

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Heaven Hill Distilleries, Inc.		10/31/2005	CORPORATION: KENTUCKY
RECEIVING PARTY DATA			
Name:	Marquez Brothers International, Inc.		
Street Address:	5801 Rue Ferrari		
City:	San Jose		
State/Country:	CALIFORNIA		
Postal Code:	95138		
Entity Type:	CORPORATION: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	76355143	MEXICANOS	
CORRESPONDENCE DATA			
Fax Number:	(415)882-3232		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	415-882-3200		
Email:	tmlegal3@owe.com		
Correspondent Name:	Gregory N. Owen, Esq.		
Address Line 1:	455 Market Street		
Address Line 2:	Suite 1910		
Address Line 4:	San Francisco, CALIFORNIA 94105		
ATTORNEY DOCKET NUMBER:	MARQ 60002		
NAME OF SUBMITTER:	Gregory N. Owen		
Signature:	/Gregory N. Owen/		
Date:	11/07/2005		

CH \$40.00 76355143

Total Attachments: 4

source=MARQ 90001#page1.tif

source=MARQ 90001#page2.tif

source=MARQ 90001#page3.tif

source=MARQ 90001#page4.tif

**SETTLEMENT AGREEMENT AND
TRADEMARK ASSIGNMENT**

This SETTLEMENT AGREEMENT AND TRADEMARK ASSIGNMENT ("Agreement") dated as of October 31, 2005 (the "Effective Date"), is made by and between Heaven Hill Distilleries, Inc., a Kentucky corporation with an office at 1064 Loretto Road, Bardstown, Kentucky 40004 ("Heaven Hill") and Marquez Brothers International, Inc., a California corporation with an office at 5801 Rue Ferrari, San Jose, California 95138 ("Marquez").

WHEREAS, on January 7, 2002 Heaven Hill filed federal trademark application Serial No. 76-355143 for the mark MEXICANOS for tequila in International Class 33 pursuant to Trademark Act Section 1(a) based upon first use of the mark as early as December 19, 2001 ("the Trademark");

WHEREAS, Marquez, prior to any filing date or date of first use upon which Heaven Hill can rely, adopted and has continuously used the mark EL MEXICANO in association with foods and non-alcoholic beverages;

WHEREAS, Marquez owns federal trademark registrations for the EL MEXICANO trademark in International Classes 29, 30 and 32 and has pending an application to register EL MEXICANO for goods in Class 33;

WHEREAS, Marquez has filed in the United States Patent and Trademark Office a Notice of Opposition against Heaven Hill's Application Serial No. 76-355143 (Opposition No. 91166114); and

WHEREAS, as part of the comprehensive settlement of the opposition proceeding Heaven Hill desires to sell, assign and transfer, and Marquez desires to receive, the Trademark;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Heaven Hill hereby sells, assigns and transfers to Marquez, and Marquez hereby accepts the sale, assignment and transfer from Heaven Hill of, all right, title and interest in and to the Trademark for Marquez's own use and enjoyment, and for the use and enjoyment of Marquez's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Heaven Hill if this Assignment and sale had not been made, together with all rights of priority and renewals, and all income, royalties or payments due or payable as of the Effective Date or thereafter, and all past, present and future claims, counterclaims, credits, causes of action, choses in action, rights of recovery and rights of setoff against third persons for infringement or other violation of the Trademark, together with the right to sue for and collect any resulting recovery of damages, lost profits, legal fees and costs, including from acts which may have occurred prior to the Effective Date for Marquez's own use

and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives (all collectively, the "Trademark Rights"). Heaven Hill requests the Commissioner of Patents and Trademarks to record Marquez as the assignee and owner of the Trademark.

