

<p>This Opinion is Not a Precedent of the TTAB</p>

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bedgear LLC

Serial No. 86690878

Leo G. Lenna of Sorrell Lena & Schmidt LLP,
for Bedgear LLC.

Kathleen M. Vanston, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

Before Bergsman, Greenbaum and Hightower,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Bedgear LLC (“Applicant”) seeks registration on the Principal Register of the
mark INDEPENDENT SUSPENSION (in standard characters) for

Mattresses and parts thereof, mattress foundations and
parts thereof, mattress toppers, pillows, back rest pillows,
kids pillows and sleeping bags in International Class 20.¹

¹ Application Serial No. 86690878 was filed on July 13, 2015, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as May 21, 2015.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark is merely descriptive of the identified goods. In this regard, the Trademark Examining Attorney submitted evidence showing that spring coiled and pocket spring mattresses are constructed so that each coil or spring is isolated from those adjacent to it so that the mattresses have an independent suspension.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. Applicable Law

Section 2(e)(1) of the Trademark Act provides for the refusal of registration of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them." 15 U.S.C. § 1052(e)(1). A term is merely descriptive of goods or services within the meaning of Section 2(e)(1) "if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). *See also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (quoting *Estate of P.D. Beckwith, Inc. v. Comm'r*, 252 U.S. 538, 543 (1920) ("A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of the goods or services related to the mark.'")), *cited*

with approval in In re TriVita, Inc., 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

The determination of whether a mark is merely descriptive must be made “in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *Bayer Aktiengesellschaft*, 82 USPQ2d at 1831 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978)). In other words, the question is not whether someone presented only with the mark could guess the goods listed in the identification of goods. Rather, the question is whether someone who knows what the goods are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *Abcor*, 200 USPQ at 218. In addition, it is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

II. Analysis

The Variety Bedding web page, submitted by the Examining Attorney, lists four general types of mattresses that currently are available: spring coil, pocket coil, memory foam, and latex. Of these, spring coil and pocket coil mattresses are

manufactured so that each coil or spring is separated and moves independently from the ones adjacent, resulting in springs and coils that last longer than traditional innersprings, and reduced partner disturbance.²

With this background in mind, the Examining Attorney asserts that the term INDEPENDENT SUSPENSION describes a significant feature or characteristic of Applicant's identified goods, namely, that they contain coils or springs that move or flex independently and provide a particular type of support. As evidentiary support, the Examining Attorney submitted Internet screenshots demonstrating that others in the relevant industry use the entire term "independent suspension" to refer to mattresses that feature springs or coils that move or flex independently.³ For example (emphasis supplied):

- With respect to spring coil and pocket coil mattresses, the above-mentioned Variety Bedding web page explains: "Since each coil/spring is isolated from its neighbor, the mattress effectively has **independent suspension**, which means the springs last longer and more importantly, partner disturbance is almost entirely eliminated"⁴
- A March 31, 2015 article entitled "How to choose the perfect mattress," posted on the property24 website, explains that one advantage of an innerspring mattress is "Minimum partner disturbance – Since the coils are isolated from their neighbors, innerspring mattresses offer **independent**

² www.varietybedding.com/mattress-types, 9 TTABVUE 14-15 (November 22, 2016 Denial of Request for Reconsideration).

³ Some of the Examining Attorney's Internet evidence comes from foreign sources. Although reliance on such evidence may be appropriate in some instances, we find these Internet sites not to be relevant because they do not appear to be directed to consumers in the United States. Cf. *Bayer Aktiengesellschaft*, 82 USPQ2d at 1835 ("Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark.").

⁴ www.varietybedding.com/mattress-types, 9 TTABVUE 14-15 (November 22, 2016 Denial of Request for Reconsideration).

suspension, which means that partner disturbance is almost entirely eliminated.”⁵

