

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CONDITIONAL ASSIGNMENT		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
Sonoma Wine Company		06/02/2009	LIMITED LIABILITY COMPANY: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
Name:	Specialty Wine Retailers Association		
Street Address:	915 L Street		
Internal Address:	Suite 1000		
City:	Sacramento		
State/Country:	CALIFORNIA		
Postal Code:	95814		
Entity Type:	CORPORATION: CALIFORNIA		
<b>PROPERTY NUMBERS Total: 1</b>			
Property Type	Number	Word Mark	
Serial Number:	77408241	TENACITY	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	(415)391-6493		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	415-391-6490		
Email:	kit@commins.com		
Correspondent Name:	Kit Knudsen		
Address Line 1:	400 Montgomery Street		
Address Line 2:	Suite 200		
Address Line 4:	San Francisco, CALIFORNIA 94104		
ATTORNEY DOCKET NUMBER:	SWC		
NAME OF SUBMITTER:	Kit Knudsen		
Signature:	/Kit Knudsen/		

OP \$40.00 77408241

**900144748**

**TRADEMARK**  
**REEL: 004074 FRAME: 0571**

Date:

10/06/2009

**Total Attachments: 9**

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## TRADEMARK LICENSE & PRODUCTION AGREEMENT

WHEREAS, Specialty Wine Retailer's Association ("Licensor") has been assigned ownership of the work mark "TENACITY" ("Licensed Mark") pursuant to a Trademark Assignment from Sonoma Wine Company, LLC ("Licensee"), a copy of which is attached as Exhibit A (the "Trademark Assignment");

WHEREAS, as of the effective date of the Trademark Assignment, Licensor owns the trademark application and any subsequent registration for the Licensed Mark in the United States, and has developed packaging, advertising and marketing creative for the Licensed Mark.

WHEREAS, Licensee is desirous of using the Licensed Mark in connection with certain wine products as defined on Exhibit B ("Products") in the following territory: the world ("Territory")

NOW, THEREFORE, in consideration of the mutual covenants of the parties and for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Grant and Non-Competition.**

(a) Licensor agrees to and does hereby grant to Licensee a non-exclusive license to make, have made, advertise, promote, distribute, offer for sale and sell wine products using the Licensed Mark in the Territory. If Licensee agrees to produce products in addition to the type and quantity of Products set forth on Exhibit B, the additional products shall be subject to all of the terms and conditions hereof unless otherwise agreed to in writing.

(b) During the term of this Agreement, Licensee shall not contest or otherwise challenge or attack Licensor's rights in the Licensed Mark or the validity of the license granted.

(c) During the term of this Agreement, Licensee shall not sell or market products whose packaging, advertising and marketing creative are substantially similar to, or substantially derivative of, the Licensed Mark and its packaging, advertising and marketing creative in the Territory or elsewhere.

2. **Quality.** The quality of the Products and all promotional and packaging material relating to the Products shall be subject to the reasonable approval of Licensor.

3. **Quality Control.**

(a) Licensee will send Licensor free of charge and by prepaid freight, six (6) specimens of each of the Products from the first supply of the regular production of each vintage (and additional individual bottling, if appropriate) and varietal of wine proposed to be sold under the Licensed Mark for quality control purposes.

(b) Licensor shall furnish to Licensee samples of packaging, advertising and marketing creative materials (including label designs) that are approved by Licensor. Licensee

shall be required to utilize packaging, advertising and marketing creative materials (including label designs) that are consistent in style and quality with the materials approved by Licensor. Licensee shall submit to Licensor for approval any proposed changes to packaging, advertising and marketing creative (including label designs) prior to making changes. Licensor's approval shall not be unreasonably withheld.

(c) Licensor has the right to request from time to time, and Licensee agrees to provide at no charge, additional representative samples of the Products being distributed and sold by Licensee, and of the promotional and packaging materials used therewith in advance of their use, for the purpose of enabling Licensor to determine whether the Products being distributed and sold by Licensee meet the above stated quality standards. In the event the above stated quality standards are not met or maintained throughout the term of this Agreement, Licensor has the right to require that Licensee immediately discontinue manufacturing, selling and distributing Products using the Licensed Mark which do not meet such quality standards.

4. **Royalties.** Licensee shall pay royalties to Licensor equal to \$3 per 750 ml bottle or such other amount as may be agreed upon in writing from time to time.

5. **Production.**

(a) **Schedules and Expense Matrix.** Licensee and Licensor shall meet and jointly approve a Production Schedule and Expense Matrix in the format set forth on Exhibit C prior to the release of each specific vintage or label of the Product. The Production Schedule shall describe the type and amount of Product to be produced and the Expense Matrix shall set forth the costs and expenses incident to each release of the Product, as well as the estimated royalty payable to Licensor for each particular Product release.

