

REPORT BY JAMAICA  
to the WIPO Standing Committee on the Law of Trademarks  
Industrial Designs and Geographical Indications (SCT)

Cases and case studies relevant to the protection of names of States, and information on our  
nation branding strategy and related problems encountered in implementation

**Executive Summary**

*“Who steals my purse steals trash; ... But he that filches from me my good name ... makes me poor indeed.”<sup>1</sup>*

At present there is no holistic legal protection available to states internationally to stop the unauthorized use of the name of the state in relation to goods or services. The purpose of this Report by Jamaica to the World Intellectual Property Organization (WIPO) is to show how Jamaica has suffered and stands to suffer and lose much more economically in the future if the Government of Jamaica is not enabled and empowered by international trade marks law to prevent the unauthorized use of the name ‘JAMAICA’ in relation to products and services, whether as trade marks, trade names, or domain names. This Report therefore documents for the purposes of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) the extent of use of Jamaica’s country name in trade marks that are registered by persons or entities which have no association or connection with Jamaica in relation to goods and services which do not originate in Jamaica. This is in response to an invitation issued by the SCT in February 2012 to member states to communicate to the WIPO Secretariat cases and case studies relevant to the protection of names of States, as well as information on any nation branding scheme in which they have engaged, including problems encountered in their implementation.

In this official country report from Jamaica, the following points are made:

---

<sup>1</sup> William Shakespeare, Othello, Act 3, scene 3, 155–161

1. The colonial history and economy of Jamaica is one of a nation of peoples and cultures who have been exploited and disadvantaged for centuries and hence is vulnerable economically as a small island developing state.
2. Nevertheless, despite the odds and centuries of exploitation, the Jamaica brand is one of the strongest and most well-known nation brands internationally and therefore a valuable national asset, central and integral to the national sustainable development of Jamaica.
3. States have the right and responsibility to halt misappropriation and unauthorized exploitation, passing off, likelihood of association and/or confusion, dilution, unfair competition in respect of their country name and nation brand.
4. States have the right and responsibility to enforce their moral and economic rights in respect of their country name and nation brand.
5. States have the right and responsibility to own control, protect and manage their country name, goodwill, reputation and fame, just as individuals have rights to their personality and reputation.
6. States have the right and responsibility to prior informed consent before use of their country name by others.
7. States have the right and responsibility to mutually agreed terms and full and effective economic participation in and benefit-sharing from use of their country name.
8. Significant, extensive effort and investment at individual and national, governmental and non-governmental levels have been made in Jamaica in regard to protecting, maintaining, developing and benefiting from Brand Jamaica, as well as halting misappropriation and unauthorized use of the country name 'JAMAICA' and the Jamaica brand.
9. ALL that significant, extensive effort and investment will be lost, eroded and undermined if Jamaica and countries like Jamaica where significant brand equity forms a valuable component of GDP, are not empowered and assisted to prevent, control and manage the use of their country name and nation brand.
10. As presently worded, the Paris Convention is insufficient to address the problem.
11. International trade mark law offers insufficient protection.
12. International geographical indication protection is insufficient.

## **Country Profile**

Jamaica is an independent island nation state in the Caribbean Sea, located 898 km south-east of Miami, 145 km south of Cuba and 161 km south west of Haiti. It is 146 miles long and 51 miles wide and has an area of 11,420 square km. In 2010 the population was estimated at 2,705,800 with an annual growth rate of 0.3%.

Jamaica was a colony of England (later Great Britain) from 1655 until she became politically independent from the United Kingdom in August 1962. As with other newly-independent states, Jamaica has grappled with the transition from a colonial plantation economy to self-government and then political independence. Jamaica's economy therefore from its colonial antecedents has been purposefully structured to exploit domestic to serve overseas markets in Europe and elsewhere.<sup>2</sup> As the UNDP correctly recognises, “unlike many other countries, the Caribbean region did not have the advantage of significant industrial progress before entering into a fully democratic and liberal system of governance.”<sup>3</sup> Thus “Jamaica emerged from its colonial past (becoming an independent nation in 1962) with a very open economy, highly dependent on foreign capital and imported inputs, very reliant on only two industries, bauxite/alumina and sugar for export earnings, and with limited intra-industry linkages.”<sup>4</sup>

Additionally, as with other small island developing states (SIDS), Jamaica possesses certain specific characteristics which make it vulnerable to international economic, social and geopolitical circumstances. These result from the island’s limited natural and human resource base, and relatively undeveloped physical and technological infrastructure. Such characteristics include:

- (a) less diverse resources and therefore a greater reliance on foreign trade;
- (b) smaller domestic markets;

---

<sup>2</sup>Brenda Wyss and Marceline White, *The Effects Of Trade Liberalization On Jamaica’s Poor: An Analysis of Agriculture and Services*, June 2004

<sup>3</sup>The United Nations Development Programme, *The Growing Vulnerability of Small Island Developing States*, The University of the West Indies Centre for Environment and Development, Kingston, Jamaica, 2002, 14

<sup>4</sup>Brenda Wyss and Marceline White, *The Effects Of Trade Liberalization On Jamaica’s Poor: An Analysis of Agriculture and Services*, June 2004

- (c) fewer commodities for export;
- (d) a greater concentration of their exports in a limited number of markets;
- (e) generally low per capita income;
- (f) over-reliance on the dominant hemispheric superpower.<sup>5</sup>

For that reason, the UNDP notes that:

“The vast majority of resources devoted to agriculture in SIDS is directed at the production of commodity crops (sugar, bananas, copra, coffee), a legacy of the colonial history and products for which the unit value continues to decline as once lucrative preferential agreements are dismantled by WTO. The dismantling of these historical agreements without implementing alternatives is resulting in an increased vulnerability of farmers and their households. While forcing SIDS to depend increasingly on the international market, WTO is ironically seeking to lower tariffs on food imported into SIDS – tariffs that are, inter alia, a source of revenue for domestic investment in industries that would increase the number of SIDS citizens who can afford to buy imports.”<sup>6</sup>

As a result, “SIDS are estimated to be economically 34% more vulnerable than other developing countries, partly for the following reasons: agricultural production in SIDS, notably as a result of their exposure to natural disasters, has been more unstable than that of other developing countries by 31%, and their exports of goods and services have been more unstable by 10%.”<sup>7</sup> As a result, “over the last two decades, the share of SIDS in global merchandise trade diminished by half (from 0.4% of world exports of goods in 1980 to 0.2% in 2003), while their share of global trade in services remained stable (0.7% of world exports of services).”<sup>8</sup>

Exports of sugar and bananas from Jamaica have suffered from price and market insecurity as a result of the erosion of market preferences previously offered by the EU. Despite its significant

---

<sup>5</sup>Velma Newton, *Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions*, W.M.W. Gaunt & Sons Inc., Florida, USA, 1989, 14

<sup>6</sup>*Ibid*, 13-14

<sup>7</sup><http://www.unctad.org/Templates/Page.asp?intItemID=3620&lang=1>

<sup>8</sup><http://www.unctad.org/Templates/Page.asp?intItemID=3620&lang=1>

decline, agriculture remains an important part of the Jamaican economy in terms of food security, employment, income and rural livelihoods.<sup>9</sup>Of the 50 percent of Jamaicans who still live in rural areas, 72 percent are poor and agriculture is their main source of employment.<sup>10</sup> The agricultural sector employs 20 percent of the labor force and supports 150,000 rural families.<sup>11</sup> The sector was estimated to provide employment for an estimated 23% of the workforce in 2003.<sup>12</sup>

The present economic and social situation in Jamaica is such that the labour force participation rate in 2010 was 62.4% and unemployment continues to rise. The total number of goods and services produced in Jamaica in 2010 declined by 1.7% and 1.5% respectively. The result is that in 2010 the Jamaican economy contracted by an estimated 1.2%.<sup>13</sup> In fact, 2010 represented the third consecutive year that the country experienced an annual contraction in GDP. In fact, the Jamaican economy has experienced an accumulated 5.1% decline since 2008. This has contributed to an overall situation where the percentage number of households in Jamaica below the poverty line stood at the end of 2010 at 16.5%,<sup>14</sup> the highest it has been in years.

