

Spotlight on “Ladies’ Night” Promotions

BY VERED YAKOVEE



Take yourself back to the 1960s, when Major League Baseball was as simple as the cotton dresses and open-toe sandals that women wore to its games in the summer. Or picture a late-season game, when it was so cold that in addition to their fur coats, the ladies still needed a scotch or two to warm up. That decade, and the century leading up to it, were peppered with “Ladies’ Night” or “Ladies’ Day” promotions to encourage female fans, and the men and children accompanying them, to attend baseball games.

Other promotions had been tried over the years, too. Indeed, an important consideration in planning a successful sports event is promoting it. Most sports fans do not have an endless influx of discretionary income. And not only do all sports properties compete with each other, but they compete with movies, concerts, and other entertainment for attendees.

A savvy sports promoter targets not only those deciding among sports events, but also demographics that are underrepresented as patrons at those events altogether.¹ “Ladies’ Night” is one of the oldest of those endeavors.

The first “Ladies’ Day” at Yankee Stadium was April 29, 1938, boasting 5,000 women in a total crowd of 12,395.² The New York Knickerbockers “encouraged their players to invite female relatives and friends to the grounds” as early as 1867.³ The New York Giants hosted their first “Ladies’ Night” on June 16, 1883.⁴ And the Chicago Cubs started a promotion for women in the early 1920s, breaking the league’s attendance record in 1929.⁵

The notion of “Ladies’ Night” or “Ladies’ Day” promotions has been challenged in various lawsuits over the last 35 years on the grounds that (a) it is discriminatory to men and (b) it perpetuates a negative stereotype of women. The first of those challenges was a 1972 lawsuit against the New York Yankees.⁶ The New York City Commission on Human Rights heard the case and decided that “the stereotyped characterizations of a woman’s role in society that prevailed at the inception of ‘Ladies Day’ in 1867 have ceased to be relevant in a modern technological society where women and men are to be on equal footing as a matter of public policy.”⁷ The decision not only ended Ladies’ Day promotions at Yankee Stadium, but it also dismissed the idea that the promotion is a viable business strategy. The court explicitly rejected the Yankees’ argument that “‘Ladies Day’ is a business concept to promote commercial patronage.”⁸ Instead, the Commission concluded that because attendance by women was still low, the discounts offered to women on Ladies’ Days were “irrational and futile and did not justify [the Yankees’] arbitrary pricing based on sex as a business concept.”⁹

Of this, another court said that “[f]or aught that appears in the [Yankees] opinion, the exemption was denied because the program was unsuccessful.”¹⁰

The following transpired among the commission hearings in the Yankees matter:

Miss Meyers: What is your estimate as a sociologist of the effect on women of having a Ladies’ Day at ball parks? Do you think they are significantly damaged by it?

Mr. Miller: I don’t know if it’s damaging. I think it reinforces stereotypes.

Commissioner Norton: What is the stereotype being reinforced here?

Mr. Miller: Unathletic. Improvident. And also the notion of silly. Ladies’ Day is a silly day. You expect to have silliness going on with a lot of shrieking and silliness because “that is the way women behave on public occasions.”¹¹

In truth, shrieking and silliness occur at most sports events by men, women, and children alike because sports induce emotion. Sports purposely induce emotion. Without it, they could not invoke the loyalty they do in fans. The concept of shrieking and silliness at games is readily exemplified by bare-chested men in the winter with letters painted on their chests, by the traditional “wave” that circles stadiums, and by the various chants that are traditionally yelled across the country in support of the home team. One professional team even boasts a 72,000-seat stadium that it routinely sells out to fans who attend games wearing gigantic slices of faux cheese on their heads; those excited and loyal fans include men, women, and children alike.¹²

Despite the Yankees decision, the concept of Ladies’ Night was not extinguished. On the contrary, since then, the promotion has spread both geographically as well as to other sports.

