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Subject: U.S. TRADEMARK APPLICATION NO. 85935569 - LEFT NUT BREWING CO. - 43302-104 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 4

Attachment Information:

Count: 13

Files: A-1.jpg, A-2.jpg, B-1.jpg, B-2.jpg, B-3.jpg, B-4.jpg, B-5.jpg, C-1.jpg, C-2.jpg, D-1.jpg, D-2.jpg, E-1.jpg, 85935569.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85935569

MARK: LEFT NUT BREWING CO.



CORRESPONDENT ADDRESS:

PETER E. MORGAN

BRISKIN, CROSS & SANFORD, LLC

1001 CAMBRIDGE SQ STE D

ALPHARETTA, GA 30009-1840

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Left Nut Brewing Company, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

43302-104

CORRESPONDENT E-MAIL ADDRESS:

pmorgan@briskinlaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 3/12/2015

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). **The following refusal made final in the Office action dated 09/08/2014 is maintained and continues to be final: Section 2(a) refusal because the applied-for mark consists of or includes**

immoral or scandalous matter. See TMEP §§715.03(a)(ii)(B), 715.04(a). See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

SECTION 2(A) FINAL REFUSAL IS MAINTAINED AND CONTINUED - SCANDALOUS

Registration was refused because the applied-for mark consists of or includes immoral or scandalous matter. Trademark Act Section 2(a), 15 U.S.C. §1052(a); see TMEP §1203.01. The examining attorney has considered the applicant's argument in the request for reconsideration, but is not persuaded.

The words "immoral" and "scandalous" may have somewhat different connotations; however, immoral matter has been included in the same category as scandalous matter. TMEP §1203.01; see *In re McGinley*, 660 F.2d 481, 484 n.6, 211 USPQ 668, 673 n.6 (C.C.P.A. 1981) (Because of the court's holding that appellant's mark was scandalous, "it [was] unnecessary to consider whether appellant's mark [was] 'immoral.' [The court] note[d] the dearth of reported trademark decisions in which the term 'immoral' [had] been directly applied.").

For a mark to be "scandalous," the evidence must show that the mark would be considered shocking to the sense of decency or propriety, giving offense to the conscience or moral feelings, or calling out for condemnation. *In re Fox*, 702 F.3d 633, 635, 105 USPQ2d 1247, 1248 (Fed. Cir. 2012) (quoting *In re Mavety Media Grp. Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994)); see TMEP §1203.01.

A mark is scandalous when the evidence demonstrates that a substantial composite of the general public (although not necessarily a majority) would consider the mark to be scandalous in the context of contemporary attitudes and the relevant marketplace. See *In re Fox*, 702 F.3d 633, 635, 105 USPQ2d 1247, 1248 (Fed. Cir. 2012) (quoting *In re Mavety Media Grp. Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925-26 (Fed. Cir. 1994)); *In re The Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003); TMEP §1203.01. To consider the views only of a subset of the public who consume applicant's goods and/or services is inappropriate. *In re Manwin/RK Collateral Trust*, 111 USPQ2d 1311, 1315 (TTAB 2014).

In this case, applicant seeks registration of LEFT NUT BREWING CO. for beers, in Class 32. The evidence from the following dictionaries shows the term LEFT NUT would be understood to be a vulgar term meaning left testicle. Therefore, the applicant's proposed mark contains scandalous matter.

LEFT is defined as:

on the side of your body that is to the west if you are facing north

"left" Macmillan Dictionary (2010) <http://www.macmillandictionary.com> Retrieved March 12, 2015. See attachment to this Office action.

NUT is defined as:

Vulgar Slang A testicle. "nut" Yahoo! Education (2009) Retrieved 09/05/2013. <http://education.yahoo.com> See attachment to Office action no. 1.

vulgar : **TESTIS** "nut" Merriam-Webster (2010) <http://www.merriam-webster.com/>. Retrieved 09/05/2013. See attachment to Office action no. 1.

(often pl.; **vulgar** slang) a testicle. "nut" Wordsmyth (2013) Retrieved 09/05/2013. <http://www.wordsmyth.net> See attachment to Office action no. 1.

