



[2025] JMCC Comm 32

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMERCIAL DIVISION
CLAIM NO: SU2024CD00403**

BETWEEN	NATIONAL RUMS OF JAMAICA LIMITED	CLAIMANT
AND	REGISTRAR OF INDUSTRIAL PROPERTY	1st DEFENDANT
AND	SHANTAL ENGLISH (HEARING OFFICER)	2nd DEFENDANT
AND	SPIRITS POOL ASSOCIATION LIMITED	3rd DEFENDANT
AND	J. WRAY & NEPHEW LIMITED	4th DEFENDANT

IN CHAMBERS BY VIDEO-CONFERENCE

Appearances: Mr. Patrick W. Foster K.C, Ms. Grace Lindo, Mr. Mark-Paul Cowan instructed by Lindo Legal for the Claimant

Ms. Taneisha Rowe-Coke and Ms. Lisa White instructed by Director of State Proceedings for the 1st and 2nd Defendants

Mr. Ransford Braham K.C, Mrs. Sanya Goffe, Ms. Camille Garrison and Ms. Christina Thompson instructed by Hart, Muirhead Fatta Attorneys-at-Law for the 3rd Defendant

Mrs. Georgia Gibson Henlin K.C and Ms. Keisha Spence instructed by Henlin Gibson Henlin for the 4th Defendant

Heard: 29th April, 13th June, 14th & 15th August and 19th September 2025

Intellectual Property – Rectification of Geographical Indication – Appeal from Decision of Tribunal – Interim Relief

BROWN BECKFORD J

INTRODUCTION & BACKGROUND

[1] The Claimant, National Rums of Jamaica Limited, a limited liability company engaged in the business of manufacturing and selling rum, is aggrieved at the decision of the Registrar of Industrial Property to rectify the Jamaica Rum Geographical Indication pursuant to **The Protection of Geographical Indication Act** and **The Protection of Geographical Indications Regulations**, on applications made by itself and the 3rd Defendant. The Claimant's Notice of Application for Court Orders is an accompaniment to its Fixed Date Claim Form, in which it seeks the following Orders:

- 1) A Declaration that the decision of the 2nd Defendant, Ms. Shantal English, Hearing Officer and Deputy Director/Legal Counsel of the Jamaica Intellectual Property Officer ("JIPO"), rendered on 2nd October 2024, purporting to determine applications for the rectification of the Protected Geographical Indication "Jamaica Rum" - Registration No. G1/002 (the "Jamaica Rum GI"), is null and void.
- 2) A Declaration that all actions concerning the Jamaica Rum GI consequent on the decision of the 2nd Defendant including the (i) rectification of the Register of Geographical Indications (the "Register") by the 1st Defendant, the Registrar of industrial Property (the "Registrar"); and (ii) publication of the rectified entry in JIPO's Intellectual Property Journal (October 2024), effected on 25th October 2024, are null and void.
- 3) Upon the Declarations being made at paragraphs 1 and 2 (above):
 - a. An Order directing the Registrar to rectify the Register as it relates to the Jamaica Rum GI in accordance with the Claimant's Form 6 Application dated 17th December 2020; or

- b. An Order directing that all relevant applications be remitted to the Registrar for hearing and determination in accordance with Section 12 of The Protection of Geographical Indications Act (“the PGI Act”) and Regulation 14(9) of the Protection Geographical Indications Regulations, 2009 (the “PGI Regulations”).
- 4) Alternatively, an Order revoking the decision of the Hearing Officer rendered on 2nd October 2024 and directing that the Register, as it relates to the Jamaica Rum GI, be rectified in accordance with the Claimant's Form 6 Application dated 17th December 2020.
- 5) Damages as applicable.
- 6) Such further or other relief as this Honourable Court deems just.
- 7) Costs to the Claimant to be taxed if not agreed.

[2] In its Notice of Application, the Claimant seeks the following interim relief:

- 1) An interim declaration that the decision of the 2nd Defendant rendered on 2nd October 2024 and all actions consequent thereon are null and void.
- 2) An Order for the stay of execution of the decision of the 2nd Defendant rendered on 2nd October 2024 and any and all processes and/or proceedings in connection therewith pending the determination of the appeal herein initiated by way of Fixed Date Claim Form or such further order from this Honourable Court.
- 3) An Order directing the 1st Defendant, forthwith, to restore the status quo immediately preceding the decision of the 2nd Defendant rendered on 2nd October 2024, which resulted in the rectification of Protected Geographical Indication "Jamaica Rum" - Registration No. GI/002 (the "Jamaica Rum GI") on October 25, 2024, to include further rectification of the register and publication in JIPO's Intellectual Property Journal.

