



manufacturer strikes out on three ip theories asserted to enforce its claimed rights in product design

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On May 14, 2020, the Federal Circuit Court of Appeals issued a decision in *Lanard Toys Limited v. Dolgencorp LLC et al.*, Case No. 2019-178, affirming summary judgment for the defendants and dismissing claims for design patent and copyright infringement. The claims were grounded in a challenging intellectual property law concept: the level of protection available for objects claimed to have both aesthetic and utilitarian functions. While the decision does little to provide additional clarity on the issue, it offers a useful snapshot of current jurisprudence, particularly in the copyright context in light of the United States Supreme Court's *Star Athletica* decision, and identifies the salient distinctions between copyright law, design patent law, and trade dress law as they apply to a product design.

Lanard involves toy chalk holders made to look and function like pencils. Since 2011, Lanard had been making and selling one such product, the "Lanard Chalk Pencil," to national distributors including Dolgencorp LLC (parent of Dollar General) and Toys R' Us ("TRU"). Lanard owned patent registrations for its design, as well as a copyright for a work entitled "Pencil/Chalk Holder." In 2012, Ja-Ru, Inc. ("Ja-Ru") released a similar toy chalk pencil holder that used the Lanard Chalk Pencil as a design reference. By 2013, Dolgencorp and TRU had stopped ordering the Lanard Chalk Pencil in favor of Ja-Ru's product...

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