

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

Mailed: January 7, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Comfort Revolution, LLC*  
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Serial No. 86029326  
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Michael J. Doherty of Doherty IP Law Group LLC,  
for Comfort Revolution, LLC

Seth A. Rappaport, Trademark Examining Attorney, Law Office 103,  
Michael Hamilton, Managing Attorney.

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Before Taylor, Wolfson and Greenbaum,  
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Comfort Revolution, LLC (“Applicant”) seeks registration on the Principal Register of the mark MEMORY COIL (in standard characters) for  
Mattress toppers, pillows, [and] mattresses  
in International Class 20.<sup>1</sup>

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<sup>1</sup> Application Serial No. 86029326 was filed on August 5, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

The Trademark Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that the applied-for mark merely describes a feature or characteristic of Applicant's goods.

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

### I. Applicable Law

Trademark Act § 2(e)(1) prohibits registration of a mark which is merely descriptive of the applicant's goods or services. A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor*, 200 USPQ at 218; *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). The issue is whether someone who knows what the goods or services are will understand the mark to directly convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent &*

*Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Assn. of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990).

## II. Analysis

Based on the evidence of record, we find that MEMORY COIL is merely descriptive of Applicant's mattress toppers, pillows, and mattresses.

While a combination of merely descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. 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, 1371-2 (Fed. Cir. 2004) ("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.").

In the case at hand, the terms "memory" and "coil" individually have descriptive meanings when used in connection with these goods; together, the term "memory coil" retains this descriptive meaning. The fact that the descriptive term MEMORY COIL is not itself found in the dictionary is not controlling on the question of registrability. *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) (GASBUYER is merely descriptive of providing on-line risk management services in the field of pricing and purchasing decisions for natural gas); *In re Orleans Wines*,

*Ltd.*, 196 USPQ 516, 517 (TTAB 1977) (BREADSPRED for jellies and jams is merely descriptive). The test is whether the merely descriptive components retain their merely descriptive significance in relation to the goods when the mark is considered as a whole; if they do, the resulting combination is also merely descriptive. *See, e.g., In re Oppedahl & Larson*, 71 USPQ2d at 1371-2; *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs, and pillows where the evidence showed that the term “breathable” retained its ordinary dictionary meaning when combined with the term “mattress” and the resulting combination was used in the relevant industry in a descriptive sense).

The submitted dictionary evidence shows that one of the meanings of the term MEMORY is “the capacity of a material, such as plastic or metal, to return to a previous shape after deformation.”<sup>2</sup> The evidence submitted by the Examining Attorney from various websites further shows that the term MEMORY is commonly used in connection with mattresses and pillows to inform consumers that the goods have the capacity to return to their previous shape after use. For example:

1. At <http://www.mattressfirm.com>, MattressFIRM sells “Fabrictech International Luxury Memory Foam” pillows. They are advertised as providing pressure relief and luxurious comfort. Included in the “specs”

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<sup>2</sup> At <http://www.thefreedictionary.com/memory>; attached to Final Office Action dated November 13, 2014.

is the information that the pillows are made “of memory foam [to] provide a plush comfort experience and plenty of pressure relief.”<sup>3</sup>

2. Macy’s advertises 68 items “in Memory Foam Bedding,” including pillows.<sup>4</sup>
3. Nature’s Sleep advertises free shipping on all “memory foam” mattresses and pillows.<sup>5</sup>
4. Costco Wholesale advertises the “Escape” memory foam mattress, touting it as “a great mattress that over time retains its original shape and comfort level” due to the fact that it is constructed with “2 layers of luxurious, premium visco memory foam.”<sup>6</sup>

The Examining Attorney has also submitted copies of third-party registrations for goods that are the same as or similar to those identified in Applicant’s application where the word “memory” has been disclaimed.<sup>7</sup> Third-party registrations featuring goods that are the same as or similar to an applicant’s goods are probative evidence on the issue of descriptiveness of a word or term in the mark, where the relevant word or term is disclaimed. *See Inst. Nat’l des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 1581-82, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re*

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<sup>3</sup> Attached to Final Office Action dated November 13, 2014.

<sup>4</sup> *Id.*, at <http://www1.macys.com>.

<sup>5</sup> *Id.*, at [https://www.google.com/?gws\\_rd=ssl#q=memory+mattresses+pillows&start=10](https://www.google.com/?gws_rd=ssl#q=memory+mattresses+pillows&start=10).

<sup>6</sup> *Id.*, at <http://www.costco.com>.

<sup>7</sup> Attached to Final Office Action dated November 13, 2014.

*Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006). Each of the following registrations includes a disclaimer of the term “memory”:

1. Reg. No. 3273437 MEMORY P.F. for “pillows”;<sup>8</sup>
2. Reg. No. 3717002 MEMORY SENSE for “bedding, namely, mattresses”;<sup>9</sup>
3. Reg. No. 3971744 MEMORY WORKS for “Box springs; Mattresses”;<sup>10</sup>
4. Reg. No. 4339083 CRADLESOFT MEMORY CLOUD for “Beds, mattresses, pillows and bolsters; Mattress cushions; Mattress toppers; Mattresses; Mattresses and pillows”;<sup>11</sup>
5. Reg. No. 4512781 SENSORPEDIC MEMORY CLOUD and Design for “memory foam and fiber filled pillows, mattress toppers and mattresses.”<sup>12</sup>

The dictionary definition and these registrations support the conclusion that consumers would perceive Applicant’s mattress toppers, pillows, and mattresses as having a “memory” component whereby they are able to retain their shape following use, and that the term “memory” is therefore merely descriptive of a feature or characteristic of these goods.