- 4) An interim declaration that there is no provision under law providing for the rectification of the Jamaica Rum GI to mandate a process of certification and approval of rum stored overseas, by or through the 3rd Defendant, or otherwise.
- 5) An Order restraining the 3rd Defendant, whether by its officers and/or its servants and/or agents, from receiving and/or processing any applications for certification in relation to the Jamaica Rum GI as contemplated by Paragraph E(viii) of the 'Rectified Entry' dated 25th October 2024 made under the hand of the 1st Defendant (the "Rectified Entry").
- 6) An Order restraining the Defendants, whether by their officers and/or their servants and/or agents, from taking any steps to facilitate and/or implement any part of the Rectified Entry dated 25th October 2024 or any Jamaica Rum specifications whatsoever including, but not limited to, making representations to the public at large, the European Commission, any European Union member state or any other relevant state or state actor in the international community as to the operative effect of the Rectified Entry or any similar entry whatsoever.
- 7) Costs to be costs in the Claim.
- 8) Such further or other relief as this Honourable Court deems just.

The Claim and Application are supported by the Affidavit of Martha Miller, the Chief Executive Officer of National Rums of Jamaica Limited, and a member of the Board of Directors.

[3] The World Trade Organization (WTO) describes itself as:

the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.

One such agreement is the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which is described as the most comprehensive multilateral agreement on

intellectual property. It sets minimum standards of protection to be provided for intellectual property by member countries. The TRIPS Agreement covers geographical indications as an area of intellectual property.

- [4] The WTO's overview of the TRIPS Agreement furnishes its own definition of geographical indications. It states:

Geographical indications are defined, for the purposes of the Agreement, as indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin (Article 22.1). Thus, this definition specifies that the quality, reputation or other characteristics of a good can each be a sufficient basis for eligibility as a geographical indication, where they are essentially attributable to the geographical origin of the good.

- [5] **The Protection of Geographical Indication Act ("PGIA")**, which came into effect in 2009, was pursuant to Jamaica's obligations as a member country of the WTO. Geographical indication is similarly defined in the **PGIA** as in the TRIPS Agreement. The Registrar of Industrial Property appointed under **The Jamaica Intellectual Property Office Act ("JIPO") ("the Registrar")** is charged with the responsibility under the **PGIA** to register Geographical Indications (GI). The Registrar may also rectify or cancel a registration.

- [6] National Rums was registered as a Geographical Indication ("**Jamaica Rum GI**") in the name of the Spirits Pool Association Limited. The Spirits Pool Association Limited is the successor to a company (which was known as the Rum Pool), organized by rum manufacturers to regulate the production of spirits. The Claimant is a shareholder in the company. Spirits Pool Association Limited is the 3rd Defendant. The Registrar of Industrial Property and the Hearing Officer (of the Applications for rectification) are the 1st and 2nd Defendants respectively.

- [7] J. Wray and Nephew Limited is the 4th Defendant. This company is the majority shareholder in the 3rd Defendant, and well known as a major player in the rum industry.

J. Wray and Nephew Limited was added as an interested party to the hearing of the applications for rectification on its own motion. Its application to be removed as a defendant to these proceedings was refused in a prior hearing.

THE APPLICATIONS FOR RECTIFICATION

[8] The first application for rectification of the Jamaica Rum GI was made by the Claimant. Paragraph 13 of the Ruling on the applications sets out the essence of the Claimant's application which is repeated here.

National Rums of Jamaica, requests that the current specification be deleted and replaced with the following:

At the end of the distillation, the rums which claim the Geographical Indication "Jamaica Rum" should fit into one of the following categories:

- (i) Non-aged rums that require no ageing;*
- (ii) Aged rums that are aged in food grade wooden barrels or vats under Jamaican supervision in Jamaica directly or indirectly" and supervision of ageing overseas shall be delegated to a reputable certification organization approved by an unanimous vote of the members of the Spirits Pool Association Limited;*
- (iii) Only rums obtained by distillation using wash produced with water obtained from the water basins of Jamaica are entitled to use the Geographical Indication;*
- (iv) Food grade wooden barrels and vats should replace small wooden oak barrels;*
- (v) The fermentation takes place in designated vessels termed as fermenters. The addition of fermenting agents is limited to the cultured or commercial yeasts of saccharomyces types, schizosaccharomyces species or from naturally occurring yeasts in the environment. Genetically modified yeasts are strictly prohibited. Locally grown bacterial & yeast cultures can be used in the production of Jamaica Rum.*

[9] A fundamental part of the application was that the Claimant wished to bring clarity to the definition of the Jamaica Rum GI to ensure that rum aged overseas could claim the benefit and protection of the Jamaica Rum GI. The application was opposed by the 3rd Defendant.

[10] The 3rd Defendant's application was born out of the desire to register the Jamaica Rum GI with the European Union Intellectual Property Office. The decision to make the application for rectification followed discussions within and a decision made at an extraordinary general meeting of the 3rd Defendant. Paragraph 112 of the Ruling captures the second application which is also repeated here.

