

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

[Provocative Uniforms, Protectable Trade Dress?](#)

Posted on December 8, 2010 by [Susan Perera](#)

Move over [Collar and Cuffs](#), a new trade dress suit has hit the Texas courts and it is set to rival the Chippendale headlines from earlier this fall. The Texas restaurant, [Twin Peaks](#), recently filed suit against the owner of a new Arkansas restaurant called Northern Exposure. (If you haven't caught onto the innuendos yet think Hooters meets northern lodge.)

In its [complaint](#), Twin Restaurant LLC, owner of Twin Peaks, asserts a claim for infringement of its lodge-like restaurant trade dress which includes Adirondack furniture, mounted taxidermy, and vintage pin-up posters, as well as its uniforms, which consist of red and black buffalo plaid blouses tied at the bust with shorts.

In this case, Twin Restaurants asserts the Northern Exposure restaurant interior uses similar furniture and décor and its uniforms consist of the same red plaid tops and shorts.

Now just as a refresher, to make out a case for trade dress infringement a plaintiff must prove: (1) its trade dress is nonfunctional; (2) its trade dress is inherently distinctive or has acquired distinctiveness; and (3) there is a likelihood of confusion.

So have the facts so far conjured up any memories of a similar suit? If so, you may be on the right track. In 2004 a [Florida district court held](#) that the Hooters uniform was not entitled to trade dress protection because it is functional. Not functional in terms of a practical clothing choice mind you; but, Hooter's admitted its uniforms' "predominant function is to provide vicarious sexual recreation, to titillate, entice, and arouse male customers' fantasies."

Granted the defendant's uniforms in the Hooters case consisted of black tank tops and shorts in comparison to Hooters' orange and white, and this case involves a much clearer case of copying, the same basis for functionality remains.

As the Florida court held, "Hooters cannot monopolize this generic theme any more than an upscale steak



restaurant featuring tuxedo-clad servers could preclude competitors from using the same or similar uniform.”

Based on this precedent, it seems unlikely Twin Restaurants can keep competitors from using the same scantily clad uniform. We will have to wait and see how the Texas federal court will rule on Twin Restaurant’s claim for infringement of its restaurant décor. Again, it appears Northern Exposure’s interior may be a clearer case of copying than the décor at question in the Hooters case. Do you think Adirondack chairs, moose heads, and pin-up posters can be distinctive to the Twin Peaks Restaurant?

In addition to these trade dress claims Twin Restaurants has asserted that Northern Exposure’s use of “Great Steaks, Cold Drinks & Free Scenic Views” infringes its federally registered trademark for “[Eat Drinks Scenic Views](#),” and Northern Exposure’s logo containing two mountains infringes Twin Restaurant’s trademark for [two snow capped peaks](#). For more on the other claims in this suit and the questionable circumstances under which this new-comer restaurant came to be, see Tanya Roth’s post on [Breastaurant Wars](#).

Please share your opinion on these trade dress claims and stay tuned for developments.

