

**THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB**

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Bucher

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Nature's Rest, Inc.

Serial No. 76424152

Brian M. Mattson of Patents+TMS for Nature's Rest, Inc.

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

Before Quinn, Bucher and Rogers, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Nature's Rest, Inc. seeks registration on the  
Principal Register for the mark LATEXCORE for "latex  
pillows and latex mattresses."<sup>1</sup>

This case is now before the Board on appeal from the  
final refusal to register on the ground that the term,  
LATEXCORE, is merely descriptive of applicant's goods under  
Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(e)(1).

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<sup>1</sup> Application Serial No. 76424152 was filed on June 24, 2002  
based upon applicant's allegation of a *bona fide* intention to use  
the mark in commerce.

Both applicant and the Trademark Examining Attorney have fully briefed the case. Applicant did not request an oral hearing before the Board.

We affirm the refusal to register.

A mark is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, if it immediately conveys information of significant ingredients, qualities, characteristics, features, functions, purposes or uses of the goods or services with which it is used or is intended to be used. A mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The question of whether a particular term is merely descriptive is not decided in the abstract. Rather, the proper test in determining whether a term is merely descriptive is to consider the mark in relation to the goods for which registration is sought, the context in which the mark is used or is intended to be used, and the possible significance that the mark is likely to have on the average purchaser encountering the goods in the

marketplace. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

The Trademark Examining Attorney introduced into the record seven excerpts from the LEXIS/NEXIS database showing the term "latex core" (or "latex cores") used to describe mattresses and/or pillows:

HEADLINE: "Dunlopillo aims at U.S. with latex mattress line"

The Panal/Harrogate-based firm said it currently exports more than \$6 million worth of **latex cores** for mattress and pillows annually to the U.S. This follows a doubling of sales to North America last year ...

Rubber & Plastics News, June 3, 2002.

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HEADLINE: "Our aching backs"

Your Back, is doing a land-office business selling ergonomic chairs, massage tables and high-priced beds with **latex cores** and organic wool and cotton quilting.

The Philadelphia Inquirer, February 10, 2002.

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HEADLINE: "Spending every waking moment thinking about a new mattress?"

[Graphic caption]: A 6-inch thick **latex core** helps give customers a visual example of Englander's mattress construction.

The Fresno Bee, February 7, 2002.

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HEADLINE: "Making moves"

As well as exporting **latex cores**, toppers and pillows to 70 countries worldwide. It offers an all inclusive door to door delivery service ...

Cabinet Maker, May 11, 2001.

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HEADLINE: "Natura expands collection"

The latex pillow has a solid **latex core** with a layer of wool on top and terry cloth cover...

Home Textiles Today, March 30, 2001.

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HEADLINE: "Are you sleeping comfort?"

\* Do not fold your mattress or store on its end. This will distort the springs and fillings or **latex core**. However, if the mattress gets wet, store it on its side and allow to dry away from direct heat. Do not expose the **latex core** to direct sunlight.

Aberdeen Press and Journal, August 15, 2000.

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HEADLINE: "Keep it clean"

The **latex core** is inhospitable to bacteria, mold, mildew and dust mites, according to the company...

Hotel & Motel Management, January 10, 2000.

In response to this showing, applicant argues that this combination of terms creates a distinct commercial impression:

... Essentially, the evidence the Examining Attorney has provided demonstrates an understanding by the relevant public that a core, or interior, of the pillow or mattress is constructed from latex. However, with respect to Applicant's goods, the relevant public would be required to gather further information to determine the actual characteristics of the goods in view of the mark "LATEXCORE." Specifically, the relevant public would be required to gather additional information regarding the interior of the pillows and/or mattresses to determine whether the interior was actually constructed from latex. Such an exercise of information gathering to reach a conclusion as to the goods indicates that the mark is suggestive of the goods rather than merely descriptive. *In re Nobile* [sic] *Co.*, 225 USPQ 749, 750 (TTAB 1985) (NOBURST held suggestive as opposed to merely descriptive for a product that reduces the likelihood that pipes of a water system in which it is used will burst since the Board did not "believe this conclusion is readily arrived at by merely observing the mark on the goods but that it requires interpretation by the viewer.") (emphasis in original)

However, in the *Noble* case, the Trademark Examining Attorney had not found descriptive uses of the term by competitors, and the Board concluded that the mark "suggests a desired result of using the product rather than immediately informing the purchasing public of a characteristic, feature, function or attribute thereof."

Noble supra at 750. Moreover, applicant apparently misapprehends the law when it argues that the term "latex core" is not descriptive of mattresses and pillows because prospective purchasers would have to investigate to find out whether applicant's mattresses and pillows actually contained a latex core.

With her final refusal to register, the Trademark Examining Attorney attached copies of pages drawn from applicant's own website. These webpages showed applicant's usage of the term "latex core" in the context of discussions of the construction of the upper quilting panels on its latex mattresses as well as in discussions of the comfort provided by its latex pillows:

The Nature's Rest quilting concepts are based [sic] the most successful quilt packages in the US bedding industry. We then make a few modifications to take into account the fact that a *latex core* was involved instead of steel springs...2. High quality super-soft urethane foam – in thin layers, when quilted for use over a *latex core* offer [sic] a comfort and appearance value that will last...

NATURE'S REST **LatexCore** Pillow...Notice the relief in shoulder pressure. The head and neck rest comfortably on the perfect loft offered by this unique combination of latex and fiber. The *Latex center core* insures support and continual comfort for hours and hours of deep restorative sleep.

(applicant's webpages, at <http://www.naturesrest.com>,

**emphasis** supplied)

For all the reasons discussed above, we agree with the Trademark Examining Attorney that the term LATEXCORE immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's goods,

namely, that applicant's pillows and mattresses have a "latex core." Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective purchasers of applicant's goods to readily perceive the mere descriptiveness of the term LATEXCORE as it pertains to applicant's goods. In re Omaha National Corporation, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

*Decision:* The refusal to register the proposed mark as merely descriptive under Section 2(e)(1) of the Lanham Act is hereby affirmed.