112. According to the Statement of Grounds, the Applicant states:

- (i) The indication of the quality, reputation or other characteristic of the good is missing or unsatisfactory within the meaning of section 12(2)(c) of the Act.*
- (ii) Following the registration of the Jamaica Rum GI, one of the shareholders of the Applicant, National Rums of Jamaica Limited, advised of several areas of the Jamaica Rum GI Code of Practice with which they were not in agreement.*
- (iii) Notwithstanding the prior unanimous agreement of the shareholders of the Applicant to submit the Jamaica Rum GI Code of Practice for registration, the Applicant had a responsibility to consider the NRJ's request for changes to the Jamaica Rum GI Code of Practice. This would allow all members of the Applicant to benefit from the protection of the Jamaica Rum GI.*
- (iv) Consequently, the members of the Applicant met at an extraordinary general meeting on July 2, 2020 and agreed on amendments to the Jamaica Rum GI Code of Practice.*

[11] The Claimant's application was allowed in part and refused particularly with respect to the location of aging. The 3rd Defendants Application was allowed, consequent on which the Jamaica Rum GI was rectified as follows:

D. Pursuant to the said judgment dated October 2, 2024, and upon hearing the First Application, the Register is rectified to be read as follows: -

- i. With respect to where Rum is aged, the Tribunal has amended the current specification from "ageing should take place in small wooden barrels" to be clearer, as follows:*
 - a. ageing in approved food grade barrels; and*
 - b. the size of the barrels should be restricted to barrels not exceeding 250 litres.*
- ii. With respect to the category of fermenting agents, the Geographical Indications Register is amended to include the following:*

- a. *the fermentation takes place in designated vessels termed as fermenters;*
- b. *the addition of fermenting agents is limited to the cultured and commercial yeasts of saccharomyces types, schizosaccharomyces species or from naturally occurring yeasts in the environment;*
- c. *genetically modified yeasts are strictly prohibited; and*
- d. *locally grown bacterial and yeast cultures can be used in the production of Jamaica Rum.*

E. *Pursuant to the said judgment dated October 2, 2024, and upon hearing the Second Application, the Register is rectified to be read as follows: -*

- i. *The addition of fermenting agents is limited to the cultured and commercial yeasts of saccharomyces types, schizosaccharomyces species or naturally occurring yeasts in the environment;* ii. *genetically modified yeasts are strictly prohibited;*
- iii. *locally grown bacterial and yeast cultures can be used in the production of Jamaica Rum; ageing shall be carried out only in Jamaica;* iv. *ageing shall take place in approved food wooden grade barrels;*
- v. *the size of the barrels should be restricted to barrels not exceeding 250 litres;*
- vi. *at the end of distillation nothing should be added to rum save and except for pure filtered water and cane sugar caramel for the sake of colour correction; and*
- vii. *there shall be a transition period of twenty-four (24) months from the date of this Judgment to allow for producers of genuine aged and unaged rum stored overseas to apply for certification of their products as being compliant with the Jamaica Rum GI. This certificate of approval is to be issued by the Spirits Pool Association Limited.*

THE CLAIM AND APPLICATION FOR INTERIM RELIEF

[12] The Claimant takes issue principally with the hearing of the applications by Ms. Shantal English, Hearing Officer and Deputy Director/Legal Counsel of the Jamaica Intellectual Property Office, on the basis that it was the Registrar of Industrial Property who was exclusively empowered by the legislation to hear and determine the applications. It seeks therefore to have the decisions declared null and void. It also contends that

notwithstanding the lack of jurisdiction, the Hearing Officer made errors in consideration of the merits of the applications, resulting in a decision that was wrong as a matter of law and principle. The claim is brought pursuant to the right of appeal granted in **S.15 of the PGIA** to any person aggrieved by a decision of the Registrar to, within two months of that decision, to appeal to a Judge in Chambers.

[13] The Claimant simultaneously filed an Application for Interim Relief seeking to forestall and/or nullify the effects of the Order of rectification until the hearing of the appeal. This decision is concerned solely with the application for interim relief. The written submissions were supplemented by extensive oral submissions to the Court occurring over several days. The Court was also helpfully supplied with speaking notes. In view of the time that I have had to produce this decision, reference will only be made to the submissions as necessary in the judgment, but I assure all Counsel and parties that I have considered them in full. The Court was also referred to a great number of cases, legislation and scholarly works which were invaluable to the determination of this matter. Again, due to time constraints, I will be referring to the cases without giving details of the facts.

