

Alternative Designs for Trade Dress Non-Functionality: Relevant Evidence or Red Herring?



Our Speakers



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Functionality - How Much Function is Too Much?

- What is functionality really about?
 - View 1: Competitive necessity
 - Do competitors need to use the feature?
 - View 2: Utility
 - Does the feature provide a meaningful functional advantage?
- How have courts and the TTAB balanced trade-dress protection against the risk of creating perpetual patent-like rights?

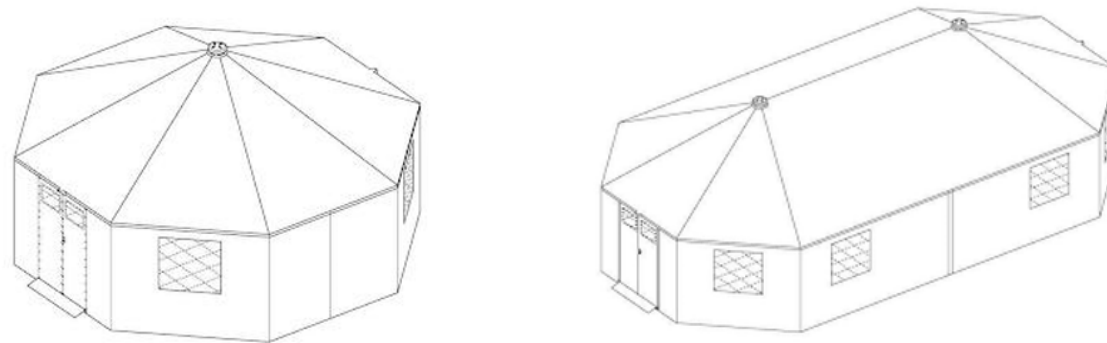
Alternative Designs

- Early authorities:
 - ***In re Morton-Norwich Products, Inc.*** (671 F.2d 1332 (C.C.P.A. 1982)) – Establishes the four-factor evidentiary framework for assessing functionality.
 - Existence of a utility patent
 - Advertising touting utilitarian advantages
 - Availability of alternative designs
 - Simplicity/economy of manufacture
 - ***TrafFix Devices, Inc. v. Marketing Displays, Inc.*** (532 U.S. 23 (2001)) – Central inquiry is whether the feature is essential to use or purpose or affects cost or quality. No need to speculate about other design possibilities.
 - ***Valu Engineering, Inc. v. Rexnord Corp.*** (278 F.3d 1268 (Fed. Cir. 2002)) – Reconciles the two: *Morton-Norwich* remains the standard, but its alternative-design factor must be applied consistently with *TrafFix*.

The “Easy” Functionality Case

***Crescent Resources, LLC v. Shelter Systems USA, Inc.*, No. 5:24-cv-02719-EKL (N.D. Cal. Sept. 30, 2026)**

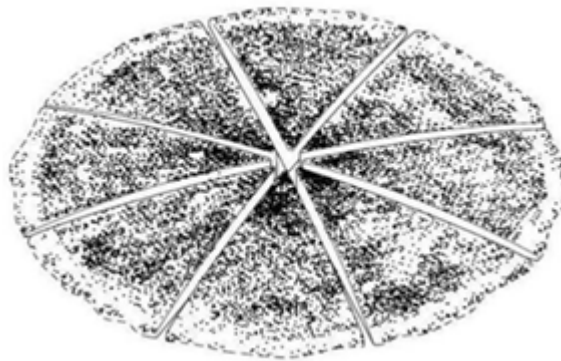
- Product features provided concrete utilitarian benefits:
 - Wind resistance
 - Rapid deployment
 - Modularity
- Utility patents and marketing materials supplied evidence of functionality.



The “Hard” Functionality Case

In re Misty Everson and Christine Maynard, 2026 USPQ2d 268 (TTAB Mar. 31, 2026)
(precedential)

- Mark Description: The mark consists of a three-dimensional product design of a round pancake consisting of 8 uniform wedges.
- Marketed benefits:
 - Easier serving
 - sharing
 - portability
 - portion control
 - convenience in eating



U.S. Application Serial. No. 97/104,306

The “Hard” Functionality Case

- **Touting Utilitarian Advantages**

- Applicant’s brand guide touted design
 - “Your new team-sized meal option”
 - “Shareable”
 - “Dippable”
- 14 examples of third-party websites showing pancakes cut into 8-equal wedges (shareability and customization of toppings)

- **Alternative Designs**

- The applicant pointed to six-, seven-, and ten-slice arrangements and stacked pancakes.
- The Board concluded that the eight-slice configuration was “one of a very few superior designs” for the asserted serving and sharing advantages.
- Availability of alternative designs does not convert a functional design into a non-functional design



Do Alternative Designs Still Matter?

***DayCab Co., Inc. v. Prairie Technology, LLC*, 67 F.4th 837 (6th Cir. 2023).**

- The Sixth Circuit reversed summary judgment because factual disputes remained concerning functionality.
- Alternative truck-cab configurations supported the argument that the claimed appearance was not dictated by function.
- Certain design choices could be characterized as aesthetic or ornamental rather than functional.
- The case provides an opportunity to revisit the tension between *TrafFix* and *Valu Engineering*.

- Trade dress described as: (1) a slant-back design with specific angles and radii, including a 144-degree slant towards the cab and rolled edges with radii of 1.5 inches; (2) a conversion-kit depth of 5.375 inches; (3) rounded edges with specific angles and radii; and (4) grey colors.



Discussion

- Alternative Designs After *TrafFix*
 - *How much weight should courts give alternative designs when evaluating functionality?*
- Trends in Functionality Doctrine
 - *Are courts (and the TTAB) becoming more willing to find functionality, or do these cases remain highly fact-specific?*
- Marketing vs. Trademark Protection
 - *Can companies effectively market a product's benefits without creating functionality evidence that later undermines trade dress protection?*
- Defining the Trade Dress
 - *How should brand owners define and describe trade dress to maximize protection while minimizing functionality risk?*

Key Takeaways

- Marketing can create damaging functionality evidence.
 - An advertisement that helps sell a product today may undermine a future trade-dress claim.
- Coordinate patent and trade-dress strategies.
 - Consider functionality before filing applications or beginning enforcement.
 - Functionality disputes may be won or lost long before litigation begins.
- Build alternative-design evidence early
 - Documentation during product-development process

Thank you.

