

This Opinion is not a  
Precedent of the TTAB

Mailed: May 3, 2016

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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Office of the Commissioner of Baseball

v.  
S9 Sports, LLC

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Opposition No. 91200934  
to application Serial No. 85029578

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Mary L. Kevlin and Lindsay Rodman of Cowan Liebowitz Latman PC for the Office of the Commissioner of Baseball.

Anthony L. Laporte of Hanszen Laporte LLP for S9 Sports, LLC.

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Before Cataldo, Bergsman and Goodman,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

On May 4, 2010, S9 Sports, LLC (“Applicant”) filed application Serial No. 85029578 based upon Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), to register on the Principal Register the mark HIGH SCHOOL WORLD SERIES (standard characters) in connection with

advertising, including promotion of products and services of third parties through sponsoring arrangements and license agreements relating to international sports events; promoting sports competitions and/or events of others; promoting the goods and services of others by

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arranging for sponsors to affiliate their goods and services with high school baseball in International Class 35.<sup>1</sup>

The Office of the Commissioner of Baseball (“Opposer”) filed an amended notice of opposition to the registration of Applicant’s mark on the grounds of likelihood of confusion pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), and mere descriptiveness under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1). Insofar as Opposer has not argued the mere descriptiveness claim in its brief, in accordance with the Board’s usual practice, we find that claim to have been waived. *See, e.g., Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313, 1314 n.4 (TTAB 2005). With regard to its likelihood of confusion claim, Opposer relies upon 25 registrations, including the following registrations issued on the Principal Register with a claim of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. §1052(f):<sup>2</sup>

Registration No. 1178547 for the mark WORLD SERIES (typed or standard characters)<sup>3</sup> in connection with

entertainment services in the nature of baseball games and exhibitions rendered live and through the media of radio and television broadcasts in International Class 41;<sup>4</sup>

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<sup>1</sup> In response to the Trademark Examining Attorney’s requirement, Applicant disclaimed “HIGH SCHOOL” apart from the mark as shown.

<sup>2</sup> 45 TTABVUE 1-97. Record citations are to TTABVUE, the Trademark Trial and Appeal Board’s publically available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

<sup>3</sup> Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. §2.52, was amended to replace the term “typed” drawing with “standard character” drawing. A mark depicted as a typed drawing is the legal equivalent of a standard character mark.

<sup>4</sup> Section 8 affidavit accepted; Section 15 affidavit acknowledged. Second Renewal.

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Registration No. 3424320 for the mark WORLD SERIES (standard characters) in connection with

entertainment services, namely, baseball games, competitions, tournaments and exhibitions rendered live and through broadcast media including television, radio, satellite, wireless, audio and video media, telephone, fiber optics, wi-fi and other electronic media and via a global computer network or a commercial on-line service; information services, namely, providing information in the field of sports, entertainment and related topics, and providing for informational messages relating thereto; entertainment services, namely, providing multi-user interactive computer games all via a global computer network or a commercial on-line service; educational services in the nature of baseball skills programs, baseball camps, and clinics; entertainment services, namely, production of programming broadcast via television, radio and a global computer network or a commercial on-line service; organizing community sporting events; organizing and conducting fantasy sports, sports contests and sweepstakes; fan clubs; providing on-line newsletters in the field of baseball in International Class 41;<sup>5</sup>

Registration No. 1542959 for the mark COLLEGE WORLD SERIES (typed or standard characters) in connection with

college teams organizing, conducting, and promoting college athletics, particularly baseball tournaments between college teams; in International Class 41;<sup>6</sup> and

Registration No. 1648385 for the mark WOMEN'S COLLEGE WORLD SERIES (typed or standard characters, "WOMEN'S" disclaimed) in connection with

organizing college teams and conducting and promoting college athletics – namely, tournaments between college baseball teams in International Class 41.<sup>7</sup>

Opposer also relies upon common law rights in the mark HIGH SCHOOL WORLD SERIES in connection with high school level baseball tournaments by assignment of

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<sup>5</sup> Section 8 affidavit accepted; Section 15 affidavit acknowledged.

