



Identity & Origin
Trademark

Distinctiveness in Trade Dress

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Konomark
Most rights sharable

source

product design ...

inherently distinctive	fanciful arbitrary suggestive		misdescriptive		inherently distinctive product packaging
can acquire distinctiveness	merely descriptive	primarily geographically descriptive	deceptively misdescriptive	non-inherently distinctive product packaging product design color	primarily a surname
unprotectable	generic	primarily geographically deceptively misdescriptive	deceptive	functional	names/likenesses of living people without consent gov't symbols

Wal-Mart v. Samara “a line of spring/summer one-piece seersucker outfits decorated with appliques of hearts, flowers, fruits, and the like”



Disney



Carters



New Potatoes



Land's End

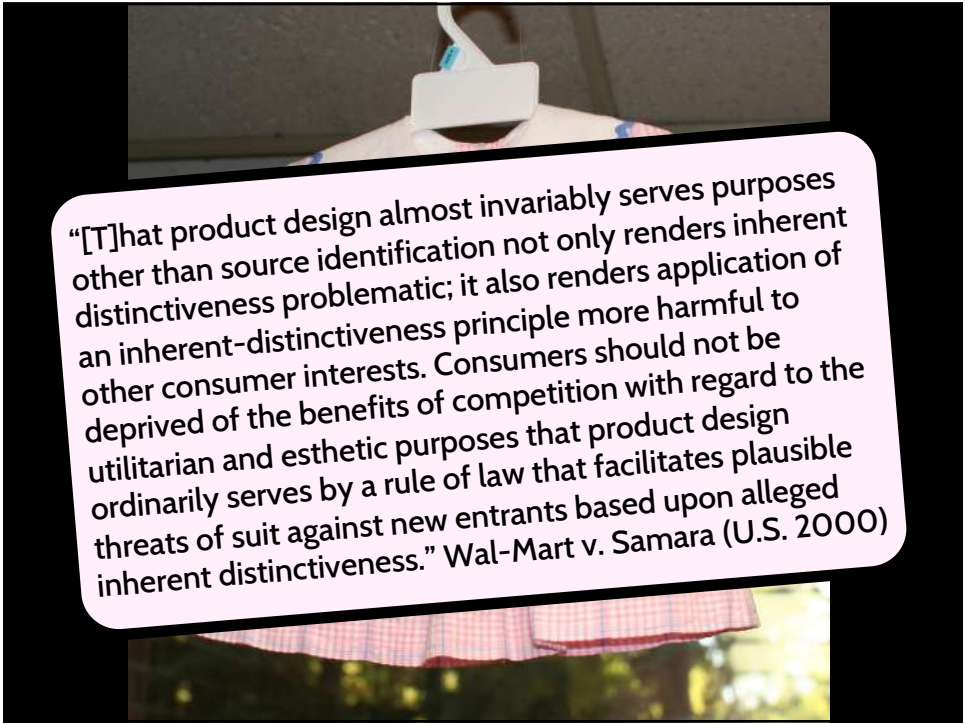


Mon Petit

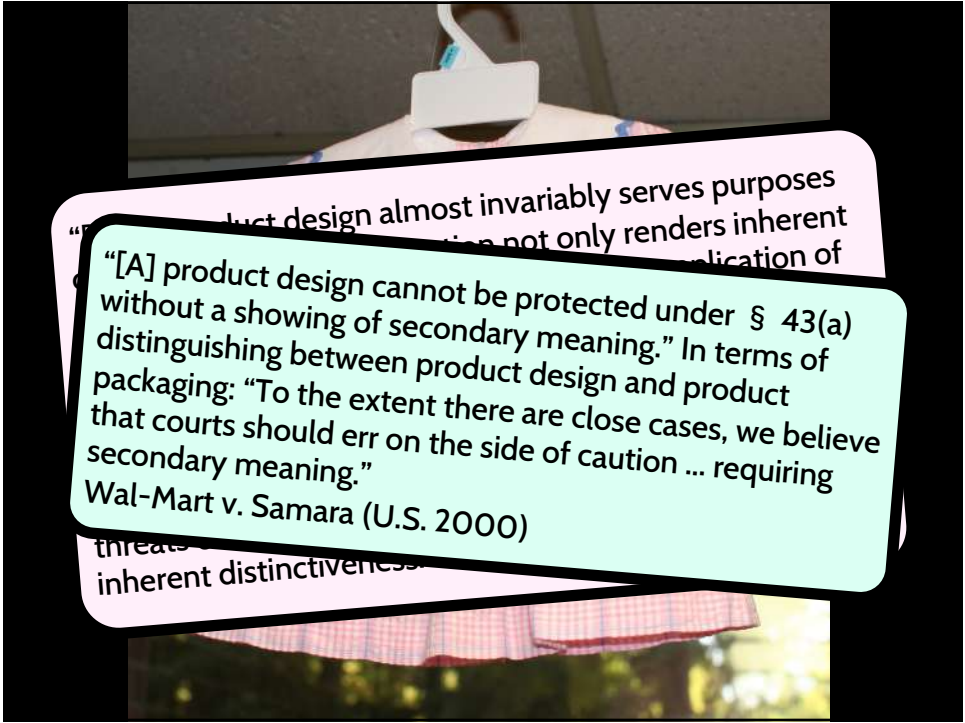


Homespun Heaven





