

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: November 8, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Major League Baseball Properties, Inc.

Serial No. 77876203

Mary L. Kevlin and Thomas Kjellberg of Cowan, Liebowitz & Latman, P.C. for
Major League Baseball Properties, Inc.

Christopher Buongiorno, Trademark Examining Attorney, Law Office 102 (Karen
M. Strzyz, Managing Attorney).

Before Holtzman, Taylor and Kuczma, Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Major League Baseball Properties, Inc. (“applicant”) filed an application
under § 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), seeking registration of the
mark:

HONORARY BAT GIRL

in standard character form for “conducting a contest relating to cancer awareness,”
as amended, in International Class 41.¹

¹ Application Serial No. 77876203, filed on November 19, 2009.

Registration of the mark was refused under § 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the applied-for mark is merely descriptive of the identified services. When the refusal was made final, applicant appealed and requested reconsideration. After the request for reconsideration was denied, applicant filed a request for remand and suspension of appeal wherein it amended the description of services to add “relating to cancer awareness.” The amendment to the description of services was subsequently entered, the final refusal was maintained and the appeal was resumed.²

Applicant and the examining attorney submitted briefs and applicant filed a reply brief.

A. Descriptiveness

Applicant’s mark was refused registration on the ground that it is merely descriptive of applicant’s contest services. More particularly, the mark is considered to describe the contest prize of serving as an honorary bat girl at a baseball game.³ Applicant contends that the inherent ambiguity and incongruity of its mark in relation to its services of conducting a contest relating to cancer awareness, renders its mark, at most, suggestive of such services.⁴

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act § 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or

² Applicant amended the description of services to add the language “relating to cancer awareness” in its July 8, 2011 Request for Remand and Suspension of Appeal. The amendment was subsequently accepted. See Examining Attorney’s Appeal Brief p. 2.

³ Examining Attorney’s Appeal Brief p. 3.

⁴ Applicant’s Appeal Brief p. 4

services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). The determination of whether a mark is merely descriptive is not made in the abstract; it must be considered in relation to the identified services, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the services because of the manner of its use or intended use. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) citing *Abcor Development Corp.*, 200 USPQ at 217-218.

In determining the descriptiveness of a term or mark comprising more than one element, it is permissible to consider the significance of each element separately in the course of evaluating the term or mark as a whole. *See In re Hotels.com, L.P.*, 573 F.3d 1300, 1301, 91 USPQ2d 1532, 1535, 1537 (Fed. Cir. 2009) (holding HOTELS.COM generic for information and reservation services featuring temporary lodging noting that the Board did not commit error in considering “the word ‘hotels’ for genericness separate from the ‘.com’ suffix”); *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174-75, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004) (holding PATENTS.COM merely descriptive of computer software for managing and tracking the status of database records noting that “the PTO may [separately] consider the meaning of ‘patents’ and the meaning of ‘.com’ with respect to the goods identified in the application.”); and *In re Save Venice N.Y., Inc.*, 259 F.3d 1346, 1352, 59 USPQ2d 1778, 1782 (Fed. Cir. 2001) (holding a mark primarily geographically deceptively misdescriptive for a variety of goods noting that “[i]t is

not erroneous, however, for the examiner to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole.”).

1. Definitions

To assist in determining the significance of the term HONORARY BAT GIRL, we first look to the definitions of the individual words contained therein that were submitted by applicant and the examining attorney:

Honorary:⁵

1. awarded as honor: given, elected, or awarded for outstanding service or distinguished achievements, rather than for the completion of formal educational or legal requirements
2. symbolizing honor conferred: representing the bestowal of an honor or distinction on somebody

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861618596>
02/25/2010 11:44:43 AM

Honorary:⁶

1. An honorary university degree of title is given to honor someone, although they have not earned it the usual way
2. An honorary member of a group is someone who is allowed to join without having the usual qualifications

<http://www.macmillandictionary.com/dictionary/american/honorary> 04/28/2011 12:38:03 PM

The foregoing definitions establish that “honorary” is used to refer to an honor or award bestowed on someone who has not earned it in the usual way or without having met the usual requirements.

⁵ See attachment to February 25, 2010 Office Action.

⁶ See attachment to April 29, 2011 Request for Reconsideration Denied.

