

This Opinion Is Not a
Precedent of the TTAB

Mailed: March 9, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re The Trustees of the Crown Acquisitions Discretionary Trust
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Application Serial No. 88666035
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Eric Karich for The Trustees of the Crown Acquisitions Discretionary Trust.

Karen Bush, Trademark Examining Attorney, Law Office 108,
Kathryn E. Coward, Managing Attorney.
—

Before Cataldo, Bergsman and Greenbaum, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

The Trustees of the Crown Acquisitions Discretionary Trust (Applicant) filed an application to register the mark THE LUXURY COLLECTIVE, in standard character form, for “Bed sheets; Blanket throws; Burp cloths; Comforters; Mattress pads; Sleeping bags for babies; Swaddling blankets; Bed blankets; Lap blankets,” in International Class 24.¹ Applicant has disclaimed the exclusive right to use the word “luxury.”

¹ Serial No. 88666035 filed October 23, 2019, under Section 1051(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

The Examining Attorney refused to register Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that THE LUXURY COLLECTIVE is merely descriptive of the identified goods because "[a] feature or characteristic of the goods is that they are LUXURY items [they provide pleasure and comfort] formed in a collection or COLLECTIVE [a number of things considered as one group]. In other words the goods consist of a LUXURY COLLECTIVE."²

To support her refusal, the Examining Attorney submitted dictionary definitions of the words "Luxury" and "Collective."

The AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2016) defines "luxury," inter alia, as follows:

n.

1. Sumptuous or extremely comfortable living or surrounds: *lives in luxury.*
2. a. Something that is not essential but provides pleasure and comfort
- ...

adj.

Providing luxury: *a luxury car.*³

² Examining Attorney's Brief (6 TTABVUE 5).

³ The Free Dictionary (thefreedictionary.com) attached to the February 3, 2020 Office Action (TSDR 5).

The citations we refer to in the examination record are to the USPTO's Trademark Status and Document Retrieval system (TSDR) by page number in the downloadable .pdf format.

The AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE defines “collective,” *inter alia*, as “Assembled into or viewed as a whole.”⁴

The Examining Attorney also submitted one use-based registration for the mark MAKERS COLLECTIVE for, *inter alia*, comforters (Registration No. 5376128)⁵ and three registrations based on foreign registrations for products similar to the goods at issue:

- Registration No. 5024449 for the mark URBAN COLLECTIVE for, *inter alia*, “bed linen, bed skirts, sheets sets, sleeping bag liners, pillowcases, comforters, bed blankets, lap blankets”;⁶
- Registration No. 5477760 for the mark SEAFOLLY COLLECTIVE for, *inter alia*, towels;⁷ and
- Registration No. 5625528 for the mark WILDFIRE TATTOO COLLECTIVE for, *inter alia*, bed covers, bed linen, and bed blankets.⁸

In the August 14, 2020 Office Action, the Examining Attorney submitted copies of 10 registrations incorporating the word “Collective” registered for products other than the goods at issue in this appeal.⁹

⁴ *Id.* at TSDR 6. *See also* MERRIAM WEBSTER DICTIONARY (merriam-webster.com) attached to the August 14, 2020 Office Action (TSDR 5) (“denoting a number of persons or things considered as one group or whole.”); Dictionary.com attached to the August 14, 2020 Office Action (TSDR 6) (“formed by a collection” and “forming a whole: combined”).

⁵ February 3, 2020 Office Action (TSDR 20).

⁶ *Id.* at TSDR 7.

⁷ *Id.* at TSDR 10.

⁸ *Id.* at TSDR 25.

⁹ August 14, 2020 Office Action (TSDR 22-46).

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with an applicant's goods, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). "A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)).

We "must consider the mark as a whole and do so **in the context of the goods or services at issue.**" *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (emphasis added); *In re Calphalon Corp.*, 122 USPQ2d 1153, 1162 (TTAB 2017). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Rather, "the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

This applies to compound marks as well.

In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. ... [I]f ... two portions individually are merely descriptive of an aspect of appellant's goods [or services], the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts,

conveys any distinctive source-identifying impression
contrary to the descriptiveness of the individual parts.

In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

Thus, the issue before us is whether the mark THE LUXURY COLLECTIVE, in its entirety, is merely descriptive when used in connection with the identified goods.

At the outset, we note that Applicant's addition of the term "THE" to the wording "LUXURY COLLECTIVE" adds little, if any, source-indicating significance or otherwise affects the term's descriptiveness. *See In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (holding THE GREATEST BAR merely descriptive of restaurant and bar services; "the definite article THE . . . add[s] no source-indicating significance to the mark as a whole"); *In re The Computer Store, Inc.*, 211 USPQ 72, 74-75 (TTAB 1981) (holding THE COMPUTER STORE merely descriptive of, and the common descriptive name for, computer-related services). *See also In re G. D. Searle & Co.*, 143 USPQ 220 (TTAB 1964), *aff'd*, 360 F.2d 1966, 149 USPQ 619 (CCPA 1966) (holding "THE PILL" a common descriptive name for pharmaceutical preparations in tablet form, and thus does not serve as an indicator of source or origin in applicant). *Cf. In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (WAVE and THE WAVE are virtually identical because "[t]he addition of the word 'The' at the beginning of the registered mark does not have any trademark significance.").

The word "Luxury" (something that provides pleasure or comfort) is merely descriptive of a quality or characteristic of the bedding products for which Applicant seeks registration. In other words, when Applicant purports to use "luxury" in connection with bedding, it immediately conveys that the bedding is an extravagance,

amenity, comfort, indulgence, etc. In addition, Applicant's disclaimer of "luxury" is a concession that the word "luxury" is merely descriptive. *See Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2014 (TTAB 1988) ("By its disclaimer of the word LITE, applicant has conceded that the term is merely descriptive as used in connection with applicant's goods."); *Plus Prods. v. Star-Kist Foods, Inc.*, 220 USPQ 541, 543 (TTAB 1983).

Likewise, the word "Collective" is merely descriptive when used in connection with bedding because it immediately conveys to consumers that the bedding products are part of group or collection of similar products.

When Applicant combines the descriptive terms "Luxury" and "Collective" into the composite mark THE LUXURY COLLECTIVE, the individual terms maintain their descriptive significance because they directly convey that the bedding is a unified collection or grouping of pleasurable, comfortable indulgent products. The composite THE LUXURY COLLECTIVE does not create a nondescriptive meaning. Accordingly, we find that THE LUXURY COLLECTIVE is merely descriptive.

Applicant argues to the contrary that THE LUXURY COLLECTIVE is not merely descriptive because the composite term does not describe any component of bedding.

The term COLLECTIVE does not lead the consumer to immediately recognize the goods that would be associated with this mark. This supports our contention that the term "collective" is not descriptive of any component of bed sheets, blanket throws, comforters, or the like.¹⁰

¹⁰ Applicant's Brief (4 TTABVUE 4).

We disagree because it is not necessary that a term describe all of the purposes, functions, characteristics, or features of a product for us to consider it merely descriptive; it is enough if the term describes one significant function, attribute, or property. *In re Chamber of Commerce*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). THE LUXURY COLLECTIVE immediately conveys that the bedding products are part of a collection of pleasurable, comfortable indulgent bedding. In this regard, we note that Applicant fails to explain what qualities, characteristics or features of the products THE LUXURY COLLECTIVE fails to describe.

Decision: The refusal to register Applicant's mark THE LUXURY COLLECTIVE is affirmed.