"[T]hat product design almost invariably serves purposes other than source identification not only renders inherent distinctiveness problematic; it also renders application of an inherent-distinctiveness principle more harmful to other consumer interests. Consumers should not be deprived of the benefits of competition with regard to the utilitarian and esthetic purposes that product design ordinarily serves by a rule of law that facilitates plausible threats of suit against new entrants based upon alleged inherent distinctiveness." Wal-Mart v. Samara (U.S. 2000)



"[A] product design cannot be protected under § 43(a) without a showing of secondary meaning." In terms of distinguishing between product design and product packaging: "To the extent there are close cases, we believe that courts should err on the side of caution ... requiring secondary meaning."
Wal-Mart v. Samara (U.S. 2000)

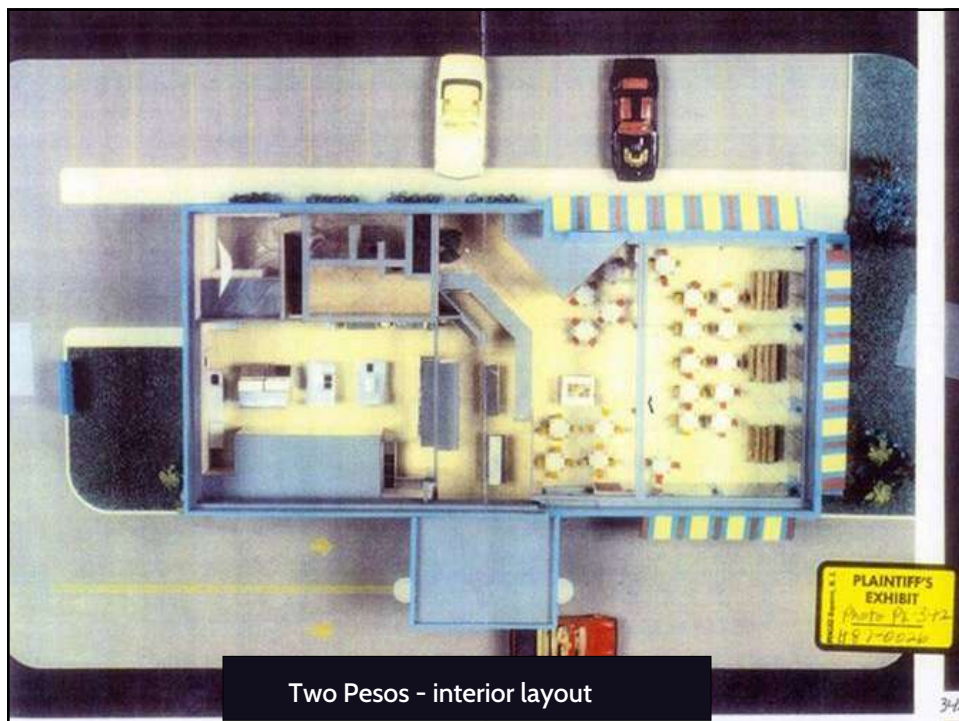
a “tertium
quid”...







Taco Cabana Pesos - interior layout



Two Pesos - interior layout