The definitions of the word “girl” submitted by both applicant and the examining attorney recognize that “girl” may refer to female children, as well as young women, and is used informally, and sometimes offensively, as a term for a grown woman:

Definitions of Girl:⁷

Girl

-noun

1. a female child from birth to full growth.
2. a young immature woman, especially formerly, an unmarried one.
3. a daughter: *My wife and I have two girls.*
4. *Informal: Sometimes Offensive*, a grown woman, especially when referred to familiarly: *She’s having the girls over for bridge next week.*

http://dictionary.reference.com/browse/girl?fb_xd_fragment#?=&cb=f2b95d447460bbc&r... 3/25/2011

World English Dictionary

-n

1. a female child from birth to young womanhood
2. a young unmarried woman; lass; maid
3. *informal* a sweetheart or girlfriend
4. *informal* a woman of any age

Slang Dictionary

girl definition

⁷ See Exhibit A to applicant’s March 29, 2011 Request for Reconsideration.

1. n.

a woman; a young woman

2. the queen of playing cards. (See also bitch). *What I needed in the last hand was the girl.*

Dictionary of American Slang and Colloquial Expressions by Richard A. Spears, Fourth Edition, Copyright 2007. Published by McGraw Hill.

http://dictionary.reference.com/browse/girl?fb_xd_fragment#?=&cb=f2b95d447460bbc&r... 3/25/2011

Definition of Girl:⁸

1. a female child

There are 12 boys and 15 girls in my son's class.

Little girl: *What a pretty little girl.*

a. a daughter

Mary's two girls still live at home.

2. a female adult, especially a young one. This use is considered offensive by many women.

<http://www.macmillandictionary.com/dictionary/american/girl> 04/28/2011 10:52:29 AM

The record also contains four passages from articles in the *Lexis® US Newspapers and Wires* database showing use of the phrase “girls night out” referencing various adult activities women engage in with other women, including watching baseball games.⁹ Thus, by definition as well as usage, the word “girl” is sometimes used to refer to adult females.

Applicant contends that the term HONORARY BAT GIRL is not descriptive because its contest is only available to females and males over the age of 18 and is therefore not available to “girls.” However, the following definitions of “bat girl,” including the definition submitted by applicant, recognize that “bat girl” has a broader meaning that includes women:

⁸ See attachment to April 29, 2011 Request for Reconsideration Denied.

⁹ See attachments to April 29, 2011 Request for Reconsideration Denied.

Definition of Bat Girl:¹⁰

A girl or woman employed to look after the equipment (as bats) of a baseball team

<http://www.merriam-webster.com/dictionary/bat%20girl>

8/25/2010

Definition of Bat Girl:¹¹

-noun Baseball

A girl or young woman who takes care of the bats and sometimes other equipment of a team.

<http://dictionary.reference.com/browse/bat+girls>

8/25/2010

<http://dictionary.reference.com/browse/bat+girl?r=66> 04/28/2011 10:43:04 AM

The record also shows that female college students at American universities, including Florida State, Clemson, LSU and Texas A&M, the vast majority of which are presumably young women, are recruited to assist the schools' baseball teams as "batgirls."¹²

In view of the foregoing, the term HONORARY BAT GIRL by definition, and use, identifies a female child or adult who receives the honorary title of "bat girl" in connection with a baseball team. The inclusion of the word "honorary" connotes that the honoree does not need to possess the necessary experience or qualifications, and accordingly, will not necessarily perform the actual duties of a "bat girl."

Additional evidence in the record establishes that the manner in which the term HONORARY BAT GIRL has been used by third parties and thus encountered

¹⁰ See Exhibit B to applicant's August 25, 2010 Response to Office Action.

¹¹ Applicant and the examining attorney submitted the same dictionary definition for "bat girl." See attachments to applicant's August 25, 2010 Response to Office Action and the April 29, 2011 Request for Reconsideration Denied.

¹² See attachments to April 29, 2011 Request for Reconsideration Denied.

by customers, is consistent with the meaning of the term HONORARY BAT GIRL described by the foregoing dictionary definitions.

3. Third-Party Contests/Awards/Benefits

It is a common practice for organizations and corporate sponsors to provide the opportunity, through contests or otherwise, to be a “bat girl/boy” for a baseball team. As reflected by the excerpts set forth below, the term “honorary bat girl (or bat boy)” is a title used to identify a person, usually children, selected to receive official recognition as a “bat girl/boy” at a baseball game. The title is often bestowed on the recipient as a contest prize or award which also includes, *inter alia*, team-related activities such as taking the field with the baseball team and interacting with team members, as well as receiving tickets to a baseball game, a personal introduction to the fans and, gifts such as team jerseys and memorabilia:

KFC Bat Girl Contest¹³

Posted: 6/14/2007

KFC Bat Girl Contest

OKLAHOMA CITY, Okla. (June 13, 2007) – The Amateur Softball Association and KFC, the title sponsor of the World Cup of Softball, are offering one lucky fan the chance to be bat girl for Team USA. The winner will take the field with the team during their game in Oklahoma City on Friday, July 13 against the powerhouse squad from China.

