

Further examples . . .

TIDE	Laundry detergent
THE STORK CLUB	Restaurant
GOOGLE	Internet search service
SNAKELIGHT	Light with a flexible neck
CLOROX	Bleach
STREETWISE	Street maps
SUPREME	Vodka
PLAYBOY	Men's magazine
NO NAME	Meat and other food products
BAIKALSKAYA	Vodka from Lake Baikal region in Russia
KODAK	Photographic film
GLOW	Fragrance, shower gel, body lotion

BROCK OVEN PIZZA	Frozen pizza
CITIBANK	Banking services
ODOL	Mouthwash
MORNINGSIDE	Financial services
NUMBER ONE IN FLOOR CARE	Vacuums
MARCH MADNESS	Annual basketball tournament
SPEEDY	Bail bond services
BEAR	Cold weather outerwear
HOTELS.COM	services . . . temporary lodging . . .
QUANTUM	Health club
VIAGRA	Erectile dysfunction drug
928, 924, 944, 911, 911S, and 911SC	Automobile model numbers

Overview – Trade Dress

- *Two Pesos* (1992) Trade dress may be inherently distinctive and protectable without a showing of secondary meaning
 - Rejects 2d Circuit view that unregistered trade dress requires a showing of secondary meaning even if it is inherently distinctive
- *Qualitex* (1995): Trade dress that consists of a color alone cannot be inherently distinctive and must have secondary meaning
- *Samara Bros.* (2000):
 - Product-packaging trade dress can be inherently distinctive and does not require a showing of secondary meaning
 - Product-configuration trade dress cannot be inherently distinctive and requires a showing of secondary meaning
 - Partially accepts 2d Circuit view?

Two Pesos, Inc. v. Taco Cabana, Inc. (1992)

- Footnote 1: “‘Trade dress’ is the total image of the business. Taco Cabana’s trade dress may include the shape and general appearance of the exterior of the restaurant, the identifying sign, the interior kitchen floor plan, the decor, the menu, the equipment used to serve food, the servers’ uniforms and other features reflecting on the total image of the restaurant.”



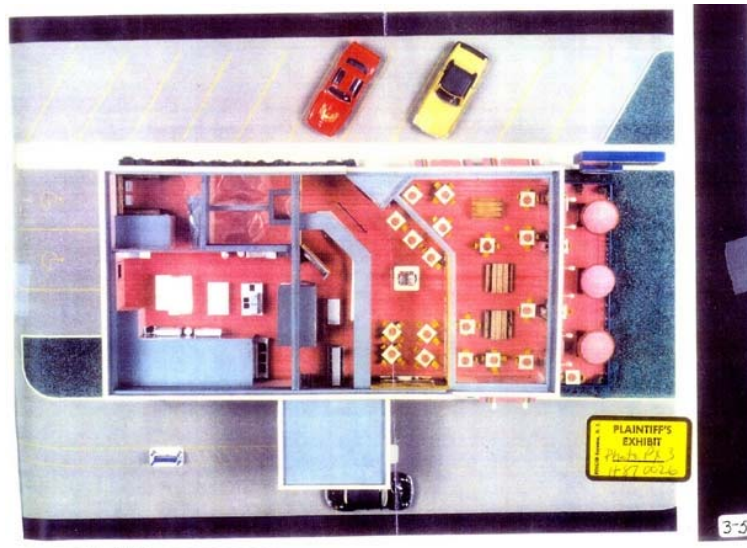
Two Pesos, Inc. v. Taco Cabana, Inc. (1992)



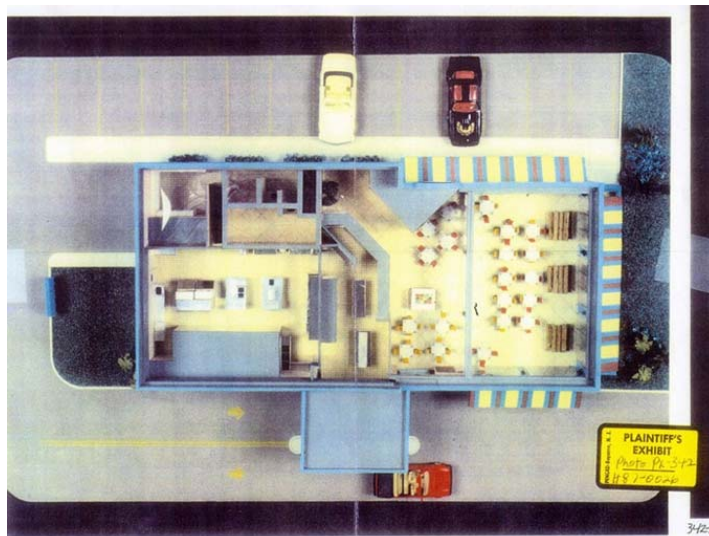
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- “There is no persuasive reason to apply to trade dress a general requirement of secondary meaning which is at odds with the principles generally applicable to infringement suits under § 43(a).”

Qualitex Co. v. Jacobson Products Co., Inc. (1995)

- Can “color alone” be a trademark?
- Definition of “trademark” in Lanham act?
 - Restrictive? (shape, sound, fragrance)
- Status of color as a trademark
 - If it obtains secondary meaning?
 - If it does not?
 - Can color be inherently distinctive?
 - What if the color has functional characteristics?
 - Interaction with patent law?

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Leading the industry in fit, performance and durability, **Sun Glow® Press Pads** are consistently used by more award-winning dry cleaning plants, by a margin of 8 to 1, than any other press pad on the market.

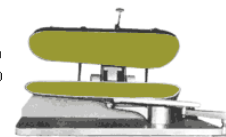


SUN GLOW® NOMEX® GRID PLATES

In 1995, Qualitex introduced the Sun Glow® Nomex® Grid Plate: the perfect complement to our Sun Glow® Press Pads.

Designed for superior performance, with a scientifically engineered metal baffle, Sun Glow® Nomex® Grid Plates will improve your finishing quality and efficiency by:

- reducing moisture and condensation
- virtually eliminating shine, moiré and double seam impressions
- evenly dispersing steam
- providing unsurpassed durability



Qualitex Co. v. Jacobson Products Co., Inc. (1995)

- Jacobson's counter-arguments
 - Shade confusion
 - Courts can make these distinctions
 - Limited supply of colors
 - Functionality doctrine
 - No need for color alone to be a trademark – it can be part of a trademark and producers can also rely on trade dress
 - trademark is more helpful than trade dress
- Test for a functional characteristic
 - Traditional rule – functional design
 - essential to the use or purpose, OR
 - affects the cost or quality
 - Aesthetic functionality
 - if exclusive use would put competitors at a significant non-reputation-related disadvantage
- See TrafFix
- Functional use of color:
 - Black for a boat's outboard motor; green for farm machinery