JURISDICTION

Power of Court to Grant Interim Relief

[14] Two preliminary questions arose as to jurisdiction. The first was whether, considering the statutory regime, this Court had the power to grant the interim reliefs sought. This issue arose as in the submissions on behalf of the 3rd Defendant; it was suggested that the statutory right of appeal was limited to and governed by the provisions in the statutory instrument which would often set out what was to happen on such appeal. In the instant case, the relief that could be granted by the appellate tribunal was either to confirm or revoke the decision. In the case of a revocation, damages could be awarded. **S.15 of the PGIA** provides that:

(1) Any person who is aggrieved by a decision of the Registrar may, within two months of that decision, appeal to a Judge in Chambers.

(2) The Judge in Chambers may in relation to such appeal— (a) confirm the Registrar's decision; or

(b) revoke that decision, and in such a case may—

- i. award damages to the appellant; and
- ii. make an order directing the Registrar to take such action as the Judge deems necessary.

[15] No other remedy being available, the Claimant's recourse would be by way of Judicial Review. Counsel cited in support the authors of *Disciplinary and Regulatory Proceedings* (see footnote 23 of the 3rd Defendant's written submissions) and **O'Reilly v Mackman** [1983] AC 237.

[16] Counsel submitted further that if the Claimant's challenge is correct, that the decision was not made by the Registrar, then there was no decision by the Registrar to be appealed. On that view, the Claimant's case would fail in its entirety and both the appeal, and this application should be dismissed.

[17] In further submissions, at the request of the Court, on the case of **CC & C Ltd v Revenue and Customs Commissioners** [2014] EWCA Civ 1653 ("**CC&C**"), Counsel submitted that there was no provision permitting a judge to grant any of the interim remedies sought by the Claimant in its Notice of Application. He contended that the effect of **CC&C** is that a party was limited to the procedure set out in the statutory framework which enables the appeal. He relied on the following paragraphs of the judgment of Underhill LJ as follows:

41. However, I understand Mr Jones's real submission to be that what the Appellant is in substance seeking in these proceedings is not to challenge the revocation decision itself but only to obtain interim relief while the statutory appeal procedure operates: that is not, he says, going behind the procedure provided by Parliament but supplementing it. That point is

more arguable, but I think it is wrong. Parliament could have provided for the First-tier Tribunal to have power to make suspensory orders pending the outcome of an appeal, but it did not do so. I do not think that it is open to the Court to provide remedies or procedures for which the statute does not provide – particularly so when, as I have pointed out above, care was obviously taken to specify precisely what the Tribunal could and could not do. Where it is intended that the powers of the Court, including the power to grant interim relief, may be deployed “in aid of” (to use Mr Jones's phrase) another tribunal, that is typically done by express provision: see for example section 44 of the Arbitration Act 1996.

42. The absence of any power under the statute to suspend the effect of a relevant decision pending appeal may be capable of operating harshly in the case of decisions to revoke the registration of registered excise dealers and shippers, but it is not incomprehensible. The statute describes the right to trade in duty-suspended goods as a “privilege”, and the nature of the business is such that it is a privilege that should only be accorded to those whom HMRC believe they can trust. There would be an obvious awkwardness in the Tribunal, or indeed the Court, being able to require HMRC to continue, for an indefinite period pending the outcome of an appeal, to confer that privilege on traders who they have ceased to believe are fit and proper persons. Parliament could reasonably have regarded the loss of registration pending an appeal as simply a risk of the business which traders must accept.

43. I do not therefore believe that the Court is entitled to intervene to grant interim relief where the registration of a trader in duty-suspended goods is revoked simply on the basis that there is a pending appeal with a realistic chance of success. But it does not follow that there are no circumstances in which the Court may grant such relief; and, as noted above, HMRC do not in fact so contend. The correct principle seems to me to be this. If a “relevant decision” is challenged only on the basis that it is one to which HMRC could not reasonably have come the case falls squarely within section 16 of the Act, and the Court should not intervene. However, where the challenge to the decision is not simply that it is unreasonable but that it is unlawful on some other ground, then the case falls outside the statutory regime and there is nothing objectionable in the Court entertaining a claim for judicial review or, where appropriate, granting interim relief in connection with that claim. A precise definition of that additional element may be elusive and is unnecessary for present purposes. The authorities cited in *Harley Development* refer to “abuse of power”, “impropriety” and “unfairness”. Mr Brennan referred to cases where HMRC had behaved “capriciously” or “outrageously” or in bad faith. Those terms sufficiently indicate the territory that we are in, but I would sound a note of caution about “capricious” and “unfair”. A decision is sometimes referred to rhetorically as “capricious” where all that is meant is that it is one which could not reasonably have been reached; but in this context that is not enough, since a challenge on that basis falls within the statutory regime. As for “unfair”, I am not convinced that any allegation of procedural unfairness, however closely connected with the substantive unreasonableness alleged, will

always be sufficient to justify the intervention of the Court: Mr Brennan submitted that cases of unfairness would fall within the statutory regime to the extent that the unfairness impugned the reasonableness of the decision. As I have noted above, the types of unfairness contemplated in Preston – which is the source of the use of the term in Harley Development – were of a fairly fundamental character. But since procedural unfairness is not relied on in this case I need not consider the point further.