### **Value of Jamaica's copyright-based industries**

Jamaica has however done significant work in relation to valuing its creative industries. In 2006 JIPO requested WIPO to commission the preparation of a national study on the economic contribution of the copyright-based industries to Jamaica, which was done in 2007.<sup>15</sup> The Jamaican study is the first to be done in the Caribbean region.<sup>16</sup>

---

<sup>9</sup>Singh, R.H. (Ph.D.)Rankine, L.B. (Ph.D.), Seepersad, G. (M.Sc.), A Review of Agricultural Policies:Case Study Of Jamaica,December 2005, [http://www.caricom.org/jsp/community/agribusiness\\_forum/agri\\_policy\\_jamaica.pdf](http://www.caricom.org/jsp/community/agribusiness_forum/agri_policy_jamaica.pdf)

<sup>10</sup>Brenda Wyss and Marceline White, The Effects Of TradeLiberalization On Jamaica's Poor: An Analysis of Agriculture and Services, June 2004

<sup>11</sup>Brenda Wyss and Marceline White, The Effects Of TradeLiberalization On Jamaica's Poor: An Analysis of Agriculture and Services, June 2004

<sup>12</sup>Singh, R.H. (Ph.D.)Rankine, L.B. (Ph.D.), Seepersad, G. (M.Sc.), A Review of Agricultural Policies:Case Study Of Jamaica,December 2005, [http://www.caricom.org/jsp/community/agribusiness\\_forum/agri\\_policy\\_jamaica.pdf](http://www.caricom.org/jsp/community/agribusiness_forum/agri_policy_jamaica.pdf)

<sup>13</sup>PIOJ, Economic and Social Survey of Jamaica 2010, Kingston, Jamaica

<sup>14</sup>PIOJ, Economic and Social Survey of Jamaica 2010, Kingston, Jamaica

<sup>15</sup> [http://www.wipo.int/ip-development/en/creative\\_industry/pdf/1009E-3.pdf](http://www.wipo.int/ip-development/en/creative_industry/pdf/1009E-3.pdf);

[http://www.jipo.gov.jm/sites/default/files/PDF\\_Files/Jamaique-Study-2.pdf](http://www.jipo.gov.jm/sites/default/files/PDF_Files/Jamaique-Study-2.pdf)

<sup>16</sup> <http://www.jipo.gov.jm/?q=node/116>

The study found that in 2005, the copyright sector contributed J\$29 billion in producer's values at constant (1996) prices (US\$464.7 million), or 4.8 % of GDP. The sector also accounted for 3.03 % of employment.

Of the total 4.8 %, the core copyright industries accounted for J\$10,363.8 million or 35.6 % of the total. The three main contributors were:

- Radio and television broadcasting – J\$3578 million (US\$57.3 million) or 12.3% of total copyright sector,
- Press and Literature – J\$3090.8 million ( US\$49.5 million) or 10.6% of total copyright sector,
- Music and Theatrical productions – J\$1263.5 million (US\$20.2 million) or 4.34% of total copyright sector,
- The 3 remaining industry groupings contributed 15.5 % (Interdependent), 9.8 % (Partial) and 39 % (Non-dedicated support).

In terms of employment, the core copyright industries contributed 1.8 % of total employment or 59.3 % of all employment in the copyright sector. The highest employment activities were:

- Press and literature – 20% (of copyright)
- Radio and television – 15.7%
- Music and theatrical productions – 9%

The music sector itself accounted for 6.4 % of copyright sector employment.

### **Efforts and initiatives to brand Jamaica**

Jamaica has been branded for centuries. Since “discovery” by Columbus, Jamaica has developed a reputation and been branded as an island of mystique and mystery, a tropical paradise of sea,

beaches and sun, exotic cuisine, music and rum - the playground and haunt of kings and queens, pirates and privateers, movie stars and celebrities from afar.

Jamaica was a famous target for pirates in the seventeenth and eighteenth centuries<sup>17</sup> as well as for buccaneers - special pirates used by the English to challenge Spain's colonial monopoly in the Caribbean by targeting and pillaging goods from English colonies and ships.<sup>18</sup> Hence, in the eighteenth and nineteenth centuries, Port Royal in Jamaica was known as one of the wealthiest places on earth.<sup>19</sup> Popular movies like the 'Pirates of the Caribbean' series attest to the enduring allure of the Jamaica/Caribbean pirate brand.

Jamaica also gained a significant brand as one of the most productive and therefore richest sugar-producing colonies in the British Empire of the 18<sup>th</sup> and 19<sup>th</sup> centuries, rich with ornamental and medicinal plants and herbs of immense value. In the late seventeenth century, persons like Hans Sloane (for whom London's Sloane Square is named) who was a medical doctor, Fellow of the Royal Society and of the Royal College of Physicians and physician to the British West Indian Fleet, was appointed as the personal physician to the Governor of Jamaica.<sup>20</sup> He would later publish a two-volume book on medicinal and food plants gleaned from his travels to Jamaica and other Caribbean countries.<sup>21</sup>

In the twentieth century, several notable personalities such as the Australian-American actor Errol Flynn and the British novelist Ian Fleming, made Jamaica their home. Fleming wrote many of his James Bond novels in Jamaica which was the set for several of the Bond movies. Several Jamaicans over the years became international celebrities across the arts, film, sports, culture, including poet Claude McKay, philosopher and activist the Honourable Marcus Garvey, musician Bob Marley, actor/singer Harry Belafonte, actress/singer Grace Jones, model Naomi Campbell, and former heavyweight champion boxers Trevor Berbick and Lennox Lewis.

---

<sup>17</sup> Richard Sheridan, *The Wealth of Jamaica in the Eighteenth Century*, *The Economic History Review*, New Series, Vol. 18, No. 2 (1965), pp. 292-311, at 294

<sup>18</sup> *Ibid*, 294-5

<sup>19</sup> *Ibid*, 295

<sup>20</sup> Schiebinger, *Plants and Empire: colonial bioprospecting in the Atlantic World*, 26

<sup>21</sup> Schiebinger, 27

Additionally, the list of reggae icons who have since maintained Jamaica's prominence on the international stage would be too long to embark upon here for the purposes of this report.

However the idea of purposively branding Jamaica began with a desire to promote Jamaica as a tourist destination. Since then, Jamaica has developed a much more broader and wider approach to branding Jamaica, involving several governmental and non-governmental agencies including industry organizations, to attempt to effectively harness that reservoir of goodwill and magnetism that Jamaica is world-renown for.

### ***The Jamaica Tourist Board (JTB)***

The idea of a country brand for Jamaica began organically from as far back as the 1950s through the efforts and activities of the Jamaica Tourist Board (JTB).

The JTB was founded in 1955 as Jamaica's national tourism agency, responsible for tourism marketing and promotion of Jamaica around the world.<sup>22</sup> The JTB has for many decades identified new and emerging consumer groups, established relationships with travel partners and packaged Jamaica as a destination of choice for vacationers. The marketing, promotion and packaging of Jamaica as a premier tourist destination has been based on Jamaica as a tropical isle rich with flora and fauna, sun, beach, sand and sea, as well as a country with a reputation for our hospitality, music and warm, creative people.

The JTB has registered trade marks for the country name "JAMAICA", which it describes as "one of the most iconic brand symbols in the world. It has been around for over 50 years, and has been the cornerstone in Jamaica becoming a leader in destination travel. The JAMAICA logo is instantly recognizable around the world."<sup>23</sup>

---

<sup>22</sup> <http://www.jtbonline.org/JTB/Pages/Introduction.aspx>

<sup>23</sup> Jamaica Tourist Board, Jamaica Brand Manual.