SLANG the testicles: a **vulgar** usage "nut" Webster's New World College Dictionary (2010) <http://www.yourdictionary.com> Retrieved 09/08/2014. See attachment to this Office action.

Vulgar Slang A testicle. "nut" The American Heritage® Dictionary of the English Language, 5th edition (2013) <http://www.yourdictionary.com> Retrieved 09/08/2014. See attachment to this Office action.

Evidence that a mark is vulgar is sufficient to establish that the mark is scandalous within the meaning of Trademark Act Section 2(a). *In re Fox*, 702 F.3d 633, 635, 105 USPQ2d 1247, 1248 (Fed. Cir. 2012) (citing *In re The Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003)); see *In re Michalko*, 110 USPQ2d 1949, 1951 (TTAB 2014); TMEP §1203.01.

Dictionary definitions alone may be sufficient to show that a term is vulgar if multiple dictionaries, including at least one standard dictionary, uniformly indicate that the term's meaning is vulgar, and the applicant's use of the term is clearly limited to that vulgar meaning. See *In re The Boulevard Entm't, Inc.*, 334 F.3d at 1341, 67 USPQ2d at 1478 (holding 1-800-JACK-OFF and JACK-OFF scandalous where all dictionary definitions of "jack-off" were considered vulgar); *In re Michalko*, 110 USPQ2d at 1953 (holding ASSHOLE REPELLENT scandalous where multiple dictionary definitions of "asshole" were considered vulgar); TMEP §1203.01.

The dictionary definition evidence from multiple dictionaries, including standard dictionaries, clearly show that "nut" has a vulgar meaning. The applicant argues that the word "NUT" has other non-scandalous meanings in general or when used with craft beer. For example, applicant argues that NUT suggests nuts, nuttiness, or other meanings such as eccentric lifestyles. In this case, there is no evidence that the applicant uses "NUT" to mean anything other than the vulgar meaning in the context of the term LEFT NUT. In support of its argument, the applicant also refers to "Samuel Smith's Nut Brown Ale", for which "nut brown" is the modifier, not "nut". The wording LEFT NUT as a unit is clearly limited to the vulgar meaning referring to the left testicle.

Furthermore, there is no requirement in Trademark Act Section 2(a) that a mark's vulgar meaning be the "only relevant meaning--or even the most relevant meaning." *In re Fox*, 702 F.3d 633, 638, 105 USPQ2d 1247, 1250 (Fed. Cir. 2012) (holding the mark scandalous for chocolate lollipops in the shape of a rooster where, in the context of the goods, the mark had the non-scandalous meaning "rooster lollipop" in addition to the scandalous meaning "fellatio"). As long as a "substantial composite of the general public" would perceive the mark, in context, to have a vulgar meaning, "the mark as a whole 'consists of or comprises . . . scandalous matter'" under Section 2(a). *In re Fox*, 702 F.3d at 638, 105 USPQ2d at 1250 (quoting 15 U.S.C. §1052(a) (emphasis added)); *In re The Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003). Thus, the trademark examining attorney need only prove the existence of one vulgar meaning to a substantial composite of the general public to justify a Section 2(a) refusal. *Id.*

The term LEFT NUT considered as a whole is clearly scandalous. The wording LEFT NUT implies there is a right nut, reinforcing that consumers will perceive LEFT NUT as a vulgar term describing the left testicle of the testes, which consists of a left testicle and a right testicle.

The definitions from Urban Dictionary.com reinforce that "LEFT NUT" refers to the left testicle, evidencing the vulgar meaning of LEFT NUT:

1. n. a part of one's anatomy that one would sacrifice to experience something exceptional

I'd give my friggin' left nut to see that shit!

6. the left testicle

“left nut” Urban Dictionary (2013) <http://www.urbandictionary.com> Retrieved 09/05/2013 See attachment to Office action no. 1.

In addition, the examining attorney refers to the attached excerpts from the following websites which reinforce that the term LEFT NUT in the applicant’s mark is a vulgar term understood by the public to refer to the left testicle. These excerpts are attached as a representative sample.

<http://www.theonion.com> See attachment.

<http://www.huffingtonpost.com> See attachment.

<http://ask.metafilter.com> See attachment.

<http://www.epictv.com> See attachment.

