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MAXIMISING THE BENEFITS OF ORIGIN PRODUCTS IN AN EMERGING ECONOMY - THE IMPACT OF GEOGRAPHICAL INDICATION POTECTION IN JAMAICA

Enrico Bonadio – Natalie Corthésy – Marc Mimler – Dianne Daley McClure - Yentyl Williams – Shadae Deslandes (*)

Introduction

The island state Jamaica, despite its small geographic size,¹ has for decades succeeded in leveraging its nation brand through the prism of its distinctive cultural and creative identity – reggae music, Rastafari religion, international track and field sporting prowess, and of course, gastronomy.² Indeed, Jamaica’s reputation for world class rum and coffee dates back to its colonial past.³ Today, Jamaica’s intellectual property (IP) landscape is characterised by modern laws consistent with internationally recognised standards of protection, and strategic alliances secured through international treaties that provided reciprocal treatment and augers well for sustainable economic growth.⁴ Notably, Jamaica enacted Geographical Indication (GI) legislation in 2004, which was promulgated in 2009, and amended in 2018.⁵ This brought Jamaica’s law pertaining to GIs into full compliance with its obligations under the World Trade Organisation’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁶ However, to date, only two products have been registered nationally under the Act - ‘Jamaica Jerk’ (2015) and ‘Jamaica rum’ GIs (2016),⁷ although many more Jamaican products are eligible to benefit from GI protection.

This apparent underutilisation of the GI system raises two critical questions: (i) Whether the small number of GI registrations is due to a knowledge gap on the part of GI producers? and (ii) To what extent can the knowledge gap be attributed to an institutional gap due to inadequate technical and financial support from the government of Jamaica to GI producers? A joint legal research project was undertaken by a Jamaican-UK team to explore this polemic. The team hypothesised that, the likelihood was that both questions were answerable in the affirmative,

* Enrico Bonadio is Reader in Intellectual Property Law, City, University of London. Natalie Corthésy is Senior Lecturer and Associate Dean Outreach and Continuing Legal Education at The University of the West Indies, Law Faculty. Marc Mimler is Senior Lecturer in Intellectual Property Law, City, University of London. Dianne Daley McClure is the founding partner of the Jamaican law firm FOGA DALEY and the head of the firm’s Intellectual Property Department. Yentyl Williams is a Phd candidate in Intellectual Property Law at the University of Bristol and researcher at the University of The West Indies, Law Faculty. Shadae Deslandes is a Law graduate from the University of The West Indies, Law Faculty.

The paper is the result of a joint research project on geographical indications in Jamaica between City University London and the University of the West Indies Mona Campus Jamaica. The project received funding from the UKRI Higher Education Innovation Funding, and supported research carried out in Jamaica and the UK between January and December 2022. The authors wish to acknowledge the kind administrative assistance of Miss Odesha Coates from the Faculty of Law of The University of the West Indies.

¹ The island of Jamaica is located in the Caribbean Sea and has an area of 4,244 square miles. It is the third-largest island of the Greater Antilles and the Caribbean (after Cuba and Hispaniola).

² Corthésy “Trade marks country names and misappropriation of national identity” JIPLP.

³ Corthésy “International Intellectual Property Protection of Country Names - Balancing Nation Brands and Geographic Commons, PhD Thesis, Unpublished 2019, Queen Mary University of London/ Ian Randle Publisher 2023 In a Competitive Global Marketplace.

⁴ Ibid.

⁵ The Protection of Geographical Indications Act No. 5 of 2004.

⁶ Article 22 & 23 TRIPS Agreement, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.

⁷ Both registrations are accessible via the Jamaica Intellectual Property Office (JIPO).

and resolved to conduct case studies which would support, or refute this presumption.⁸ A representative sample of public and private sector GI stakeholders were interviewed - 6 Stakeholder industries and 3 regulatory bodies (see Appendix). The industry stakeholders included producers of cannabis, castor oil, coffee, honey, jerk, and rum, while the institutional stakeholders included the Jamaica Bureau of Standards, the Jamaican Agricultural Commodities Regulatory Authority (JACRA) and the Jamaican Intellectual Property Office (JIPO). This paper draws on the outcome of the interviews we had with these local stakeholders, and sheds light on the knowledge and institutional gaps impacting GI stakeholders in Jamaica.

Approximately 90% of the interviews took place in January 2022 with the final interview occurring in February of the same year. During this time, the research team met with each stakeholder either in person, virtually or by using a hybrid method of contact. Regardless of the forum used, all interviewees were informed of the objectives of this research, as well as the role they played as stakeholders, and as a result, they all gave their consent for the information shared in the interviews to be recorded and analysed for these purposes. It should be noted that all the interviews followed a similar structure, in which the interviewees were presented with a questionnaire that included both generic and bespoke questions. This allowed the research team to understand the general challenges concerning the overall GI application process, while also learning about specific issues that stakeholders in particular industries may raise. The team took great care to accurately record each interviewee's response to the questions posed and made it a point of duty to ask the stakeholders for further clarification when needed. Additionally, before the close of each interview, the interviewees were encouraged to provide the team with any relevant information which was not previously elicited from the aforementioned questionnaires.

Part one analyses whether the underutilisation of the existing legal framework for the protection of GIs in Jamaica is due to a knowledge gap. It demonstrates how producers either have little knowledge or some knowledge of GI regimes yet remain uninformed about the purpose of GIs – it does so by drawing on case studies of the honey, cannabis, coffee and castor producers. A comparative assessment of Jamaica Jerk and Jamaica rum, which have both procured national but not extraterritorial GI registrations, is made. This highlights the issue of how and who drives the registration process. These examples of private sector driven GI registrations underscore the institutional challenges that remain in mobilising producers to avail themselves of the GI protection system. Part two considers the institutional gap impacting GI registrations in Jamaica. It suggests that producers require administrative assistance and mentorship in the GI application process. It draws on case studies from the Jamaica Bureau of Standards, JACRA, JIPO and the European Union – Caribbean Forum's (EU-Cariforum) Caribbean Intellectual Property Initiative (CarIPI). The article concludes with the recommendation that addressing the knowledge and institutional gaps would lead to more GI protection both locally and internationally.

