

11-10-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Hawaiian Rectifiers, Inc. dba Hawaiian Distillers

- Individual(s) Association General Partnership Limited Partnership Corporation-State Hawaii Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Paradise Beverages, Inc.

Internal

Address:

Street Address: 94-1450 Moaniani Street

City: Waipahu State: HI Zip: 96797

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State Hawaii

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: September 15, 2000

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2537951, 2571048 & 2606785

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Brandon U. Davidson

Internal Address: Watanabe Ing Kawashima & Komeiji LLP

Street Address: 999 Bishop Street, 23rd Floor

City: Honolulu State: HI Zip: 96813

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41) \$ 90.00

- Enclosed Check No. 082820 Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

brandon U. Davidson

Name of Person Signing

Signature

Signature

NOV 03 2003

Date

8

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

11/07/2003 ECOOPER 00000181 2537951

01 FC:8521 40.00 OP 02 FC:8522 50.00 OP

TRADEMARK REEL: 002859 FRAME: 0183

## ASSIGNMENT OF TRADEMARKS

This Assignment of Trademarks is made effective as of September 15, 2000 by Hawaiian Rectifiers, Inc., a Hawaii corporation doing business as "Hawaiian Distillers" ("Assignor"), in favor of Paradise Beverages, Inc., a Hawaii corporation ("Paradise Beverages").

### RECITALS

A. Capitalized terms used herein without definition have the meaning given them in that certain Asset Purchase Agreement dated September 15, 2000 (the "Asset Purchase Agreement") among Assignor, as seller, the shareholders of Assignor and Paradise Beverages, as buyer.

B. Pursuant to Section 2 of the Asset Purchase Agreement, Assignor has agreed to sell and transfer, and Paradise Beverages has agreed to purchase and accept, the Purchased Assets.

C. Among other things, the Purchased Assets include the Trademarks, including the trademarks described on Schedule 1.18 to the Asset Purchase Agreement, a copy of which is attached hereto.

D. The other intangible property included in the Purchased Assets has been transferred to Paradise Beverages by separate instrument.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties agree as follows:

1. **Assignment.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, transfers, conveys and assigns to Paradise Beverages the Trademarks and all goodwill associated therewith.
2. **Habendum.** To have and to hold the Trademarks and all goodwill associated therewith unto Paradise Beverages and its successors and assigns forever.
3. **Assignor Representations.** Subject to the terms and conditions of the Asset Purchase Agreement, Assignor hereby represents and warrants that: (i) Assignor owns the entire, unencumbered right, title and interest in and to the Trademarks, free from Liens, and no rights or licenses with respect to the Trademarks have been granted to any Person with respect thereto, nor

does any Person have a right to receive any royalty or other remuneration from Assignor or its Affiliates with respect thereto; (ii) neither Assignor nor its Affiliates have received any notice or otherwise has any knowledge of any claims or assertions, nor are they aware of any facts or prior acts upon which such a claim or assertion could be based, that any of the Trademarks are subject to any Lien, are invalid or defective in any way, or that Assignor or its Affiliates are infringing upon, or otherwise violating, the rights of any third party with respect to any of the Trademarks; and (iii) to the Best Knowledge of Assignor, there is no infringement by any third party or other adverse claim against any of the Trademarks.

4. **Further Assurances.** Assignor hereby covenants at the request of Paradise Beverages after the Closing to cause its officers, directors, agents and Affiliates to execute and deliver such further documents and take such reasonable action as may be necessary or appropriate to confirm the sale, transfer, assignment, conveyance and delivery of the Trademarks to Paradise Beverages, and to vest in Paradise Beverages all of Assignor's right, title and interest therein and as otherwise needed to preserve for the benefit of Paradise Beverages the goodwill associated therewith.

All references to "Assignor" and "Paradise Beverages" herein shall include their respective nominees, successors and/or assigns.