<http://www.barstoolsports.com> See attachment.

<https://www.bungie.net> See attachment.

<http://www.metrolyrics.com> See attachment.

<http://www.talkingaboutmenshealth.com> See attachment.

<http://www.someecards.com> See attachment.

<http://bsgossip.com> See attachment.

For the foregoing reasons, the following refusal made final in the Office action dated 09/08/2014 is maintained and continues to be final: Section 2(a) refusal because the applied-for mark consists of or includes immoral or scandalous matter.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Ellen Awrich/

Trademark Examining Attorney

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The DMV Can Suck My **Left Nut**

COMMENTARY - Transportation - ISSUE 39-09 - Mar 12, 2015

By Jim Anchower - The Cruise

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Hola, amigos. I know it's been a long time since I rapped at ya, but I've been ass over elbows in problems. First off, I'm finally getting over some kind of flu-type thing. I don't know exactly what I had, and I don't suppose it would matter much if I did. All I can tell you is that it made my crap reek worse than roadkill, and I didn't even want to drink beer.

I may not know what I had, but I've got a pretty good idea where I got it. Last Tuesday, I had to spend the entire day cooped up in an airtight room at the DMV with a bunch of losers. The way most of those guys looked, I'm lucky I didn't come down with crotch rot or trench ass or something.

So, how'd your old pal Jim Anchower wind up spending a whole day at the DMV? Well, the night before, Wes, Ron, and this guy Ron works with named Rob dropped by my house unexpectedly. Because I wasn't expecting guests, I didn't have enough beer to entertain. So, being a good host, I went out to get a case of MGD at the Kwik-Stop. And while I was there, I decided to pick up a few bags of pretzels and some of those baby carrots. I'm really into those baby carrots lately. They're crunchy like pretzels, but they're also sweet and wet.

Since they had videos for rent, I decided to make a night of it and rented *Dude, Where's My Car?* I've seen it a few times already, but I love that shit. It could use some tits, but it's still pretty good.

Anyway, I pile all the stuff into the car and leave the parking lot. A few blocks away, this cop suddenly appears behind me and hits his lights. Man, was I pissed—I didn't do nothing! As I was pulling over, I started getting even madder, thinking about how I was being hassled for no reason and how the pigs just had it in for me. Turns out, I was all worked up for nothing, 'cause the cop flew right past me. He was going after the guy in the car in front of me. Fuckin' pigs!

I hate to waste a good mad, so I hollered at the guy on the radio for saying Johnny Winter recorded "Frankenstein" when it was Edgar Winter. By the time I calmed down, I was back home. While I was telling Wes, Ron, and Rob what happened, I realized it was doubly good that I didn't get pulled over, since my license was expired. We spent the night celebrating my good luck by polishing off the case plus the six MGDs I already had in the fridge.

I had the next day off, so I figured I should take care of my license. I got to the DMV at about 11:30 and took a number. It wasn't coming up for a while, plus I was a little hung over, so I decided to take a short nap. The problem was, it wasn't so short. I woke up at 1:45 to somebody shaking me, telling me I should go to a shelter if I needed to sleep. I looked up at the number board and saw that mine had long passed. The lady at the counter said she

me i should go to a sneeze if i needed to sleep. i looked up at the number board and saw that mine had long passed. i ne lady at the counter said she couldn't bump me to the front, and that i had to take another number.

I took my second number and sat back down. I flipped through a couple of *Road And Track* magazines, but they weren't telling me anything i didn't already know. I looked around the room and saw that one of the people working the counter was Shelley Drexler, who i knew from grade school. It isn't like we were friends, or even talked, but i still knew who she was.

Half an hour later, my number came up. I got called up to a window and, sure enough, it was Shelley's. I knew she recognized me, but she wasn't letting on. I wasn't going to let her off that easy, so i said hi and asked how she was doing. She said "Fine," and asked me for the proper forms, my expired driver's license, and a second form of ID. I gave her the forms and the license, but i didn't have another ID with me. I said we went to school together, and that she should recognize me. She said she still needed a second form, and that it was out of her hands. I said if i wasn't Jim Anchower, then how did i know about the time she pissed her pants in second grade because she was too chickenshit to ask the teacher to go to the bathroom?