...

The lucky winner will receive round-trip airfare (for the winner and her parents or guardians), accommodations at the team hotel, a game day ride on the team bus, a personalized jersey, a team autograph session, dinner with the team and much more.

<http://74.125.93.132/search?q=cache:Ubl9BU7E9rUJ:www.usasoftball.com/news.asp%3Fuid%3D2320+%22bat+girl+contest%22&cd=4&hl=en&ct=clnk&gl=us> 02/25/2010 11:28:01 AM

The Chukars in association with Hertz Car Sales, will hold Hertz Bat Boy contest¹⁴

¹³ See attachment to February 25, 2010 Office Action.

¹⁴ See attachment to February 25, 2010 Office Action.

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FOCUS™ Terms bat pre/1 boy pre/1 contest Search Within Original Results (1 - 6) Co → Advanced...

View: Cite | KWIC + 25 | Full | Custom 3 of 6

Save As Alert | More Like This | More Like Selected Text

Royals' top pick coming to Idaho Falls Idaho Falls Post Register (Idaho Falls, Idaho) June 10, 2004 Thursday (Copy w/ Cite) Pages:

BODY:

... stay in their native countries and not report to their professional teams in the United States.

Bat boy, girl contest planned

The Chukars, in association with Hertz Car Sales, will hold the Hertz **Bat Boy contest** for the 2004 season. Any child ages 9 to 15 is eligible to be a bat boy or girl for a game during the season. Parents can sign up their kids all summer ...

Source: News & Business > /... / > US Newspapers and Wires

Terms: bat boy/girl contest / Edit Search / Support Terms for My Counsel

<http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=FULL&fpDocs=&fpNodeId=&fpCiteReq=&brand=&m=fb561e6c029d9fb6786e645f7763e3&newSt artCite=1&cmCh=0&cmCt=ALLCASES&docnum=3&fmtstr=VKWIC&startdoc=1&wchp=dGLbVtb-zSkAI&md5=ed8f91a46cc5786d993c5d4edda16ff8&locBudTerms=bat+g>

Camden Riversharks Honorary BatBoy/BatGirl¹⁵

Camden Riversharks

2001 PRESENTED BY Wawa 10 SEASONS 2010

OFFICIAL WEB SITE OF THE **CAMDEN RIVERSHARKS**

Campbell's Field Buy Tickets Schedule Advertising Team Store

HONORARY BATBOY/BATGIRL

Become an Honorary Batboy/Batgirl!

Sign up below for a chance to become the Checkers / Bok Bok Fresh Batboy/Batgirl for a 2010 Riversharks Game. Pre-game festivities for the winner will include time on the field and dugout, personal introduction to our fans from our on-field announcer, and a special gift from Checkers / Bok Bok Fresh.

Winners will be selected two (2) weeks before the game they have been selected for and will receive four (4) complimentary tickets to the selected game. Participants must be under 12 years old.

<http://www.riversharks.com/kids/specials.cfm> 09/28/2010 10:57:02 AM

Snyder's Honorary BatBoy/BatGirl¹⁶

¹⁵ See attachment to September 28, 2010 Final Office Action.

¹⁶ See attachment to September 28, 2010 Final Office Action.

The screenshot shows the official website of the Frederick Keys, a Class A affiliate of the Baltimore Orioles. The top banner reads "ROAD TRIP" with the text "HIT THE ROAD WITH MiLB.COM AND PLAN THE PERFECT SUMMER TRIP." and a "LEARN MORE" button. Below the banner is a navigation bar with links: Tickets, Promotions, Schedule, Scoreboard, Stats, Roster, News, Multimedia, Harry Grove Stadium, Kids, Community, Groups, and Sponsorship. The main content area features a "SNYDER'S HONORARY BATBOY/GIRL" contest. The contest is sponsored by Snyder's of Hanover, America's Pretzel. The text says: "Hey Keys Fans! How would you like to be an honorary bat boy or bat girl for a Frederick Keys game? Well Snyder's of Hanover and the Frederick Keys have teamed up to make that happen for some lucky fans this season and here's how to enter." To the right of the contest text is a photo of a group of people. On the left side of the page, there is a "Kids" section with links: Jr. Keys Kids Club, Snyder's Honorary Batboy/Girl, Keyote, Baseball Camps, Pitchers Camp, Anthem Buddies, and Birthdays. Below the "Kids" section is a Twitter logo. On the right side of the page, there is a "CHECK OUT ..." section with a photo of a baseball game.