The GI knowledge gap in Jamaica

This section considers whether the apparent underutilisation of the existing legal framework for the protection of GIs in Jamaica is due to a knowledge gap. It is based on interviews

⁸ The original team of consisted of Dr. Enrico Bonadio and Dr. Marc Mimler, City Law School, University of London and Dr. Natalie Corthésy, Faculty of Law, UWI (co-investigators:); Mrs Dianne Daley McClure, Foga Daley (legal consultant); Shadae Deslandes (Research Assistant) and Odesha Coates (Administrative Assistant). Yentyl Williams (Research Assistant) joined the team after all interviews were conducted.

conducted with stakeholders who perceive themselves as “custodians of the legacy”,⁹ and who have the perception that GI laws can benefit their products. The first set of case studies on Jamaica honey and Jamaica cannabis illustrate that producers have inadequate knowledge or are misinformed. The second set of case studies on Jamaican Blue Mountain Coffee and Jamaican Black Castor oil demonstrate that producers have *some* knowledge, but misinformation poses an impediment to pursuing GI registration.

Jamaican Honey

Beekeeping has been the fastest-growing subsector in the agricultural industry in Jamaica over the past decade,¹⁰ and is currently valued at US\$17 million.¹¹ Currently, under the Jamaican Bees Control Act honey cannot be imported into Jamaica (Section 3).¹² It seems propitious that honey GI stakeholders register and protect their honey before an amendment to that act, which would allow for imports and may impact honey standards in Jamaica. In 2019 there were over three thousand five hundred (3500) beekeepers island-wide, ranging from small farmers to colonies.¹³ The Jamaica Bees Control Act requires persons to register their operation in January of each year. Registrants must notify the Ministry within 30 days of making changes to their operations. Specifications for Jamaica Honey have already been created by the Bureau of Standards. Yet honey stakeholders have not taken a unified approach to the name that a potential GI for honey could use. In general, stakeholders have agreed to use the name Jamaica Honey, although some stakeholders are in favour of more localised names, such as Blue Mountain Jamaica Honey.

Historically, Jamaica honey was the yardstick for measuring the quality of British honey during the colonial epoch.¹⁴ The rich heritage alongside the quality, reputation and characteristics of Jamaica honey makes it suitable for GI protection. Yet currently, the stakeholder from the Jamaica Honey Association was not aware of any type of IP protection for Jamaican honey, be it a prior trade mark or certification mark. The Apiculture Unit at the Ministry of Agriculture and Fisheries does routine certification in line with the internationally recognised quality management system, ISO 9001.¹⁵ Despite this, certification and accreditation are not mandatory. There is no legal or industry obligation or regulation to ensure that persons producing and selling honey are certified. Furthermore, the Act does not provide for the regulation of persons operating bees, instead, it permits for entry into any premises to inspect for diseases that may affect the bees (Sections 7-13).¹⁶ While any third party would need to be granted permission from the Ministry or the Jamaican producers to trade the product, additional support would be required in the sector more generally.

⁹ Interview with Loreen Walker, Jamaica Jerk.

¹⁰ Investment in the Bee-Keeping Sub-sector, The Apiculture Unit, August 2013. <<https://moa.gov.jm/sites/default/files/pdfs/new-investment-in-beekeeping-and-establishing-apiaries.pdf>> Accessed 15 November 2022.

¹¹ ‘Agriculture ministry pumps \$35 million into beekeeping industry,’ Jamaica Loop, 6 May 2021, <<https://jamaica.loopnews.com/content/agriculture-ministry-pumps-35-million-beekeeping-industry>> Accessed 15 November 2022.

¹² The Bees Control Act 1920, Consolidated version of Chapter 38 as amended by Act No. 6 of 1968 as authorized last by L.N. No. 480/73 available at <<http://extwprlegs1.fao.org/docs/pdf/jam70962.pdf>> Accessed 15 November 2022. The Act is implemented by Bees (Importation of Queen Bees) Regulations, 1920; Bees (Transshipment of Honey and Beeswax) Regulations, 1934; Bees (Protection from Disease) Order, 1940; Bees (Importation of Metal Containers for Honey) Regulations, 1959; Bees (Importation of Cayman Islands Honey) Regulations, 1921; Bees (Transportation) Rules, 1920.

¹³ According to the interviewee, the Unit is currently overdue for a census. The above-mentioned 2021 article states that the industry is comprised of “3,000 investors managing just over 3,500 apiaries with approximately 65,000 bee colonies”. Ibid.

¹⁴ According to Jamaican Honey interviewee.

¹⁵ Established by the International Organisation for Standardization to provide a standard to which organisations can adhere to that signals to customers that products and services have met the required regulatory stands.

¹⁶ Cf nt 8.

At present to begin the GI process, the Association requires support for drafting the specification, traceability, certification, establishing a certifying body, branding as well as registration of the product internationally. The Honey Association stakeholder interviewed expressed a preference for the GI to be owned by the producer organisation with the requisite institutional management support from the Ministry of Agriculture and Fisheries, and JIPO. It was expressed that the Beekeepers Association should also be consulted. In light of this contribution, the researchers have put forth two recommendations. First, using Jamaica Honey as an umbrella term for the GI would allow Jamaica to capitalise on the honey as well as be recognisable abroad. Certification marks for distinct variations of honey could also be registered as an additional layer of IP rights for the honey producers. Second, domain name registration is increasingly a key part of the GI protection process. Currently, the website jamaicanhoney.com is on sale for \$2,795 USD.¹⁷ Reclaiming the domain name via ICANN's Uniform Domain-Name Dispute-Resolution Policy (UDRP) would be one part of a larger strategy to protect Jamaican honey as a GI.