[18] With respect to **CC&C**, Counsel for the 1st and 2nd Defendants submitted that the Court was required to scrutinise the statutory regime of the Act that covered the registration. Counsel relied on paragraph 43 of the judgement of Underhill LJ, where it was stated that:

...where the challenge to the decision is not simply that it is unreasonable but that it is unlawful on some other ground then the case falls outside the statutory regime and there is nothing objectionable in the court entertaining a claim for judicial review, or where, appropriate granting interim relief in connection to that claim...”

He concluded that the Court could intervene to make Orders for interim relief, as the main challenge to the decision goes to the jurisdiction and validity of the decision.

[19] Counsel for the Claimant agreed with Counsel for the 1st and 2nd Defendants that as the relief being sought was based on a challenge to the lawfulness of the decision, the Court therefore had the power to grant the interim relief sought. On the facts of **CC&C**, the Court declined to grant the interim reliefs.

[20] The Court agreed with the latter submissions that it had the power to grant the interim reliefs sought, the Claimant’s main challenge being to the lawfulness of the decision.

Jurisdiction of Hearing Officer to hear Applications

[21] The second issue related to the jurisdiction of the Hearing Officer to have heard the applications. The fundamental argument of the Claimant was that Ms. Shantal English presided, heard the evidence, made the ruling and handed down the decision but she did not possess the requisite jurisdiction to hear the matter. This jurisdiction was given to the Registrar and no one else. The Defendants countered that the decision was that of the Registrar. The issue was whether the Court should

determine this issue at this stage, or it should be dealt with at the hearing of the appeal. The Court ruled that as this was fundamentally the issue in the appeal, this issue should be left to be determined at the hearing of the appeal in a full hearing. In view of this ruling, I will comment sparingly on the evidence. The arguments will be dealt with more fulsomely when considering whether there is a serious issue to be tried.

LAW – INTERIM RELIEF

[22] The submissions of Counsel show general agreement as to the applicable law. The Claimant submitted that the Court has jurisdiction to grant the interim reliefs pending a final decision to be made by the Court pursuant to its inherent jurisdiction, and to **S. 49(h) of The Judicature (Supreme Court) Act** which confers the relevant powers as follows:

A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court thinks just...

[23] **Rules 17.1(1)(a) and 17.1(1)(b) of the Civil Procedure Rules (“CPR”) 2002 (as amended on the 3rd of August 2020)** also provide that the court may grant interim remedies including interim injunctions, prohibitive or mandatory, and interim declarations.

[24] The Claimant relied on the cases of **Bailey Terrelonge Allen (A firm) v National Transport Co-operative Society Limited** [2015] JMSC Civ 251 and **Caribbean Cement Company Limited v The Attorney General and The Minister of Finance and Planning et al (unreported)**, Supreme Court, Jamaica, Claim No. 2008 HCV 05710, judgment delivered 28 January 2011, that the court has the power to grant interim declarations where the claimant had a prima facie case to govern the interim situation until the determination of final rights, particularly where it would assist to preserve the status quo. The Claimant relied on the decision of Justice Mangatal in **Ralph Williams and Others**

v Commissioner of Lands and Another [2012] JMSC Civ 118 (“**Ralph Williams**”), relying particularly on the statement that:

Granting such an interim declaration does not in my judgment in any way interfere with the court's duty and power of on deciding on the final rights at the substantive hearing or trial. The matter may well have much to do with how carefully the terms of the interim declaration are fashioned. The terms must make it clear that what is being declared relates only to the rights of the parties in the interim before trial and prior to final disposition of the matter and the issues relevant at that final stage.

[25] Counsel for the Defendants generally agreed that the Court had the power to grant the interim relief. Counsel for the 1st and 2nd Defendants urged the Court to consider that interim declarations were not usually granted in the context of a pending appeal, if at all. And particularly, a court should be reluctant to grant such relief where the interim remedy being sought was similar to the relief claimed in the substantive matter. It was advanced that doing so would risk seeming to determine or dispose of the matter. Counsel also relied on **Caribbean Cement Ltd. v The Attorney General and Minister of Finance** that:

Interim declarations should be granted only where the claimant has a prima facie case... when considering the balance of convenience test; relevant factors and the strength of the claimant's case and their respective detriment to the parties should the interim declaration be granted or denied.

Counsel contended that the interim declarations being sought would be determinative of issues and should not be granted.

[26] With respect to a stay, Counsel argued that this relief could not be granted as the proceeding were at an end, there was therefore nothing to stay. Reliance was had to the cases of **Ministry of Foreign Trade and Industry v Vehicles and Supplies Ltd and Anor** [1991] 4 All ER 65 and **Symbiote v Office of Utilities Regulation et al** [2019] JMCA App 8.