(b) **Expanded Production or New Product Lines.** In the event Licensor wants to increase production of the Products identified on Exhibit B or to produce additional products using the Licensed Mark, Licensor shall make a written request to Licensee (the "New Production Request"). Licensee in its sole discretion may determine if it wishes to produce such additional products. If Licensee determines it will not increase production of the Products or produce a new product line, Licensee shall notify Licensor within thirty (30) days of receipt of Licensee's New Production Request. In the event Licensee provides this notification, Licensor may ask another winery to fulfill the New Production Request using the Licensed Mark and Licensee shall not object to this use. Licensee shall have no responsibility or liability for any wines produced by third parties including but not limited to any compliance obligations. Licensee shall cooperate in providing any necessary releases to enable the third party to produce and sell wine pursuant to the New Production Request.

6. **Alcoholic Beverage Laws.** Licensee represents and warrants that it now has, and during the entire Term of this Agreement (including any extensions and renewals) will keep in full force and effect, all licenses, permits and approvals from all regulatory agencies (including the Tax and Trade Bureau of the US Department of the Treasury and such state and local agencies as may have jurisdiction over Licensee or the Products) necessary to produce, distribute and sell the Products in the Territory. Licensee shall properly conduct its business at all times so as to keep its alcoholic beverage licenses and permits in full force and effect and shall hold

Licensors harmless and shall fully indemnify Licensor from any breach by Licensee of its obligations pursuant to this paragraph. The costs of compliance shall be calculated on a project-by-project basis and agreed upon between the parties on the Expense Matrix.

7. **Royalty Payments.**

(a) Within fifteen (15) days following the end of each calendar month during the term of this Agreement, Licensee shall provide Licensor with a written report listing the sales of Products by invoice, buyer and gross sales collected during the immediately preceding calendar month and the basis used in determining the royalty payments due. Royalty payments shall be calculated and due based upon revenue collected from the sales of Products. All such reports shall be accompanied by a check for the royalties shown to be due in the report. Any adjustments to royalties necessitated by returns or discounts granted after payment of the royalties shall be set off against future royalties.

(b) In the event that either party has to resort to legal action for any payments to which it is duly entitled, or to resolve any disputes, the prevailing party in such action or dispute shall be entitled to recover its reasonable attorney's fees and costs from the other party.

8. **Records.**

(a) Licensee shall keep true and complete records relating to the production, distribution and sales of Products. Such records shall be available for inspection upon reasonable notice by an authorized representative of Licensor during normal business hours, and shall be maintained for at least four (4) years following the end of the calendar month to which they pertain. The expense of such examination shall be borne by Licensor and Licensee shall pay any deficiencies to Licensor.

(b) In the event the Territory covered hereunder includes, or shall be extended to include, more than one country, Licensee shall maintain sales and royalty records separately for each country.

9. **Term and Termination.**

(a) Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be for two (2) years from the effective date of the Agreement and shall be automatically renewed for additional consecutive two (2) year terms unless Licensor or Licensee shall give written notice to the other of its intention not to renew at least sixty (60) days prior to the end of the original or any renewal term.

(b) Either party shall have the right to immediately terminate this Agreement on written notice to the other party should the party: (i) file a petition in bankruptcy or be adjudicated as bankrupt or insolvent, or make an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law or if a receiver is appointed for Licensee; or (ii) discontinues its business.

(c) Licensor shall have the right to terminate this Agreement if Licensee: (i) breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights

in the Licensed Mark; (ii) fails to make timely submission of royalty statements and/or royalty payments when due two or more times during a twelve (12) month period; or (iii) if Licensee breaches any law or regulation pertaining to the production, distribution or sale of the Products. In the event of a termination under this subparagraph 9(c), Licensor must give to Licensee written notice of termination. Said notice of termination shall specify the obligation that Licensee failed to perform. If the specified failure to perform is not cured within thirty (30) days of receipt of said notice, this Agreement shall be terminated upon expiration of such thirty (30) day period.

(d) This Agreement shall terminate automatically if ownership of the Licensed Mark reverts to Licensee under the terms of the Trademark Assignment.

(e) Upon the expiration or termination of this Agreement, Licensee shall immediately cease taking orders for Products using the Licensed Mark. If this Agreement is terminated or expires, Licensee shall have the right to sell any finished Products on hand, and to complete and sell Products in the process of manufacture as of the date of such expiration or termination for a period of ninety (90) days immediately following such expiration or termination. Notwithstanding the foregoing, if the ownership of the Licensed Mark reverts to Licensee under the Trademark Assignment, Licensee may continue to produce and sell products bearing the Licensed Mark without interruption.