In 1981, “Ladies’ Night” was among the several promotions employed by the Seattle Sonics. A man who attended at least one Sonics basketball game that year brought a lawsuit similar to the Yankees case, alleging sex discrimination because he was forced to pay full price for a ticket while his wife only paid half price.¹³ The Sonics court declined to follow the nonbinding Yankees decision and it dismissed the case on a motion for summary judgment. The court acknowledged that the purpose of the promotion was “not to exclude anyone but to encourage attendance.”¹⁴ Notably, the court also acknowledged that business considerations, rather than litigation, should govern whether such “Ladies’ Night” promotions continue:

[A] sizeable majority of fans have indicated their approval of promotional programs such as “ladies’ night.” Perhaps the time will soon arrive when most will shun them. When that occurs, we would expect that the demands of the marketplace will dictate that the programs be abandoned.¹⁵

A baseball league as far away as the South Pacific employed similar promotions to attract more spectators to games. In 1987, the Australian Sports Commission's Queensland Rams held "Ladies' Nights" to increase attendance at their home games that typically drew a few thousand fans at that time.¹⁶

"Ladies' Night" and similar promotions continue to be the subject of litigation. On September 26, 2005, a lawsuit was filed against the Southern California Tennis Association (SCTA); the ATP Tour, Inc.; The Regents of the University of California; and their sponsors in connection with the Mercedes-Benz Cup that took place at the Los Angeles Tennis Center at UCLA. The SCTA is a nonprofit entity that owns the license from the ATP to stage the annual men's professional tennis tournament known as the Mercedes-Benz Cup. UCLA entered into a long-term facilities use agreement with the SCTA whereby UCLA provided access to certain facilities and support such as ticketing through the university's ticketing office. The complaint alleged sex discrimination against all of the defendants based on a "Ladies' Day" event that occurred in the morning before an afternoon of tennis. The male plaintiffs alleged that they were discriminatorily denied access to the "Ladies' Day" clinic where women received instruction on tennis, a fashion show, and their choice of an on-site manicure or massage.¹⁷ In addition, the complaint alleged that "Ladies' Day" had the effect of "promoting harmful negative stereotypes"¹⁸ The court did not have the opportunity to address these points because the case settled after an insurer of the SCTA accepted defense of the matter on behalf of all of the defendants. However, 24 years earlier, the Sonics court had addressed the latter point stating that

[j]udging from its alleged success at the Sonics Sunday night games, not all women have found that type of inducement offensive.¹⁹

The same attorney that filed the SCTA lawsuit brought a similar action on May 4, 2006, against Angels Baseball LP, and others, claiming that a

Mothers' Day promotion the team employed was discriminatory.²⁰ The promotion specifically involved the distribution of tote bags to women over the age of 18 who attended the 2005 "Family Sunday" event on Mothers Day.²¹ On February 1, 2007, the judge dismissed the Angels case. On May 8, 2006, days after filing the Angels action, the same attorney had filed a lawsuit against the Oakland A's, challenging the team's hat giveaway because the items were distributed to women only.²² He also filed a complaint against the San Diego Padres on June 17, 2005, challenging the team's baseball clinic held for women only.²³

After the court's summary judgment in their favor, Angels' spokesperson Tim Mead stated that "[e]very sport franchise has the right intentions in mind, and hopefully the decision clears the path that other franchises don't have to worry about something so silly."²⁴ He also confirmed that the Angels' Mothers' Day promotion will continue.²⁵

Modified versions of "Ladies' Night" continue with other baseball teams. For example, the Florida Marlins still host a monthly "Ladies' Nite."²⁶ On those occasions, women 18 and older are admitted for free to a pregame roundtable discussion with guest speakers, including players and front office and field staff.²⁷

Indeed, Major League Baseball continues to promote the sport to its female demographic in new ways. In 2000, the league announced its Commissioner's Initiative on Women and Baseball. Among the initiative's projects are "an official MLB 'Mothers Day' celebration" and "special ballpark nights with discounts, giveaways, and in-park promotions designed to entertain—not patronize—female fans."²⁸ These programs continue and thus we are likely to see "Ladies" promotions as a continuing feature of sporting events.

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1. This holds true for any underrepresented demographic. As this point pertains to the topic of Ladies' Night, women are arguably not dramatically underrepresented as baseball fans. Numerous reports and articles place the constituency of female baseball fans at about 41–46 percent. For example, in 2004, the *Chicago Sun Times* reported that "[a]ccording to Scarborough research, 41 percent of women nationwide are defined as major-league baseball fans and 42 percent of major-league baseball fans are women." Jennifer Jones, *Gender Equity Believe It or Not, Women Are Big Part of Cubs, Sox Fan Bases*, CHICAGO SUN TIMES, June 27, 2004, at Sports 103. See also Becky Yarek, *Baseball Makes a Pitch to Women League Isn't the Only Sport to Court Female Fan Base*, USA TODAY, Oct. 16, 2000, Money 3B ("Women make up 46% of MLB's fan base.").