Here's What You Can Win:

- Early entry into a selected Keys Game to watch batting practice
- A Pregame behind the scenes tour
- An Honorary first pitch
- A piece of Keys Memorabilia
- Four free reserved tickets to a future Frederick Keys game
- Plus you could win a chance for an in-game radio interview by Keys broadcaster Adam Pohl

http://web.minorleaguebaseball.com/team2/page.jsp?ymd=20100615&content_id=11193556&key=team2_t493&text=.jsp&id=t493 09/28/2010 10:58:10 AM

Orioles Honorary Bat Boy/Girl Sweepstakes (undated)¹⁷



Sweepstakes Application

http://docs.google.com/viewer?a=v&q=cache:JSVKIXPunJM:images.giantfood.com/static/full/common/media/savings/promotions/bat-kid-entry-form.pdf+HONORARY+BAT+GIRL&hl=en&gl=us&pid=tl&srcid=ADGEES9H--YXe8xq65aacyxJsmQ44w1F2AxIm0k3MF95x7tVN6OfqWp2GiQh2-Utk_ILVhDQmdP0CWIM7_hrhGswWZwZPYhS9gCScvblAVccSqvLjDODIbjN3mAy2Q0FaTzEnApJ&sig=AHIEtbRXZrh6QoF3vQF21fTinn

Iowa Cubs¹⁸

¹⁷ See attachment to September 28, 2010, Final Office Action.

¹⁸ See attachment to April 29, 2011 Request for Reconsideration Denied.



At Fareway, You're Family

home | company | promotions | news | recipes | shopping | dietitian | contact

Search for:

Weekly Ad

Graduation 2011

Project Homefront

Principal Charity Classic

Tickets

I Cubs Bat Boy/Bat Girl

NASCAR Trip Giveaway

LET'S RIDE Giveaway

Gift Cards

Coupons

Honorary I Cubs Bat Boy/Bat Girl Sweepstakes

Winner's child will have the chance to:

- *Throw one of the first pitches of the game!
- *Have the pitch played live on the video board
- *Name announced on the public address during the game
- *Receive four box seats to the game
- *Receive a t-shirt, an official certificate, and a mini bat




Odds of winning depend on the number of eligible entries received. Any travel expenses are not included. Must be 10 or older to enter for a minor. Winner drawn for home games only.

Official Entry Form: Register to Win!



<http://www.fareway.com/i-cubs-bat-boybat-girl.cfm> 04/28/2011 05:51:23 PM


Chaps Honorary Bat Kid¹⁹



Tickets | Promotions | Schedule | Scoreboard | Stats | Roster | News | Multimedia | Chukchansi Park | Group Outings | Community | Contact Us | Shop

Promotions


- Chaps Brand Seats
- Chaps Honorary Bat Kid





Sweet!

Up to 90% off local eats

See Today's Deal



CHAPS HONORARY BAT KID



CHAPS

Honorary Bat Kid

Calling all fans age 14 and under! How would you like to be an honorary bat boy or bat girl for the Grizzlies? Well, Chaps and the Grizzlies have teamed up this season to make that happen. Fill out an [entry form](#) and take it to the Courtesy Booth on the concourse to be entered for your chance to be a Chaps Honorary Bat Boy or Bat Girl for a game.

Other potential Grand Prizes for the Chaps Honorary Bat Kid Sweepstakes include:

- In-Game Promotions: Be a member of Parker's Party Patrol for a game
- Full Stadium Tour: See the stadium in full operation during a game
- Lineup Card Exchange: Go to the plate with Grizzlies Team Manager Steve Decker as the lineup cards are exchanged
- Field Prep: Work with Chukchansi Park Head Grounds Keeper David Jacinto and learn what it takes to get the field prepared for a Grizzlies Game
- Radio Interview: Go live with Grizzlies Radio Broadcaster Doug Greenwald
- Grizzlies Game Day Meetings: Find out how much preparation goes into putting on 8 games in a row

Two (2) Winners will receive:

