

TRADEMARK COEXISTENCE AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between the following parties, and is effective on the last date signed below by one of the parties ("Effective Date"):

The City of Portland, Oregon, an Oregon municipal corporation having offices at 1221 SW 4th Avenue, Portland, Oregon 97204 ("City"); and

Milne, Inc., an Oregon corporation doing business as "Old Town Brewing" and having offices at 5224 NE Cleveland Street, Portland, Oregon 97211 ("OTB").

Together, City and OTB are referred to as the parties.

WHEREAS, City is the owner of the "Portland, Oregon" sign located at the west end of the Burnside bridge in Portland, Oregon, along with various associated intellectual property rights, including without limitation copyright and trademark rights;

WHEREAS, City has applied to register the "Portland, Oregon" sign image as a federal trademark in international classes 21, 25, 32 and 33 (application serial no. 86703114) and has applied to register a "City of Roses" variation of the "Portland, Oregon" sign image as a federal trademark in international classes 25, 32 and 33 (application serial no. 87173025) (collectively the "Pending City Applications");

WHEREAS, OTB is the owner of various federal trademarks comprised of or containing a leaping deer image, including without limitation U.S. federal trademark registration nos. 4,200,106, 4,357,419, 4,728,640 and 5,024,837 in international class 32, and U.S. federal trademark registration no. 4,509,490 in international class 25 (collectively the "OTB Registrations") and has applied to register an additional federal trademark containing a leaping deer image in international class 32 (application serial no. 87131070) (the "Pending OTB Application");

WHEREAS, the USPTO has rejected the Pending City Applications based in part on a likelihood of confusion with certain of the OTB Registrations;

WHEREAS, the USPTO has suspended further examination of the Pending OTB Application based on the City's pending application serial no. 86703114;

WHEREAS, the parties do not believe confusion is likely to result from concurrent use of their respective marks within the guidelines set forth in this Agreement because of the differences in their respective marks and the goods and services with which the parties are using and will use their respective marks; and

WHEREAS, the parties desire to provide for use and registration of their respective marks under the terms and conditions of this Agreement, and to provide a basis for minimizing the possibility of consumer confusion.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Trademark Coexistence Terms

1. City will amend the Pending City Applications to delete "beer, ale and lager" from Class 32 and to delete Class 33 in its entirety. The amended listings of goods are shown in Appendix A to this Agreement and are collectively referred to as the "City Goods."

2. OTB agrees not to object to, oppose or seek to cancel City's use, licensing or federal registration of the "Portland, Oregon" sign and variations thereof for the City Goods in the USPTO or any court of law, and consents to the City's federal registration, use and licensing of the "Portland, Oregon" sign and variations thereof for the City Goods and for any other goods and services that are not in the field of alcoholic beverages.
3. City agrees not to object to, oppose, seek to cancel, or otherwise challenge OTB's use of, or OTB's current or future trademark applications or registrations for, marks comprised of or containing the leaping deer image for goods and services in the fields of alcoholic beverages, apparel and restaurant services, provided OTB will not use or apply to register the "Portland, Oregon" sign image or any variation thereof.
4. City agrees not to file any future trademark applications for the "Portland, Oregon" sign, or any other mark that includes the leaping deer design, for goods or services in the alcoholic beverages field.
5. City agrees not to license the "Portland, Oregon" sign image, or any variation thereof that includes the leaping deer design, to any alcoholic beverage companies (beer, wine, spirits, cider, etc.) or to any other parties for use on alcohol product labels or packaging, point of sale materials, or licensee/distributor vehicles. City also agrees not to manufacture, distribute or sell, either itself or through any third party, any alcohol product that includes the "Portland, Oregon" sign image, or any variation thereof that includes the leaping deer design, on labels or packaging, or point of sale materials promoting the sale thereof.
6. OTB will not object to, and the City is permitted to grant, licenses for the "Portland, Oregon" sign image or any variation thereof to beer and alcohol-related festivals/events, provided (a) there is no cobranding with a single entity (the use must include multiple alcoholic beverage company logos/sponsors to qualify); (b) no products bearing the sign image and alcoholic beverage company logos are sold/given away outside the festival/event premises; (c) the sign image will not appear on glassware or beverage holding vessels that also display the logo of any alcoholic beverage companies (the sign image alone on glassware or beverage holding vessels is permitted); and (d) the sign image may appear on advertising, banners, and signage for festivals/events provided such materials display multiple alcoholic beverage company logos/sponsors.
7. OTB will not object to, and the City is permitted to grant, licenses for the "Portland, Oregon" sign image or any variation thereof to local alcoholic beverage trade organizations solely for advertisements. City will not grant licenses to local alcoholic beverage trade organizations that would result in the sign image appearing on alcohol labels, packaging, POS materials or licensee/distributor vehicles.
8. City agrees to use reasonable efforts to enforce unlicensed uses by third parties of the "Portland, Oregon" sign image, or any variation thereof that includes the leaping deer design, in the alcohol field. City may offer retrospective licenses to alcoholic beverage companies covering the use of the "Portland, Oregon" sign image or any variation thereof on alcohol product labels or packaging, point of sale materials, or licensee/distributor vehicles only in cases where there was unauthorized use and the City offers the retrospective license as a remedy. However, any retrospective licenses granted by the City pursuant to this paragraph will require OTB approval, and alcohol label and point of sale violations may require a joint remedy and cooperation. OTB approval will not be unreasonably withheld. City has disclosed to OTB all prior known violations and licenses granted in the alcohol field. Upon OTB's request, City will cooperate with and provide reasonable assistance to OTB in connection with