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<sup>8</sup> Issued August 7, 2007; Sections 8 and 15 combined declaration has been accepted and acknowledged.

<sup>9</sup> Issued November 24, 2009.

<sup>10</sup> Issued May 31, 2011.

<sup>11</sup> Issued May 21, 2013.

<sup>12</sup> Issued April 8, 2014.

The definition of COIL includes “a series of connected spirals or concentric rings formed by gathering or winding.”<sup>13</sup> The Examining Attorney argues that Applicant is “providing goods that contain a coil that returns to its original shape after use by a consumer”<sup>14</sup> and in support of his assertion that “coil” is descriptive of such goods, has submitted copies of third-party registrations for the same goods where the word “coil” has been disclaimed.<sup>15</sup> These examples include:

1. Reg. No. 1814946 for the mark PERIMETER COIL for “spring units for mattresses and box springs”;<sup>16</sup>
2. Reg. No. 2304404 POCKET COIL for “mattresses and box springs”;<sup>17</sup>
3. Reg. No. 2970844 FREE COIL for “mattresses and parts therefor; beds and furniture”;<sup>18</sup>
4. Reg. No. 2912053 SUPER POCKETED COIL for “bed springs separately wrapped in textile material, sold as a component part of mattresses”;<sup>19</sup>
5. Reg. No. 2736762 CHIRO COIL for “Sleep products, namely, mattresses, spring mattresses, box springs, mattress foundations”;<sup>20</sup>
6. Reg. No. 4020328 MY COIL for “Mattresses and Box Springs”;<sup>21</sup>

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<sup>13</sup> At <http://www.thefreedictionary.com/coil>; attached to Final Office Action dated November 13, 2014.

<sup>14</sup> 6 TTABVUE 5.

<sup>15</sup> Attached to Final Office Action dated November 13, 2014.

<sup>16</sup> Issued January 4, 1994; renewed.

<sup>17</sup> Issued December 28, 1999; renewed.

<sup>18</sup> Issued July 19, 2005; Sections 8 and 15 combined declaration has been accepted and acknowledged.

<sup>19</sup> Issued December 21, 2004; renewed.

<sup>20</sup> Issued July 15, 2003; renewed.

<sup>21</sup> Issued August 30, 2011.

7. Reg. No. 4258943 KING KOIL COOL CELL for “Beds; Box springs; Mattresses”,<sup>22</sup>
8. Reg. No. 4377595 COOL COIL\* for “mattresses.”<sup>23</sup>

The dictionary definition of COIL and these active registrations support the conclusion that “coils” are components of mattresses, and that the term “coil” is therefore merely descriptive of a feature or characteristic of a mattress.

Applicant argues that the term MEMORY COIL “is not merely descriptive because it is susceptible to multiple connotations and requires imagination and the gathering of further information in order for the relevant public to perceive any significance of the terms as they relate to a significant aspect of Applicant’s product.”<sup>24</sup> The connotation advanced by Applicant regards recuperative benefits allegedly associated with using Applicant’s products: “MEMORY COIL is suggestive of sleeping products that enable consumers to achieve long term sleep, which enhances brain function.”<sup>25</sup> This argument is unpersuasive. There is no record evidence to support Applicant’s argument that its products would be perceived as “enhancing memory.” Rather, actual and prospective purchasers of Applicant’s goods will readily perceive the word “memory” as modifying “coil” and immediately apprehend that Applicant’s MEMORY COIL bedding products contain coils that retain a “memory” of their original position to which they return after decompression.

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<sup>22</sup> Issued December 11, 2012. The registration also includes a disclaimer to the term “Cell.”

<sup>23</sup> Issued July 30, 2013.

<sup>24</sup> 4 TTABVUE 3.

<sup>25</sup> *Id.*

Applicant further argues that there are multiple third-party uses of the term MEMORY COIL in unrelated industries. However, we are concerned with the connotation of the term in connection only with mattress toppers, pillows, and mattresses, which are the goods for which registration is sought. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979) (“[S]ince the question of descriptiveness must be determined in relation to the goods or services for which registration is sought, the fact that a term may have meanings other than the one the Board is concerned with is not controlling on the question.”) (internal citations omitted).

### III. Conclusion

The composite term MEMORY COIL merely describes a feature of Applicant’s goods, namely, that Applicant’s mattress toppers, pillows, and mattresses are constructed from material that includes coils which allow the product to retain a “memory” of its original shape. Accordingly, the term MEMORY COIL is merely descriptive of the goods.

**Decision:** The refusal to register Applicant’s mark MEMORY COIL under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), is affirmed.