Shelley didn't like that. She told me to get another form of ID and stop wasting her time. I was going to lay into her, but i saw the security guard eyeballing me. I went out to my car, thinking that if i got pulled over on the way back home without my driver's license, Shelley was going to get it. I dug around my house for half an hour before i found my birth certificate. It was torn and had some weird food stains on it, but it was still valid. I got back to the DMV five minutes before they shut the door.

Anyway, i must've shook Shelley's shit up pretty bad, because when i got back, she was gone. I had to wait a while, but i got my license renewed without any hassle this time, so i guess it all worked out for the best. Except for my getting the flu.

Oh, and the picture looks like shit, especially compared to my last one. That one looked hot. I was all like Gary Cherone.

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Love Me, Love My Violent Alcoholic Rages

You And Me And Baby Minus Me Makes ...

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Alan Simpson's Advice To Reporter: 'Grab Your **Left Nut** For Luck'

The Huffington Post | By Chris Geethiva
Posted: 03/09/2014 2:39 pm EDT | Updated: 03/09/2014 2:59 pm EDT



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Now that his "naked" vs. "nakkid" expertise is out in the open, another quotable from former Sen. Alan Simpson (R-Wyo.) has emerged.

The Washington Post reported Wednesday that staffer David Nakamura had a conversation with Simpson about immigration reform in February. Nakamura told the senator that he was going to be covering the issue, prompting Simpson to reply: "Oh yeah? Well grab your left nut for luck."

The Post report comes one day after a [memorable exchange surfaced](#) between Simpson and a Des Moines Register reporter. When the paper called him for an



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We Might See Jesse Pinkman On 'Better Call Saul' After All



...interview, he picked up the phone and said he was "stark nekkiid," which is quite different than just plain naked.

"Do you know the difference between naked and nekkiid?" Simpson asked, according to the Register. "If you're naked, you don't have any clothes on, but if you're nekkiid you don't have any clothes on but you're up to something."

This wasn't the first case of Simpson being up to something. Back in Dec. 2012, he captured plenty of attention for [dancing gangnam style](#) to spur more attention toward our fiscal crisis from young folks.



ALSO ON HUFFPOST:



United Airlines Apologizes To Mom After 'Embarrassing' Breastfeeding Incident



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Vanessa Hudgens Doesn't Look Like This Anymore



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I love some of the things Simpson says..... he is a gem that truly makes one smile.
I hope one day to be so crusty and funny!

26 MAR 2014 2:31 PM
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 **Marc** (Plausible_Denial)
158 Fans

Isn't this guy at the age that they've revoked his driving privileges? He can pretty much say anything he wants. He probably doesn't drive any longer because stop signs are meant for other people who might be in his way.

26 MAR 2014 4:40 PM
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 **Crimson Flush** (@crimsonflush)
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Mr. Austerity strikes again with some more fabulously bad advice.

26 MAR 2014 5:34 PM
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 **Sam** (View_from_the_middle)
49 Fans

I would take 100 Simpsons in Congress over what passes now. He speaks his mind and he knows the score.

26 MAR 2014 6:51 PM
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Should I Get a 2nd Opinion On My Sore [Left Nut?](#)

July 2, 2007 5:26 PM [Subscribe](#)

Would it be worth my while to get a second opinion about my sore left testicle?

I've had this problem for a while and I've seen my urologist about it. From time to time, my left testicle becomes tender and sore, with some of the discomfort running up a bit into my abdomen. The first time a couple of years ago, an ultrasound didn't find anything and some hot baths and anti-inflammatories took care of it.

This summer, it's come back and I saw my urologist about it again. At first, I just had him check me out generally, but no ultrasound. Then I found a new lump. So, ultrasound. The lump's a calcium pearl, not a threat. I also have a very small varicocele and a very small spermicocele, I'm told. I.e. I have a blood vessel and a sperm tube that both leak backwards a little bit - likely the source of the pain.

So, my urologist says that these are both really small and there's no need, nor much use, to doing anything invasive about them. It's tight undies, aspirin and hot baths for me.