(f) Licensee shall be obligated to pay to Licensor all royalties which are due and owing at the time of expiration or termination of this Agreement and all royalties earned during the period after expiration or termination during which Licensee has the right to sell Products using the Licensed Mark pursuant to this Agreement. These royalties shall not include sales made from use of the Licensed Mark after ownership of the Licensed Mark reverts to Licensee under the terms of the Trademark Assignment.

10. **Remedies for Breach of Termination Provisions.** Except as allowed pursuant to paragraph 9(d) or upon reversion of the ownership in the Licensed Mark to Licensee, Licensee acknowledges that its failure to cease use of the Licensed Mark after termination of this Agreement will result in immediate and irreparable injury to Licensor. Licensee acknowledges and admits that there is no adequate remedy at law for such failure and that in the event of such failure Licensor shall be entitled to equitable relief by way of temporary and permanent injunctions and other further relief as any court with jurisdiction of such matters may deem just and proper. With respect to any other dispute under this Agreement, the parties shall first attempt to resolve the same in an amicable manner by mediation with a mutually acceptable mediator. If unable to agree upon an acceptable mediator, either party may ask a mutually agreed upon mediation service to appoint a neutral mediator, and the mediation shall be conducted under the Commercial Mediation Rules of the mutually acceptable mediation service. Any disputes remaining unresolved after mediation shall be settled by binding arbitration conducted in San Francisco, California utilizing a mutually agreed arbitrator or arbitration service. The arbitration shall be conducted under the Commercial Arbitration Rules of the mutually agreed arbitrator or arbitration service. Both parties shall be entitled in any arbitration to conduct reasonable discovery, including document production and a reasonable number of depositions not to exceed five per party. The prevailing party shall be entitled to recover its costs and reasonable attorney's fees, as determined by the arbitrator. The arbitrator shall be required to follow the law.

11. **Licensor's Ownership.** During the term of this Agreement, Licensee agrees nothing herein shall give to Licensee any right, title or interest in the Licensed Mark, except the right to use the Licensed Mark in accordance with the terms of this Agreement, that the Licensed Mark is the sole property of Licensor and that any and all uses by Licensee of the Licensed Mark, inure to the benefit of Licensor.

12. **Infringement.** Licensor shall have the right and authority to prosecute infringements of the Licensed Mark by third parties that it, in its sole discretion, deems appropriate. Licensor shall bear all costs and expenses and receive all awards and recoveries with respect to such action. Licensee shall notify Licensor in writing of any third party infringements of the Licensed Mark that come to the attention of Licensee.

13. **Indemnity.** Each party shall and hereby does indemnify the other party and its directors, officers, agents, representatives and employees and holds same harmless from any liability claim, judgment, penalty, loss, cost, damage or expense arising out of or in connection with the acts or omissions of the indemnifying party in performing its obligations under this Agreement.

14. **Product Liability Insurance.** Licensee shall maintain during the period of this Agreement, at its expense, liability insurance from a recognized insurance carrier providing protection in an amount sufficient to provide a level of protection consistent with customary practice in the industry, but in no event to be less than Five Million Dollars (\$5,000,000). Such insurance shall name Licensor as an "additional insured." Licensee shall provide to Licensor a certificate of insurance evidencing same within thirty (30) days of execution of the Agreement.

15. **Notices.** All notices and statements to be given and all payments to be made hereunder, shall be transmitted in writing by certified or registered mail, return receipt requested, and shall be sent to the respective addresses set forth below unless notification of change of address is given in writing. Notice shall be effective upon receipt.

If to Sonoma Wine Company, LLC:

9119 Graton Road  
Graton, CA 95444

And to:

P.O. Box 390  
Graton, CA 95444

If to Specialty Wine Retailer's Association:

John A. Hinman, Secretary and Treasurer, SWRA  
c/o Hinman & Carmichael LLP, 260 California Street, Suite 1001  
San Francisco, CA 94111

16. **Successors and Assigns; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

However, neither Licensee nor Licensor shall directly or indirectly, whether in writing or orally, assign, transfer or encumber its rights under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise without the prior written consent of the other party, which consent may not be unreasonably withheld. Any assignment or transfer attempted without such consent shall be null and void.

17. **No Joint Venture.** Nothing herein contained shall be construed so as to make the parties hereto partners or joint venturers or to permit either party to bind the other party to any agreement.

18. **Waiver or Modification.** Failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances. No modification of any of the terms of this Agreement shall be valid unless evidenced by a writing signed by both parties.

19. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

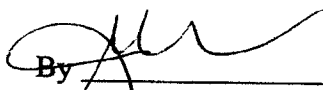
20. **Headings.** The paragraph headings are inserted only for purpose of reference. Such captions shall not affect the scope, meaning or intent of the provisions of this Agreement nor shall such headings otherwise be given any legal affect.

