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CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Nature's Rest, Inc.

Serial No. 76424153

Brian M. Mattson, Esq. for Nature's Rest, Inc.

Kathleen M. Vanston, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Quinn, Walters and Holtzman, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Nature's Rest, Inc. has filed an application to
register on the Principal Register the mark DOWNLOFT for
"pillows," in International Class 20.¹

The Trademark Examining Attorney has issued a final
refusal to register, under Section 2(e)(1) of the Trademark

¹ Serial No. 76424153, filed June 24, 2002, based on an allegation of a
bona fide intention to use the mark in commerce.

Serial No. 76424153

Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that DOWNLOFT is merely descriptive because "down" refers to feathers and is often used as a pillow filler; that "loft" refers to the thickness of a material such as goose down and, in the context of pillows, refers to pillow thickness; and that the term "down loft" is commonly used to describe an attribute of down-filled goods. In support of her position, the Examining Attorney submitted relevant definitions of "down" as "a covering of soft fluffy feathers; also: these feathers" and of "loft" as "the thickness of a fabric or insulating material (as goose down) - loft-like."²

Additionally the Examining Attorney submitted excerpts of articles retrieved from the LEXIS/NEXIS database and from Internet websites. The following are several examples:

Bed Bath & Beyond has a pillow filled with a synthetic fiber that originates from corn. It is sold as the Natural Balance Pillow. This pillow has a lot of loft and will fluff naturally after being squashed during a night of sleep... [*The Columbus Dispatch*, August 25, 2002.]

"We didn't want traditional down pillows for this crisp space," said Lewis Goetz, a design

² These excerpts are from: www.yourdictionary.com, October 29, 2002.

principal. [*Topeka Capital Journal*, October 26, 2002.]

If you have a down pillow, when you punch into the pillow and pull your hand out, the pillow will stay compressed with your fist print. [*St. Cloud Times*, October 24, 2002.]

... while Springmaid offerings included a pillow with a quilted panel-loft construction and a 100 percent cotton cover. [*HFN The Weekly Newspaper for the Home Furnishing Network*, July 15, 2002.]

The Super Loft and Dual Support pillows will be added to PCF's line of down and feather pillows while three new constructions will be added to the line of synthetic... [*Home Textiles Today*, October 12, 2001.]

This four-sided border system prevents the down from shifting to the edges and bottom of your comforter. Premier stitching patterns allow for the maximum in down loft, while minimizing the down from shifting around the inside of your comforter. [www.downandlinen.com, undated.]

Loft is the technical term for measuring the filling power of down. One ounce of down can support a volume of air ranging from 425 to 700 cubic inches, depending upon its quality. A good average goose down will loft around 550 to 575 cubic inches per ounce. [beddingandbath.com, undated.]

Applicant contends that DOWNLOFT "provides a combination of terms that creates a distinct commercial impression which is not descriptive" (Brief, p. 2); that the Examining Attorney has inappropriately dissected applicant's proposed mark; that DOWNLOFT is, at most, suggestive as it does not convey the exact nature of the goods and it does not indicate the particular thickness of the pillow; and that DOWNLOFT may also suggest that applicant's pillows,

regardless of the material of the pillows, has a resiliency similar to that of a down pillow.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Contrary to applicant's contentions, the evidence clearly establishes that the composite term DOWNLOFT as well as the individual terms DOWN and LOFT are merely descriptive of applicant's goods, pillows. As the record shows, in the

context of pillows, "down" is the feather filling of a pillow and "loft" is the thickness or fluffiness of that feather filling. In the phrase "down loft," "down" modifies "loft" and clearly refers to the thickness of down.

Contrary to applicant's contentions, in the context of pillows, prospective purchasers are likely to perceive applicant's proposed mark DOWNLOFT as merely indicating that the loft of the pillow is created by a filling material of down.

In conclusion, when applied to applicant's goods, the term DOWNLOFT immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods as indicated above. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term DOWNLOFT as it pertains to applicant's goods.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.