Jamaican Cannabis, Ganja and Hemp

The 2015 amendment to the Dangerous Drugs Act sought to regulate Jamaica's legal cannabis industry.¹⁸ Therein, the Cannabis Licensing Authority (CLA) was established as an agency that falls under the Ministry of Industry, Investment and Commerce. The CLA has an operation of fifty four (54) staff members, split generally across Licensing and Application, and Enforcement and Monitoring.¹⁹ The CLA currently has five licence types: cultivated licence, retail licence, processing licence, transportation licence and research and development licence. Each licence type is guided by the interim regulations that established the CLA. Across the licence types, the CLA has authorised over eighty (80) exports from Jamaica. These exports primarily consisted of dried cannabis flowers and, to a lesser extent, oil. The CLA has also managed the donation of seeds to St Vincent and the Grenadines in 2021. The Authority liaises with two main industry associations: the Ganja Growers Association and the Jamaican Licensed Cannabis Association. These associations meet about various aspects of the cannabis industry, including the potential name for a GI, and in consultation with the Cannabis Industry Task Force, spearheaded by the same Ministry.

The term cannabis is a catch-all term for all plants with cannabinoids, although the Jamaican legislation refers to the word ganja. Under the 2015 amendments to the Dangerous Drugs Act, it is explained

“ganja” includes all parts of the plant *cannabis sativa* from which the resin has not been extracted and includes any resin obtained from that plant, but does not include –

- (i) medicinal preparations made from that plant;
- (ii) hemp;” (Section 2).

The same amendment to the Dangerous Drugs Act uses THC concentration to distinguish Ganja from hemp. According to the legislation, all forms of *cannabis sativa* with a THC

¹⁷ Jamaica Honey, Huge Domains, <https://www.hugedomains.com/domain_profile.cfm?d=jamaicanhoney.com> Accessed 15 November 2022.

¹⁸ The Dangerous Drugs Act, 1948 The Dangerous Drugs (Amendment) Act, 2015 The Dangerous Drugs (Amendment) Act, 2021.

¹⁹ There are also support departments such as Safety and Security, Human Resources, Research and Development, Communications and Procurement.

concentration of more than 1% are to be considered ganja, while hemp must have a THC concentration of no more than 1% (Section 2). The CLA has also established a threshold of 10% of another cannabinoid (Cannabidiol) CBD, which in its perspective, is valuable in Jamaica's medical industry. Therefore, for hemp to be used as medicine it must contain 1% or less THC, as well as 10% or more CBD. It should be noted that the word 'marijuana' is not used in the Act. Historically, the term 'marijuana' has a derogatory connotation and hence, 'Jamaica Marijuana' is not considered a viable GI name.²⁰ Rather, Jamaica Ganja, Cannabis and Hemp are the terms that will be considered for GI protection. The CLA is also of the perspective that the GI will be managed and owned by the Government of Jamaica (GoJ), while producers will also reap the benefit of protection.

The choice of these words – Jamaica cannabis, Jamaica ganja and Jamaica hemp - seeks to find the balance between an umbrella term that could include all the proprietary strains owned by licensees, while also incorporating the hemp industry. The approach of having several GIs maximises the chance to benefit from business opportunities in markets which recognise different terms, while also providing protection for the different strains grown in Jamaica. A GI specification therefore is a means to manage the standards and harmonise the regulations of the industry in Jamaica.

Additionally, the CLA can also benefit from IP for new plant varieties, allowing for the protection of new strains of cannabis.²¹ Specifically, it can explore patents, trademarks, copyright, and confidentiality agreements to protect the interests of stakeholders within the cannabis industry. In relation to trademarks in particular, since Jamaica's accession to the Madrid Protocol,²² on March 27, 2022, it is expected that several innovative international registrations, relating to the cannabis industry, will enter the JIPO and subsequently, the Madrid single-filing trademark registry. For example, a search for cannabis trademarks in respective registries bring up 267 trademarks for cannabis across different classes in UK, 186 trademarks at EU's IP Office (EUIPO) by 33 owners, 1,185 for Cannabis via USPTO, 500 for cannabis in Canadian registry, and 1,468 registered globally for cannabis in TMView.²³ There are fewer

²⁰ Jamaica Cannabis stakeholder interview.

²¹ The EU's Community Plant Variety Office (CVO) office in Angers charges €2020 change in fees for testing the cannabis plant per growing period: <https://cpvo.europa.eu/en/news-and-events/news/note-applicants-adjustment-examination-fees-pharmaceutical-cannabis-sativa-varieties-pcs> Accessed 15 November 2022.

²² Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, June 27, 1989, WIPO Doc. MM/DC/27 Rev. (1989).

²³ See UK Trade mark registry, <<https://trademarks.ipo.gov.uk/ipo-tmtext/page/Results>>, Accessed 15 November 2022. the EU IPO <<https://euipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100/cannabis>>, Accessed 15 November 2022. The USPTO, <https://tmsearch.uspto.gov/bin/showfield?f=toc&state=4808%3Am0x5rj.1.1&p_search=search&p_L=50&BackReference=&p_plural=yes&p_s_PARA1=live&p_tagrepl%7E%3A=PARA1%24LD&expr=PARA1+AND+PARA2&p_s_PARA2=cannabis&p_tagrepl%7E%3A=PARA2%24COMB&p_op_ALL=AND&a_default=search&a_search=Submit+Query&a_search=Submit+Query>, Accessed 15 November 2022. The Canada Trade marks database <<https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home>>, Accessed 15 November 2022. and the Trade Mark View international database, <<https://www.tmdn.org/tmview/#/tmview/results?page=1&pageSize=30&criteria=C&basicSearch=cannabis&sortColumn=tradeMarkStatus&desc=false&fTMStatus=Registered>>, Accessed 15 November 2022.

registrations for Ganja,²⁴ and more for hemp.²⁵ This adds a new level of competition for IP protection in the marketplace that Jamaican producers should know about and also be prepared for.

Jamaican Blue Mountain Coffee

Currently, 100% Jamaica Blue Mountain Coffee (JMBC) is one of the most highly-priced coffee in the world, averaging approximately US\$100 per pound.²⁶ And 70% of Jamaican Coffee Exporters Association Coffee (JCEA) is sold to Japan, where it may be blended.²⁷ This lucrative export relationship puts the exporters of the world-famous Jamaica Blue Mountain coffee between a rock and a hard place on the issue of GI protection: a GI is likely to preclude blending (given the current Jamaica-Japan export model is based on 100% JBMC) and this would jeopardise the lucrative Japanese sales market for the JCEA, which allows for blending once the authentic JBMC is imported to Japan. This export dependency explains the Exporters Association's view that a GI would not add any considerable market value, since the reputed coffee is already expensive. Rather, the issue that the Exporters have reportedly been grappling with is how to protect their coffee from infringements (notably in the UK and Chinese markets) while allowing blending of coffee, which facilitates their currently lucrative trading relations with Japan. While the Exporters fear that a GI may lead to sourcing coffee from elsewhere, in particular Ethiopia, the Jamaican Coffee Growers Association – comprised of smallholder Blue Mountain coffee farmers – fundamentally disagree. In their perspective, a GI is precisely what the sector needs since the GI can benefit the entire community of producers, and not simply the Exporters' Association members as under the current status quo, by harnessing the reputable JMBC name.

