

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 99-1404

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E-Z Implements, Inc.,  
a Minnesota corporation,

Appellant,

v.

Marv Haugen Enterprises, Inc.;  
Virnig Manufacturing, Inc.,

Appellees.

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Appeal from the United States  
District Court for the  
District of Minnesota.  
[UNPUBLISHED]

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Submitted: November 17, 1999

Filed: December 29, 1999

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Before WOLLMAN, Chief Judge, LAY, and BOWMAN, Circuit Judges.

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PER CURIAM.

E-Z Implements, Inc. appeals from the district court's<sup>1</sup> grant of summary judgment in favor of defendants Marv Haugen Enterprises, Inc. and Virnig Manufacturing, Inc. in its action for trade dress infringement under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Having considered the record and the parties'

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<sup>1</sup>The Honorable David S. Doty, United States District Judge for the District of Minnesota.

submissions on appeal, we agree with the district court that E-Z Implements has presented no evidence that the trade dress of its product, the E-Z Digger, is nonfunctional, as is required for trade dress protection under the Lanham Act. See Insty\*Bit, Inc. v. Poly-Tech Indus., Inc., 95 F.3d 663, 667 (8th Cir. 1996) (stating that trade dress is protected only when it is primarily nonfunctional). Accordingly, the judgment is affirmed. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.