21. **Integration.** This Agreement and the attached Trademark Assignment (collectively the "Agreements") comprise the entire understanding of the parties hereto on the subject matter herein contained, and these Agreements supersede and merge all prior and contemporaneous agreements understandings and discussions between the parties relating to the subject matter of this Agreement. Any modification of this Agreement shall be by a written instrument signed by the parties hereto.

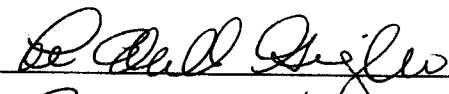
22. **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of California.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this License Agreement.

**LICENSOR:**

By   
\_\_\_\_\_  
Title Secretary/Treasurer  
Date 09/15/08

**LICENSEE:**

By   
\_\_\_\_\_  
Title Division President  
Date 8/22/08



**EXHIBIT A, TRADEMARK LICENSE & PRODUCTION AGREEMENT  
TRADEMARK ASSIGNMENT**

This Assignment of Trademark (Assignment) is made as of this 22<sup>th</sup> day of August, 2008, by Sonoma Wine Company, LLC, a limited liability company formed under the laws of the State of California ("Assignor"), in favor of Specialty Wine Retailer's Association, ("Assignee").

**RECITALS**

WHEREAS, Assignor is the owner of the following Trademark and the associated applications and registrations;

<u>Trademark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>App. Ser. No.</u>	<u>Filing Date</u>
TENACITY	N/A	N/A	77408241	2/28/2008

and, WHEREAS, the Assignor desires to assign, and Assignee desires to receive, all right, title and interests in and to the Trademark, subject to the terms of this Assignment;

and, WHEREAS, in the event Assignee desires to sell the Trademark, Assignor retains a first right of refusal to repurchase the Trademark from Assignee on the same terms and conditions offered by any bona fide third party to Assignee for the purchase of the Trademark ("the Repurchase Terms"), and upon Assignor's notice to Assignee of its intent to exercise its first right of refusal, and upon Assignor's satisfaction of the Repurchase Terms, Assignee will assign the Trademark back to Assignor;

and, WHEREAS, in the event Assignee discontinues the use of the Trademark, Assignor retains a right to reversion, and upon Assignor's notice to Assignee of its intent to exercise its right to reversion for Assignee's non-use, Assignee will assign the Trademark back to Assignor;

NOW THEREFORE, Assignor hereby assigns to Assignee, its successors and assigns, all of its right, title, and interests in and to the Trademark, together with the goodwill of the business symbolized by the Trademark.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed on the date written above.

SONOMA WINE COMPANY, LLC

By: 

Name: Lisa Ehrlich-Giglio

Title: Division President

SPECIALTY WINE  
RETAILER'S ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B, PRODUCTS**

**TENACITY RED TABLE WINE, WHITE TALBE WINE AND SPARKLING WINE,  
UNDER AND OVER 14% ALCOHOL**

**TERRITORY: WORLD**

**EXHIBIT C, PRODUCTION AND EXPENSE MATRIX**

<b>SWC EXCLUSIVE BRANDS PRIVATE LABEL:</b>	
<b>Specialty Wine Retailers Association Tenacity Program</b>	
<b>BRAND</b>	<b>TENACITY</b>
<b>Appellation</b>	<b>OKV</b>
<b>Type</b>	<b>Meritage</b>
<b>Cases (750 ML x 12 btl)</b>	<b>1500</b>
<b>Vintage</b>	<b>2005</b>
<b>SWRA Royalty @ \$3/Case</b>	
	<b>\$36.00</b>
<b>Compliance /Licensing/Fees</b>	
	<b>\$0.75</b>
<b>Samples/Handling</b>	
	<b>\$0.25</b>
<b>TOTAL SWC FOB EX CELLAR</b>	
	<b>\$155.00</b>
<b>Shipping and Clearing Fees</b>	
	<b>\$ 17.00</b>
<b>Wholesale Net Price</b>	
	<b>\$ 172.00</b>
<b>Net Wholesale Btl Cost</b>	
	<b>\$ 14.33</b>
<b>Retail GM</b>	
	<b>30%</b>
<b>Suggested Retail Price</b>	
	<b>\$ 20</b>

<b>INCLUDED IN FOB PRICING</b>
Full punt tapered glass
Stock decorated natural cork
Stock poly laminate capsule closure
Content Shipper with front label
Front and back pressure sensitive label - 4 color or less / foil emboss front / flexographic printing
Oakville Meritage Blend

<b>TERMS AND CONDITIONS</b>
Pricing, appellation and quantity for future orders subject to change
Any costs incurred in excess of \$172 wholesale price to be drawn from SWRA royalty fee
Any excess revenue generated over \$17 shipping and clearing to revert to SWRA