The JAMAICA and *Once you go, you know* tagline are registered trademarks of the JTB with the United States Patent and Trademark Office. The registration number is 3,087,559.<sup>24</sup>

### ***Coffee Industry Board (CIB)***

Blue Mountain coffee had its first exports to England in 1789. Since the late 1940s, the Government of Jamaica has played an important role in the Jamaican coffee industry. The Coffee Industry Board (CIB) was established officially in 1950 to promote, regulate, monitor and guide the development of the coffee industry of Jamaica and to assure quality of Jamaican coffee.<sup>25</sup> The Blue Mountain origin is protected in Jamaican law through a certification mark, managed by the CIB. The CIB certifies not only that the coffee was grown within the Blue Mountain area, but also the quality of the coffee's characteristics.

To date, the Blue Mountain coffee mark has been registered in approximately 51 countries as a certification mark. In other jurisdictions where certification marks are where permissible, Blue Mountain coffee is registered just as a trademark. The CIB also owns the Jamaica Blue Mountain® and Jamaican High Mountain Supreme® coffee trademarks. The CIB however prefers certification marks because they do more than indicate origin, they also certify quality.

---

<sup>24</sup> Jamaica Tourist Board, Jamaica Brand Manual.

<sup>25</sup> <http://www.ciboj.org/cib/>



Most of the Blue Mountain coffee (approximately 83%) is sold to Japan. Japanese demand for Blue Mountain began to rise substantially in the mid-1970s. Japanese firms have developed the Blue Mountain name and positioned it as a luxury item. The current brand recognition of Blue Mountain coffee grown in the Blue Mountain region is due mainly to a reasonably high-quality supply and consistent marketing as a luxury item.

However costs for certification and quality control are high. According to the CIB, the annual cost of trademark protection is in the range of US\$ 250,000 to US\$ 400,000 depending on the level of activities carried out. This includes cost of registration in other countries, cost of hiring monitoring companies, cost of legal challenges and litigation, and the cost of salaries for full time administrators and a legal officer.

### ***The Jamaica Exporters' Association (JEA)***

The Jamaica Exporters Association (JEA) is a non-governmental members association which was established in 1966 to promote and support the growth and development of the export sector in Jamaica.<sup>26</sup> The JEA work with Jamaican businesses to seize export opportunities in non-traditional areas such as fresh produce, pharmaceuticals, herbs and herbal products, condiments, craft and giftware and in the area of services. The National Export Strategy, discussed more below, is a collaborative effort of the JEA, the Jamaica Promotions Corporation (JAMPRO) and the Ministry of Industry, Investment and Commerce (MIIC) of the Government of Jamaica.

---

<sup>26</sup> [http://www.exportjamaica.org/start/index.php?option=com\\_k2&view=item&layout=item&id=1&Itemid=54](http://www.exportjamaica.org/start/index.php?option=com_k2&view=item&layout=item&id=1&Itemid=54)

### *The Competitiveness Company (TCC)*

The Competitiveness Company (TCC) was established in 2005 as a subsidiary of the JEA to focus on building the competitive capacity of Jamaican exporters. The stated aim of the company is to “enhance the competitiveness of Jamaican firms, ensure that Jamaican products can command a premium in the market place and move Jamaican exports up the value chain.”<sup>27</sup> The Company organises interested Jamaican enterprises into clusters thereby enabling participating producers to realise cost efficiencies. The Company also undertakes policy and market research, as well as proposes, applies for, manages and implements a range of projects aimed at improving the organization, performance and competitive capability of Jamaican entrepreneurs across the micro, small and medium sized sector.<sup>28</sup>

TCC has been involved in several initiatives and projects to protect intellectual property rights and improve the capacity of micro, small and medium-sized enterprises (MSMEs) in Jamaica. The TCC received funding from the EU in 2007 to introduce new services to MSMEs which would boost the awareness of MSMEs as it relates to Intellectual Property Rights (IPRs), specifically in the areas of IPR Registration, IPR Management, IPR Protection and Brand Development. A structured IPR programme was developed to advise and assist MSMEs in the acquisition and maintenance of their intellectual property rights in Jamaica and internationally. Four (4) collective marks and five (5) certification marks were registered with JIPO and IP audits were conducted for nineteen (19) firms.<sup>29</sup>

In December 2009 TCC received US\$150,000 from the Inter-American Development Bank's (IDB's) Multilateral Investment Fund (MIF) to finance a project aimed at ensuring that products with the TCC's certification and collective marks receive intellectual property protection locally, in the US and the UK. One of the main objectives of the project was to counter the counterfeit

---

<sup>27</sup>[http://www.exportjamaica.org/start/index.php?option=com\\_k2&view=item&layout=item&id=7&Itemid=111](http://www.exportjamaica.org/start/index.php?option=com_k2&view=item&layout=item&id=7&Itemid=111)

<sup>28</sup><http://www.thecompetitivenesscompany.com/>

<sup>29</sup><http://www.thecompetitivenesscompany.com/projects/95-local-projects?showall=&start=5>

branding of Jamaican products internationally, as well as to strengthen the positioning and presence of Jamaican products internationally.<sup>30</sup>

Having working with over 300 MSMEs in Jamaica, the TCC confirms that piracy of Jamaica's products is a major issue. TCC Head, Dr. Beverley Morgan is quoted as saying that "The single recurring theme was that people felt that they were competing globally against themselves." "When I ask, 'what do you mean by that', they said, 'we are up against jerk seasoning and sauces, scotch bonnet pepper, against T-shirts which say 'Jamaica, No Problem', which are made in all kinds of other places."<sup>31</sup>

The TCC Head illustrated to the media the results of her own findings as to the extent of the piracy, by sharing the contents of a bag of products she collected which fraudulently claimed to be 'Jamaican' but are produced elsewhere and with raw materials that do not come from Jamaica, including jerk seasoning made with raspberries in Idaho, and Jamaican ginger ale made in Washington DC, and Jamaican Scotch Bonnet pepper sauce made in Costa Rica.<sup>32</sup> The state of unfair competition facing Jamaican entrepreneurs internationally does not escape the IDB. Country Office Representative for the IDB, Gerard Johnson, is quoted as saying in regard to the project, "We know there are a lot of pirates out there and we won't succeed without something like this."<sup>33</sup>

The project was implemented in co-operation with the Bureau of Standards Jamaica (BSJ), the Scientific Research Council (SRC), the Jamaica Intellectual Property Office (JIPO) and Jamaica Trade and Invest, now known as the Jamaica Promotions Corporation (JAMPRO). TCC started with fifty companies, not limited to the food and agriculture sectors, but also fine apparel, and wearable arts.<sup>34</sup> As part of the criteria for selection, the companies, products and services had to be authentically Jamaican. Certification marks were eventually developed for processed ackees, Jamaican jerk seasoning and sauces, scotch bonnet pepper, honey and bammies. A generic food

---

<sup>30</sup><http://www.jamaicaobserver.com/business/Competitiveness-Co-gets-13-5m-to-police-brand-JA-piracy>

<sup>31</sup> <http://www.jamaicaobserver.com/business/Competitiveness-Co-gets-13-5m-to-police-brand-JA-piracy>

<sup>32</sup><http://www.jamaicaobserver.com/business/Competitiveness-Co-gets-13-5m-to-police-brand-JA-piracy>






<sup>33</sup><http://www.jamaicaobserver.com/business/Competitiveness-Co-gets-13-5m-to-police-brand-JA-piracy>

<sup>34</sup>[http://www.jis.gov.jm/news/104-finance-public-service/22330-finance\\_planning-competitiveness-company-signs-agreement-with-idb-to-assist-msmes](http://www.jis.gov.jm/news/104-finance-public-service/22330-finance_planning-competitiveness-company-signs-agreement-with-idb-to-assist-msmes)

mark and a non-traditional tourism mark were also developed and registered, while collective marks were developed and registered for wearable art, visual arts, fresh produce and boutique agribusiness.<sup>35</sup>

Under the 2009 project, TCC registered its marks in the USA<sup>36</sup> and in Europe. This is an attempt by the TCC to assist MSMEs who produce authentically Jamaican products to overcome their competitive disadvantage and loss of market share in international markets experienced as a result of inferior products that are passed off as “Jamaican” or “Jamaica-style”.<sup>37</sup> This is but one of the means that Jamaica and Jamaicans struggle to recapture the value of our culture and creativity. The JEA plans to develop two more marks for the services sector in the near future.

