

**EXHIBIT 5**  
**HEAVEN HILL'S APRIL 25, 2018**  
**CEASE AND DESIST LETTER**



500 West Jefferson Street, Suite 2800  
Louisville, Kentucky 40202-2898  
502.589.5235  
Fax: 502.589.0309

Matthew A. Williams  
502.562.7378  
mwilliams@wyattfirm.com

April 25, 2018

**via FEDERAL EXPRESS**

Manuel Valcarcel  
Greenberg Traurig, P.A.  
333 SE 2nd Ave., Suite 4400  
Miami, FL 33131

**Re: Trademark Infringement**

Dear Mr. Valcarcel:

This Firm represents Heaven Hill Distilleries, Inc. ("Heaven Hill"), which is the largest independent family-owned and operated producer and marketer of distilled spirits in the United States. Heaven Hill is the owner of the HEAVEN HILL trademark, which it uses in connection with whiskey and other alcoholic beverages, along with other related goods and services. Heaven Hill has used the mark continuously in connection with alcoholic beverage products since 1937, and Heaven Hill is highly-regarded in the distilled spirits industry. In addition to its common law rights, Heaven Hill owns numerous Federal trademark registrations for the HEAVEN HILL, HEAVEN HILL BRANDS, HEAVEN HILL DISTILLERY, and related marks, including Registration Nos. 693,986; 355,451; 4,770,439; 5,242,398; and 4,495,860 (the "HEAVEN HILL Mark").

Our client has recently become aware of two intent-to-use trademark applications for HEAVEN'S DOOR (word mark, Serial No. 87/401073) and HEAVEN'S DOOR (stylized, Serial No. 87/401078), both for use in connection with distilled spirits, filed by your client, Heaven's Door Spirits, LLC. Additionally, Heaven Hill has recently become aware of several COLA applications, namely TTB IDs 17348001000504, 17348001000473 17348001000483, and 17348001000497, filed by Tennessee Distilling Ltd, Tennessee Distilling Group LLC, for labels for a HEAVEN'S DOOR straight bourbon whisky.

In view of Heaven Hill's longstanding and exclusive use of the HEAVEN HILL mark in connection with bourbon whiskey and other related goods and services, we believe that use of the HEAVEN'S DOOR mark in connection with distilled spirits will create a likelihood of confusion with Heaven Hill's HEAVEN HILL products and services. The parties' respective marks share the identical element HEAVEN, followed by a four-letter single-syllable word. The product labeling for each parties' products display the marks in uppercase lettering with similar fonts. The Heaven's Door labels also use similar color schemes to the Heaven Hill labels, as shown in the enclosed Exhibit. Additionally, as shown below, your client's use of a stacked



Manuel Valcarcel, Esq.

April 25, 2018

Page 2

format of the HEAVEN'S DOOR mark is very similar to the HEAVEN HILL BRANDS logo design that our client uses on certain of its point of sale and promotional materials:



All of these elements together are likely to cause confusion among consumers as to the source or sponsorship of your goods.

Moreover, Heaven Hill has a history of creating special collections and issuing special release of its products, especially of its American whiskey and bourbon whiskey products such as its Bourbon Heritage Collection. We believe this makes it still more likely that consumers encountering your client's HEAVEN'S DOOR line of products will likely believe it to be a collection of products being offered by Heaven Hill.

This likelihood of confusion and false designation of origin created by the unauthorized use of a similarly confusing mark constitutes trademark infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1114 and 1125. As you may be aware, violations of the Lanham Act potentially expose a defendant to significant liability. A prevailing plaintiff may recover the defendant's profits, any damages that the plaintiff suffered, and the costs of the action, including the plaintiff's attorney's fees. See 15 U.S.C. § 1117. A losing defendant may also be subjected to treble damages and an injunction. *Id.*

Heaven Hill therefore demands that Heaven's Door Spirits, LLC immediately surrender the COLA applications for the HEAVEN'S DOOR mark, expressly abandon all trademark applications for the mark HEAVEN'S DOOR and anything confusingly similar, and immediately cease and desist from all use of, or preparations to use, the HEAVEN'S DOOR mark in connection with whiskey or other alcoholic beverage products.

Should Heaven Hill's demands be refused, Heaven Hill is prepared to take the actions necessary to protect its rights in its HEAVEN HILL brand. Heaven Hill will also consider any further use of the HEAVEN'S DOOR mark, or any other mark that is confusingly similar to Heaven Hill's HEAVEN HILL mark, to be a willful infringement of Heaven Hill's rights. Be advised



Manuel Valcarcel, Esq.

April 25, 2018

Page 3

that a finding of willful infringement may enhance the damages up to three times the amount awarded.

Given the importance of this matter, we look forward to receiving your response by no later than May 7, 2018. Should you wish to discuss this matter in further detail, please do not hesitate to contact me.

Very truly yours,

WYATT, TARRANT & COMBS, LLP



Matthew A. Williams

MAW/MBC/dkl

cc: Heaven Hill Distilleries, Inc.

61728260.2

EXHIBIT

HEAVEN HILL LABELS AND HEAVEN'S DOOR LABELS AS DISPLAYED IN COLA APPLICATIONS

	
	
	
	
	