<sup>6</sup> Section 8 affidavit accepted; Section 15 affidavit acknowledged. First renewal.

<sup>7</sup> Section 8 affidavit accepted; Section 15 affidavit acknowledged. Second Renewal.

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rights in that mark from the Continental Amateur Baseball Association (CABA) to Opposer on July 23, 2014.<sup>8</sup>

Applicant, in its answer, denied the salient allegations in the amended notice of opposition.<sup>9</sup>

A. Evidentiary Matters

The parties stipulated to and the Board approved the taking of testimony by declaration.<sup>10</sup>

Applicant appended three exhibits to its brief.<sup>11</sup> Exhibit A was not introduced during Applicant's testimony period as set or reset, and is untimely. *See, e.g., Lincoln National Corp. v. Anderson*, 110 USPQ2d 1271, 1274 n.5 (TTAB 2014). *See also* TBMP § 539 and authorities cited therein. Exhibits B and C were properly made of record during Applicant's trial period, as reset, and their attachment to Applicant's brief was unnecessary. The exhibits attached to Applicant's brief will otherwise be given no further consideration.<sup>12</sup>

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<sup>8</sup> 43 TTABVUE 1-62.

<sup>9</sup> In its amended answer, Applicant asserted certain "defenses" that are more in the nature of amplifications of its denials, and have been so construed.

<sup>10</sup> 34 and 35 TTABVUE.

<sup>11</sup> 61 TTABVUE 14-32.

<sup>12</sup> Applicant seems to be under the impression that attaching previously-filed evidence to a brief (and citing to the attachments, rather than to the record) is a courtesy or a convenience to the Board. It is neither. When considering a case for final disposition, the entire record is readily available to the panel. Because we must determine whether such attachments are properly of record, citation to the attachment requires examination of the attachment and then an attempt to locate the same evidence in the record developed during the prosecution of the proceeding, requiring more time and effort than would have been necessary if citations were directly to the prosecution history.

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B. The Record

In view of the foregoing, the record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application file. In addition, Opposer introduced the following testimony declarations and evidence:

Declaration of Ethan G. Orlinsky, Senior Vice President of Legal, Business and Club Affairs for Major League Baseball Properties, Inc. (licensing agent for Opposer), and Exhibits A through S.<sup>13</sup>

Declaration of Steve Armus, Vice President, Consumer Products for Major League Baseball Properties, Inc., and Exhibits A through C.<sup>14</sup>

Declaration of Michael J. Mellis, Executive Vice President and General Counsel for Major League Baseball, and Exhibits A through G.<sup>15</sup>

Declaration of Larry L. Redwine, Chief Executive Officer of CABA, and Exhibits A through E.<sup>16</sup>

Declaration of Ignacio Duran, one of Opposer's counsels, and Exhibits A through G.<sup>17</sup>

First Notice of Reliance Upon Opposer's registrations, consisting of current printouts of information from the electronic database records of USPTO's Trademark Status and Document Retrieval ("TSDR") records, showing the current status and title of Opposer's registrations attached as Exhibit A.<sup>18</sup>

Second Notice of Reliance Upon Applicant's Discovery Responses attached as Exhibits A through D.<sup>19</sup>

Third Notice of Reliance Upon Printed Materials attached as Exhibits A through G:

(a) Exhibit A – printed publications from the Lexis/Nexis databases consisting of representative articles from 2005 through 2015

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<sup>13</sup> 38-40 TTABVUE.

<sup>14</sup> 41 TTABVUE.

<sup>15</sup> 37, 42 TTABVUE.

<sup>16</sup> 36, 43 TTABVUE.

<sup>17</sup> 44 TTABVUE.

<sup>18</sup> 45 TTABVUE.

<sup>19</sup> 46 TTABVUE.

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referencing Opposer's WORLD SERIES Marks and events.

