

**This Opinion is Not a
Precedent of the TTAB**

Mailed: October 31, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pacific Coast Feather Company

Serial No. 85712273

Clark A. Puntigam of Jensen & Puntigam PS,
for Pacific Coast Feather Company.

Mitchell Front,¹ Managing Attorney, Law Office 102.

Before Kuhlke, Taylor and Masiello,
Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Pacific Coast Feather Company (“Applicant”) seeks registration on the Principal
Register of the mark STRETCHKNIT (in standard characters) for

Mattress pads in International Class 24.²

¹ Mary E. Crawford was the examining attorney responsible for the application prior to briefing.

² Application Serial No. 85712273 was filed on August 24, 2012, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act. Applicant, during prosecution of the application, filed an Amendment to Allege Use, which was accepted on July 3, 2014, claiming first use anywhere and use in commerce since at least as early as August 1, 2013.

The Trademark Examining Attorney has refused registration of Applicant's mark on the grounds that the mark is merely descriptive of a feature or characteristic of the identified goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).³

After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

As an initial matter we note that Applicant, in its appeal brief, states that a second issue before the Board is whether the applied-for mark is generic when used on or in connection with the identified goods. However, a genericness refusal was never made and, accordingly, the only issue before us is whether the designation STRETCHKNIT is merely descriptive of the identified goods. As explained by the Managing Attorney in his brief, the Examining Attorney provided an *advisory* that "in addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source indicator for applicant's goods." Br. unnumbered p. 8, citing the October 25, 2013 Final Office Action. Under those circumstances, the Examining Attorney went on to say, "an amendment to the Supplemental Register can no longer be recommended." *Id.* These statements do not constitute a refusal.

³ The Examining Attorney additionally refused registration under Trademark Act Section 2(a), 15 U.S.C. § 1052(a), on the ground that the proposed mark is deceptive or, alternatively, under Trademark Act Section 2(e)(1), 15 U.S.C. § 1051(e)(1), on the ground that the mark is deceptively misdescriptive of the identified goods; however, those grounds were withdrawn.

Turning then to the merits of this case, a term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

A combination of merely descriptive terms may be registrable if the composite creates a mark with a separate, nondescriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968). “Whether a term which is created by combining two or more unregistrable words may achieve registration depends on whether, in combination, a new and different commercial impression is achieved and/or the term so created imparts a bizarre or incongruous meaning as used in connection with the goods or services.” *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its descriptive significance in relation to the goods or services, the combination results in a

composite that is itself descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

The Managing Attorney maintains that “the proposed mark STRETCHKNIT merely describes a feature of applicant’s goods, namely that applicant’s mattress pads feature a skirt made from a stretchable knit fabric.” Br. unnumbered p. 3. He elaborates that “both the individual components of the mark and the composite result are descriptive of applicant’s goods and they do not create a unique, incongruous or nondescriptive meaning in relation to the goods.” *Id.*

In support of his position, the Managing Attorney has pointed to the definitions of the words “stretch” and “knit,” of which the following were highlighted in his brief. The word “stretch” is defined as “to lengthen, widen, or distend,” “to make taut; tighten,” or “to extend or reach over a distance or area or in a given direction.”⁴ Br. unnumbered p. 4, citing the first Office Action issued September 13, 2012, pp. 5-6. The term “knit” is defined as “a fabric or garment made by knitting.”⁵ *Id.* at pp. 2-4. The Examining Attorney also submitted during prosecution of the application Internet evidence showing that various third-party manufacturers and retailers of mattress pads use the wording “stretch knit” to identify the stretchable and knitted features of their mattress pads, covers, and protectors. Examples include the following (emphasis supplied in brief):

- Suite Sleep offers an “Organic Cotton Knit Mattress Protector” that is made of “soft double

⁴ <http://education.yahoo.com/reference/dictionary/entry/stretch>.

⁵ <http://www.collinsdictionary.com/dictionary/english/knit>.

knit mattress ticking,” and “uses a **stretch knit** cover.” (www.suitesleep.com/category-s/24.htm)⁶

- On its “Mattress Pads, Toppers & Protectors” webpage, The Company Store sells a “Bed Bug Protective Cover,” explaining that “[t]he **stretch-knit** cover creates an impenetrable bite-proof fabric barrier against everything from bed bugs and dust to pet dander and other allergens.” (www.thecompanystore.com/bed-essentials/mattress-pads-protectors/)⁷
- FloBed explains that its mattress covers “are made of Organic Cotton European Stretch Knits quilted to Organic Natural Wool, a bedding wonder.” The website advises “[w]hat to look for in your mattress cover” includes **Stretch knit** to allow mattress to conform to your body.” (www.flobeds.com/information.natural-organic/covers.htm)⁸
- Organic Comfort Zone sells an “Organic Cotton **Stretch Knit** Mattress Cover,” explaining that, “[u]nlike many other organic cotton **stretch knits** which only feature the top layer as organic, our **stretch knit** does not contain polyester on the bottom or in the center.” ([www.tomorrowworld.com/Organic-Cotton-Stretch-Knit-Mattress-Cover ...](http://www.tomorrowworld.com/Organic-Cotton-Stretch-Knit-Mattress-Cover...))⁹
- Target sells a “**Stretch Knit** Zip Allergy Mattress Cover.” (www.target.com)¹⁰
- The Clean Bedroom and Amazon offer a “Naturally Organic Stretch Knit Mattress Pad,” explaining that “[t]his stretchable mattress pad

⁶ October 25, 2013 Final Office Action, pp. 10-11.

⁷ *Id.* at pp. 7-9.

⁸ *Id.* at p. 21.

⁹ *Id.* at p. 23.

