

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: July 22, 2014

Concurrent Use No.
94002588

Crown Center
Redevelopment Corporation

v.

Cumberland County,
North Carolina¹

Before Seeherman, Quinn and Lykos, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Crown Center Redevelopment Corporation ("Applicant")
has filed four concurrent use applications for the marks
shown below for "providing facilities for exhibitions,
concerts, community festivals and other functions," in
Class 43:

¹ Previous papers erroneously identified the Excepted User as
"Cumberland County Commission, County Courthouse," apparently
because Applicant, in naming the Excepted User, used the phrasing
"Cumberland County, North Carolina (Cumberland County Commission,
County Courthouse, 117 Dick Street, Fayetteville, NC 28301)."
Upon review, it appears that "Cumberland County Commission,
County Courthouse" is part of the address of the Excepted User.
We have therefore corrected the caption.

Serial No. 85705643² for



Serial No. 85705612³ for



Serial No. 85979418⁴ for



Serial No. 85705584 for CROWN CENTER in standard characters.⁵

The applications were all filed on August 16, 2012. Each application names Cumberland County, North Carolina, a political and geographic subdivision of the state of North Carolina (hereafter "Cumberland" or "Excepted User"), as an

² This application also includes services in Class 36; during the course of prosecution Applicant requested that the application be divided, with Class 43 being placed into a child application. The request to divide will be acted on at the conclusion of this concurrent use proceeding.

³ This application is only for services in Class 43; no request to divide was filed.

⁴ The application as originally filed (Serial No. 85705534) included services in both Class 36 and Class 43. During the course of prosecution Applicant filed a request to divide, and the subject application in Class 43 became a "child" application, Serial No. 85979418.

⁵ This application is only for services in Class 43; no request to divide was filed.

exception to Applicant's exclusive right to use the marks. At the time that this proceeding commenced, Applicant sought registration of its marks for the entire United States outside of Cumberland County, North Carolina.

On July 3, 2014, Applicant filed a Settlement and Coexistence Agreement, dated July 1, 2014, between Applicant and Excepted User, by which the parties "acknowledge that their respective services are primarily geographic in nature, and 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."

Recital No. 4. Under the agreement, Applicant agrees that it will not use its marks anywhere within Excepted User's territory, namely, the North Carolina counties of Cumberland, Harnett, Sampson, Bladen, Robeson, Hoke and Moore. ¶ 1.3. Excepted User, on the other hand, states that, as of March 27, 2014, it has changed the name of its "Crown Center" development, through which it provides facilities for conventions, shows, concerts and other business, entertainment and community functions, to "Crown Complex," recital No. 3, and that it will not use the mark CROWN CENTER and design after November 15, 2014 in the territory claimed by Applicant. ¶ 1.1. Excepted User

further consents to the use and registration by Applicant of the subject marks in connection with Applicant's identified services in Class 43 throughout the United States except in the named North Carolina counties. ¶¶ 1.3, 1.4.⁶

As part of their efforts to avoid confusion, the parties have agreed that they will cooperate to avoid any possible confusion, including using commercially reasonable efforts to identify themselves as the owners of the respective marks when using the marks in commerce. ¶ 4.2. Each further agrees to promptly notify the other of any instance of actual confusion that comes to its attention, and both parties will take reasonable steps to eliminate such confusion and prevent any such instance of confusion from recurring in the future. *Id.*

With the "Settlement and Coexistence Agreement" Applicant has filed a Motion requesting amendment of its applications in accordance with Section 1.4 of the agreement, so that the services in Class 43 "pertain to the entire United States except for the North Carolina counties of Cumberland, Harnett, Sampson, Bladen, Robeson, Hoke, and Moore."

⁶ Cumberland consents to Applicant's registration of its marks for its Class 36 services throughout the United States, with no restriction with respect to any North Carolina counties. ¶ 1.4.

Based on the provisions of the agreement, and the amendment of Applicant's applications, we find that confusion is not likely with respect to the parties' use of their respective marks. Both have agreed that they will not use the CROWN CENTER marks in the territory of the other; that they will use reasonable efforts to identify themselves as the owners of the respective marks when using the marks in commerce; and that, if either party becomes aware of any instance of actual confusion, it will take reasonable steps to eliminate such confusion and prevent any such instance of confusion from recurring in the future.

The parties agree that confusion is unlikely, noting that their services are primarily geographic in nature, and 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. We also recognize that it is the parties that are most knowledgeable about their respective businesses and the use of their respective marks, and therefore most able to determine whether the conditions set forth in their agreement will prevent confusion. *See Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank*, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988); *Bongrain Int'l Corp.*

v. Delice de France Inc., 811 F.2d 1479, 1 USPQ2d 1775 (Fed. Cir. 1987). In view thereof, we find that, based on the geographic limitations and other conditions set forth in the agreement, concurrent use of the CROWN CENTER marks is unlikely to cause confusion or mistake or to deceive.

Therefore, Applicant's request for amendment of its applications, and the parties' joint request for issuance, with these amendments, of concurrent registrations to Applicant for the marks CROWN CENTER and CROWN CENTER with various designs, Serial Nos. 85705584, 85705643, 85705612 and 85979418, are hereby granted.

Decision:

Crown Center Redevelopment Corporation is entitled to concurrent use registrations for the marks CROWN CENTER and CROWN CENTER with various designs, Serial Nos. 85705584, 85705643, 85705612 and 85979418, for Applicant's Class 43 services in its territory, namely, the entire United States with the exception of the North Carolina counties of Cumberland, Harnett, Sampson, Bladen, Robeson, Hoke and Moore.

Application Serial No. 85705643 is hereby forwarded to the ITU Division to act on the request to divide filed June 6, 2013.