- Four (4) tickets to a pre-determined Saturday Home Game
- Grizzlies Gift Pack

¹⁹ See attachment to April 29, 2011 Request for Reconsideration Denied.

http://web.minorleaguebaseball.com/promotions/page.jsp?ymd=20110421&content_id=18075472&vkey=promo_t259&ext=.isp&sid=t259 04/28/2011 05:52:08 PM

Marines²⁰



Home News Photos Units Leaders Marines Family

Home > In the Community > Marine Week Boston

Marine Week Boston Home

SHARE PRINT

Red Sox Marine Appreciation Day a homerun

5/3/2010 By Sgt. Michael S. Cifuentes, Headquarters Marine Corps BOSTON — The Marines took on the Green Monster.

Fenway Park, home of the 37-foot high left field wall known as the "Green Monster," hosted Marines May 3 during the park's Marine Appreciation Day.

The Red Sox home turf recognized and honored the Marine Corps in various ways to include throwing out the first pitch, witnessing the swearing in of 20 Marine prospects, and giving the son and daughter of Maj. Neil Murphy of New York City Public Affairs the privilege of being the **honorary bat boy** and **bat girl** during pregame warm-ups.

<http://webcache.googleusercontent.com/search?q=cache:OwndyFaEeoJ:www.usmc.mil/community/MarineWeekBoston/Pages/RedSoxMarineAppreciationDayahomerun.aspx+HONORARY+BAT+GIRL&cd=16&hl=en&ct=clnk&gl=us>
09/28/2010 10:59:09 AM

Alfred's Auctions, Inc.²¹



on Listings Past Auctions About Us Contact References News/Events

News

NJSSA Bid Calling Contest July 16, 2010

Going, going, gone . . .

Auctioneers sell sports memorabilia to benefit Operation Shoebox New Jersey

BRIDGEWATER — The New Jersey State Society of Auctioneers will hold an auction of sports memorabilia at TD Bank Ballpark on Sunday, Aug. 15 to benefit Operation Shoebox New Jersey.

Among the highlights will be a spectacular Somerset Patriots Experience package which includes a Hospitality Suite For 30 People (food and beverages are not included); throwing out the ceremonial first pitch prior to a game; a chance to be on the field and in the dugout as **Honorary Bat Boy** or **Bat Girl** and a pre-game "Meet and Greet" with Patriots manager Sparky Lyle and Players.

²⁰ See attachment to September 28, 2010 Final Office Action.

²¹ See attachment to September 28, 2010 Final Office Action.

http://webcache.googleusercontent.com/search?q=cache:tuOY_4wvt2oJ:alfredsauctionsinc.com/News+HONORARY+BAT+GIRL&cd=78&hl=en&ct=clnk&gl=us 09/28/2010 11:05:20 AM

The Boston Globe²²

The Boston Globe June 12, 2011 Sunday (Copy w/ Cite) Pages

SECTION: REGIONAL; South; Pg. 6

LENGTH: 860 words

BYLINE: Paul E. Kandarian,

BODY:

... Lauren.' He soon got a job at NStar, where he works as a customer service associate in the billing department. His goal is to raise \$10,000. For information, visit giving.childrenshospital.org.

HONORARY BAT GIRL: Mary O'Sullivan, 11, of Marshfield, a student at Martinson Elementary School, will serve as **honorary bat girl** at Fenway Park Saturday for her work in organizing a 110-member team to ride in today's PMC Kids Ride in Hingham. The team consists of cyclists ages 3 to ...

http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleVaue=&numDocsChked=0&prefFBSel=0&delformat=FULL&fpDocs=&fpNodeid=&fpCiteReq=&expNewLead=id%3D%22expandedNewLead%22&brand=&m=a72648e3d70a338e5b552316e50f110b&newStartCite=1&cmCh=0&cmCt=ALLCASES&docnum=11&fmtstr=VKWIC&_startdoc=1&wchp=dGLzVzt-zStAA&_md5=28a20ec0f

On occasion, the honorary bat girl/boy receives the opportunity to participate in some of the duties of a bat girl or boy such as “help[ing] the regular bat boy take equipment off the field . . . ,” “perform[ing] simple duties on the field such as retrieving bats and supplying baseballs to the umpire,” or “help[ing] bring out some of the equipment.”²³

Hence, it is common practice to combine the word “honorary” with the term “bat girl/boy” to identify the recognition, i.e., the title of “honorary bat girl,” given to an individual in connection with a baseball game. This recognition is frequently given as a contest award accompanied by gifts and/or privileges, which *may* include participation in some of the actual duties of a bat girl/boy. Thus, the public is

²² See attachment to August 9, 2011 Request for Reconsideration Denied.

