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[iPhone-y Baloney](#)

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On April 15, Apple launched a massive suit against Samsung alleging various counts of patent and trademark infringement arising from Samsung's Galaxy line of products. (The Complaint is [here](#).)

While the lawsuit involved claims of trade dress infringement and patent infringement, I was most interested in the trade dress aspects of the case. Of particular interest to me is the alleged "trade dress" that Samsung is accused of infringing. Apple claims that Samsung has infringed its exclusive rights in:

- 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
- metallic surround framing the perimeter of the top surface
- display grid of colorful square icons with uniformly rounded corners
- a bottom row of icons set off from the other icons and that do not change as the other pages of the user interface are viewed



[Hardware 2.0](#) provides some good color comparisons of the products in his [article](#) questioning whether Samsung is “paying homage” or “ripping off.” In my opinion, Samsung is doing neither. It would be odd if Samsung were paying homage to a direct competitor. However, the fact that Samsung isn’t paying homage doesn’t mean it’s ripping off. My take is that Samsung is merely using highly functional design elements that consumers want in their smart phones, regardless of whether those design elements come from Apple, Samsung, or any other source.

If you have been a long time reader of our blog, you may recall a post I did sometime back on the [functionality doctrine](#) in the context of [round beach towels](#). Among other things, the functionality doctrine prevents protection through trademark law of features that give a producer a competitive advantage that is not related entirely to brand identification. Trademark (and trade dress) law are about protecting indicators of source. Simply stated, you typically can’t trademark a design where the purpose or effect of the design is for something other than indication of source.

Apple makes what I believe is a serious gaffe in its complaint: it claims that the end result of its alleged protected trade dress is to create a product that is “more accessible, easier to use, and much less technically intimidating than previously available smart phones and PDAs.” That’s basically an admission of functionality. Ignoring Apple’s admission, virtually every smart phone on the market is rectangular, dominated by a screen surface, and black with some sort of metallic trim. Does that mean everyone thinks their smart phone is an Apple? Of course not. People don’t want these features because they think it means they’re getting an Apple product. They want these features because they’re aesthetically pleasing and make the product easier to use. That makes the features functional.