Unauthorised exploitation of Jamaica's reputed Blue Mountain coffee have taken place in several jurisdictions. However, the JCEA have stated that they cannot afford the costs of constantly enforcing their legal rights against these violators, such as in the US. In response to this, and given international precedents,²⁸ it is advisable that the Exporters work alongside the GoJ to enforce protection, and one way of doing this could be through bilateral country agreements. Yet, the Exporters and other coffee stakeholders, such as JCGA, must come together as a united front, if they are to adopt this approach seeking government support. In the absence of consensus and a strategy to enforce protection both at home and internationally, all stakeholders risk losing out, for example in relation to trademarks: indeed, the Madrid Protocol

²⁴ 43 in UK database, however not all are live <https://trademarks.ipo.gov.uk/ipo-tmtext/page/Results> Accessed 15 November 2022.; 14 in EUIPO, <<https://euipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100/ganja>> Accessed 15 November 2022.; 79 via USPTO <https://tmsearch.uspto.gov/bin/showfield?f=toc&state=4808%3Am0x5rj.1.1&p_search=search&L=50&BackReference=&p_plural=yes&p_s_PARA1=live&p_tagrepl%7E%3A=PARA1%24LD&expr=PARA1+AND+PARA2&p_s_PARA2=ganja&p_tagrepl%7E%3A=PARA2%24COMB&p_op_ALL=AND&a_default=search&a_search=Submit+Query&a_search=Submit+Query> Accessed 15 November 2022.; 28 via Canadian registry <<https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home>> Accessed 15 November 2022. 348 live trademarks registered via TM View, <<https://www.tmdn.org/tmview/#/tmview/results?page=1&pageSize=30&criteria=C&basicSearch=ganja&fTMStatus=Registered>> Accessed 15 November 2022.

²⁵ 469 via UK IPO <<https://trademarks.ipo.gov.uk/ipo-tmtext/page/Results>> Accessed 15 November 2022; 621 via EUIPO <<https://euipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100+100/hemp>> Accessed 15 November 2022; 1341 via USPTO <<https://tmsearch.uspto.gov/bin/showfield>> Accessed 15 November 2022; 5890 via Canada Trademark registry <<https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home>> 4500 via TM View <<https://www.tmdn.org/tmview/#/tmview/results?page=1&pageSize=30&criteria=C&basicSearch=hemp&fTMStatus=Registered>> Accessed 15 November 2022;

²⁶ Coffee stakeholder interview.

²⁷ Coffee stakeholder interview.

²⁸ India Basmati case, where the Government of India and stakeholder groups litigated to protect Indian Basmati rice in the US. See, Agricultural and Processed Food Exports Development Authority v. Rice Tec Inc., 1997.

will likely usher a significant number of new marks into Jamaica from all over the world, especially China, and these marks may include references to Blue Mountain brands protected in foreign jurisdictions.²⁹

A JBMC GI could follow the route of spirit producer GIs that use a strategic combination of EU-style Protected Denomination of Origin (PDO) and Protected GI (PGI) models for protecting their GI products.³⁰ For example, a GI specification would recognise a GI for pure JBMC of at least 95% authentic Jamaican coffee, which would be akin to PDO-level of protection. PDO status in the EU is regarded as a benchmark for a strong form of GI protection.³¹ A PDO gives a monopoly over the name of an agricultural or food product (a) where the latter originates from a specific place, region or, *in exceptional cases, a country*; (b) whose quality or characteristics are *essentially or exclusively due to a particular geographical environment* with its inherent natural and human factors; and (c) the production steps of which *all take place* in the defined geographical area (Article 5.1(a) Italics added).³²

Alternatively, GI protection could be given to blends with indications of the quantities used, which would be equivalent to the PGI form of protection under EU law. A PGI gives a monopoly over the name of an agricultural or food product (a) where the latter originates in a specific place, region or country; (b) whose given quality, *reputation* or other characteristic is *essentially attributable* to its geographical origin; and (c) *at least one of the production steps* of which take place in the defined geographical area (Article 5.2(a) Italics added).³³ Following the PGI-style route, blends may include names such as 'Jamaica Hospitality' or 'Jamaica Select'. However, it is not advisable to have a GI, 'Jamaica Blue Mountain Blend', as this would diminish the overall value of the authentic JBMC which has its specific qualities, characteristics and reputation worthy of GI protection. Jamaica's national law requires only 30% JBMC for the signage to be used, while in Japan JBMC must consist of at least 50% of the authentic coffee. Given this anomaly, it would be strategic for the industry to expedite the heightening of Jamaica's legislative requirements to reflect at least the 50% threshold required to benefit from using the Jamaican Blue Mountain Coffee name. Additionally, exporters and producers alike can consider the value in branding JBMC as a premium item, and also rebranding a new term for coffee blends, which would include the word 'Jamaica', but exclude 'Blue Mountain'.

Jamaican Castor Oil

²⁹ There are a number of live registrations for 'blue mountain coffee' some of which are from the JCGA, and others which are not. For example, there is a 'Red Tadpole Blue Mountain Coffee' registered in China's Trade Mark registry (Application no. 36922342 registered on 07/01/2020). See <https://www.tmdn.org/tmview/#/tmview/results?page=1&pageSize=30&criteria=C&basicSearch=blue%20mountain%20coffee&sortColumn=tradeMarkStatus&desc=true>. Accessed 18 December 2022.