(b) Exhibit B – printed publications from the Lexis/Nexis databases consisting of representative articles from 2005 through 2015 referencing Opposer's COLLEGE WORLD SERIES Marks and events.

(c) Exhibit C – printed publications from the Lexis/Nexis databases consisting of representative articles from 1995 through 2014 referencing Opposer's HIGH SCHOOL WORLD SERIES Marks and events.

(d) Exhibit D – printed publications from the Lexis/Nexis databases consisting of representative articles from 2006 through 2015 referencing Opposer's RBI WORLD SERIES Marks and events.

(e) Exhibit E – excerpts from dictionaries that define “World Series.”

(f) Exhibit F – an excerpt from a dictionary that defines “world series.”

(g) Exhibit G - printed publications consisting of excerpts from representative books discussing Opposer's WORLD SERIES events.<sup>20</sup>

Fourth Notice of Reliance Upon Internet Materials attached as Exhibits A through E:

(a) Exhibit A – printouts of various online articles from 2005 through 2014 referencing Opposer's WORLD SERIES Marks and events.

(b) Exhibit B – printouts of various online articles from 2006 through 2014 referencing Opposer's COLLEGE WORLD SERIES Marks and events.

(c) Exhibit C – printouts of various online articles from 2001 through 2014 referencing Opposer's HIGH SCHOOL WORLD SERIES Marks and events.

(d) Exhibit D – printouts of online articles from 2007 through 2014 referencing Opposer's RBI WORLD SERIES Marks.

(e) Exhibit E – excerpts from dictionaries available on the Internet that define the term “World Series.”<sup>21</sup>

Those portions of the Mellis and Redwine declarations that contain confidential information will be discussed, as necessary, only in general terms.

Applicant introduced the following testimony declarations and evidence:

Declaration of Anthony L. LaPorte, counsel for Applicant and Exhibit A.<sup>22</sup>

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<sup>20</sup> 47, 48 TTABVUE.

<sup>21</sup> 49 TTABVUE.

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Declaration of Carlos Gonzales, an officer of Applicant.<sup>23</sup>

C. Standing and Priority

Standing is a threshold issue that must be proven in every *inter partes* case. *See Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) (“The facts regarding standing . . . must be affirmatively proved. Accordingly, [plaintiff] is not entitled to standing solely because of the allegations in its [pleading].”). To establish standing in an opposition, an opposer must show both “a real interest in the proceedings as well as a ‘reasonable’ basis for his belief of damage.” *See Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

In this case, Opposer made of record during trial copies of its pleaded registrations showing current status and title to Opposer. In view thereof, Opposer has established its standing. In addition, priority is not in issue with respect to the marks and the goods and services set out in its pleaded registrations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

D. Likelihood of Confusion

Our determination under Trademark Act Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

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<sup>22</sup> 50 TTABVUE.

<sup>23</sup> 52 TTABVUE.

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USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

We focus our likelihood of confusion analysis on only one of Opposer’s marks, namely, Registration No. 3424320 for the mark WORLD SERIES (standard characters) in connection with

entertainment services, namely, baseball games, competitions, tournaments and exhibitions rendered live and through broadcast media including television, radio, satellite, wireless, audio and video media, telephone, fiber optics, wi-fi and other electronic media and via a global computer network or a commercial on-line service; information services, namely, providing information in the field of sports, entertainment and related topics, and providing for informational messages relating thereto; entertainment services, namely, providing multi-user interactive computer games all via a global computer network or a commercial on-line service; educational services in the nature of baseball skills programs, baseball camps, and clinics; entertainment services, namely, production of programming broadcast via television, radio and a global computer network or a commercial on-line service; organizing community sporting events; organizing and conducting fantasy sports, sports contests and sweepstakes; fan clubs; providing on-line newsletters in the field of baseball in International Class 41.