The Certification Marks owned by The Competitiveness Company include:

		
<b>Sauces &amp; Spices</b>	<b>Scotch Bonnet Pepper</b>	<b>Honey</b>
		
<b>Processed Ackees</b>	<b>Generic</b>	

The Regulations governing use of the above trademarks limit their application to “goods which are of Jamaican origin and have been manufactured in Jamaica in conformity with the standards outlined in the Jamaica Certification programme covering the particular good to ensure that it is safe, unadulterated, or premium quality and authentically Jamaican.”

<sup>35</sup><http://www.thecompetitivenesscompany.com/marks>

<sup>36</sup><http://www.thecompetitivenesscompany.com/news/132-press-release-the-competitiveness-company-launches-jamaica-intellectual-property-marks-in-new-york>

<sup>37</sup><http://www.thecompetitivenesscompany.com/news/131-the-competitiveness-company-launches-jamaican-intellectual-property-marks-in-uk>

The four Collective Marks, owned by the Jamaica Exporters Association and managed by The Competitiveness Company are:



### ***Jamaica Promotions Corporation (JAMPRO)***

JAMPRO is Jamaica’s investment and export promotion agency. It was established in 1988 “to stimulate, facilitate, and promote the development of trade and industry, and export and investment activities in all sectors of the island’s economy.”<sup>38</sup> The agency focuses on several targeted sectors including the creative industries (film, music and entertainment), manufacturing, tourism, agri-business, information and communication technology, mining, and professional services.<sup>39</sup>

In 2006 JAMPRO applied to register its Brand Jamaica trade mark. It is registered in a total of 15 classes for goods as well as several services, including advertising, business management, insurance and financial affairs, telecommunications, transport, packaging and storage of goods, education, entertainment, sporting and cultural activities, food and accommodation services, and medical, cosmetic, agriculture, horticulture and forestry services. This was done in the context of an initiative by JAMPRO started in 2006 to utilise the positive references and reputation of Jamaica to promote trade and investment. The JAMPRO initiative was particularly launched in 2006 ahead of the Caribbean’s hosting of Cricket World Cup in 2007.

In 2009, JAMPRO applied to register its “Jamaica to the World!” trade mark and its “Brand Jamaica to the World!” trade marks in 22 classes of goods and services. At present, JAMPRO has registered five trade marks which could be considered as Brand Jamaica marks.

---

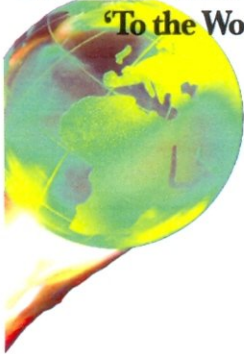
<sup>38</sup> <http://www.jamaicatradeandinvest.org/aboutjti>

<sup>39</sup> <http://www.jamaicatradeandinvest.org/aboutjti>

**BRAND JAMAICA**



**BRAND JAMAICA**  
*'To the World!'*



**BRAND JAMAICA**  
*'To the World!'*

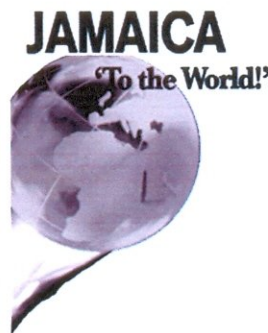
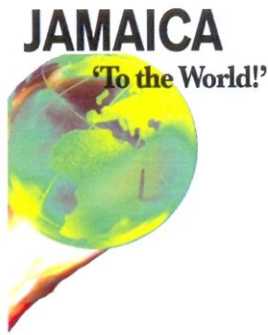


**BRAND JAMAICA**



**BRAND JAMAICA**





### ***Bureau of Standards Jamaica (BSJ)***

“The Bureau of Standards Jamaica is a statutory body established by The Standards Act of 1969 to promote and encourage standardization in relation to commodities, processes and practices. However over the years, its role has expanded to include the provision of services in relation to conformity assessment (certification, inspection and testing, and calibration) and metrology.”<sup>40</sup> The BSJ, through the Regulatory Division, is mandated to register and monitor all food processing establishments involved in processing and pre-packaging food for sale locally or internationally.<sup>41</sup>

The BSJ in collaboration with the JEA, Jamaica Manufacturers’ Association (JMA), the Jamaica Chamber of Commerce (JCC), the Jamaica Agro Processors Association (JAPA), the Jamaica Business Development Corporation (JDBC) and the Jamaica Intellectual Property Office (JIPO),

---

<sup>40</sup> <http://www.bsj.org.jm/AboutBSJ/Overview/tabid/157/Default.aspx>

<sup>41</sup> <http://www.bsj.org.jm/>



devised a branding and certification programme in 2008. The programme involves the development of the “Jamaica-Made” Certification Mark with the objective being “to create a significant competitive advantage for authentic Jamaican products, to strengthen consumer confidence in the authenticity and quality of Jamaican products locally and internationally and to provide economic benefits to our local manufacturers.”<sup>42</sup> This trade mark was registered in 2009 in all 45 classes.



43

The mark is also protected under the provisions of the Standards Act 1969. The Standard Marks (Amendment) Regulations 2008 define “*Jamaica raw material*” as those components originating solely from Jamaica, used in its natural, modified or semi-processed state as an input to a production process for subsequent modification or transformation into a finished good or used as a finished good; “*Jamaican input*” is defined as all physical and measurable input originating in Jamaica including labour, raw materials, additives and processing.

Only products made in Jamaica utilizing at least 51% Jamaican raw material, or if the principal raw material is not made in Jamaica, which have at least 70% local input,<sup>44</sup> and which have been produced in keeping with the relevant specifications and checked for quality assurance, are eligible for certification. The Jamaica-made mark programme was launched in 2010.

---

<sup>42</sup> <http://bsj.org.jm/Services/ProductCertification/JamaicaMadeMarkProgramme/tabid/118/Default.aspx>

<sup>43</sup> Trade Mark No. 52084 on the Register of Trade Marks, Jamaica

<sup>44</sup> At least 70% of the cost of production must be incurred in Jamaica which includes a ‘significant change’ of any imported material that is not available and not produced in Jamaica.

### ***Jamaica Business Development Corporation (JBDC)***

The JBDC specialises in providing business and technical support services for a wide range of Jamaican enterprises, from startups to established businesses.<sup>45</sup>

In 2004 JBDC applied to register its certification mark “Jah Mek Yah Born Yah Product”. It is now registered in 22 classes.



46

Regulations governing the mark stipulate that it may only be used by persons carrying on or intending to carry on business in the manufacture, processing, packaging, purchase, sale, or exportation of ‘authentic Jamaican products’. ‘Authentic Jamaican product’ is defined as a product which:

- is produced in Jamaica utilising manual or mechanical techniques;
- utilises at least 60% Jamaican raw materials;
- is produced by a Jamaican citizen or a Jamaican company;
- meets national quality standards;
- has consistent quality and supply.