2. Heaven Hill hereby represents and warrants as follows:

- a. Heaven Hill is the owner of the Trademark and has the right to enter into this Agreement and Trademark Assignment and there are no challenges to Heaven Hill's ownership of the Trademark or its right to assign the Trademark and the associated goodwill to Marquez.
- b. Heaven Hill has not granted the right to use the Trademark or a similar name or mark to any person or entity and has not entered into any coexistence agreement, consent agreement, litigation forbearance agreement or like agreement bearing on the rights and obligations associated with the Trademark.
- c. Heaven Hill has no inventory of MEXICANOS branded product on hand or in production.

3. Heaven Hill shall provide to Marquez, its successors, assigns or other legal representatives, cooperation and assistance at Marquez's reasonable request and sole expense (including, without limitation, the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens and other documentation as may be reasonably required: (a) in the prosecution or defense of any interference, opposition, cancellation, infringement or other proceedings that may arise in connection with any of the Trademark Rights, including, without limitation, testifying as to any facts relating to the Trademark Rights assigned herein and this Assignment; and (b) in the implementation or perfection of this Assignment. Notwithstanding the foregoing, Heaven Hill shall provide to Marquez at Heaven Hill's sole expense the documentation and materials produced pursuant to Section 4 hereinbelow.

4. Heaven Hill agrees to furnish to Marquez written documentation relating to Heaven Hill's use and ownership of the Trademark. Such documentation shall include materials showing Heaven Hill's first use of the Trademark, first use of the Trademark in interstate commerce, and the period of time during which such use continued.

5. Heaven Hill acknowledges that it does not own any other state or federal trademark or service mark registrations for the Trademark and it will not in the future use the Trademark nor use or file any state or federal applications to register any mark containing the formative "mexicano."

6. Marquez will pay Heaven Hill the sum of \$6,500.00 upon the execution of this Agreement by Heaven Hill.

7. Within five (5) days of the Effective Date of this Agreement Marquez will submit to the Trademark Trial and Appeal Board a request to withdraw the Opposition.

8. Subject to and conditioned upon full and complete performance of the covenants of this Agreement, each of the Parties, on behalf of itself and its parent and subsidiary organizations, affiliates, partners, agents, servants, owners, stockholders, employees, representatives, assigns, attorneys and successors (collectively "Affiliates"), hereby releases and forever discharges the other party and its Affiliates from any and all damages, demands, causes of action, liabilities, costs, expenses, compensation, attorney's fees and all other damages and liabilities of any kind whatsoever, direct or indirect, known or unknown, which each Party and its Affiliates have or may have relating to the use and attempt to register MEXICANOS for tequila and the subject matter of the Opposition based on facts or activities occurring prior to the Effective Date.

9. The Parties acknowledge that additional facts concerning the subject matter of the Opposition may be discovered subsequent to the Effective Date. However, the Parties intend to and hereby do, through this Agreement, fully, finally and forever settle and release all damages and liabilities notwithstanding the discovery or existence of any additional or different facts. The parties further acknowledge that they are familiar with California Civil Code Section 1542, which provides:

general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.

The Parties waive and relinquish any rights and benefits which they have or may have under California Civil Code Section 1542 to the full extent that they may lawfully waive any such rights and benefits.

10. Heaven Hill agrees to defend, indemnify and hold Marquez and its Affiliates harmless against all costs, expenses and losses (including reasonable attorney fees and costs) incurred as the result of Heaven Hill's breach of the representations and warranties set forth in Section 2 hereinabove.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and wholly performed therein.

12. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

13. Each party shall bear its own costs and attorneys' fees incurred in the Opposition and in connection with the negotiation and performance of this Agreement.

14. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15. Each of the Parties acknowledges and agrees that this Agreement constitutes a compromise and settlement of the claims in the Opposition and is not to be represented or construed as an admission or concession by any of the Parties.

IN WITNESS WHEREOF, Heaven Hill and Marquez each has caused this instrument to be executed by its respective duly authorized representative as of the Effective Date.

HEAVEN HILL DISTILLERIES, INC.

By: 

Name: Max L. Shapiro

Title: President

MARQUEZ BROTHERS
INTERNATIONAL, INC.

By: 

Name: Gustavo Marquez

Title: President

20252425.1