[27] Counsel for the 3rd Defendant argued that the Court was not empowered by the statute to grant a final declaration; therefore, it was not open to the Court to grant an interim declaration (see earlier submissions). Counsel also submitted that a

stay was not appropriate in circumstances where the proceedings had ended, relying on the same cases as the 1st and 2nd Defendants.

- [28] Counsel for the 4th Defendant generally adopted the previous submissions and pointed out that not only should a declaration be granted in exceptional circumstances, but also and on the basis of a higher test than an injunction. She suggested that the relevant test was the precise pre-**American Cyanamid** test. On that premise, the strength of the parties' case was important. Counsel also submitted that the Claimant, through this application, was seeking to get the entire relief of the Fixed Date Claim Form, albeit on an interim basis, which the Court should not facilitate. Reliance was placed on **Sail Rock Limited v Old Fort Bay Property Owners Association Limited** 2023/CLE/gen/0047 ("**Sail Rock**").
- [29] The Claimant's Counsel generally agreed with the principles from **Sail Rock**, but countered that the Court should and would grant an interim declaration if it was just and convenient to do so on consideration of the **American Cyanamid** principles. Counsel also disagreed that the grant of the interim relief would have the effect of disposing of the claim, as the interim Orders could be set aside, giving the Order for rectification full force and effect if the Claimant was unsuccessful in its appeal.
- [30] The arguments for and against the grant of an interim injunction were presented based on principles from the seminal cases of **American Cyanamid Co. v. Ethicon Ltd.** [1975] 1 All E.R. 504 and **NCB v. Olint** [2009] J.C.P.C. 16, which were adumbrated by Mangatal J in **Ralph Williams** where she stated:

GUIDELINES FOR THE GRANT OF AN INTERIM INJUNCTION

*[34] The guidelines for the grant of an interim injunction until trial (or interlocutory injunction), are set out in the oft-cited case of **American Cyanamid Co. v. Ethicon Ltd.** [1975] 1 All E.R. 504, and more recently in the decision of the Judicial Committee of the Privy Council in **NCB v. Olint** [2009] J.C.P.C. 16. Basically, the following considerations arise:*

- (a) Is there a serious issue to be tried? If there is a serious question to be tried, and the claim is neither frivolous nor vexatious, the court should then go on to consider the balance of convenience generally.*

- (b) *As part of that consideration, the court will contemplate whether damages are an adequate remedy for the Claimants, and if so, whether the Defendants are in a position to pay those damages.*
- (c) *If on the other hand, damages would not provide an adequate remedy for the Claimants, the court should then consider whether, if the injunction were to be granted, the Defendants would be adequately compensated by the Claimants' cross-undertaking in damages.*
- (d) *If there is doubt as to the adequacy of the respective remedies in damages, then other aspects of the balance of convenience should be considered.*
- (e) *Where other factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are designed to preserve the status quo.*
- (f) *If the extent of the uncompensatable damages does not differ greatly, it may become appropriate to take into account the relative strength of each party's case. However, this should only be done where on the facts upon which there can be no reasonable or credible dispute, the strength of one party's case markedly outweighs that of the other party.*
- (g) *Further, where the case largely involves construction of legal documents or points of law, depending on their degree of difficulty or need for further exploration, the court may take into account the relative strength of the parties' case and their respective prospects of success. This is so even if all the court can form is a provisional view-see **NCB v. Olint**, and the well-known case of **Fellowes v. Fisher** [1975] 2 All E.R. 829. This is of course completely different from a case involving mainly issues of fact, or from deciding difficult points of law, since, as Lord Diplock points out at page 407 G-H of **American Cyanamid**, "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult points of law which call for detailed argument and mature considerations".*
- (h) *There may also be other special factors to be taken into account, depending on the particular facts and circumstances of the case.*

[35] At the end of the day, in principle, what the court must try to do at this interlocutory stage is to adopt the course which seems likely to cause the least irremediable harm or prejudice, this exercise of necessity having to take place at a time when the court cannot be certain as to the final outcome of the matter.

At paragraph 59 of the judgment, she indicated that the same considerations arose for the grant of an interim declaration, a view which I adopt.