²³ See *Ledyard girl represents Connecticut fans at Fenway* (attached to September 28, 2010 Final Action); and *Macey's Honorary Bat Kid Sign Up Information Announced and Cries & whispers too interesting to ignore The Republican (Springfield)* (attached to August 9, 2011 Request for Reconsideration Denied).

familiar with, and accustomed to seeing, the term HONORARY BAT GIRL associated with contests in connection with baseball games and will understand this term to be a title bestowed upon a person as part of the contest prize.

3. Applicant's Use of Term

The manner in which applicant uses the term HONORARY BAT GIRL sheds further light on the descriptiveness of this term. Applicant uses HONORARY BAT GIRL as the name of its contest.²⁴ The contest is open to adults of both sexes and is intended to promote cancer awareness. As prescribed by its official rules, “a contestant enters applicant’s HONORARY BAT GIRL contest by answering the question ‘How Do You Go to Bat Against Breast Cancer?’ and describe[s] his or her personal connection to breast cancer in a written essay. That connection could be a personal fight against the disease, or that of a family member, such as a son describing his experience with his mother’s battle with the disease.”²⁵

Applicant contends that HONORARY BAT GIRL is at most suggestive, and not merely descriptive of its services, because “potential customers” would not immediately understand the nature of its services, i.e., conducting a contest *relating to cancer awareness*.²⁶ Applicant’s argument is misplaced. Even if “customers” would not immediately understand the specific nature of applicant’s contest as relating to cancer awareness, this does not mean the term HONORARY BAT GIRL is suggestive. The term conveys an immediate idea of a contest prize or award


²⁴ See applicant’s specimen and 2010 Honorary Bat Girl Contest Official Rules attached as Exhibit A to applicant’s August 25, 2010 Response to Office Action.

²⁵ Applicant’s Appeal Brief p. 8.

²⁶ Applicant’s Appeal Brief p. 4.

which renders it descriptive in the context of applicant's baseball-related contest services.

Due to the asserted inherent ambiguity and incongruity of the mark in relation to applicant's services, applicant further urges that it requires more than a modicum of imagination to divine from the mark itself the nature of the services, which are offered to adult men and women, are related to cancer awareness, and do not include serving as an "actual" bat girl during a baseball game.²⁷ Applicant also argues that its HONORARY BAT GIRL mark is not descriptive because contrary to the inclusion of the word "girl" in its mark, its contest is open to adult women *and* men, neither of which is encompassed by the term "girls."

Evidence of the context in which a mark is used on labels, packages, or in advertising material directed to the goods is probative of the reaction of prospective purchasers to the mark. *Abcor Development Corp.*, 200 USPQ at 218. Applicant's specimen of use featuring a portion of a page from its website demonstrates the significance that the term HONORARY BAT GIRL would have to the average customer or contestant. The title "The Honorary Bat Girl Contest" is located near the top of its webpage specimen underneath the phrase "Going to Bat Against Breast Cancer." Pink cancer ribbons  flank the top right and left hand sides of the page. The background color of the page is pink and features a woman wearing a pink baseball cap and holding a pink bat. The text contains the following language:

²⁷ Applicant's Appeal Brief p. 4.

This year, submit your story and you could win an opportunity to be an Honorary Bat Girl or Boy this Mother's Day (Must be 18 or older to enter). . . . One winner per Major League Baseball team will be selected as Honorary Bat Girl or Boy and will represent his or her favorite Major League Baseball team as an "honorary" bat girl or boy during the Mother's Day Game. . . .

The portion of applicant's website for its 2011 HONORARY BAT GIRL CONTEST submitted by the examining attorney, features images of adult females (no males) identified as "Honorary Bat Girl" and contains similar language regarding the contest:²⁸

Submit your story by April 14, 2011, 12:01 pm ET and you could win an opportunity to be an "Honorary Bat Girl" this Mother's Day. (Must be 18 or older to enter). . . . One winner per Major League Baseball team will be selected to represent his or her favorite Major League Baseball team as an "Honorary Bat Girl" on Mother's Day, May 8, 2011. . . .