---

<sup>45</sup> [http://www.jbdc.net/index.php?option=com\\_content&view=article&id=46&Itemid=94](http://www.jbdc.net/index.php?option=com_content&view=article&id=46&Itemid=94)

<sup>46</sup> Trade mark No. 41660 in the Register of Trade Marks, Jamaica

### ***Jamaica Intellectual Property Office (JIPO)***

The Jamaica Intellectual Property Office (JIPO) is an agency of the Ministry of Industry, Investment and Commerce (MIIC) established in January 2001 as a central focal point for the administration of intellectual property in Jamaica.<sup>47</sup> One of the core responsibilities of JIPO is to contribute to national economic growth and development through the promotion, proper protection, administration and enforcement of Intellectual Property Rights. This includes providing a registration service for Trade Marks, Geographical Indications, Industrial Designs and Patents, as well as making recommendations on IP policy development and implementation in the preparation of national development plans.<sup>48</sup>

Since its establishment, JIPO has been actively involved in the promotion and advancement of multiple areas of intellectual property in Jamaica, including copyright, trade marks, patents, designs, geographical indications and traditional knowledge/traditional cultural expressions. JIPO has been integrally involved with the valuation of the copyright-based industries and promotion and development of the creative industries in Jamaica. JIPO has also been actively involved in the protection of Jamaica's national symbols and emblems and has been central to the development of a nation branding programme and strategy for Jamaica.

### ***Nation Branding as a modern developmental tool***

The past ten years represent a turning point in the methods states use to manage their reputations.<sup>49</sup> Modern branding efforts have evolved well beyond tourism marketing and packaging to the point where today, countries hire marketing and nation branding consultants to design and implement sophisticated nation branding campaigns and strategies. "As a communications strategy and a practical initiative, nation branding allows national governments to better manage and control the image they project to the world, and to attract the "right" kinds

---

<sup>47</sup> <http://www.jipo.gov.jm/?q=node/4>

<sup>48</sup> <http://www.jipo.gov.jm/?q=node/35>

<sup>49</sup> Melissa Aronczyk, *Living the Brand: Nationality, Globality and the Identity Strategies of Nation Branding Consultants*, New York University

of investment, tourism, trade, and talent, successfully competing with a growing pool of national contenders for a shrinking set of available resources.”<sup>50</sup>

“While neither innovation nor competition is a new element of the national preoccupation, what *is* new, as of recent decades, is that these features are expressed as drivers of profit in a global system of free markets, with national cultural specificity as the “competitive edge” over other nations. Critical cultural policy literature has documented this shift as one from an arts-based model to a “creative industry” or “enterprise culture” model of policymaking”.<sup>51</sup> This is the new nation branding paradigm which did not exist at the time of the making of the original Paris Convention as it relates to the rights of states over their national flag, symbols, emblems and country names.

### ***Brand Jamaica Strategy***

As mentioned above, the idea of branding Jamaica began organically from as far back as the 1950s largely through the advertising and marketing of Jamaica by the JTB. In addition to Jamaica being world-renown as a strong tourism brand, Jamaica’s music – from folk, ska, mento, rocksteady, reggae, dub, lover’s rock, dancehall/ragga/bashment - has always intrinsically been a significant part of Jamaica’s brand, due to its sheer natural international recognition and penetration.

Focused branding of Jamaica as a campaign outside of the tourism sphere began in earnest in 1996 under the auspices of JAMPRO’s Film, Music and Entertainment Commission. That year, the Commission organised Jamaica Inc. to bring all the major components of Jamaica’s brand of culture – music, food, art, craft – to an international music festival audience. JAMPRO has subsequently led many delegations of Jamaican musical and cultural ambassadors to the annual MIDEM Festival in France, under the brand “Sounds of Jamaica”.

---

<sup>50</sup> Ibid

<sup>51</sup> Ibid

More recently, discussions surrounding nation branding began in Jamaica in 2003 in the context of the National Export Strategy (NES). As President of the JEA, Michael Lumsden, says of the NES:

“Brand Jamaica is one of the most recognizable brands internationally and it is important that we utilize the National Export Strategy to position Jamaican exporters of goods and services to capitalize on the opportunities which exist for Jamaican products and services in the international market, while at the same time strengthen *Brand Jamaica* to achieve a stronger positioning globally.”

In 2005, the JEA launched its Brand Jamaica programme, focusing primarily on branding its members’ products and services as uniquely Jamaican. In 2006 JEA applied to register their “Brand Jamaica” trade mark, “Jamaica Brand We Love” trade mark and “Unique Jamaica” trade marks.





By the turn of the twenty-first century, it was increasingly recognised internationally that “national reputation or brand is a critical component of the competitive advantage of nations in a busy global marketplace” and therefore “one of the fundamental duties of governments to understand, manage and nurture the good name of its country, because good name underpins all success in the marketplace.”<sup>52</sup>

JIPO thus requested WIPO to assist Jamaica to develop its nation brand. WIPO recommended leading nation branding consultant/expert from the UK, Simon Anholt, who in 2004 and 2005 visited Jamaica and undertook a feasibility study of Jamaica developing a nation branding programme and strategy. Mr. Anholt noted that Jamaica “produces IP in amazing quantities – in culture, in music, in art, in religion, in business” and that “Jamaica is sitting on a treasure-house of natural brand equity, composed of its cultural, historical, physical and human capital”, as a result of which he found that “Jamaica, without a shadow of doubt, already has a very strong brand – probably one of the strongest in the world for the size of the country, its population and its economy.” He however recognized that Jamaica as a nation had not significantly benefited from its enormous strength as a brand. He therefore advised the Government of Jamaica to adopt a nation branding programme and strategy “to stop and reverse this centuries-old ‘equity haemorrhage’, and ensuring that in future the country always benefits both directly and indirectly from its vigorous and abundant intellectual capital.”<sup>53</sup>

---

<sup>52</sup> Simon Anholt, Brand Jamaica Feasibility Study, 2

<sup>53</sup> Simon Anholt, Brand Jamaica Feasibility Study, 30



The Place Branding Hexagon © 2002 Simon Anholt

As Mr. Anholt’s Place Branding Hexagon shows, nation branding is much more than just products, it is services, it is culture and heritage, it is people. Mr. Anholt makes the point that it is absolutely necessary for Jamaica to be able to effectively and comprehensively manage its nation brand to ensure that the brand image is true, fair, up-to-date and beneficial to the nation.<sup>54</sup>

In 2007, at the request of the Government of Jamaica, WIPO organised and sponsored a Follow-Up Workshop on a National Branding Strategy for Jamaica. Mr. Simon Anholt met with the several government agencies involved in developing the nation branding strategy, as well as several stakeholders within the relevant industries, as a means of identifying practical steps to further define, refine and reposition Brand Jamaica as a business-driven brand, particularly from the perspective of integrating arts, culture, music and sports. The need was identified for the establishment of a central executive and steering committee to co-ordinate the several governmental, non-governmental, manufacturing and creative industry stakeholders consistent

<sup>54</sup> Simon Anholt, Brand Jamaica Feasibility Study, 6

with Mr. Anholt's 'Place Branding Hexagon'. Emphasis was placed on making intellectual property an integral part of Jamaica's nation branding strategy.<sup>55</sup>

In 2008, the Government of Jamaica, through the Executive arm of Government, the Cabinet, gave formal expression of its intent to develop a nation branding strategy by approving the Cabinet Submission relating to the development and implementation of a nation branding strategy for Jamaica. In 2010 the Government of Jamaica also consulted with Mr. David Lightle from the USA who was involved in devising nation branding strategies for Taiwan and Colombia. In his report he wrote that "Without doubt, Jamaica has a unique image in the world. And for a small country, it has a relatively large "footprint" on the stage of world cultures. Be it reggae, rum, running or first-class beach resorts, Jamaica stands for something of value to foreigners, particularly in the sense that Jamaica OWNS these appealing qualities."<sup>56</sup>

The Government of Jamaica has subsequently taken significant steps in developing the nation branding concept and strategy and integrating it into national development. One such important integration has been within the current National Export Strategy.