ANALYSIS

Serious issue to be tried

[31] The Claimant contends firstly that on the issue of jurisdiction, there is a serious issue to be tried. Counsel submitted that the intent and effect of the **PGIA** and its attending Regulations is that the Registrar must conduct a judicial hearing and hand down a decision. These functions were not capable of delegation. The Claimant further contends that even on the evidence of the 1st and 2nd Defendants, (see paragraphs 20 and 21 speaking notes) these actions were not in keeping with the legislative provisions. This position is based on the principle of law that no judicial function can be delegated (**Barnard and Others v National Dock Labour and Another** [1953] 1 all ER 11). To that extent, no question of waiver could arise as where a tribunal lacks constitutive jurisdiction, the parties may not consent to confer jurisdiction on the tribunal. (**Essex County Council v Essex incorporated Congregational Church Union** [1963] AC, pages 820-821) Further, the issue of jurisdiction could be raised at any stage. (**Carter v Ahsan** [2005] ICR 1817 at 82).

[32] Counsel for the 1st and 2nd Defendants conceded that there was a serious issue to be tried on the issue of jurisdiction. Counsel submitted that the issue of jurisdiction was the major or central issue in the appeal, and that it ought to be left to that court to be determined, rather than in the context of an application for interim relief. She contended that the status quo, that is of the decision to rectify the Jamaica Rum GI, should be preserved until the hearing of the appeal.

[33] For their part nonetheless, on the issue of jurisdiction, the position was that while it accepted that the application was heard by the 2nd Defendant, Ms. English, and a draft decision submitted to the 1st Defendant, the Registrar, who then gave her own consideration to the applications and the evidence, and thereafter approved the decision. This was in keeping with **S.3(1) of the JIPO Act**, **S.12 of the PGIA** and **Regulation 14 of the PGI** which govern the functions of the Registrar in an application for rectification of the GI Register. These sections are reproduced here.

The Jamaica Intellectual Property Office Act

3.-(1) There is hereby established a body to be known as the Jamaica Intellectual Property Office which shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

The Protection of Geographical Indications Act

12.-(1) Any person who has an interest in a geographical indication may apply to the Registrar for rectification of the Register on any of the grounds specified in subsection (2).

(2) The grounds referred to in subsection (1) are that-

- (a) the geographical area specified in the Register does not correspond to the geographical indication;
- (b) the indication of the good for which the geographical indication is used is missing or unsatisfactory;
- (c) the indication of the quality, reputation or other characteristic of the good is missing or unsatisfactory.

(3) The Registrar shall rectify the Register in relation to an application under subsection (1) if he is satisfied that such rectification is necessary.

The Protection of Geographical Indications Regulations

14.-(1) An application for rectification under section 12, or a request for cancellation of registration under section 13, of the Act shall be made in the form set out in Form 6 in the First Schedule.

(2) The application or request referred to in paragraph (1) shall be accompanied by a statement setting out--

- (a) the nature of the person's interest;

(b) the facts and grounds which form the basis of the case; and (c) the relief sought.

(3) The Registrar shall publish a copy of the application or request referred to in paragraph (1), by notice in a daily newspaper in circulation throughout Jamaica, specifying--

(a) the time within which the parties may submit written submissions in respect thereof to the Registrar; and

(b) the time within which any other interested party may apply to be joined in the matter.

(4) The person making the application or request referred to in paragraph (1), shall bear the cost of publishing the notice referred to in paragraph (3).

[34] It was Counsel's contention that there was nothing contained in the **JIPO Act**, the **PGIA** or the **PGI Regulations** that required or mandated the Registrar to conduct a hearing herself in respect of an application for rectification. What was required by the legislation was that the Registrar decide on the applications for rectification. Counsel submitted further that it was the unchallenged evidence of the Registrar that she considered the applications, the evidence that was presented by the parties at the hearing, reviewed the recommendations made and approved the decision prior to its issuance. Following which she rectified the register in the JIPO Journal. This was not, as was contended by the Claimant, a delegation by the Registrar of her functions to the Hearing Officer, but of the Registrar acting appropriately within the legislative scheme and framework of her statutory functions. Further, **S.12(3) of the PGIA** requires the Registrar to rectify the Register only if she was satisfied that such rectification was necessary. This provision imposed a duty on the Registrar to bring her own mind to bear and to decide the applications, which she did.

[35] This interpretation of the law, Counsel submitted, was buttressed by the fact that there was no objection by the Claimant to the hearing being conducted by Ms. English. The Claimant was also therefore complicit in the hearing of the applications by Ms.

English and have thereby waived any right to object to her hearing the applications.

Counsel relied on the cases of **Wakefield Local Board of Health v West Riding and Grimsby Rly Co.** 1[865] 1 QB 84, **Thomas v University of Bradford (No.2)** [1992] 1 All ER 964 and **Locobail (UK) Ltd v Bayfield Properties Limited** [2000] 2 WLR 870.