³⁰ From Scotch Whisky to Demerara Rum GI, this has been the approach. See, Scotch Whisky GI Specification, PGI-GB-01854, filed 12/06/1989, Ares(2013)3005272 available via EAmbrosia, EU GI database: <https://ec.europa.eu/geographical-indications-register/eambrosia-public-api/api/v1/attachments/45004> Accessed 15 November 2022. And, 'DEMERARA RUM' (File number: PGI-GY-02423 – 28.6.2018). Publication of an application pursuant to Article 17(6) of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89. Official Journal of the European Union. C120/7. 18.04.2021.

³¹ Enrico Bonadio, Nicola Lucchi, Magali Contardi, Extending the Protection of Geographical Indications Within and Beyond the EU (December 1, 2021). Agrifood Market regulation and Contractual relationships, Anna Maria Mancaloni and Raffaele Torino (Eds) (Roma Tre Press, forthcoming 2023).

³² Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

³³ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

The Jamaica Black Castor Oil market is saturated with 99.9% of counterfeit products, originating predominantly from India.³⁴ Evocative use of this brand is also an issue.³⁵ Currently, a metric tonne of Jamaica Black Castor Oil is valued at up to US\$18,000, while the American market is valued at US\$30 million.³⁶ Yet, Jamaica struggles to export US\$500,000 worth of Jamaica Black Castor Oil.³⁷ Consumers are willing to pay up to 30% more for organic and authentic Jamaican Black Castor Oil.³⁸ Castor oil has wide uses, from common use as a laxative or hair products, as well as in more than 3,000 commercially viable products, including aeroplane fuel.

In an attempt to regulate production and harness the market value of Jamaican castor oil, the Jamaica Castor Industry Association (JCIA) LLC was established in 2017. It was first established with support from the government via the Jamaica Promotions Corporation (JAMPRO), which provided the initial secretariat and later, the Jamaica Manufacturing and Exporters Association (JMEA). More recently, the JCIA has been in talks with Sugar Corporation to use some of the Corporation's land to set up its own office, in a *quid pro quo* exchange (for a business plan). The Association benefits from funding provided by Inter-American Development Bank (IDB) and JAMPRO for research conducted by Mona Institute of Applied Sciences (University of the West Indies, UWI) on castor plants, seeds, processes, and oil, as well as the IP protection available. The JCIA has also partnered with the BSI and JAMPRO on further research.³⁹

The Association is relatively young and urgently needs to learn best practice from other producer organisations, while putting in place a strategy to combat the alarming level of counterfeit. This task is even greater due to the Association's current lack of IP rights, including certification marks.⁴⁰ Although at least 60% of the members of JCIA have developed their own brands of Jamaica Black Castor Oil, the prevalence of private trade mark rights does not bolster the Associations' ability to work together, as could be done under collective marks or GIs (also, JCIA had a number of collective and certification marks which they allowed to lapse due primarily to lack of funding). Moreover, monies raised and funding, is earmarked for research, not IP protection. When asked how a Jamaican Castor Oil would be governed, the Association had preference for sole ownership. Yet, from an overview of the issues facing Jamaican castor oil producers, a co-branded strategy with government support would seem the most viable route to begin to resolve the current predicament.

Lessons from Jamaica Jerk and Jamaica Rum GIs

Jamaica Jerk and Jamaica Rum GIs are the first GIs registered under the GI law in Jamaica, signalling that they have overcome the challenges of the knowledge gap concerning GI implementation. These can be considered success stories since they respond to the general

³⁴ Jamaica Castor Oil stakeholder interview.

³⁵ Evocation is widely discussed in EU case law. Accordingly, "the concept of 'evocation' covers a situation in which the sign used to designate a product incorporates part of a [GI], so that when the consumer is confronted with the name of the product in question, the image triggered in his or her mind is that of the product whose indication or designation is protected." See CJEU Press Release No 154/21, Judgement in Case C---783/19 *Comité Interprofessionnel du Vin de Champagne* (Luxembourg, 9 September 2021).

³⁶ According to Jamaica Black Castor Oil interviewee.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ See Jamaica poised to strike Liquid Gold: UWI Led Project to help Castor Oil Farmers and Processors to benefit from standards and certification, Mona UWI, 21 September 2022, <<https://www.mona.uwi.edu/fst/jamaica-poised-strike-liquid-gold-uwi-led-project-help-castor-oil-farmers-and-processors-benefit>> Accessed 15 November 2022.

⁴⁰ It does have GRSE accreditation from the Food and Drug Administration, however this has not had a tangible impact in curbing counterfeiting or acting as a mark of authenticity.

concern of stakeholders: the unauthorised uses of their brands are detrimental, not only to Jamaican products, but also to the broader brand Jamaica,⁴¹ and the socio-economic development of the sixty-year-old nation.⁴² Yet, the lack of protection through international registration for the Jamaica Rum and Jamaica Jerk GIs via the EU GI regime, for example, may be an indication that an institutional gap persists even where a knowledge gap is filled. A brief overview of the Jamaica rum and jerk GIs will be presented before considering the institutional gap for GI forthcoming registrations in Jamaica.

The Jamaica Rum GI is only registered in Jamaica as well as Switzerland as a result of the bilateral treaty between the two countries.⁴³ The Association is presently working with the JIPO to meet the specific additional requirements needed to register a GI in the European Union. One such requirement is providing documentation to establish the history and reputation of Jamaica Rum. Jamaica rum producers have the expectation that the GI will result in greater demand and increased sales of authentic Jamaican rum in Europe and the US. However, for both to be tested in practice, the GI would need to be registered in the EU and the trade mark or certification mark in the US.⁴⁴ Despite registering a GI nationally, the additional hurdles to registration internationally demonstrate that further research would be needed to assess the cost-benefit analysis in relevant international markets, as well as technical-scientific assistance, trainings and assistance could be given in marketing the GI.

No one producer or brand owner has exclusive rights to the GI and once rum has been produced according to the Code of Practice then the producer should be able to benefit from the GI. This does not preclude brand owners from registering separate or additional trademarks. It could indeed help with overseas infringements. Violations have taken place in Brazil and also locally in Jamaica - however, the Spirits Pool has not got involved in the legal enforcement of the GI. In part, this may be due to the reality that the SPA is still dealing with institutional management at home: currently the Association protects the GI by engaging in a verification process that is done before any brand owner is granted permission to use the GI. There is an initiative to prepare a database of the chemical signatures of the marks using a gas chromatograph, as well as a mass spec signature.