If we find that there is a likelihood of confusion with this WORLD SERIES mark, there is no need for us to consider the likelihood of confusion with the other WORLD SERIES and WORLD SERIES formative marks. Conversely, if we find there is no

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likelihood of confusion with this mark, we would find no likelihood of confusion with Opposer's other marks as they comprise or merely incorporate WORLD SERIES as part thereof. *See In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

*Fame of Opposer's WORLD SERIES Mark*

Opposer contends that its WORLD SERIES mark is famous.<sup>24</sup> Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use. A famous mark has extensive public recognition and renown. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods or services identified by the marks at issue, "the length of time those indicia of commercial awareness have been evident," widespread critical assessments and through notice by independent sources of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d at 1305-1306 and 1309. Although raw numbers of product sales and advertising expenses may have sufficed in the past to prove fame of a mark, raw numbers alone may be misleading. Some context in which to place raw statistics may be necessary (e.g., the substantiality of the

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<sup>24</sup> 57 TTABVUE 14-24.

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sales or advertising figures for comparable types of products or services). *Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d at 1309.

Finally, because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to clearly prove it. *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007).

Based on the evidence and testimony set forth below, we find that Opposer's WORLD SERIES mark is very famous:

1. WORLD SERIES games have been played under Opposer's WORLD SERIES marks since 1903, and have been played every year since then with the exception of 1904 and 1994.<sup>25</sup>

2. WORLD SERIES games are highly anticipated by fans and have resulted in many celebrated moments involving the most recognized names in baseball.<sup>26</sup> Radio broadcast of WORLD SERIES games began in 1921 and presently continues on ESPN Radio and SiriusXM Satellite Radio.<sup>27</sup> Television broadcast of WORLD SERIES games began in 1947 and currently reaches tens of millions of viewers.<sup>28</sup> Viewers currently can also watch WORLD SERIES games on Opposer's subscription-based Internet website mlb.tv.<sup>29</sup> Viewers, listeners and attendees at WORLD SERIES games encounter Opposer's WORLD SERIES marks at these

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<sup>25</sup> 38 TTABVUE 13-18, and 28-224. <sup>39</sup> TTABVUE 1-158.

<sup>26</sup> 38 TTABVUE 13-18, and 28-224.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

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events and in advertisements including game programs, press releases, printed publications, and sports segments on television, radio and Internet news programs, including *SportsCenter*, *ESPN SportsNation*, *Fox Sports*, *CBS Sports*, *NBC Sports*, printed publications including *USA Today*, *The Wall Street Journal*, and *The Washington Post* as well as social media sites including Facebook and Twitter.<sup>30</sup> During the month of October alone, in each year from 2004 through 2014, Opposer's Internet websites received over 370 million page views and over 70 million visits.<sup>31</sup>

3. References to the WORLD SERIES games have appeared in popular culture references in film and television programs, including *Good Will Hunting*, *The Babe Ruth Story* and *Seinfeld*.<sup>32</sup>

4. Opposer and its affiliates extensively license the WORLD SERIES mark in connection with a wide variety of goods in connection with numerous sponsors including Anheuser-Busch, Bank of America, Gatorade, General Motors (Chevrolet), Head & Shoulders, MasterCard International, Nike, Pepsi-Cola, Scotts, SiriusXM and T-Mobile.<sup>33</sup> Additional licensees advertise their goods and services in programs and at ballparks at which WORLD SERIES games are played.<sup>34</sup>

5. Opposer licenses, markets and produces a wide range of merchandise in connection with its WORLD SERIES games, including apparel, bags, jewelry, paper goods, printed materials, sporting goods, toys and novelty items bearing its

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 41 TTABVUE 10-12, 14-86.

<sup>34</sup> *Id.* and 38 TTABVUE 13-18, and 28-224.