**IN WITNESS WHEREOF**, Assignor has executed this Assignment of Trademarks as of the date first above written.

ASSIGNOR:

HAWAIIAN RECTIFIERS, INC.,  
a Hawaii corporation

By: Timothy J. LeVecke  
Timothy J. LeVecke, President

By: Neil LeVecke II  
Neil LeVecke, II, Secretary

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is entered into on September 15, 2000 among Paradise Beverages, Inc., a Hawaii corporation ("Paradise Beverages"), Hawaiian Rectifiers, Inc., a Hawaii corporation doing business as "Hawaiian Distillers" ("Hawaiian Distillers"), Reed J. LeVecke, Timothy J. LeVecke and J. Neil LeVecke II (collectively, the "LeVeckes"), Michael C. Harnetiaux ("Harnetiaux") and Robert Young ("Young"). The LeVeckes, Harnetiaux and Young are at times referred to in this Agreement collectively as the "Shareholders".

### RECITALS

A. Hawaiian Distillers and its affiliate, LeVecke Corporation, a California corporation ("LeVecke"), are engaged in the manufacture, distribution and sale of certain distilled spirits and liqueurs as hereinafter more particularly described (collectively, the "Brands").

B. Hawaiian Distillers desires to: (i) sell and transfer to Paradise Beverages substantially all of the assets relating to the Brands, including all of the trademarks and other intellectual property associated therewith; and (ii) cause LeVecke to enter into an agreement whereby LeVecke will produce the Brands exclusively for Paradise Beverages and pay to Paradise Beverages a licensee fee based on the sales of the Brands by LeVecke within the United States (but not including the State of Hawaii). Paradise Beverages desires to: (i) purchase such assets from Hawaiian Distillers; and (ii) enter into such supply and license agreement with LeVecke, each on the terms and conditions set forth in this Agreement and the Exhibits hereto.

C. The LeVeckes own an aggregate of 60% of the outstanding equity securities of Hawaiian Distillers, Harnetiaux and Young each own 20% of the outstanding equity securities of Hawaiian Distillers, and each shall receive a material financial benefit from the transactions contemplated by this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties agree as follows:

1. **Definitions.** The following terms shall have the meanings set forth below:

1.1 "Affiliates" means, when used with reference to a specified Person: (i) the natural person in ultimate control of such Person; and (ii) any Person directly or indirectly controlling, controlled by or under common control with such Person.

1.2 "Assignment of Intangible Property" means that certain assignment of intangible property assigning to Paradise Beverages all of the right, title and interest of Hawaiian Distillers in and to the Intangible Property (other than the Intangible Property described in the Trademark Assignment) included in the Purchased Assets, in the form of Exhibit A hereto, to be executed by Hawaiian Distillers in favor of Paradise Beverages at the Closing.

1.3 "Best Knowledge of Hawaiian Distillers" means the actual or constructive knowledge of any of the Shareholders, where "constructive knowledge" means matters of public record and the knowledge that would be acquired by any of such individuals after making such inquiry as would be made by a reasonably prudent businessman upon receiving notice of an act or omission giving rise to such inquiry.

1.4 "Brands" means the following brands of Hawaiian Distillers: (i) Hana Bay Rum; (ii) Kahana Royale Macadamia Nut Liqueur; (iii) Keoki Kona Coffee Liqueur; and (iv) Spirit of Hawaii Curacaos (Blue and Orange).

1.5 "Closing" means the closing of the purchase and sale of the Purchased Assets and the execution and delivery of the documents described in Section 6 hereof on September 15, 2000 at 10:00 a.m. at the office of Topa Equities, Ltd., 1800 Avenue of the Stars, Suite 1400, Los Angeles, California, or at such other time and place as may be agreed to by the parties hereto.

1.6 "Closing Date" means the date on which the Closing occurs.

1.7 "Damages" means any action, claim, damage, expense (including reasonable attorneys' fees and disbursements and accountants' and other experts' fees and disbursements), fine, judgment, liability, loss, obligation, penalty, suit or tax.

