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[Lego My Smart Blocks](#)

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On September 23, 2010, Smart Blocks, Inc. filed an [action](#) against [Lego](#) seeking, among other things, to recover a shipment of [Smarck's Smart Blocks](#) that were being held up at U.S. Customs. For those of us who don't specialize in U.S. border protection, the Customs Department has the [authority to seize goods](#) which are believed to infringe intellectual property rights recognized in the U.S.

Now, as you may recall from one of my earlier posts, ([Towels On The Beach Go 'Round And 'Round](#)) people aren't allowed to obtain trademarks for "functional" features of a product design, so I was naturally curious about whether this was in fact a case about a potentially functional mark. I searched the USPTO database for the [Lego mark](#) and came up with this:



That's right, Lego's mark is apparently the raised cylinder which every two year old can tell you (assuming they possess the requisite vocabulary) is the part of the block which allows them to stick together. Can I get a tally as to how many people think Lego's mark is going to survive this skirmish? Personally, I had always considered the functionality of Lego's building block shape to be a settled issue in the U.S. In fact, it always struck me as the textbook law school hypothetical for functionality. As a result, I was somewhat shocked to see that Lego's mark was registered as recently as August of 1999 and, according to my quick legal research, has never been litigated. (If you know otherwise, please let me know.)

If you want a prediction, I'd say Lego has an uphill battle. The European Union recently [ended Lego's efforts](#) to retain similar trademark protection over seas. Should this case proceed without settlement, I would expect a similar result here.



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