enforcement of OTB's trademark rights in the leaping deer design against third parties in the alcohol field.

9. The parties agree to sign this Agreement for filing with the USPTO, (a) to allow City to advance the Pending City Applications and any future City trademark applications covering the use of the "Portland, Oregon" sign image or any variation thereof toward federal registration, provided such future applications are not in the field of alcoholic beverages; and (b) to allow OTB to advance the OTB Pending Application and any future OTB trademark applications comprised of or containing the leaping deer design for goods and services in the fields of alcoholic beverages, apparel or restaurant services, provided such future applications do not include the "Portland, Oregon" sign image or variations thereof.
10. The parties acknowledge that they have resolved any known cases of confusion between the "Portland, Oregon" sign image and the OTB trademarks including the leaping deer design.
11. The parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way as to mitigate any likelihood of confusion between them. In the unlikely event that confusion occurs, the parties agree to notify each other of the confusion in writing, and to take adequate measures to prevent likelihood of further confusion.

General Terms

12. This Agreement shall be in force for five (5) years from the Effective Date, at which time it may be extended for an additional five (5) years by mutual agreement of the parties.
13. This Agreement may be terminated for cause by the non-breaching party in the event that a material breach by the other party remains uncured thirty (30) days after the non-breaching party provides written notice of the breach to the breaching party.
14. Upon termination of this Agreement, whether through expiration or for cause, each party shall retain all rights, remedies and objections (including for any uncured material breach by the other party) with respect to the activities of the other party after termination of the Agreement.
15. The terms and conditions of this Agreement shall inure to the benefit of and be binding and enforceable against each party's agents, successors, licensees, assignees, and other present or future parties in interest.
16. If any one or more clauses of this Agreement is later held invalid or unenforceable, the validity of the remaining clauses shall not be affected, and the parties shall replace by agreement any such clause held invalid or unenforceable.
17. This Agreement encompasses the entire agreement and understanding between the parties hereto and supersedes all prior understandings or agreements, whether written or oral, regarding the coexistence of the parties' respective trademarks.
18. The parties to this Agreement represent and warrant that they have the right and authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any interest, right, claim or demand, or portion thereof, relating to any matter in this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement by their authorized representatives on the dates set forth below.

City of Portland

Milne, Inc. (dba "Old Town Brewing")



(Authorized Signature)

(Authorized Signature)

Ted Wheeler

ADAM MILNE

Printed Name

Printed Name

Mayor

PRESIDENT

Title/Position

Title/Position

1/22/18

1/11/18

Date Signed

Date Signed

Appendix A

(Revised description of goods for Pending City Applications)

Application Serial No. 86703114

International Class 021: Cups, mugs, and drinking glasses; shot glasses; growlers; heat-insulated vessels; insulated flasks

International Class 025: T-shirts; long-sleeved shirts; infant and toddler one piece clothing; hooded sweatshirts; baseball caps and hats

International Class 032: ~~Beer, ale and lager;~~ soft Soft drinks; sports drinks

~~International Class 033: Alcoholic beverages except beers; wines; distilled spirits; bourbon whisky~~

Application Serial No. 87173025

International Class 025: T-shirts; long-sleeved shirts; infant and toddler one piece clothing; hooded sweatshirts; baseball caps and hats

International Class 032: ~~Beer, ale and lager;~~ soft Soft drinks; sports drinks

~~International Class 033: Alcoholic beverages except beers; wines; distilled spirits; bourbon whisky~~