### ***The National Export Strategy (NES)***

The significant efforts that the Government of Jamaica has made with respect to owning, controlling and managing brand Jamaica have found expression in national policy across several different sectors and industries. This is coalesced most cogently as an official government policy most notably in Jamaica's National Export Strategy (NES), prepared by the Ministry of Industry, Investment and Commerce.<sup>57</sup>

The NES starts from the premise that brand Jamaica is one of the most recognizable brands internationally. The intent of the Government of Jamaica in the NES is to own, protect, control, manage and enhance brand Jamaica nationally and internationally and enable Jamaican exporters

---

<sup>55</sup> WIPO, Report on WIPO Follow-Up Workshop on a National Branding Strategy for Jamaica, 2007

<sup>56</sup> David Lightle, Proposal for the Development of Jamaica's Brand Identity, April 2010, 2

<sup>57</sup> <http://www.psoj.org/files/TheNationalExportStrategyDocument.pdf>



of goods and services to capitalize on the demand for Jamaican products and services in the international markets.

The National Export Strategy (NES) aims to co-ordinate and harmonize a national strategy to increase exports and international market share for Jamaican products and services. The philosophy behind brand Jamaica in the NES is that Jamaica has a high value suite of niche products and services, applicable across a range of sectors. The NES therefore provides a SWOT analysis of relevant sectors.

The NES discusses nation branding under the heading ‘National Image and Branding’ and defines ‘nation branding’ as “the act of deliberately shaping the world image of the country based on the country’s definition of its social and economic development goals.<sup>58</sup> The Strategy affirms the nation branding policy of the Government in the following terms:

- *nation branding can provide for Jamaica an effective tool by which to co-ordinate the management of the world image of the country both internally and internationally.*
- *a nation branding strategy has the potential to serve as a nexus for the transformation of the nation – its economy and social infrastructure – the psyche and attitudes of its people; the accomplishments of enterprise.*
- *through the process of developing a nation branding strategy, Jamaica will obtain a lever with which to manage its identity and image on the world stage, by systematically shaping the world’s understanding and conceptualization of Jamaica but more importantly, through sharpening the country’s understanding and esteem of itself.*
- *the primary stakeholders have agreed to collaborate on a nation branding initiative as a matter of priority.*
- *this overarching framework will guide all the elements of country branding including destination or tourism branding, cultural aspects of the brand as well as the country’s business image.*
- *critical to the initiative will be the protection of our marks, country of origin issues, intellectual property and branding support and services to firms for their own marks.*

---

<sup>58</sup>[1] NES, pg. 40

- *a national coordinated effort to uphold Jamaica's reputation through a nation branding framework and programme to be supported by creation and management of the nation's Intellectual Property.*

The NES outlines a 3-phase nation branding approach of the Government of Jamaica:

### **Phase I – Developing the Nation Branding Strategy**

This phase focuses on the development of the Nation Branding Strategy, as well as design of the National Brand. It contemplates further stakeholder consultation, with the support of WIPO, and other international partners in order to establish the policy framework to guide the implementation of the Strategy and identify and concretise the synergies with other development plans for the country.

### **Phases II & III**

This phase focuses on the implementation and monitoring of the Strategy, respectively.

- Review current IP legislations to ascertain adequacy
- Increase opportunities to exploit nation branding while protecting national marks and symbols.
- Continued and increased development of Certification and Collective Marks to protect, support and promote selected Jamaican products and services in discerning international market segments.
- Establish a team with a mandate to improving the capacity of micro, small and medium-sized enterprises to benefit from the intellectual property that is embedded in their goods and services.
- Promote the concept and building capacity for the management of Intellectual Property as a tradable good or service.
- Provide support to firms in enterprise and product/service branding linked to national branding in order to harness the benefits to association.
- Promote our market in a more coherent and strategic manner aligned to target sectors and markets for each, with improvements in the service delivery, such as the planning timeframe and scope, activity management and follow-up.

The NES identifies seven priority sectors for development:

1. Agro-processing (Food & Beverages)
2. Aquaculture
3. Coffee
4. Education
5. Entertainment
6. Fashion
7. ICT

In regard to the Agro-processing (Food & Beverages) sector, the NES recognises as a strength of the sector the brand equity and strong country of origin reputation, as well as the existence of established niche markets, brands and products and strong demand for Jamaican products, which is increasing in some markets. However the NES recognises the export of “Jamaican” ‘knock-offs’ as a major threat to the sector. In regard to Aquaculture and Coffee, the NES recognised as a strength the existence of established product brands and a very strong destination reputation, especially in the Japan market.

The NES gives separate and special focus on the fashion industry too, recognising that “Jamaica’s fashion industry also captures the vibrant and bold energy of its people, and may be considered the strongest goods producing sector in Jamaica’s creative industries. As with other creative industries it provides the potential for regional development and the economic engagement of less advantaged groups – based on economic (poor) or education level – who may not easily find (have access to) traditional employment opportunities.” While recognising the strong national Jamaica fashion brand and the growing demand for Jamaican creative and design products internationally, the NES saw as a threat to the sector the “overseas mass as well as designer production of ‘Jamaican inspired’ designs.”

However the application of Jamaica’s nation branding strategy is not limited to products alone but also includes significant services. The NES speaks to the fact that “Jamaica has an active and vibrant education industry with strong growth potential... By building on these strengths,

Jamaica could develop a viable education export industry capable of providing significant foreign exchange earnings. The country has the potential to become a destination for students interested in university degree programmes, specialised professional and vocational training and ELT” (English Language Teaching). This could include uniquely Jamaican programmes based on Jamaican sports training, cultural studies and natural environment experiences.

As one would expect, the NES also speaks significantly to Jamaica’s entertainment services. The NES recognises that “within the Creative Industries, Dance, Drama, Film and Music are among the strongest export services and have the greatest potential to promote our culture and creativity.” The Strategy cites several reports on the Music industry which place the employment estimate between 6,000 and 15,000 with estimates of export earnings as high as USD100million from the music. Film location projects are also cited for their potential to contribute USD14million in the local economy and employment for up to 1,500 – 2,500 persons.

Despite the obvious strengths of Jamaica’s creative and entertainment industries, the NES posits as serious threats:

- “the copying and adaptation of the Jamaican style and genres by non-Jamaicans that is eroding our share in formerly indigenous areas (e.g. international reggae artistes, reggaeton (also reguetón and reggaetón), popularised dances)”;
- Potential loss of comparative advantage in Jamaican cultural products through increased quality and use by other countries of Jamaican symbols and arts;
- Potential erosion of geographic indications for Brand Jamaica through imitation by Competitors;
- Impact of negative activities on the image of Jamaica.

The NES also addresses Jamaica’s interest in positioning brand Jamaica in respect of Information Communications Technology (ICT) services. It recognises that “Jamaica has already emerged as a recognised leader in ICT services in the region as well as in target markets, supported by a solid and improving infrastructure”. The NES explains that “Jamaica has an active ICT sector centred around software development services and the largest call centre

industry in the region. Exporting is already taking place across the segments of this market, with exports from the call centre industry alone conservatively estimated to be between US\$300-400 million.” Recognising that the success of the ICT sector in Jamaica is due largely to Jamaica’s reputation for creativity, the need for the Government of Jamaica to fully protect the brand in this sector as well is of vital importance.

### **Limitations of Existing Intellectual Property Systems**

The position of the Government of Jamaica is that trade marks including collective and certification marks, and geographical indications, as well as rights in trade names, are inadequate to effectively protect Jamaica’s country name and brand in the global market place.

#### ***Trade Marks***

At present, the international trade mark regime does not recognize the right of states to control use of their country name. Similarly, national trade mark regimes do not generally recognize the right of States over their names. While most trade mark regimes give individual trade mark proprietors the right to prevent the registration of trade marks which are identical or similar to earlier trade marks or other recognized rights in relation to identical or similar goods or services, as country names are not generally registered as trade marks nor recognized as prior rights, states do not have such rights generally.

