

# *Wal-Mart v. Samara Bros.*

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- What is the mark?
- Does this change the requirements for trade dress?
- If product configuration then descriptive at best
  - *Qualitex*
- What if product packaging?
- What if both?
- What is the Court's concern?



# Trademark – Trade Dress

- *Hypos.*



# Trademark – Trade Dress

*Problem V-4.* Alice Richland, a gourmet chef world-renowned for her chocolate desserts, designs a new line of chocolate products. Called “Chocolate Shells,” these products are made of dark chocolate flavored in special ways with a combination of ingredients Alice hit upon after months of work in her kitchens. The use of the special ingredients imparts a unique flavor to the Shells, and has the additional property of making the usually soft chocolate feel sandy or grainy to the touch. The Shells are made in the shapes of different seashells native to the Florida coast, and each shell is colored in a different, unusual pattern. On the advice of her lawyer, Alice files a trademark application seeking to register each of her shell designs. What aspects of the Shells are entitled to registration? To §43(a) protection?