1.8 "Hawaiian Distillers Closing Documents" means this Agreement and any other agreement, document or instrument contemplated hereby to which Hawaiian Distillers is a party.

1.9 "Intangible Property" means all of the right, title and interest of Hawaiian Distillers in and to: (i) the designs, blends, recipes and formulations for the Brands (including all relevant manufacturing processes and techniques, data, information and other trade secrets developed, designed or derived by Hawaiian Distillers and its Affiliates in connection therewith), including research, test results, and pricing and cost information with respect thereto; (ii) the Trademarks; (iii) all files and records related to the Purchased Assets, including customer, vendor and supplier lists, product literature, production records, sales and collection records, estimates and proposals; and (iv) the Hawaiian Distillers domain name, web site and Internet-related technology, but not including any content on such web site not related to the Purchased Assets or the Brands.

1.10 "LeVeckes" means Reed J. LeVecke, Timothy J. LeVecke and J. Neil LeVecke II.

1.11 **"Liens"** means any trust deed, mortgage, pledge, option, escrow, hypothecation, lien, security interest, financing statement, lease, charge, encumbrance, conditional sale or other title retention or security agreement or any other similar restriction, claim or right of others (other than trademark, copyright or other intellectual property rights), whether arising by contract, operation of law or otherwise.

1.12 **"Paradise Beverages Closing Documents"** means, with respect to Paradise Beverages, this Agreement and any other agreement, document or instrument contemplated hereby to which Paradise Beverages is a party.

1.13 **"Person"** means any individual, partnership, joint venture, corporation, trust, unincorporated organization, government (including any political subdivision thereof, whether federal, state, local or foreign, or any department, instrumentality or agency thereof, or any federal or state court or arbitrator) or other entity.

1.14 **"Purchase Price"** means the purchase price for the Purchased Assets, as set forth in Section 4 hereof, subject to reduction as provided therein.

1.15 **"Purchased Assets"** means the Intangible Property.

1.16 **"Supply Agreement"** means that certain supply agreement, in the form of Exhibit B hereto, to be entered by LeVecke and Paradise Beverages at the Closing, pursuant to which LeVecke shall produce for Paradise Beverages such quantities of the Brands as Paradise Beverages may from time to time require.

1.17 **"Trademark Assignment"** means that certain assignment of trademarks and other intangible property in the form of Exhibit C hereto to be executed by Hawaiian Distillers in favor of Paradise Beverages at the Closing.

1.18 **"Trademarks"** means all trademarks used in connection with the sale and distribution of the Brands, together with all statutory and common law rights, registered or unregistered, to use such trademarks, all goodwill associated therewith, including all names, trade names, trade styles, product designations, service marks, certification marks, brands, symbols, signs, designs, copyrights, logos (including the "Hawaiian Distillers" and "Hawaiian Rectifiers" names, trademarks and logos) and all applications thereof, and federal, state and other registrations thereof in all classes, and all variations thereof, and all forms bearing the same, including the marks set forth on Schedule 1.19 hereto and all variants and derivatives thereof.

2. **Sale and Purchase of Purchased Assets.** Subject to the terms and conditions hereof, at Closing, Hawaiian Distillers shall sell, transfer, assign, convey and deliver the Purchased Assets to Paradise Beverages, and Paradise Beverages shall purchase, accept and acquire the Purchased Assets from Hawaiian Distillers. Paradise Beverages shall take possession of the Purchased Assets at their current locations at the Closing Date.

**SCHEDULE 1.18**

**TRADEMARKS**

**Hana Bay: No trademark registration filed**

**Kahana Royale: Trademark registered with United States Patent and Trademark Office July 2, 1985 as Registration Number 1346660; registration canceled December 23, 1991**

**Keoki: Trademark registered with United States Patent and Trademark Office November 5, 1985 as Registration Number 1369388; registration canceled April 23, 1992**

**Spirit of Hawaii Curacao (blue and orange): No trademark registration filed**