Even where “JAMAICA” for example has been registered as a trade mark by the JTB, it is only protected in the trade mark classes in which it has been registered, within the confines of trade mark law. On the US trade marks register, it is also registered alongside many many other trade marks which utilize the country name “Jamaica” and so the Government of Jamaica still has no exclusive rights over its country name as a means of owning, protecting, controlling and managing its country brand (please see the search results for “Jamaica” from the United States, Patent and Trademark Office (USPTO), the United Kingdom Intellectual Property Office (UKIPO) and the Canadian Intellectual Property Office (CIPO).)

In fact, the section of the Paris Convention which speaks to the non-registrability of marks which consist exclusively of terms used in trade to designate geographical origin, militates against states or government agencies registering the country name as a word mark. States may be able to register their country names as stylized word marks or mixed word and logo (figurative) marks, but may be prevented from obtaining exclusive rights protection for the name in its entirety. The trade marks regime is also inadequate to prevent third parties from using “Jamaica” in their trade marks despite having no association with Jamaica. (Again, please see the search results for “Jamaica” from the USPTO, the UKIPO and the CIPO.)

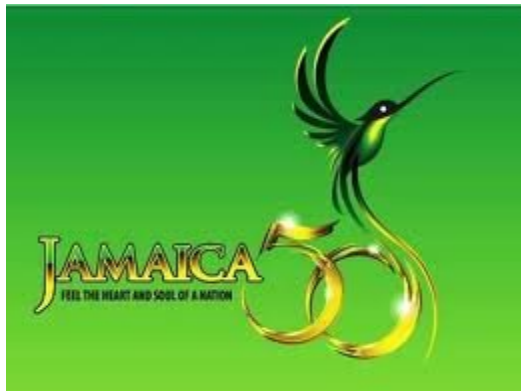
Collective and certification marks have similar limitations. Marks which consist exclusively of terms used in trade to designate geographical origin are generally not registrable either as collective or certification marks. Additionally, while certification marks have quality control regulations which must be adopted to regulate use of the mark, collective marks do not necessarily have that. Like trade marks, collective and certification marks must be registered in specific classes which make holistic protection of the country name difficult. Similar to trade marks, collective and certification marks offer limited protection against third parties using the country name despite having no association with Jamaica. Further, not all countries recognize or register collective or certification marks.

### *Trade Mark Damage*

Under Article 16.1 of the TRIPS Agreement, in order to establish trade mark infringement, the proprietor must prove use of the mark in the course of trade and, if not identical, likelihood of confusion. In respect of dissimilar goods or services, the proprietor must also prove that that his interests are likely to be damaged by such use (Art. 16.3, TRIPS). Such criteria are inconsistent with how the sovereign right of states to own and control their country name, goodwill and reputation ought to be interpreted and enforceable, that is, without the requirement of proof of likelihood of confusion or of likelihood of loss, damage or harm.

Under the Paris Convention, well-known trade marks get higher protection in that they need not be registered to be protected. Article 6bis obliges member states to “prohibit the use, of a

trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country”. Applying trade mark terminology, ‘JAMAICA’ is undoubtedly a well-known trade mark yet the rightful proprietor, the Sovereign State of Jamaica, is denied the right to legal protection afforded other trade mark owners, even those which are not well-known. Fundamentally though, the Government of Jamaica is of the view that the right of states to own and control their country name, goodwill and reputation ought to be recognized and enforceable without the requirement of proof of likelihood of confusion, such as is provided for national flags, state symbols and emblems.



### ***Trade Names***

The Paris Convention also affords protection for trade names. Similar to well-known marks, trade names are protected by the Paris Convention “without the obligation of filing or registration, whether or not it forms part of a trademark” (Art. 8). Under Art. 9 of the Paris Convention, all goods unlawfully bearing a trademark or trade name shall be seized on importation into Paris Convention countries. No such protection exists for States for their country names. However this protection is limited to protect country names for the reason that it only applies in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant (Art. 10). Therefore this would be ineffective to prevent use of indications such as “Jamaica-style”, or indications which are used

not to indicate source but nevertheless utilise the country name as part of its trade name, trade dress or marketing.

### ***Passing Off / Unfair Competition***

The Paris Convention binds member states to ensure effective protection against unfair competition, specifically against all acts of such a nature as to create confusion, and against indications which in the course of trade are liable to mislead the public as to the nature, manufacturing process, or characteristics of the goods (Art. 10bis). For common law countries which do not have sui generis laws against ‘unfair competition’ and apply common law passing off principles, three elements must be proved – goodwill, misrepresentation and damage.

Laws related to Unfair Competition and/or Passing Off therefore offer limited protection for country names which may be misleadingly used without authorization but, because of use of words like ‘style’, ‘type’ and ‘kind’, do not constitute a misrepresentation and may not be deemed likely to create confusion or to mislead the public. This therefore is lesser protection than afforded by geographical indications for goods and by trade mark law for which neither misrepresentation nor proof of damage is necessarily required. Again, the Government of Jamaica is of the view that the right of states to own and control their country name, goodwill and reputation ought to be recognized and enforceable without the requirement of proof of actual or likely damage.

### ***Geographical Indications***

Geographical Indications (GIs) are important and useful intellectual property tools which allow countries and/or localities to add value to their economies and societies, not only in terms of trade and income, but also in terms of cultural and environmental benefits as well. Iconic cultural products such as Ska, Reggae, Blue Mountain Coffee, Jamaica Ginger Beer, Jamaica Rum and Jamaica Jerk, are among some of the fittest candidates for GI protection. However GI protection also has its limitations:



- (1) In the vast number of countries of the world the protection afforded to GIs is specifically limited to goods, not services.
- (2) In order to receive protection the product must have a quality, reputation or other characteristic which is essentially attributable to the geographical location and which identifies a good as originating in the territory of a country.
- (3) GIs are not as uniformly recognized and protected internationally as are trade marks and Article 6ter in particular.
- (4) The abuse and infringements of country names takes place predominantly in the area of Trade Marks and not so much under GIs which has some protection of country names embedded in the GI system and prevents the abuse of GI names, unlike Trade Marks.
- (5) To get the protection under the GI system the criteria are much more stringent and the bar is much higher than in obtaining protection of a Trade Mark or sui generis protection as under Article 6ter.
- (6) EXCEPT for wines and spirits, the GI system offers no protection where even though the country name is falsely used without authorization, the true origin of the goods is indicated.
- (7) EXCEPT for wines and spirits, the GI system offers no protection where the geographical indication used is a translation of the country name.
- (8) EXCEPT for wines and spirits, the GI system offers no protection where use of the GI is accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.
- (9) EXCEPT for wines and spirits, the GI system offers no protection for homonymous geographical indications.

We are of the view that even translations, homonyms, homographs and homophones of the country name ‘Jamaica’ should be protected.<sup>59</sup> Homonyms, homographs and homophones are considered under trade mark law and may be deemed to be so similar to an existing mark that it amounts to an infringement. Whether in English or another language, the Government of Jamaica believes that such words also ought to be regulated in the protection of country names,

---

<sup>59</sup> Homonyms are words that share the same spelling and the same pronunciation but have different meanings; homographs are words that share the same spelling irrespective of their pronunciation; and homophones are words that share the same pronunciation, irrespective of their spelling.

because third party users of such names often intend to free-ride on the goodwill of the country name, which may cause confusion on the part of the public and ultimately dilute the name and reputation of the country. The use of adjectives such as “Jamaican” would be considered in the same light.

The Government of Jamaica is not opposed to the use of the country name totally, once permission is sought and obtained, which is what now obtains under Article 6ter of the Paris Convention in respect of the use of state emblems, national flag, armorial bearings and official signs. The GI regime is therefore inadequate to prevent a large percentage of country name infringements and therefore would not be effective in many cases to prevent abuse of country names and provide effective remedies.

