

WHAT ABOUT TRADE DRESS?



Apple iPhone



Samsung Galaxy

Samsung's Galaxy smart phone sure looks a lot like the Apple iPhone. But can the way a product looks be legally protected? The answer is that in many cases, it can. Recently, Apple filed suit against Samsung for a variety of alleged intellectual property infringements. While the media largely focused on the patent dispute, Apple also sued Samsung for trade dress infringement. In this article we look at the concept of trade dress.

Under the Lanham Act (the same legislation protecting trademarks), a product's trade dress can be legally protected. Trade dress refers to the visual appearance of products and packaging. For example, the shape, color, or materials used for a product. Other examples include the design of a magazine cover or a greeting card.

Even the way in which a service is provided may be protectable under trade dress. For example, in the *Two Pesos* (112 US 2753) case, the US Supreme Court ruled that the decor of a Mexican

restaurant could be protected. In its trade dress registration, the restaurant described the decor as follows: “a festive eating atmosphere having interior dining and patio areas decorated with artifacts, bright colors, paintings and murals. The patio includes interior and exterior areas with the interior patio capable of being sealed off from the outside patio by overhead garage doors. The stepped exterior of the building is a festive and vivid color scheme using top border paint and neon stripes. Bright awnings and umbrellas continue the theme.”

In its complaint, Apple claims that Samsung infringed on the following elements of the Apple iPhone trade dress:

- a rectangular product shape with all four corners uniformly rounded;

- the front surface of the product dominated by a screen surface with black borders;

- substantial black borders above and below the screen having roughly equal width and narrower black borders on either side of the screen having roughly equal width;

- a metallic surround framing the perimeter of the top surface;

- a display of a grid of colorful square icons with uniformly rounded corners; and

- a bottom row of square icons (the “Springboard”) set off from the other icons and that do not change as the other pages of the user interface are viewed.

The lawsuit cited several of Apple’s trade dress registrations (U.S. Registration Nos. 3,470,983, 3,457,218, 3,475,327).

For entrepreneurs, the takeaway is to make sure that you consider trade dress protection for the various products and services you offer.

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