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WORLD SERIES mark.<sup>35</sup> These goods are available in trade channels including Opposer's website, the websites of its affiliate baseball clubs, stadium concessionaires, affiliate team stores, catalogs, and retail locations including Sports Authority, Dick's Sporting Goods, Target, Wal-Mart and Amazon.com.<sup>36</sup> Between 2007 and 2014, Opposer sold over \$100 million worth of merchandise bearing the WORLD SERIES mark.<sup>37</sup>

6. WORLD SERIES appears in printed and online dictionaries in connection with the professional baseball championship series.<sup>38</sup>

Finally, Applicant has acknowledged the fame of Opposer's WORLD SERIES marks:

The Opposer's World Series marks are famous. There is no question about it. (The three+ pages of "look how great and famous we are" self-aggrandizing preaching done by Opposer on this issue are wholly unnecessary and irrelevant.)<sup>39</sup>

Based upon the testimony and evidence adduced by Opposer in this case, we find WORLD SERIES to have achieved a very high level of fame, particularly in connection with Opposer's championship baseball series and promotional goods and services related thereto.

While having established that Opposer's WORLD SERIES mark is famous for purposes of likelihood of confusion, this fact alone is not enough to prove likelihood

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<sup>35</sup> *Id.* and 42 TTABVUE 6-7, 91-160.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 49 TTABVUE 1-182.

<sup>39</sup> 61 TTABVUE 10. "When a trademark attains dictionary recognition as part of the language, we take it to be reasonably famous." *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1720 (Fed. Cir. 1988).

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of confusion. As the Board explained in *Blue Man Productions Inc. v. Tarmann*, 75 USPQ2d 1811, 1819 (TTAB 2005), *rev'd on other grounds*, Civil Action No. 05-2037 (D.D.C. April 3, 2008):

If that were the case, having a famous mark would entitle the owner to a right in gross, and that is against the principles of trademark law. *See University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 703 F.2d 1372, 217 USPQ 505, 507 (Fed. Cir. 1983):

The fame of the [plaintiff's] name is insufficient in itself to establish likelihood of confusion under § 2(d). “Likely\* \* \* to cause confusion” means more than the likelihood that the public will recall a famous mark on seeing the same mark used by another. It must also be established that there is a reasonable basis for the public to attribute the particular product or service of another to the source of the goods or services associated with the famous mark. To hold otherwise would result in recognizing a right in gross, which is contrary to principles of trademark law and to concepts embodied in 15 USC § 1052(d).

*See also Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“fame alone cannot overwhelm the other du Pont factors as a matter of law”).

*Similarity or Dissimilarity of the Marks*

We turn then to a comparison of Applicant’s HIGH SCHOOL WORLD SERIES mark with Opposer’s famous WORLD SERIES mark, both in typed or standard characters. In determining the similarity or dissimilarity of marks, we must consider the marks in their entirety in terms of sound, appearance, meaning and commercial impression. *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

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In this case, the mark HIGH SCHOOL WORLD SERIES is similar to Opposer's mark WORLD SERIES inasmuch as Applicant's mark includes as its most prominent feature the entirety of Opposer's mark. The only difference between the marks is Applicant's addition of the descriptive and disclaimed wording HIGH SCHOOL to Opposer's famous mark. Disclaimed, descriptive matter is often "less significant in creating the mark's commercial impression." *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001). "Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'" *Cunningham*, 55 USPQ2d at 1846, quoting, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985). However, while a disclaimed term ... may be given little weight ... it may not be ignored." *M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1948-49 (Fed. Cir. 2006).

The presence of the term HIGH SCHOOL in Applicant's HIGH SCHOOL WORLD SERIES mark results in that mark differing somewhat from Opposer's WORLD SERIES mark in appearance and sound. It also creates a variation in connotation to the extent that it suggests a "World Series" of competition played at the high school level. However, we cannot agree that this additional term distinguishes the marks. The only term in Opposer's mark is WORLD SERIES and it is the only distinctive term in Applicant's mark. This common identical term in both marks results in marks that, overall, are more similar than dissimilar in sound and appearance. With regard to meaning or connotation, as noted above Applicant's mark suggests a