There are also issues with the existing Jamaica Rum GI specification pertaining to blending, sweetening and water inputs, which have stirred up concerns that some stakeholders want the GI specification re-written. On blending, the Jamaica Rum GI Code of Practice states that, with the exceptions of potable water and distiller's caramel (for colour correction purposes only), any product added after distillation automatically nullifies the GI.⁴⁵ This suggests that there may be instances where a violation originates from within the Spirits Pool Association (SPA).

⁴¹ On co-branding as a nation strategy see Natalie Corthésy, 'Trade Marks Country Names and Misappropriation of National Identity', 2017, 4 JIPLP; N Corthésy, 'Country name designation and international IP protection of national competitive identities', *Journal of Intellectual Property Law & Practice*, 2021, Vol. 00, No. 0 ARTICLE 1; N Corthésy, 'Brand new IP: 'Country name designation' – from France with love' chapter 16 in Gervais ed. *The Future of Intellectual Property*, 2021, Edward Elgar.

⁴² On the socio-economic development potential of GIs, see Y Williams, 2019, *Afronomicslaw*. 31 May 2019 <<https://www.afronomicslaw.org/2019/05/31/post-cotonou-and-innovation-lessons-learned-from-intellectual-property-ip-provisions-on-geographical-indications-gi-in-the-eu-ACP-economic-partnership-agreements-epas>> Accessed 15 November 2022.

⁴³ Many GI organisations protect their authentic products through certification schemes. For example, Roquefort, Parmigiano Reggiano from the EU or even Darjeeling from India are registered in the US. See Certification statement - Additional Considerations in Geographic Certification Mark Applications, USPTO, <https://tmept.uspto.gov/RDMS/TMEP/print?version=Oct2015&href=ch1300_d22670_1adc6_1cc.html> Accessed 15 November 2022.

⁴⁴ No records have been found of registrations dead or alive in the US.

⁴⁵ The Code is available at JIPO, via an online request or an in-person search.

With regard to adding sugars, or sweetening, one of the members of the Association informed us that the GI should not be nullified if a sweetening product is added to the rum after. The challenge is based on the fact that hundreds of years ago, some Jamaican rum producers would add caramel or sweeteners to their rum. He used Captain Morgan Spiced Rum as an example, explaining that a spiced rum does not fit within the Jamaica Rum specifications. Rum stakeholders do not have a unified view on the impact of water inputs to the final rum product. Thus, the SPA would like to definitively establish the impact that Jamaica's water quality has on the taste profile of rum. Despite having obtained the GI, this brief overview shows that some of the local impediments in regulating the rum GI may in fact be impeding its international protection.

Jamaica Jerk was the first registered GI in Jamaica in 2015.⁴⁶ The Jamaica Jerk Association, similarly to the SPA, is still working with JIPO and CarIPI to obtain GI protection in the EU. Only a small group of producers use the GI, all of whom comply with the specifications of the quality standard required by the Association. Within the Association, there is a committee responsible for managing use of the GI. Currently, the economic value of Jamaica Jerk has not been quantified.

Similarly to the SPA, the Jerk Association faces the significant challenge in policing products due to the cost of international litigation. For example, one of the Association members, Grace Kennedy, has a long-standing commercial presence in the US and UK and tries to survey those international markets. If the company sees anything that it believes is a violation, it will bring it to the attention of the Association, who would then communicate it to all members. The Association plans to become a member of Origin, a European Association of GI Producers.⁴⁷ Origin facilitates the surveillance of the use of GIs in Europe, and this would be of direct benefit to the Association if it were to become a member. Beyond Europe however, it would be necessary to monitor the use of the reference to Jamaica Jerk via trademarks, not only in key markets like the UK,⁴⁸ but also world-wide.

Despite both having achieved national registrations for Jamaica jerk and Jamaica rum GIs, both sets of producers currently face institutional challenges and would benefit from enhanced technical and regulatory support. The fact that the Jamaica rum producers/SPA must clarify their origin link to register their rum in the EU is also evidence that enhanced institutional support from the outset could have assisted in this process so that international registration flows as a seamless complimentary step in protecting GI products both at home and abroad.

The next section considers the institutional gap that currently impacts national GI registrations drawing on interviews with institutions responsible for providing assistance in the GI process.

The institutional gap impacting GI protection

This section assesses the extent to which low GI registration level in Jamaica can be attributed to an institutional gap. Some stakeholders interviewed expressed an interest in co-ownership of the GI with the government, while others noted how the GI process could be supported through close cooperation with the government. One set of data illustrates that producers

⁴⁶ The Jamaica Jerk specification is also available at JIPO.

⁴⁷ Organization for an International Geographical Indications Network, OriGIN-GI, < <https://www.origin-gi.com/>> Accessed 15 November 2022.

⁴⁸ Recall the UK chef Jamie Oliver's jerk rice case. See Enrico Bonadio – Chauntina Poyser, Protecting Jamaican Geographical Indications: The Cases Of 'Jamaica Jerk', 'Jamaica Rum' And 'Blue Mountain Coffee' (2021) European Intellectual Property Review.

require but have not received adequate administrative assistance. These are the cases of the Jamaican Bureau of Standards and the Jamaican Agricultural Commodities Regulatory Authority (JACRA) are considered. Another set of data demonstrates that producers require but have not received sufficient mentorship. These are the cases of the JIPO and the CarIPI.

Access to Public sector technical assistance - The Jamaican Bureau of Standards

The BSJ is a quasi-government executive agency, and the Jamaican government is accountable for its operations. The Bureau's mandate is to facilitate trade through standardisation. This process involves assessing whether a lack of standards in a particular industry is prohibiting its growth and helping to fill that gap. The Bureau has eight types of standards, the three main ones being: agriculture, processing and labelling, and handling and pest management. It also has three separate bodies for certification, standards, and inspection. The Bureau facilitates trade through standardisation, upon realising that the lack of standards in the area is prohibiting the growth of the area. Such Bureau will get involved to assist in the standardisation if it has sufficient resources to do so, and if the consortiums are willing to accommodate its needs. A part of this process involves introducing the stakeholders to the benefits of standards and explaining how standards can help the process be more efficient. It should be noted, however, that there is no requirement for GI applicants to engage with the Bureau before registering a GI.