The manner in which applicant uses the term it now seeks to register is telling. Specifically, applicant uses the term "Honorary Bat Girl" as a noun and without any explanatory language. Such use necessarily assumes that visitors to its site will comprehend the meaning of the term "Honorary Bat Girl or Boy." Indeed, applicant admits that this term has an "ordinary meaning."²⁹

Applicant's own use of the term in a descriptive manner is strong evidence that the term is descriptive. *See, e.g., In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) ("[applicant's] own submissions provided the most damaging evidence that [the word SCREENWIPE is generic]"); and *In re*

²⁸ See April 29, 2011 Request for Reconsideration Denied pp. 12-15.

²⁹ See Applicant's Appeal Brief p. 10.

Educational Communications, Inc., 231 USPQ 787, 790 (TTAB 1986) (“applicant's own highly descriptive usages of the components of its asserted mark ... is strong evidence of its generic nature”).

That applicant's contest is open to men as well as women, and there is no evidence of any other contest, competition or call for participation with a “girl” designation – except for applicant's HONORARY BAT GIRL contest – that is explicitly opened to women and men of legal age, does not alter the descriptive meaning of the term HONORARY BAT GIRL or transform it into a suggestive mark. While contestants entering applicant's HONORARY BAT GIRL contest may be men or women, the title “Honorary Bat Girl” is bestowed primarily on female candidates identified by the contestants. Females are clearly the target of applicant's contest as evidenced by the name of applicant's HONORARY BAT GIRL contest, the pink color scheme, the fact that the award tickets are for a game played on Mother's Day and the images of only female Honorary Bat Girls on applicant's website.³⁰ Applicant's contest prize consisting of two tickets to attend a professional baseball game played on Mother's Day, an opportunity for the winner to be recognized on the baseball field during the game and pink ribbon team merchandise to wear,³¹ is very similar in nature to the prizes awarded by third parties to

³⁰ According to a *Wikipedia* article submitted by applicant: “The color pink is considered feminine in modern Western countries. . . . Buying, wearing, displaying, or sponsoring pink ribbons signals that the person or business cares about *women*. The pink ribbon is a marketing brand for businesses that allows them to promote themselves with women and identify themselves as being socially aware.” (emphasis added). See Exhibit B to March 29, 2011 Request for Reconsideration.

³¹ See PRIZE section of 2010 Honorary Bat Girl contest Official Rules attached as Exhibit A to applicant's August 25, 2010 Response to Office Action.

honorary bat girl (and boy) contest winners. Thus, HONORARY BAT GIRL would be understood to describe the prize awarded in applicant's contest.

Applicant's argument that HONORARY BAT GIRL is not descriptive of the specific purpose of its contest, i.e., promoting cancer awareness, misses the point. A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973). In view of the common use of the term "honorary bat girl," the meaning of the individual words in this term, and the manner in which applicant uses the term HONORARY BAT GIRL, it is evident that HONORARY BAT GIRL would be understood as describing the prize awarded in applicant's baseball-related contest.

Applicant argues on the one hand that use of the word "girl" in HONORARY BAT GIRL functions in a suggestive manner to convey a "feminine concept" yet on the other hand, argues that "girl" is an offensive term when used to refer to female adults.³² Acceptance of applicant's argument finds applicant in the predicament of having used the offensive word "girl" to evoke a concept of femininity in a contest directed to adult females and males. Rather than suggesting the more complex and unlikely feminine concept espoused by applicant, the plain meaning of the words in the term HONORARY BAT GIRL directly describes the prize to be awarded in connection with applicant's contest.

³² See applicant's Appeal Brief at pp. 6-7.

In an effort to overcome the descriptive meaning of HONORARY BAT GIRL, applicant contends that this term contains a double entendre; that is, HONORARY BAT GIRL has a double connotation one of which is not merely descriptive of its services.³³ In urging this position, applicant undertakes a complicated argument that relies on the marketing slogan GOING TO BAT AGAINST BREAST CANCER that applicant uses in connection with its HONORARY BAT GIRL contest.³⁴ According to applicant, in the context of its services, “Go[ing] to Bat” relates not only to the sport of baseball, it also suggests defending or giving support to the fight against breast cancer. The word BAT in HONORARY BAT GIRL is an extension of the “Go to Bat” idiom, suggesting a person who “goes to bat” – supports the cause – against breast cancer.³⁵

A mark is deemed to be a double entendre only when both meanings are readily apparent from the mark itself. If the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of applicant’s advertising materials, trade dress or other matter separate from the mark itself, then the mark is not a double entendre. *See In re The Place Inc.*, 76 USPQ2d 1467, 1471 (TTAB 2005) (“A mark is not a double entendre if the second meaning is

³³ Applicant’s Appeal Brief pp. 7-10.