2. <http://www.thebaseballpage.com/players/gehrilo01.php> (last visited Mar. 2, 2007).

3. http://losangeles.dodgers.mlb.com/la/fan_forum/mccourt_qa.jsp (last visited Mar. 2, 2007).

4. UNITED PRESS INTERNATIONAL, THE ALMANAC, June 16, 2005.

5. See Steve Watkins, *William Wrigley Could Chew Anything He Bit Off, Sell with Enthusiasm*, INVESTORS BUS. DAILY, Dec. 18, 2006, at A04; <http://www.answers.com/topic/william-wrigley-jr> (last visited Mar. 3, 2007).

6. *Abosh v. New York Yankees, Inc.*, No. CPS-25284, Appeal No. 1194 (N.Y. State Human Rights Appeal Board, July 19, 1972).

7. *Id.*

8. *Id.*

9. *Id.*

10. *MacLean v. First N.W. Indus. of Am., Inc.*, 635 P.2d 683, 687 n.3 (Wash. 1981).

11. BARBARA ALLEN BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW* (1975) (citation omitted); *MacLean*, 635 P.2d at 687 n.3.

12. The author wishes to acknowledge the esteemed Green Bay Packers as a founding team of the National Football League, a steady pillar of both the history and the current climate of American sports, and as a nonsilly establishment that she

holds in the highest regard.

13. *MacLean*, 635 P.2d at 683.

14. *Id.* at 687.

15. *Id.*

16. Richard D. Lyons, *Baseball Fever on the Rise in Australia*, N.Y. TIMES, Feb. 6, 1987, at A25.

17. Complaint, ¶ 6, and Exhibit D to Complaint, *Cohn v. Mercedes-Benz USA*, Case No. 05CC10640 (filed Sept. 26, 2005).

18. Complaint, ¶ 9, *Cohn*.

19. *MacLean v. First N.W. Indus. of Am., Inc.*, 635 P.2d 683, 687 n.3 (Wash. 1981).

20. *Cohn v. Corinthian Colleges Inc.*, Case No. 06CC0090 (filed May 4, 2006).

21. Erik Ortiz, *Plaintiff Strikes Out in Lawsuit over Angels Bag Giveaway*, ORANGE COUNTY REG., Feb. 8, 2007 at NewsR.

22. Sasha Talcott, *Teams Woo Female Fans with Freebies, but a Lawyer Cries Foul*, BOSTON GLOBE, Aug. 22, 2006, at Bus. and Fin. News.

23. Bill Shaikin, *Lawsuit Against Angels Thrown Out*, L.A. TIMES, Feb. 2, 2007, at D9.

24. Erik Ortiz, *Plaintiff Strikes Out in Lawsuit over Angels Bag Giveaway*, ORANGE COUNTY REG., Feb. 8, 2007, at NewsR.

25. *Id.* But note, franchises react differently to this line of litigation. For example, the Angels handed out the Mothers Day tote bags to the first 25,000 fans in attendance, regardless of gender, at that annual game that occurred while the lawsuit was pending. See Shaikin, *supra* note 24. The Oakland A's no longer base promotions on gender, and they have allowed men to

attend their Baseball 101 clinic that was previously only for women. See Talcott, *supra* note 23. On the other hand, a AA affiliate of the Toronto Blue Jays turns down requests from adults for the bobble-head dolls the team gives away as a promotional item to children. *Id.*

26. http://florida.marlins.mlb.com/news/press_releases/press_release.jsp?ymd=20060905&content_id=1647191&vkey=pr_fla&fext=.jsp&c_id=fla (last visited Mar. 4, 2007).

27. *Id.*

28. http://www.mlb.com/news/press_releases/press_release.jsp?ymd=20000726&content_id=388145&vkey=pr_mlb&fext=.jsp&c_id=mlb (last visited Mar. 4, 2007).