This overview demonstrates that the Bureau's involvement in this process is limited to the extent to which the producers are willing to collaborate with the BSJ. For example, The BSJ had provided its standards for the rum and jerk GI processes. However, the interviewee did note that the standard for jerk had to be withdrawn as it was too detailed for the GI process. In its place, a new seasoning standard was created, which specified that for a product to be jerk, the differences between the scotch bonnet pepper and other ingredients had to be added.

The BSJ also has a project with the CARICOM Regional Organisation for Standards and Quality (CROSQ), funded by the EU, on castor oil, which involves the creation of the standards and GI, as above-mentioned. The Bureau is working alongside the team of producers and stakeholders to put a standard in place for Jamaica Black Castor Oil as well as grouping the producers to regulate and organise the control and management of the product. The Bureau has engaged in research with the Institute of Applied Sciences at UWI Mona to define the characteristics and requirements that make Jamaica Black Castor Oil unique. Once this is completed, the Bureau will choose a standard for Jamaica Black Castor Oil including its taste, smell, pH, acidity, and the oil itself. Chemical profiles are selected by the team at the Institute and test verification is done by the Bureau's chemists in their ISO 17025 accredited labs (chemistry calibration, energy and mechanical construction labs).⁴⁹

While the BSJ is involved in establishing the standards relevant for GI application processes, in its past experience, it has not been invited to develop the origin/*terroir* link of the GI product. The reasoning they provided was that this was not within the scope of the Bureau. Additionally, it has been suggested that the BSJ, within the framework of the CROSQ project, to be the control body of forthcoming GIs. As there was a concern about BSJ assuming this role alongside its existing functions, a separate branch was created to help producers. For example, it provides various services, from inspection to the Client Service Unit that assist producers in drafting GI manuals. Due to the lack of human resources internally, it was suggested that a

⁴⁹ ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories, ISO, <<https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100424.pdf>> Accessed 15 November 2022.

consultant be recruited to assist the producers' in drafting the manual. The Bureau's role could be delimited to oversee this process and ensure that the manual was properly developed and included the limits of the standards and the product's specifications. A new funding stream would be required for such an endeavour - to hire consultants and attorneys-at-law to assist them in the creation of manuals – in order to assist with the process of registering more GIs in Jamaica. Meanwhile, the BSJ encourages producers to go to JIPO to fulfil the requirements of the GI, including the terroir characteristics, which would be a part of their producer's manual.

From the Bureau's perspective, the government should benefit from GI registrations and should have some level of control over the GIs usage because the sustainability of producer groups in Jamaica has been inconsistent. It was further implied that the GoJ would be incentivised to provide the framework needed for the GI to survive if the government has responsibility, ownership, or a direct benefit from the GI. The same interviewee moreover suggested that farmers should also receive funding to support a consistent production of a good worthy of GI protection. As a recipient of support via the CarLPI project, the BSJ in dialogue with the EU could certainly request such institutional support which would provide a boost to the pace of GI registration in Jamaica.

Access to Public sector regulatory assistance – The Jamaica Agricultural Commodities Regulatory Authority

The JACRA was formed as a result of the enactment of the JACRA Act in 2017. According to the First Schedule of this Act, JACRA has regulatory authority over cocoa, coconuts, coffee, ginger, nutmeg, pimento, turmeric, and any product made from the above-mentioned commodities. Additionally, JACRA has authority over the oil or fat-producing products listed in the Second Schedule of the Act. The organization's mandate is to regulate, monitor and facilitate the development of these industries. The passing of the JACRA Act came with the repeal of several other acts. For example, both the Coffee Industry Board and the Cocoa Industry Board were repealed. The organization also took over the regulatory functions of the Export Division that dealt with the spices, as well as the regulatory functions of the Coconut Industry Board. According to our interviewee, there may be an opening for the inclusion of other commodities that are not presently listed in the Act, such as bananas, as the JACRA Act is currently under review.

JACRA only owns trademarks relating to coffee, i.e., Jamaica Blue Mountain Coffee, Jamaica High Mountain Coffee, and Jamaica Blue. These trademarks are registered in approximately sixty (60) countries outside of Jamaica and are actively policed. JACRA has also obtained overseas counsel to help ensure the protection of the trademarks. Our interviewee argued that JACRA has a role to educate and sensitise the public and producers about GIs and their benefits. Although, the interviewee recognised that they also contend with profiteering, as well as a myopic view that fails to consider the long-term protection of some of Jamaica's most reputable products, such as the Jamaica Blue Mountain brand. Nonetheless, it was expressed, there is scope for cross fertilisation of knowledge amongst Caribbean GIs, such as Trinidad Cocoa Producers Association and Cocoa Institute in Trinidad who worked together to obtain the Montserrat Hills Cocoa GI for their producer community.

Given the challenges of registering GIs, JACRA has the option to register any relevant TM and assign it to a producer group in a top-down fashion. Given the Jamaica's accession to the single-filing international trademark registry, the Madrid System, this may be one viable route for protection. At the level of its own office, JACRA could also make public a registration calendar

for the other products in its portfolio. The interviewee expressed that there was no consensus on the issue of government ownership of a GI. However, there is agreement that a GI framework offers protection against evocation, which would be useful in light of the cases being flagged to JACRA.⁵⁰

Access to Public sector legal assistance – JIPO

From JIPO's perspective, co-ownership of GIs is a pragmatic choice. It is based on the understanding that there is a risk that the private sector may not have the support, capacity, or continuity to ensure the proper protection of registered GIs. And in addition, private stakeholders are unable to sustain the GI without governmental support, while the government cannot register the GI without the stakeholders. Moreover, the GoJ would have an interest in their success because these GIs are harnessing the country's reputation and history in their product. In other words, a successful GI can positively impact the country's GDP. In JIPO's perspective, GIs would be more useful when co-branded with Jamaica, rather than the country's parishes. However, coffee is an exception to this rule, as the 'Blue Mountain' has a brand that is bigger than the Jamaican brand for that sector.

