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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002588
Party	Applicant Crown Center Redevelopment Corporation
Correspondence Address	DAVID N JOHNSON HALLMARK CARDS INCORPORATED 2501 MCGEE TRAFFICWAY , MD 339 KANSAS CITY, MO 64108-2600 UNITED STATES sara.grabill@hallmark.com, trademark@hallmark.com
Submission	Other Motions/Papers
Filer's Name	David N. Johnson
Filer's e-mail	sara.grabill@hallmark.com
Signature	/david n johnson/
Date	07/03/2014
Attachments	Motion for Consideration.pdf(573012 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Applications Serial Nos. 85705584, 85705612, 85705643, and 85979418 for the marks CROWN CENTER and CROWN CENTER and Device

Crown Center Redevelopment Corporation Plaintiff v. Cumberland County Commission, County Courthouse Defendant	Concurrent Use Proceeding No. 94002588

MOTION FOR CONSIDERATION OF COEXISTENCE AGREEMENT, REQUEST OF ISSUANCE OF THE CONCURRENT USE REGISTRATIONS SOUGHT, AND AMENDMENT

Crown Center Redevelopment Corporation (hereafter "CCRC"), the applicant and therefore the plaintiff in the above-captioned concurrent use proceeding, hereby moves that the concurrent registrations sought in this concurrent use proceeding, once amended as described below, be granted in light of the Settlement and Coexistence Agreement between CCRC and the defendant in this proceeding, Cumberland County, North Carolina, which was executed on July 1, 2014 (hereafter "the Agreement") and which is attached hereto as Exhibit A and incorporated herein by this reference. Plaintiff submits that the terms of the Agreement are sufficient to avoid any likelihood of confusion, mistake, or deception from the concurrent use by the parties of their respective marks in accordance with the Agreement. Plaintiff therefore moves that this concurrent use proceeding be resolved in accordance with the terms of the Agreement, that is, that the four applications that are the subject of this proceeding be amended, in accordance with section 1.4 of the Agreement, so that, with respect to the services in Class 43, they pertain to the

entire United States except for the North Carolina counties of Cumberland, Harnett, Sampson, Bladen, Robeson, Hoke, and Moore, and with respect to the services in Class 36 they pertain to the entire United States; and that registrations issue on said applications as so amended.

Favorable consideration of this motion is requested.

Respectfully submitted,

David N. Johnson
Hallmark Cards, Incorporated
Attorney for Plaintiff
2501 McGee Trafficway, MD 339
Kansas City, MO 64108-2600
David.johnson@hallmark.com
Tel.: 1.816.274.8397

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing MOTION FOR CONSIDERATION OF COEXISTENCE AGREEMENT, REQUEST OF ISSUANCE OF THE CONCURRENT USE REGISTRATIONS SOUGHT, AND AMENDMENT upon the following by U.S. first class mail, postage prepaid, as follows:

William S. Fultz
Attorney for Defendant
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

this 7th day of July, 2014.

David N. Johnson
Hallmark Cards, Incorporated
Attorney for Plaintiff
2501 McGee Trafficway, MD 339
Kansas City, MO 64108-2600
David.johnson@hallmark.com
Tel.: 1.816.274.8397

Exhibit A

SETTLEMENT AND COEXISTENCE AGREEMENT

THIS SETTLEMENT AND COEXISTENCE AGREEMENT (the "Agreement") is made effective this 30th day of June, 2014, between Cumberland County, North Carolina, a political and geographic subdivision of the state of North Carolina ("Cumberland County"), and Crown Center Redevelopment Corporation, a corporation under the laws of the State of Missouri ("CCRC"). Cumberland County and CCRC are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CCRC owns and operates a development known as "Crown Center," located at 2450 Grand Boulevard, Kansas City, Missouri, through which it provides facilities for exhibitions, concerts, community festivals, and other functions, as well as shopping center services, namely, rental of shopping center space (the "CCRC Services");

WHEREAS, Cumberland County owns and operates a development that, until March 27, 2014, was also known as "Crown Center," through which it provides facilities for meetings, conventions, shows, concerts, leisure activities, and other business, entertainment, and community functions (excluding the rental of shopping center space) (the "Cumberland County Services");

WHEREAS, as of March 27, 2014, Cumberland County changed the name of its "Crown Center" development to "Crown Complex," although the development continues to be referred to from time to time as "Crown Center";

WHEREAS, CCRC and Cumberland County acknowledge that their respective services are primarily geographic in nature, in that each Party's services emanate from a single, fixed physical location and primarily serve consumers living or operating within different geographic regions of the United States;

WHEREAS, CCRC is the owner of a pending application with the U.S. Patent and Trademark Office ("USPTO") to register the service mark CROWN CENTER, as well as three pending applications to register the CROWN CENTER wording along with a design element, all in connection with some or all of the CCRC Services, as shown on Exhibit A hereto (collectively, the "CCRC Marks");