That'd be fine, but after getting things quieted down for a week or so, the tenderness and soreness came right back over this weekend. So, I'm doing what I can to settle things down again, but I'm wondering of there really isn't anything I can do to take care of this in a more permanent way. Would it be worth my while to see another urologist about this or would I just get the same answer?

Further questions can be directed to: tenderleftnut@gmail.com

posted by [anonymous](#) to [Health & Fitness](#) (9 answers total)



I think, with all sincerity, that any question containing the words "testicle" and "second opinion", in that order, can be answered "Yes."

posted by [davejay](#) at 5:41 PM on July 2, 2007

er, the reverse order as well.

posted by [davejay](#) at 5:42 PM on July 2, 2007

Yes, absolutely. No ifs, buts or maybes.

posted by [christos](#) at 5:48 PM on July 2, 2007

Run, don't walk, RUN to another urologist. Didn't you see the leaked copy of SICKO yet? Far be it from me to suggest that your urologist is hoping for a bigger HMO bonus this year, but who in their right mind would take chances with their left nut?

posted by [IronLizard](#) at 6:18 PM on July 2, 2007

Definitely yes. Testicular cancer is probably what you're afraid of - but testicular cancer has an excellent cure rate if caught early. And as a general rule, anything involving cancer warrants a second opinion. It's probably nothing, but I sure as hell would want to know that for certain. Or, what davejay said.

posted by [selfmedicating](#) at 6:50 PM on July 2, 2007

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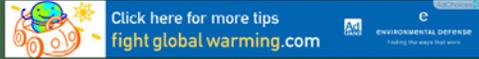
Testicular cancer is usually painless. I would still consult a urologist for another opinion. Most of this pain is nothing, but a few conditions are quite serious. Why take chances?
posted by [caddis](#) at 7:04 PM on July 2, 2007

I'll add to the first response... any medical question that includes "should I get a second opinion" can only be answered 'yes'.
posted by [dirtyumbangelboy](#) at 7:21 PM on July 2, 2007

I had a sore testicle when I was 22. It freaked me out, but it turned out it was just a strained muscle in my scrotum. Who knew scrotums had muscles?
posted by [Doc One](#) at 7:39 PM on July 2, 2007

Interestingly, pinched nerves in your lower back can lead to testicle pain. Don't suppose you have back problems? Sometimes you can feel the pain along the nerve that curves around your side from your lower vertebrae. It curves around and goes down to ball town. I too went and got checked out and have no cancer or other problems but the pain still comes back now and then. I have found that when my left one hurts, if I shift my back a bit, it stops. Damned annoying but possibly something to investigate.
posted by [kookoobirdz](#) at 10:09 PM on July 2, 2007

« Older I want a single copy of the Ge... | Mrs. Optimistic is not general... Newer »



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TOP FIVE THINGS YOU'D GIVE YOUR LEFT NUT TO DO

1 of 5

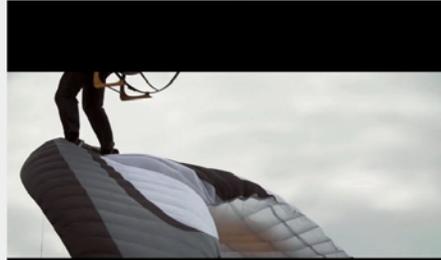
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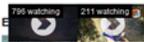
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If you're sitting on a can of gasoline, buzzing the ground and kicking in your mate's parachute as you fly by, you must be a Rover. Watch this ridiculously skilled crew as they buzz around Scotland messing with each other the whole way. Throughout the deep and wild Scottish mountains, a bunch of new adventurers discover the highland by the way of the air. Paramotor is the perfect tool to pop over mountains, slide into deep canyons, follow rivers from 4000 meters high or drag your feet 500 meters through a dark loch. Director: Antoine Michaud-Sorel Video Producer: Ahstudio Filmmakers Athletes: Peter Christiansson Parachute Kicking, Loch Buzzing Over Scotland | We Are The Rovers, Ep. 2

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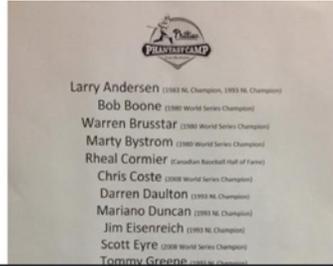
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