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“World Series” of baseball championship games played at a high school level. This meaning or connotation plays off that of Opposer’s famous WORLD SERIES mark, which itself identifies a very well-known series of championship games. The presence of the additional term HIGH SCHOOL would not be likely to distinguish the marks since it would merely indicate that Applicant offers a subset of Opposer’s services under its mark. *See, e.g., Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (“Given the dominance of the word ‘Packard’ in PACKARD TECHNOLOGIES and HP’s heavy involvement in the technology field, this court agrees with the Board that the similarities in the marks [PACKARD TECHNOLOGIES and HEWLETT PACKARD] outweigh the differences. Substantial evidence supports the Board’s finding that the marks are similar in their entirety”). Thus, the term HIGH SCHOOL in Applicant’s mark does not serve to distinguish it from Opposer’s WORLD SERIES mark so much as it suggests that the marks are variations of each other.

Viewed as a whole, we find that Applicant’s mark is more similar to Opposer’s famous mark than dissimilar in terms of appearance, sound, and especially connotation and overall commercial impression. Therefore, the first *du Pont* factor, similarity of the marks, weighs in favor of a likelihood of confusion.

*Similarity or Dissimilarity of the Services*

Next, we turn to our consideration of the similarities or dissimilarities between the parties’ services. It is well established that the goods or services of the parties need not be similar or competitive, or even offered through the same channels of

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trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods or services of the parties are related in some manner, or that the conditions and activities surrounding the marketing of the goods or services are such that they would or could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same source. See *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); *In re International Telephone & Telephone Corp.*, 197 USPQ 910, 911 (TTAB 1978). The issue, of course, is not whether purchasers would confuse the goods and/or services, but rather whether there is a likelihood of confusion as to the source thereof. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In this case, the services recited in Opposer's Registration No. 3424320 are:

entertainment services, namely, baseball games, competitions, tournaments and exhibitions rendered live and through broadcast media including television, radio, satellite, wireless, audio and video media, telephone, fiber optics, wi-fi and other electronic media and via a global computer network or a commercial on-line service; information services, namely, providing information in the field of sports, entertainment and related topics, and providing for informational messages relating thereto; entertainment services, namely, providing multi-user interactive computer games all via a global computer network or a commercial on-line service; educational services in the nature of baseball skills programs, baseball camps, and clinics; entertainment services, namely, production of programming broadcast via television, radio and a global computer network or a commercial on-line service; organizing community sporting events; organizing and conducting fantasy sports, sports contests and sweepstakes; fan clubs; providing on-line newsletters in the field of baseball.

Applicant's services are recited as follows:

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advertising, including promotion of products and services of third parties through sponsoring arrangements and license agreements relating to international sports events; promoting sports competitions and/or events of others; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with high school baseball.

Opposer argues that its

“baseball games, competitions, tournaments and exhibitions rendered live and through broadcast media...” “baseball skills programs, baseball camps and clinics,” and “organizing community sporting events” are not restricted by the level of baseball and thus encompass youth level baseball within their descriptions.<sup>40</sup>

Opposer is correct that its services, as recited, are not limited to professional baseball. While it is common knowledge that the “World Series” is a series of games that determines the championship of Major League Baseball, Opposer’s services are not limited thereto. Rather, its services include live and broadcast baseball games without limitation to the level of play and organization of community sporting events also without such limitation. These services may include baseball games played at a high school level. Indeed, it is unlikely that “community sporting events” include professional championship baseball games. Rather, it is more likely that such events are intended to foster an interest in baseball among children and young adults. Similarly, baseball camps and clinics may be directed toward promising, non-professional, young players seeking to enhance their skills. Thus, as recited, Opposer’s services include baseball competition and the fostering of baseball skills at all levels. Similarly, Applicant’s promotion of the sporting competitions and events of others and promoting the goods and services of others through sponsoring

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<sup>40</sup> 57 TTABVUE 43.