WHEREAS, in each of CCRC's applications to register the CCRC Marks, CCRC cited to Cumberland County's use of the mark CROWN CENTER as an exception to CCRC's exclusive right to use the CCRC Marks in connection with the CCRC Services in International Class 43 and consequently sought registrations to use the CCRC Marks for such services in the entire United States except for Cumberland County, North Carolina;

WHEREAS, a concurrent use proceeding before the USPTO's Trademark Trial and Appeal Board (Proceeding No. 94002588) was instituted by CCRC against "Cumberland County Commission, County Courthouse" on February 23, 2014, as a result of CCRC's applications for concurrent use registrations of the CCRC Marks;

WHEREAS, the Parties recognize the validity of each other's uses of their respective marks and have concluded that confusion is not likely to arise from their respective uses of such marks in accordance with the terms and conditions of this Agreement;

WHEREAS, the Parties desire to protect their respective interests and to prevent confusion in the marketplace, and believe this can be accomplished without the need for litigation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Terms of Use and Registration of CROWN CENTER

1.1 CCRC hereby consents to, and agrees not to object to, oppose, or challenge, by any means or on any legal theory, the use by Cumberland County of the CROWN CENTER marks shown on Exhibit B hereto (the "Cumberland County Crown Center Marks") in connection with the Cumberland County Services (a) in perpetuity within the North Carolina counties of Cumberland, Harnett, Sampson, Bladen, Robeson, Hoke, and Moore (the "Cumberland County Territory"), and (b) though November 15, 2014 outside the Cumberland County Territory, after which date Cumberland County will cease all use of the Cumberland County Crown Center Marks outside of the Cumberland County Territory. For purposes of this Section 1.1, use by Cumberland County of the Cumberland County Crown Center Marks in general advertising that does not specifically target any areas outside of the Cumberland County Territory (including but not limited to such use on Internet websites or in national media) shall not constitute "use" outside of the Cumberland County Territory.

1.2 Cumberland County will not register or seek to register any of the Cumberland County Crown Center Marks in any jurisdiction in the world.

1.3 Cumberland County hereby consents to, and agrees not to object to, oppose, or challenge, by any means or on any legal theory, the use by CCRC of the CCRC Marks in connection with the CCRC Services throughout the United States except in the Cumberland County Territory. CCRC may not use the CCRC Marks anywhere within the Cumberland County Territory. For purposes of this Section 1.3, use by CCRC of the CCRC Marks in general advertising that does not specifically target any areas within the Cumberland County Territory (including but not limited to such use on Internet websites or in national media) shall not constitute "use" within the Cumberland County Territory.

1.4 Cumberland County consents to CCRC's concurrent use registrations with the USPTO of the CCRC Marks covering (a) with respect to CCRC's Services that are listed in International Class 43 on Exhibit A hereto, the entire United States except for the Cumberland County Territory, and (b) with respect to CCRC's Services that are listed in International Class 36 on Exhibit A hereto, the entire United States.

1.5 CCRC will not seek, obtain, or maintain any registrations of any of the CCRC Marks, or any other marks consisting of or incorporating the wording "Crown Center," to the extent that such registrations (a) include or would include any of the CCRC Services that are

listed in International Class 43 on Exhibit A hereto, and (b) would cover any portion of the Cumberland County Territory. Further, CCRC will not seek, obtain, or maintain any state-level registrations of any of the CCRC Marks in the State of North Carolina.

2. Cumberland County's Use and Registration of "Crown Complex"

2.1 CCRC hereby consents to, and agrees not to object to, oppose, or challenge, by any means or on any legal theory, the use, registration, re-registration, maintenance, and/or renewal, anywhere in the world, by Cumberland County of any of the CROWN COMPLEX marks shown on Exhibit C hereto (the "Cumberland County Crown Complex Marks") in connection with the Cumberland County Services and/or any substantially similar services.

2.2 CCRC agrees that it will not adopt or use, anywhere in the world, any of the Cumberland County Crown Complex Marks, whether standing alone or as a component of any other trademark, service mark, slogan, tagline, or other indicator of source. CCRC further agrees that it will not register, seek to register, acquire, or maintain any of the Cumberland County Crown Complex Marks as a trademark, service mark, or domain name in any jurisdiction.

3. Further Cooperation and Consents

3.1 Cumberland County agrees to execute any additional reasonable consents or agreements, or to provide any additional verbal or written consents, as CCRC may reasonably request to permit or facilitate CCRC's registration, re-registration, renewal, new applications to register, or right to use the CCRC Marks as permitted under this Agreement.

3.2 CCRC agrees to execute any additional reasonable consents or agreements, or to provide any additional verbal or written consents, as Cumberland County may reasonably request to permit or facilitate Cumberland County's registration, re-registration, renewal, new applications to register, or right to use the Cumberland County Crown Center Marks and the Cumberland County Crown Complex Marks as permitted under this Agreement.