Co-ownership is also preferable when considering combatting GI infringements. Currently, high violation rates are recorded where diaspora reside: Jamaican Jerk Chips; Jamaican ginger biscuits, cookies and bread are just a few examples, with even esteemed brands purporting to produce canned Jamaican callaloo, Jamaican ackee, Jamaican breadfruit, etc. Worse yet, these brands are not owned by Jamaicans, nor the producers are based in Jamaica, but they benefit from the Jamaica suffix to the products they sell. While these brands are not obligated to declare any form of Jamaican connection, the cumulative effect of these factors is that the marketplace is left vulnerable to being misled and deceived.

In a bid to raise awareness of IPR and GIS, JIPO has led a number of initiatives including hosting of several workshops, meetings and trainings about GIs. The organisation has also printed and distributed brochures on the topic, as well as included it on its website. GIs are also on the agenda of Intellectual Property Week 2022, a national week of activities organised by JIPO along the theme of WIPO's World Intellectual Property Day. This year's focus was 'IP and Youth', a vital theme to ensure the sustainability of agriculture as well as the legal protection of its output. Yet, the GI ecosystem contends with disorganization of the producer groups who do not see the value of meeting with competitors for a common goal. The lack of unity across various sectors means that challenges are faced, from obtaining money for registration to drafting a detailed registration application. In light of these issues, JIPO clearly has a role to play, alongside other institutional stakeholders to support more GI registrations in Jamaica.

Access to Public sector financial assistance – CarIPI / EU-Cariforum

CARIFORUM Intellectual Property Rights and Innovation (CARIPI) is an EU-funded IP and innovation programme (2019-2023) within the framework of the EU – Caribbean Forum Economic Partnership Agreement (EU-CARIFORUM EPA).⁵¹ It brings together the EU, CARIFORUM and international organisations with the aim to: "create stronger IP offices

⁵⁰ These include Honduras pimento shipped via Jamaica to obtain a Jamaican aroma, or molasses being sold as 100% Jamaican honey in Egypt.

⁵¹ Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part' [2008] Official Journal of the European Union L 289/1/3.

offering high quality, state of the art services to users; ensure availability of effective IPR enforcement mechanisms; contribute to the development of a sustainable and innovative private sector; make doing business between the EU and CARIFORUM, and particularly within the CARIFORUM region easier.”⁵² Although not formally interviewed in the framework of this project, CARIPI has held constructive discussions sharing its work plan in public outreach sessions.⁵³ With its stated objective to “upgrade and harmonise the systems for IP creation, protection, administration and enforcement in line with the EPA provisions, and to contribute to regional integration in Intellectual Property Rights”, the CARIPI project has the potential to provide vital support to bridge both the knowledge gap and institutional gap identified herein.

Conclusion

This paper has shown that two gaps currently impact the protection of Jamaican GIs in Jamaica and internationally: the knowledge gap and the institutional gap. Currently, the existing GI legal framework in Jamaica is underutilised and producers have inadequate or some knowledge about how to protect GIs in Jamaica. Despite Jamaica Jerk and Jamaica Rum registrations in Jamaica, these GIs are not protected internationally via GI regimes. Rather, data collected during our research suggests that the success of GIs for a small developing country like Jamaica hinges on co-branding with the country name. This was evidenced in case studies focusing on producers Jamaica honey, cannabis, coffee and castor oil, as well as institutions, namely JBS, JACRA, JIPO and CarIPI. The data we gathered demonstrated that producers also require administrative assistance and mentorship in the GI application process. And in order for Jamaican GIs to be impactful in the global marketplace, increased public-private sector partnerships are the only way forward locally and regionally.

Appendix

LIST OF PERSONS INTERVIEWED BY THE JAMAICA GI TEAM

Jamaica Intellectual Property Office

1. Dr Marcus Goffe – Deputy Director/Legal Counsel

Bureau of Standards Jamaica

1. Mrs Julia Bonner Douett – Director of Standards Division
2. Ms Tafara Smith – Head of Regional and International Trade Branch

Jamaica Castor Industry Association

1. Mr Courtney Haughton – President

Spirits Pool Association

⁵² CARIPI, < <https://internationalipcooperation.eu/en/caripi>>, Accessed 18 December 2022.

⁵³ CARIPI, Work Plan, <https://internationalipcooperation.eu/en/caripi/activities>, Accessed 18 December 2022.

1. Mr Christopher Gentles – General Manager
2. Ms Georgia Brown – Administrative Officer
3. Mr Stephen Salmon – Member

Ministry of Agriculture and Fisheries

1. Mr Hugh Smith – Chief Protection Officer for the Apiculture Unit

Jamaica Agricultural Commodities Regulatory Authority

1. Mr Peter Thompson – Director-General
2. Mr Hervin Willis – Senior Director of Coffee
3. Ms Shanika Newman – Senior Compliance Inspector
4. Ms Deanna McFarlane – Legal Counsel
5. Mr Gusland McCook – Advisory and Research Coordinator

Jamaica Jerk Producers Association Limited

1. Ms Loreen Walker – Director

Jamaica Coffee Exporters Association

1. Mr Norman Grant – Chairman
2. Mr Mark McIntosh – Executive Member
3. Mr David Shirley – Executive Member
4. Ms Jackie Sharp – Member

Cannabis Licensing Authority

1. Ms Daenia Ashpole – Interim Chief Executive Officer
2. Ms Felicia Bailey – Director for Research Development and Communications
3. Ms Faith Graham – Director of Enforcement and Monitoring
4. Mr O'Shane Douse – Supervisor for the Site Inspection and Monitoring Unit
5. Mr O'Shane Williams – Supervisor for the Enforcement Unit
6. Mr Kelvis Walker – Agricultural Specialist in the Cannabis Specialisation Unit
7. Mr Ricardo Graham - Agricultural Specialist in the Enforcement and Monitoring Section
8. Mrs Stacy-Ann Johnson-McIntosh – Site Inspector
9. Ms Toni-Ann Dacres – Site Inspector
10. Ms Dominique Farquharson – Site Inspector

11. Ms Kedeisha Bell – Executive Assistant to the CEO

12. Ms Dayna Elliot – Intern in the Research and Development Unit