¹⁰ *Id.* at p. 16.

is made of an organic jersey fabric designed to cover your mattress in soft organic luxury,” and that “[t]he extra long length fits a dorm mattress.”

(www.thecleanbedroom.com; and www.amazon.com)¹¹

- The Clean Bedroom, Yahoo! Shopping and EcoSleep websites all offer Suite Sleep’s “Organic Cotton **Stretch Knit** Mattress Pad.” The Clean Bedroom explains that “[t]his mattress pad ... **stretches** to fit your luxurious organic mattress,” and Yahoo! notes that “[t]his lovely mattress pad is made from an organic cotton jersey **knit**, which **stretches** to fit your mattress.”

(www.thecleanbedroom.com, www.shopping.yahoo.com/969373866 and <http://ecosleepshop.com>)¹²

- Sylvane offers “AllerSoft Mattress Protectors – **Stretch Knit**,” and describes the product as a “100% polyester stretch knit mattress protector from AllerSoft,” and mentions that “AllerSoft’s silky soft **stretch knit** mattress protector is made with a breathable urethane inner membrane...”

(www.sylvane.com/allersoft-stretch-knit-mattress-protectors.html)¹³

- QVC offers a “Cannon Terry Cloth CKing Mattress Pad w/ **Stretch Knit** Skirt.”

(www.qvc.com...)¹⁴

- Google Shopping advertises various “**Stretch Knit**” mattress and box spring covers.

(www.google.com)¹⁵

¹¹ April 4, 2013 Office Action, pp. 27-34.

¹² October 25, 2013 Final Office Action, pp. 14 and 5.

¹³ *Id.* at pp. 2-3.

¹⁴ *Id.* at p. 25.

¹⁵ April 4, 2013 Office Action, pp. 20-22.

The examining attorney also provided evidence demonstrating that “Stretch Knits,” are a type of fabric, as summarized in the following excerpts:

- Trim & Fabric website (www.trimfabric.com) offers a variety of “**Stretch Knit Fabric**.”¹⁶
- Nancy’s Notions website (www.nancynotions.com) offers a variety of “**4-way Stretch Knits**.”¹⁷
- An article from the A&E *Technical Bulletin*, titled “Sewing **Stretch Knit Fabrics**,” discussing the best stitching methods, thread types and sizes, and seam margins for use with “**stretch knit fabrics**.” (<https://docs.google.com/viewer?a=v&q=cache:FqBxGC6L50J:www.amefird.com>)¹⁸

We find this evidence highly persuasive. Not only does each element of the mark have descriptive significance as shown by the dictionary definitions, but the record establishes that the combination “stretch knit” is used in the mattress pad industry to describe the stretchable and knitted features of the fabrics from which mattress pads are fashioned. The absence of a space between the terms “Stretch” and “Knit” in Applicant’s mark does not eliminate the descriptive nature of the mark. *See In re Cox Enterprises Inc.*, 82 USPQ2d 1040, 1043 (TTAB 2007) (“THEATL is simply a compressed version of the descriptive term THE ATL without a space between the two words. Without the space, THEATL is still equivalent in sound and impression to THE ATL and is equally descriptive of applicant’s goods.”).

We are not persuaded by Applicant’s arguments to the contrary. More particularly, Applicant asserts that, in connection with mattress pads, the “term

¹⁶ April 4, 2013 Office Action, pp. 2-5.

¹⁷ *Id.* at. 17-19.

¹⁸ *Id.* at pp. 6-9.

‘stretch’ means to widen or lengthen, while the definition of ‘knit’ is to join closely together,” and that “there is conflict between the two definitions.” Br. p. 2. Applicant thus concludes that there is no common understanding of the combined term STRETCHKNIT because “[c]ombining those two terms together in a single term does not produce an immediate understanding as to what the single term means, particularly when the specific goods are considered, e.g. mattress pads.” *Id.* The problem with this argument is that descriptiveness is considered in relation to the relevant goods. The fact that the term “knit” may have other meanings in other contexts is simply not controlling on the question of descriptiveness now before us. *See In re Chopper Indus.*, 222 USPQ2d 258, 259; *In re Bright-Crest*, 204 USPQ at 593. Here, the term “knit” clearly refers to a fabric. Indeed, the product packaging Applicant submitted as its specimen of use describes the goods as having a “[s]uperior skirt, with 4-way stretch” and as being made of “Luxurious Baroque Double Knit Fabric.” Such usage by Applicant confirms the descriptive significance of the separate terms.

Moreover, and contrary to applicant’s contention, when the designation STRETCHKNIT is viewed in connection with the identified mattress pads, there is nothing in the mark which is incongruous, nor is there anything which would require the gathering of further information in order for the merely descriptive significance thereof to be readily apparent to prospective purchasers of the goods. *See, for example, In re Abcor Development Corp., Inc.*, 588 F.2d 811, 200 USPQ 215 (CCPA) (Rich, J., concurring) [GASBADGE described as a shortening of the name

“gas monitoring badge”]; and *Cummins Engine Co., Inc. v. Continental Motors Corp.*, 359 F.2d 892, 149 USPQ 559 (CCPA 1966) [TURBODIESEL held generically descriptive of engines having exhaust driven turbine super-chargers]. That is, the combination of the words “stretch” and “knit” fails to create a new and distinct commercial impression.

Lastly, Applicant’s assertion that the designation “Stretchknit’ is not relevant to the basic purpose of a mattress pad” clearly is belied by the evidence of record.

We conclude that when applied to Applicant’s goods, the designation STRETCHKNIT immediately describes, without the need for any kind of multi-step mental reasoning, a characteristic of the identified “mattress pads,” namely that they feature a skirt made of stretchable knitted fabric.

Decision: The refusal to register STRETCHKNIT pursuant to Section 2(e)(1) of the Trademark Act is affirmed.