

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TWO PESOS, INC. v. TACO CABANA, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 91-971. Argued April 21, 1992—Decided June 26, 1992

Respondent, the operator of a chain of Mexican restaurants, sued petitioner, a similar chain, for trade dress infringement under §43(a) of the Trademark Act of 1946 (Lanham Act), which provides that "[a]ny person who . . . use[s] in connection with any goods or services . . . any false description or representation . . . shall be liable to . . . any person . . . damaged by [such] use." The District Court instructed the jury, *inter alia*, that respondent's trade dress was protected if it either was inherently distinctive—*i. e.*, was not merely descriptive—or had acquired a secondary meaning—*i. e.*, had come through use to be uniquely associated with a specific source. The court entered judgment for respondent after the jury found, among other things, that respondent's trade dress is inherently distinctive but has not acquired a secondary meaning. In affirming, the Court of Appeals ruled that the instructions adequately stated the applicable law, held that the evidence supported the jury's findings, and rejected petitioner's argument that a finding of no secondary meaning contradicted a finding of inherent distinctiveness.

Held: Trade dress which is inherently distinctive is protectable under §43(a) without a showing that it has acquired secondary meaning, since such trade dress itself is capable of identifying products or services as coming from a specific source. This is the rule generally applicable to trademark, see, *e. g.*, Restatement (Third) of Unfair Competition §13, pp. 37-38, and the protection of trademarks and of trade dress under §43(a) serves the same statutory purpose of preventing deception and unfair competition. There is no textual basis for applying different analysis to the two. Section 43(a) mentions neither and does not contain the concept of secondary meaning, and that concept, where it does appear in the Lanham Act, is a

requirement that applies only to merely descriptive marks and not to inherently distinctive ones. Engrafting a secondary meaning requirement onto §43(a) also would make more difficult the identification of a producer with its product and thereby undermine the Lanham Act's purposes of securing to a mark's owner the goodwill of his business and protecting consumers' ability to distinguish among competing producers. Moreover, it could have anticompetitive effects by creating burdens on the start-up of small business. Petitioner's suggestion that such businesses be protected by briefly dispensing with the secondary meaning requirement at the outset of the trade dress' use is rejected, since there is no basis for such requirement in §43(a). Pp.5-13.

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932 F.2d 1113, affirmed.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed a concurring opinion. STEVENS, J., and THOMAS, J., filed opinions concurring in the judgment.