4. Avoidance of Confusion

4.1 The Parties believe that, based upon the terms and conditions contained in this Agreement, including the geographic restrictions pertaining to the Parties' rights to use and register their respective CROWN CENTER marks, there is not, and will not be, any likelihood of confusion or conflict between the Parties' respective marks.

4.2 CCRC and Cumberland County agree that they will cooperate in good faith to avoid any possible confusion in the uses of their respective marks, including but not limited to using commercially reasonable efforts to identify themselves as the owners of the respective marks when using the marks in commerce. Each will promptly notify the other of any instance of actual confusion that comes to its attention, and the Parties will take reasonable steps to eliminate such confusion and prevent any such instance of confusion from recurring in the future.

5. Mutual Release and Discharge. Each Party hereto, intending to be legally bound, and for and in consideration of the obligations undertaken pursuant to this Agreement, does for itself,

and its successors, parent companies, subsidiaries, affiliates, assigns, directors, officers, shareholders, agents, employees, attorneys, and insurers hereby remise, release and forever discharge the other Party and its successors, predecessors, parent companies, subsidiaries, affiliates, assigns, directors, officers, shareholders, agents, employees and attorneys, insurers, and all other persons, corporations or entities who are jointly and severally liable with them, from any and all known or unknown actions, causes of action, claims, charges, demands, suits, contracts, and damages, including compensatory damages, consequential damages, punitive damages, liquidated damages, attorneys' fees, expenses, and any other type of damages whatsoever. This release includes any and all claims of any nature whatsoever, whether known or unknown or whether asserted or unasserted, including without limitation all claims relating to trademark infringement, breach of contract, fraud, unfair trade practices, and any and all claims arising under or pursuant to any other legal or equitable theory of recovery. This release is not intended to, and does not, release any obligations of any Party set forth in this Agreement.

6. Costs and Expenses. Each Party shall pay its own costs and expenses relating to this Agreement and the issues addressed herein.

7. Assignment; Benefit. Neither Party shall have the right to assign or transfer this Agreement in whole or in part without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed in the event the requesting Party desires to assign or transfer this Agreement in its entirety to a successor in interest to that portion of such Party's business with which the mark(s) at issue are used, in whole or in part. Any attempted assignment or transfer in violation of this provision shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and the permitted successors, assigns, and transferees of each Party hereto, as well as to any licensees of those respective entities.

8. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina and the United States of America.

9. Duration. The obligations and restrictions of this Agreement shall cease to be binding on CCRC if and when Cumberland County has abandoned, as a legal matter, all of its trademarks (including service marks) which include the word "Crown" in connection with all of the Cumberland County Services. The obligations and restrictions of this Agreement shall cease to be binding on Cumberland County if and when CCRC has abandoned, as a legal matter, all of its trademarks (including service marks) which include the word "Crown" in connection with all of the CCRC Services.

10. Entire Agreement; Severability; Authority to Sign; Counterpart Execution. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and may not be modified, amended, or otherwise changed in any manner except in writing executed by each of the Parties hereto. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. Each of the Parties represents, warrants, and agrees that the company officer reviewing and executing the Agreement on its behalf has been duly authorized and empowered by the company to do so. This Agreement may be executed in counterparts, each of which shall be deemed an original document, but all of which will constitute a single document.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement intending to be legally bound hereby effective the date first above written.

Cumberland County, North Carolina

By: Jeanette Council

Name: Jeanette Council

Title: Chair, Board of Commissioners

Approved by the Cumberland County Board of Commissioners June 2, 2014

Crown Center Redevelopment Corporation

By:

Name: William (Bill) Lucas

Title: President

APPROVED AS TO FORM

APPROVED FOR LEGAL SUFFICIENCY

BY: N Morefield

County Attorney's Office

PPAB 2434193v2

EXHIBIT A

CCRC Marks

Mark	Jur.	Application No.	Application Date	Owner	Covered Services
CROWN CENTER	US	85979418	8/16/12	Crown Center Redevelopment Corporation	(International Class 43) Providing facilities for exhibitions, concerts, community festivals and other functions
CROWN CENTER	US	85705643	8/16/12	Crown Center Redevelopment Corporation	(International Class 36) Shopping center services, namely, rental of shopping center space (International Class 43) Providing facilities for exhibitions, concerts, community festivals and other functions
CROWN CENTER	US	85705612	8/16/12	Crown Center Redevelopment Corporation	(International Class 43) Providing facilities for exhibitions, concerts, community festivals and other functions
CROWN CENTER	US	85705584	8/16/12	Crown Center Redevelopment Corporation	(International Class 43) Providing facilities for exhibitions, concerts, community festivals and other functions

EXHIBIT B

Cumberland County Crown Center Marks

1. **CROWN CENTER**

2.

CROWN

CENTER

FAYETTEVILLE, NC

EXHIBIT C

Cumberland County Crown Complex Marks

1. **CROWN COMPLEX**

2.