³⁴ According to applicant, GOING TO BAT AGAINST BREAST CANCER is a registered trademark of the Susan G. Komen Breast Cancer Foundation, Inc. See Applicant’s Appeal Brief pp. 8-9.

³⁵ See Applicant’s Appeal Brief pp. 9-10.

grasped by purchasers only when the mark is used with ‘other indicia,’ even if that other indicia is itself not merely descriptive.”).³⁶

To explain the alleged double entendre of HONORARY BAT GIRL, applicant points to the marketing slogan GOING TO BAT AGAINST BREAST CANCER used together with HONORARY BAT GIRL on its website. Only when HONORARY BAT GIRL is used in conjunction with GOING TO BAT AGAINST CANCER can the second meaning of the applied-for term be appreciated. Under these circumstances, i.e., where the double meaning of a term can only be appreciated when it is used in a certain context, the term does not constitute a double entendre and retains its descriptive meaning. *In re Wells Fargo & Company*, 231 USPQ 95, 100-01 (TTAB 1986) (applicant argued EXPRESSERVICE was not merely descriptive of its banking services because of a double entendre involving the Old West; Board found consumers associate “Express Service” with Old West imagery only when the term is used in association with applicant’s name or other allied marks (e.g., the stagecoach design)). Even if there were some minor double entendre engendered by the term HONORARY BAT GIRL, the term is unregistrable because the primary significance of the term is descriptive. *See In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1460 (TTAB 1998).

³⁶ The cases cited at page 2 of applicant’s Reply Brief do not support its argument that the Board may take the content of applicant’s specimen into consideration in determining whether the mark is a double entendre. Rather, such cases provide that the context in which a mark is used such as in specimens, may be probative of the meaning of a mark and the reaction of prospective purchasers to the mark. *See In re Hershey*, 6 USPQ2d 1470, 1472 (TTAB 1988) and *Abcor Development Corp.*, 200 USPQ at 218.

Based on the evidence presented, the term HONORARY BAT GIRL will be perceived by consumers as the descriptive term “honorary bat girl” rather than as suggesting “a person who ‘goes to bat’—supports the cause—against breast cancer.” Thus, applicant’s argument that it is appropriate to look to its GOING TO BAT AGAINST BREAST CANCER marketing slogan to find that its HONORARY BAT GIRL term is a double entendre, must be rejected. *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009).

Applicant also argues that HONORARY BAT GIRL is inherently incongruous and as such the term is not merely descriptive of its services. Specifically, applicant argues that “the juxtaposition of the term HONORARY (‘having or conferring distinction,’ according to Merriam Webster’s Collegiate Dictionary, 10th ed.) with BAT GIRL—defined in the record as a ‘girl or young woman who takes care of the bats and sometimes the equipment of a team’—results in an oxymoron, inviting adult women and men to compete for the ‘honor’ of one of the humbler job titles in baseball.”³⁷ We agree with applicant that incongruity is a strong indication that a mark is suggestive rather than merely descriptive.³⁸ However, applicant’s HONORARY BAT GIRL mark, unlike the marks in the cases cited by applicant which require some degree of imagination to grasp their meaning, is a commonly used and understood slogan that evokes an immediate impression.

³⁷ Applicant’s Appeal Brief p. 12. While this definition was included in Applicant’s Appeal Brief and is not in the record, the Examining Attorney did not object to the definition. In any event, the Board may take judicial notice of dictionary definitions. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

³⁸ Applicant’s Appeal Brief p. 12.

B. Conclusion

Descriptiveness of a mark, when applied to the goods or services involved, is to be determined from the standpoint of the average prospective purchaser. *Abcor Development Corp.*, 200 USPQ at 218. Based on the record before us, we find that consumers, including contestants, of applicant's contest services would understand HONORARY BAT GIRL to be a prize awarded in connection with applicant's contest. In view of the foregoing, applicant's applied-for mark HONORARY BAT GIRL is merely descriptive when used in connection with contests awarding prizes in a baseball setting.

While any doubt as to the registrability of a mark is to be resolved in applicant's favor, here, we have no such doubt. The evidence demonstrates that consumers are accustomed to contests that award winners with the opportunity to be recognized as "honorary bat girls/boys" and would understand the term HONORARY BAT GIRL to refer to the contest prize awarded by applicant.

Decision: The refusal to register the applied-for term HONORARY BAT GIRL under § 2(e)(1) is affirmed.