- The Froli Systems website touts the benefits of the “FROLI box-spring system” with “[i]ndividual spring elements [that are] firmness adjustable for a customized feel,” explaining that “[a]s each spring flexes independently, the effect is one of **independent suspension**, superior to any traditional mattress/box spring combination.”⁶
- The web page for It’s About Sleep, a mattress retailer, describes “The World Luxury Montpellier Luxury Firm” mattress collection, which features “858 individually wrapped coils [which] allow for an **independent suspension** to adjust to your every move.”⁷
- The web page for Aphostrom, another mattress retailer, states: “Aphostrom’s mattress range is based on the conventional suspension with ‘Bonnel’ type springs, the **independent suspension** of ‘pocket springs,’ the ‘Latex’ and ‘memory foam.” Among the various mattresses are the “Princessa,” a “[n]on-turn mattress with double ‘Pocket’ type spring units for full **independent suspension** and support,” the “Anassa,” an “[e]xcellent mattress with **independent suspension** (Pocket Springs) which embraces softly and gently the body in all sleeping positions,” and the “Galini,” a “[c]omfortable mattress with **independent suspension** (pocket springs).”⁸
- The Mattress Expert website, which provides “Mattress Advice & Sales,” posted on September 13, 2014 a response to a query from a mattress shopper concerning the differences between hotel mattresses and those offered to the general public: “What made you sleep so well is not that mattress, specifically, but that it is a Beautyrest by Simmons. Every Beautyrest uses an individually pocketed coil system, where the coils all move independently from one another. This **independent suspension**

⁵ www.property24.com/articles/how-to-choose-the-perfect-mattress, 6 TTABVUE 4 (November 22, 2016 Denial of Request for Reconsideration).

⁶ www.nickleatlantic.com, 9 TTABVUE 6-7 (November 22, 2016 Denial of Request for Reconsideration).

⁷ www.itsaboutsleeper.com/king-koil-world-luxury-montpellier-luxury-firm, 7 TTABVUE 6 (November 22, 2016 Denial of Request for Reconsideration).

⁸ www.aphostrom.com, 8 TTABVUE 6 (November 22, 2016 Denial of Request for Reconsideration).

type of support contours to your body and maintains the natural alignment of your spine.”⁹

Based on the foregoing, we have no doubt that consumers who see the proposed mark INDEPENDENT SUSPENSION, used on the mattresses identified in the application, immediately would understand that the mattresses feature a type of support containing springs or coils that move and flex independently from their neighbors. Accordingly, the proposed mark is merely descriptive of the identified goods. *See Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (“Moreover, a mark need not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper ‘if the mark is descriptive of any of the [services] for which registration is sought.’”) (citing *Stereotaxis*, 77 USPQ2d at 1087).

We do not find persuasive Applicant’s arguments that consumers who see the words “independent suspension” will think of cars rather than bedding, thus rendering the proposed mark suggestive and incongruous. As stated above, we must consider the meaning of a term in relation to the identified goods, not in the abstract. *See Bayer Aktiengesellschaft*, 82 USPQ2d at 1831; *Abcor*, 200 USPQ at 218. When consumers encounter the term INDEPENDENT SUSPENSION on Applicant’s identified goods, the evidence supports a finding that they would immediately understand that the mattresses incorporate springs or coils that move and flex independently. That the term “independent suspension” may have another meaning

⁹ mattressexpert.typepad.com/the_mattress_expert/2014/09/simmons-beautyrest-hospitality-hotel-mattress, April 21, 2016 Final Office Action, TSDR p. 9.

when used with automotive products is not controlling. *Bright-Crest*, 204 USPQ at 593.

Finally, although not entirely clear, Applicant also appears to argue that the refusal should be reversed because Applicant was the first to use the term “independent suspension” with bedding products.¹⁰ However, even if this apparent assertion were true,¹¹ the fact that an applicant may be the first or only user of a merely descriptive designation does not justify registration if the only significance conveyed by the term is merely descriptive. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1514 (TTAB 2016); *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1826 (TTAB 2012).

III. Conclusion

For the reasons discussed, we conclude that consumers familiar with Applicant’s identified goods would immediately understand, upon seeing the wording INDEPENDENT SUSPENSION, that the goods feature springs or coils that move and flex independently. *See In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff’d unpub’d*, 871 F.2d 1097 (Fed. Cir. 1989) (if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class). Furthermore, Applicant’s competitors who also might offer similar goods should have the opportunity to use “independent

¹⁰ 11 TTABVUE 4 (Applicant’s Brief).

¹¹ As the Examining Attorney points out, the record does not support this assertion. For example, the posts on The Mattress Expert and the Property 24 websites, discussed above, both predate Applicant’s claimed first use date.

suspension” or variations thereof to explain a significant feature or characteristic of their goods. *See In re Boston Beer Co., L.P.*, 47 USPQ2d 1914, 1920-21 (TTAB 1998), *aff’d*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999); *Abcor*, 200 USPQ at 217 (“The major reasons for not protecting [merely descriptive] marks are ... to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.”). While Applicant urges us to resolve doubt in its favor, on this record, we have no such doubt to resolve.

Decision: The refusal to register Applicant’s proposed mark INDEPENDENT SUSPENSION is affirmed on the ground that it is merely descriptive of Applicant’s identified goods.