### *Names of International Organizations*

The Paris Convention also protects the names of international intergovernmental organizations. Article 6ter obliges member states to:

1. prohibit the unauthorized use of armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organizations, and any heraldic imitation of them, either as trademarks or as elements of trademarks; and
2. refuse or invalidate the registration of armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organizations, and any heraldic imitation of them, as trade marks or as elements of trademarks.

However in respect of States, the Paris Convention provides inadequate protection as it fails to protect the names of states. There is no logical justification for international intergovernmental organizations being afforded such protection but not sovereign states who are members of the Paris Convention in their own right.

From an international law perspective, the right and responsibility of sovereign states to own, control, protect and manage their country name is a fundamental part of the sovereignty of states, consistent with the right to self-determination of peoples.

### ***Current JIPO Practice regarding the Registration of Country Names***

Jamaica's Trade Marks Act does not currently make provision for the protection of country names specifically and reflects the provisions of Article 6ter of the Paris Convention under Part VII, "*Provisions to Implement International Conventions*". Under the Brand Jamaica initiative, a policy and practice has developed that JIPO does not allow the registration of country names in trade marks.

In the case of the use of the country name "Jamaica", local enterprises for many years, long before the brand Jamaica initiative, have been registering Jamaican brands using the country name as part of the trade mark. JIPO does not block Jamaican companies from using the name Jamaica. Just as the present law allows residents of the state to use with government's permission the national flag, symbols and emblems, JIPO has repeatedly made submissions to the WIPO SCT for an amendment of the Paris Convention that would require permission to be sought for country names to be used as part of registered trade marks. This would apply to nationals as well as non-nationals.

Where nationals of Jamaica may have some legitimate use of the country name as part of their trade marks, in those cases JIPO would give a disclaimer so no one would be given exclusive use of the country name. Currently, the policy at JIPO has been not to allow the registration of the name 'Jamaica' by foreign entities that have no genuine connection or association with Jamaica and appear to be seeking to exploit and take advantage of the reputation of Jamaica. If such a request is made for use then consideration of use would have to be on a case by case basis, as in the instance of diaspora interests, based on assessment of authentic connection to Jamaica.

The policy of the Government of Jamaica in the treatment of the use of National Flag, State Emblems, Symbols etc. is that permission should be sought from the Protocol Division of the

Office of the Prime Minister (OPM) in consultation with JIPO and once written approval is given from the OPM, this is presented to JIPO for the application process to proceed. In most instances the request is made for “use” of the national emblem or state symbol and not necessarily “registration”. So a request has to be specific as to whether it is for use in advertising or to be placed on a product but which would not necessarily be registered as part of a trade mark.

A Committee comprising the OPM, JIPO, Ministry of Foreign Affairs and Ministry of Culture was convened in 2010, to develop recommendations to Cabinet for their approval on a more structured policy approach to dealing with the numerous requests that are received annually for the use of national symbols etc. by local and foreign entities. JIPO also intends to seek Cabinet approval for an amendment to the Trade Marks Act to incorporate the protection of country names, which would formalize how this matter is addressed in Jamaica. However that will not assist the Government of Jamaica to protect and manage the use of our country name internationally. We are seeking that kind of structured holistic international approach to recognition and protection of country names through the WIPO SCT.

JIPO in turn would in turn protect the country name of other countries as is currently done under the Paris Convention in respect of other countries’ national flags, symbols, emblems, official signs and hallmarks. It therefore would be a reciprocal arrangement, as the same level of protection that would be offered to Jamaica would be offered to all other states that are party to the amended Convention. We would not allow the use of another country’s name without getting the permission from the relevant country. This is what now obtains under Article 6ter but only for countries’ national flags, symbols and emblems, but not for country names.

As a result of the foregoing analysis, it is thought that the provisions of the Paris Convention which give states the right to protect and authorize use of their national symbols and emblems would be the most appropriate and convenient method to protect country names, just as how the relevant provisions of the Paris Convention have been used to protect the names of international organizations. In the absence of such a broad-based and holistic right of states to protect their country names as they protect their national symbols and emblems, trade mark law is inadequate to effectively protect country names. This is borne out by the case studies attached.

### *Results of the WIPO SCT Questionnaire*

The Government of Jamaica is of the firm view that the way in which the questions in the recent WIPO SCT Questionnaire were asked and answered, does not accurately reflect the state of affairs as it relates to the lack of legal protection for country names afforded by member states through their trade mark laws and policies. The Government of Jamaica is of the view that many of the questions and answers rely on the theory of the law rather than on what obtains in practice, and focus on discretionary mechanisms rather than mandatory ones. In our view, the answers given by the majority of states to the questionnaire inaccurately paints a picture of adequate legal protection being afforded to country names when in fact that is not the case in most countries.

To demonstrate the point, JIPO undertook a search of the public trade mark registries of the United States Patent and Trademark Office (USPTO), the United Kingdom Intellectual Property Office (UKIPO) and the Canadian Intellectual Property Office (CIPO) to ascertain how many trade marks exist on the respective registers which bear the name 'Jamaica'. We were surprised to see the high number of trade marks, whether in force or expired, which exist or existed on the registers with the name 'Jamaica'.

The USPTO database showed three hundred and eleven (311) trade marks with the name 'Jamaica' in it. Some were never accepted for registration, some are now out of use and some of course are registered by Jamaican companies in the US, but the vast majority are still in force, having been registered and owned by persons or entities unaffiliated with Jamaica. The UKIPO trade marks database search revealed 129 trade marks with the name 'Jamaica' in them. The CIPO trade marks database search resulted in 64 trade marks with the name 'Jamaica' in them. While it is clear that many of the trade marks found in the UKIPO database are legitimately associated with Jamaica, it is equally clear that the database nevertheless contains many which are not so associated. The same can be said of the CIPO database. The USPTO database however shows that most of the trade marks with 'Jamaica' in them do not originate or legitimately associate with Jamaica.

There is therefore an urgent need for a much more closer look at this aspect of the trade mark laws internationally with a view to providing effective and adequate mandatory legal protection

for country names, especially country names of developing countries like Jamaica where the country name forms an integral and valuable part of the nation's goodwill, reputation and national asset base, necessary for advancing economic growth and development.

In summary therefore the Government of Jamaica reiterates:

1. States have the right and responsibility to halt misappropriation and unauthorized exploitation, passing off, likelihood of association and/or confusion, dilution and unfair competition in respect of their country name and nation brand.
2. States have the right and responsibility to enforce their moral and economic rights in respect of their country name and nation brand.
3. States have the right and responsibility to own control, protect and manage their country name, goodwill, reputation and fame, just as individuals have rights to their personality and reputation.
4. States have the right and responsibility to prior informed consent before use of their country name by others.
5. States have the right and responsibility to ensure mutually agreed terms and full and effective economic participation in and benefit-sharing from use of their country name and nation brand.
13. The colonial history and economy of Jamaica is of a nation of peoples and cultures who have been exploited and disadvantaged for centuries. Nevertheless, despite the odds and centuries of exploitation, the 'Jamaica' brand is one of the strongest and most well-known nation brands internationally and therefore a valuable national asset, central and integral to the national sustainable development of Jamaica.
6. Significant, extensive effort and investment at individual and national, governmental and non-governmental levels have been made in Jamaica in regard to protecting, maintaining, developing and benefiting from Brand Jamaica, as well as halting misappropriation and unauthorized use of the country name 'JAMAICA' and the Jamaica brand.
7. ALL that significant, extensive effort and investment will be lost, eroded and undermined, if Jamaica and countries like Jamaica where significant brand equity forms a

valuable component of GDP, are not empowered and assisted to authorize, prevent, control and manage the use of their country name and nation brand.

8. The Government of Jamaica therefore recommends and continues to advocate for a revision of the Paris Convention or the development of some other trade mark related or sui generis protection for country names. The Government of Jamaica is however open to other viable suggestions from member states which can afford adequate and sufficient legal protection and means of prevention and redress for unauthorized use of country names.

\*\*\*