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and licensing agreements relating to international sporting events are not limited to high school level of play. *See In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1166 & n.4 (TTAB 2013) (semicolon separates services into discrete categories). We find as a result that, as recited, Applicant's promotion of sporting events and sponsoring and licensing agreements relating thereto are related to Opposer's organization of community sporting events, baseball games and competitions, and baseball skills camps and clinics inasmuch as Applicant may sponsor sporting events at the same level of competition as the sporting events organized by Opposer, and also that Applicant may promote the goods and services of others at such events through sponsorship and licensing agreements. It is settled that likelihood of confusion is determined on the basis of the services as they are identified in Opposer's registration and Applicant's involved application. *See, e.g., Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed").

Applicant argues that

Opposer contends that the parties' services are identical or closely related. To the extent all baseball games are the same as all other baseball games, Opposer may be right. But no reasonable person thinks that Little League games are a MLB enterprise, nor do reasonable people think that college baseball games are high school baseball games. Indeed, the people who would care about high school

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baseball games and tournaments as proposed by Applicant are the most savvy and sophisticated of baseball supporters and would be most sensitive of the distinction. It is laughable for anyone to say that the common major league baseball consumer would drive to some out of the way field with lights emblazoned “High School World Series”, in a parking lot loaded with minivans with paint on the windows saying “Go Bobby”, pay \$6 for a ticket, enter a no-alcohol environment, and then think to himself, “What a deal I’m getting to see major league baseball!!”<sup>41</sup>

Applicant is correct that a fan of baseball is unlikely to confuse his or her attendance at a professional baseball game with a college, high school, or Little League game. Even the most exasperated of fans, comparing the play of a professional baseball team with the level of play encountered at a neighborhood sandlot game, are nonetheless unlikely to believe they are watching or attending anything other than an unfortunate performance by their favorite professional team. However, it is not necessary for us to find that fans are likely to confuse a professional baseball game with a high school baseball game. As noted above, it is only necessary for the conditions and activities surrounding the marketing of such baseball games to be such that they could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same source. *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d at 1432; *In re International Telephone & Telephone Corp.*, 197 USPQ at 911.

As discussed above, Applicant’s services include promoting sporting events and promoting sponsoring arrangements and license agreements with third parties to promote their goods and services at these events. Opposer organizes and conducts

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<sup>41</sup> 61 TTABVUE 9.

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such sporting events. Moreover, based on the fame of Opposer's mark, consumers know that Opposer will use its mark for advertising and promoting the goods and services of others in connection with its baseball championship. Also, as indicated above, consumers are likely to believe that Applicant's services rendered under the mark HIGH SCHOOL WORLD SERIES are a variation of Opposer's WORLD SERIES services rendered at the high school level. The second *du Pont* factor thus supports a finding of likely confusion.

*Channels of Trade and Classes of Consumers*

Because there are no recited restrictions as to the channels of trade or classes of purchasers of the services identified in Opposer's registration, we must assume that the services are available in all the normal channels of trade to all the usual purchasers for such services. *See Octocom*, 16 USPQ2d at 1787. *See also Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods [or services]."). As such, Opposer's services are presumed to be marketed to the general public through all normal trade channels therefor. Applicant's services are marketed in part to all consumers and in part to fans of high school baseball, whom are subsumed among Opposer's unrestricted classes of consumers. Furthermore, both parties market their services to players and fans of baseball, and nothing in the record suggests that fans of professional baseball are separate or distinct from fans of baseball played at a college, high school or community level.

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The third *du Pont* factor also supports a finding of likely confusion.

*Actual Confusion*

Applicant argues “[t]here has never been any confusion in the marketplace.”<sup>42</sup> Opposer argues that “the lack of actual confusion is ‘immaterial’ since Applicant filed on an intent-to-use basis and has admitted that it ceased even initial preliminary activities to try to use its mark as soon as the Opposition was brought.”<sup>43</sup>

In light of the foregoing, it would appear on this record there has been little, if any, opportunity for actual confusion to occur. Furthermore, it has often been recognized that evidence of actual confusion is very difficult to obtain. *Lebanon Seaboard Corp. v. R&R Turf Supply Inc.*, 101 USPQ2d 1826, 1834 (TTAB 2012). In addition, it is not necessary to show actual confusion in order to establish likelihood of confusion. *See Weiss Associates Inc. v. HRL Associates Inc.* 902 F.2d 1546, 223 USPQ 1025 (Fed. Cir. 1990). We treat this *du Pont* factor as neutral.

