The Full Court of the Federal Court held that they had not.

The High Court unanimously held that the Zip Companies did not affirmatively establish their honesty from the time of the first potential infringement in November 2013 onwards. The time at which the defences of honest concurrent use are to be assessed is the time of each alleged potential infringement. And the content of the requirement of honesty under s 44(3)(a) of the *Trade Marks Act* is that an alleged infringer must have a state of mind that is honest by the standards of ordinary, decent people.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*