



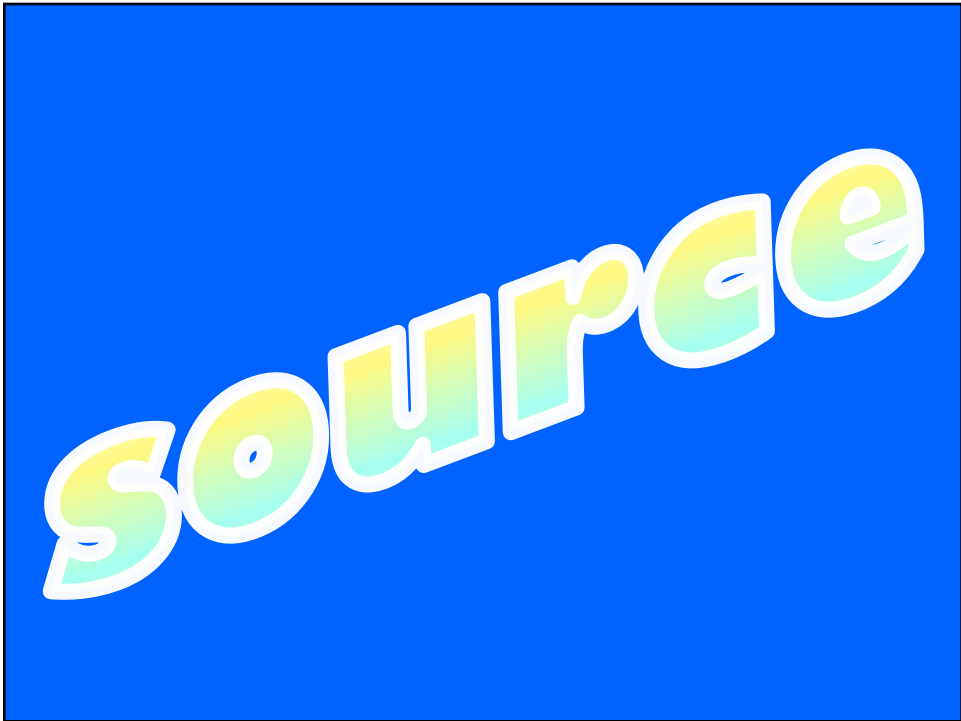
Non-Word Marks, Colors, and Trade Dress

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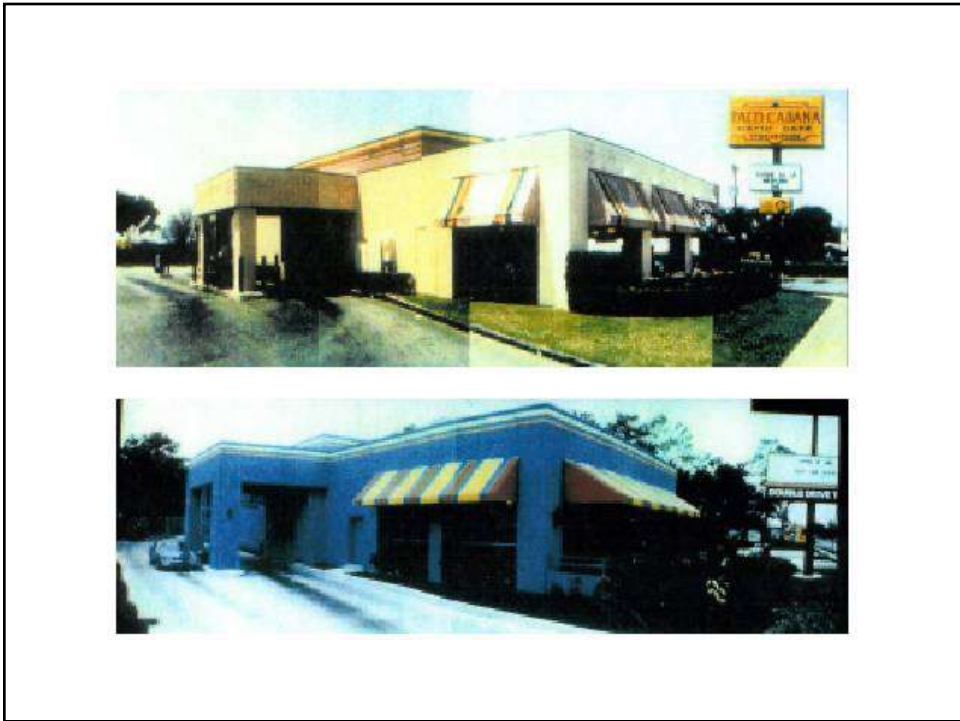
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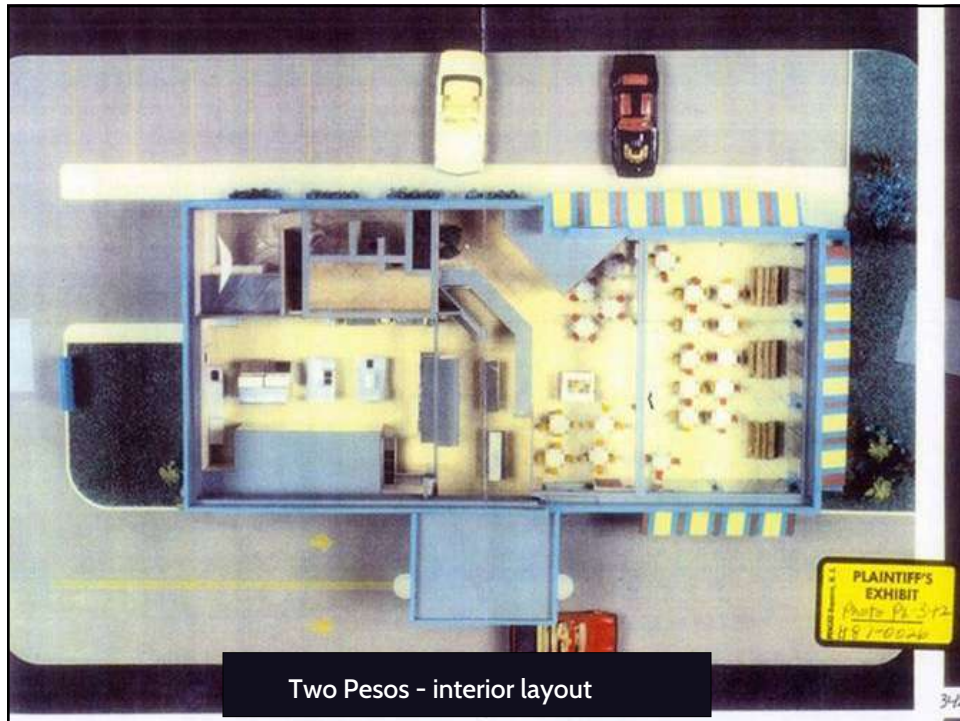








Taco Cabana Pesos - interior layout



Two Pesos - interior layout





Taco Cabana v. Two Pesos (5th Cir. 1991)

Arguing that simply “distinctive” trade dress is not enough, Two Pesos cites error in the district court’s failure to address the quality of inherence. We find no reversible error.

The district court instructed the jury as follows:

Distinctiveness is a term used to indicate that a trade dress serves as a symbol of origin. If it is shown, by a preponderance of the evidence, that Taco Cabana’s trade dress distinguishes its products and services from those of other restaurants and is not descriptive and not functional, then you should find that Taco Cabana’s trade dress is inherently distinctive.

While the district court might have achieved greater semantic clarity by separately addressing distinctiveness and inherent distinctiveness, the instruction as a whole properly guided the jury as to the elements of inherent distinctiveness. A distinctive trade dress that is neither descriptive nor functional is ipso facto inherently distinctive.