*Applicant’s Intent in Adopting Its Mark*

Under the thirteenth *du Pont* factor, evidence of an applicant’s bad faith adoption of its mark is relevant to our likelihood of confusion analysis. *L.C. Licensing Inc. v. Berman*, 86 USPQ2d 1883, 1891 (TTAB 2008) (bad faith is strong evidence that confusion is likely, as such an inference is drawn from the imitator’s expectation of confusion). *See also, J & J Snack Foods Corp. v. McDonald’s Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991); *L’Oreal S.A. and L’Oreal USA, Inc. v.*

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<sup>42</sup> 61 TTABVUE 11.

<sup>43</sup> 57 TTABUVE 49.

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*Robert Victor Marcon*, 102 USPQ2d 1434 (TTAB 2012) (applicant’s “string of filing of applications to register various well-known marks convinces us that applicant’s adoption of [opposer’s] mark was in bad faith”).

Opposer argues that “Applicant has admitted awareness of certain of Opposer’s WORLD SERIES Marks prior to filing its Application and that such marks were well known and associated with Opposer.”<sup>44</sup> Opposer further argues that Applicant “had a duty to avoid selecting a mark that encroached on Opposer’s WORLD SERIES Mark. Instead, it intentionally chose such a mark.”<sup>45</sup> In its brief, Applicant acknowledges that it knew of Opposer’s World Series mark:

Was Applicant aware of Opposer’s World Series marks? Of course. So if this was about the “World Series” mark, the issue makes some sense. But no one has ever heard of the CABA mark or CABA itself. And the CABA marks were unregistered, untrademarked marks. How would anyone ever have heard about them? The factor favors Applicant.<sup>46</sup>

As noted above, we have not considered Opposer’s common law rights in the HIGH SCHOOL WORLD SERIES mark it acquired from CABA in our determination herein, but rather confined our discussion to Opposer’s famous WORLD SERIES mark. Thus, as Applicant acknowledges, “the issue makes some sense.” Nonetheless, to the extent that Opposer is arguing that Applicant adopted its mark in bad faith, there is insufficient evidence to show or from we which we can infer this. Mere knowledge of the existence of Opposer’s mark does not, in and of itself, constitute bad faith. *See Action Temporary Services Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ 1307 (Fed. Cir. 1989); *Ava Enterprises, Inc. V. Audio Boss*

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<sup>44</sup> 57 TTABVUE 50.

<sup>45</sup> *Id.*

<sup>46</sup> 61 TTABVUE 11.

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*USA, Inc.*, 77 USPQ2d 1783 (TTAB 2006). Opposer must show that Applicant intentionally sought to trade on Opposer's good will, and such evidence is not present on this record. As a result, this *du Pont* factor also is neutral.

E. Conclusion

We have carefully considered all of the parties' testimony declarations and other evidence pertaining to standing, priority of use and the relevant *du Pont* factors, as well as all of the parties' arguments with respect thereto, including any evidence and arguments not specifically discussed in this opinion.

We conclude that Opposer has established its standing, priority of use and that consumers familiar with Opposer's services under its famous WORLD SERIES mark would be likely to believe, upon encountering Applicant's applied-for HIGH SCHOOL WORLD SERIES mark for its related services, that the parties' services originate with or are associated with or sponsored by the same entity. In making our determination, we have balanced the relevant *du Pont* factors. The factors of the fame of Opposer's WORLD SERIES mark, the similarity of the marks and the relatedness of the services and their trade channels and consumers weigh strongly in Opposer's favor. To the extent that any other *du Pont* factors for which no evidence was presented may be applicable, we treat them as neutral.

*Decision:* The opposition is sustained on the ground of likelihood of confusion, and registration to Applicant is refused.