[36] Counsel for the 3rd Defendant did not agree that there was a serious issue to be tried. He submitted that once it was established that the wrong person had made the decision, then the Court could not deal with the matter, and the issue of jurisdiction falls away. This was as the right to appeal was with respect to the decision of the Registrar; there was no appellate process to be engaged if she was not the decision maker. This was borne out by the available remedies which was to confirm or revoke the decision of the Registrar. In such circumstances, the process to be engaged by the Claimant was a challenge by way of judicial review (**O'Reilley v Mackman** [1983] 2 AC 237) or some other appropriate process. On this basis, Counsel for the 3rd Defendant submitted that as the Claimant had not properly invoked the appellate jurisdiction of the Court under **S.15 of the PGIA**, there was no serious issue to be tried, and the matter should be dismissed.

[37] In the event the Court was not persuaded by that argument, Counsel for the 3rd Defendant submitted further that the **PGIA**, properly construed, did contain the power to delegate. Further, the evidence showed that the decision was in fact made by the Registrar even though the hearing was carried out by the Hearing Officer. He relied on **Willam Andrew Chang v The Commissioner of Taxpayer Appeals (Income Tax)** [2016] JMCA Civ 16, for the principle that it was not necessary for the actual hearing to be dealt with by the Registrar, as the law requires only that the Registrar is to be satisfied. He argued further that independent consideration was given to the matter by the Registrar, who in the end signed the written reasons demonstrating that she had addressed her own mind to the applications.

[38] Counsel also contended, in the alternative, that delegation was permissible by virtue of **S. 34(2) of the Interpretation Act** which allows another person to act in the place of an individual with statutory authority. Further, given that there was an issue

surrounding the propriety of the hearing being conducted by Ms. Andrienne Thompson, who occupied the post of Registrar at the material time, it was necessary, in light of the duty to act fairly and to avoid bias, that the power to delegate be necessarily implied in all the circumstances to preserve the integrity of the decision-making process.

[39] Counsel for the 4th Defendant argued that the Hearing Officer had jurisdiction to hear the matter based on the full terms and effect of the **JIPO Act**. She further contended that the Claimant was estopped from questioning the authority of the Hearing Officer having made no demur. She contended also that the Claimant's appeal was without merit as the rectified GI was not substantially different from the existing GI, there always being the distinction between aged and non-aged rum, with aging having to take place in Jamaica, as it was to be done under the supervision of the Excise office which was situated in, and had its jurisdiction limited to Jamaica.

[40] I have taken the time to give some detail of the submissions of the parties on the question of jurisdiction. The arguments are not unsound or without basis. There is no doubt a serious issue to be tried.

Whether Damages are an Adequate Remedy

[41] This issue was addressed primarily by Counsel for the 3rd Defendant, who submitted that the Claimant had not established that it would suffer any damage or that damages would not be an adequate remedy. Further, damages were an adequate remedy as that was one of the reliefs that could be granted by a Judge in Chambers if the appeal were successful, and JIPO was in fact in a position to pay such damages if awarded. On the other hand, damages would not be an adequate remedy if the 3rd Defendant was prevented from taking steps to enforce the Jamaica Rum GI in the European Union. In so doing, the 3rd Defendant is performing a public function. Counsel submitted no damages could be paid for the protection of the public good. The Claimant also had not put forward an undertaking as to damages nor provided proof to the Court that it was in a position to pay them.

[42] Counsel for the 4th Defendant submitted that there being no substantial change to the Jamaica Rum GI, the Claimant would not suffer any prejudice. This would suggest that there would be no question of the Claimant needing to be compensated in damages. On the other hand, the 4th Defendant would be prejudiced by any interim Orders.

[43] Counsel for the Claimant pointed out that the Defendants' witness, Mr. Gentles, agrees that the effect of having to age rum within the jurisdiction could bring irreparable harm to the Claimant which would severely affect the Claimant's numerous employees and the rum industry in general.

[44] The Claimant is engaged in a business enterprise, and while damages might at first blush appear adequate, the effect of rectification of the Jamaica Rum GI which would require the Claimant to age its rum in Jamaica, would disrupt the Claimant's business model, making the damage unlikely to be calculable. (This against the Claimant's argument that the existing GI does not in fact require aging in Jamaica). At the same time, the 3rd and 4th Defendants are in fact likely to be prejudiced, with economic effect for the 4th Defendant, by the delay in giving effect to the rectified GI. This therefore means that the question of whether damages would be an adequate remedy is fairly balanced, even if the Claimant seems likely to suffer the greater harm.

Other Factors

[45] The Court was urged to consider the actions of the Claimant, particularly its acquiescence to the hearing of the Applications by Ms. English and deny its application. Given that the challenge is to the lawfulness of the decision, a position the Claimant is entitled to take, even at this stage, this will not be considered to prejudice the Claimant's application.

Balance of Convenience generally

[46] The Defendants argue that as a matter of public policy, the decisions of a public body should be allowed effect until displaced by an Order of the court. The Registrar having made the decision to rectify the Jamaica Rum GI, which is on the face of it valid, the status

quo should be preserved. On the other hand, the Counsel for the Claimant argues the Claimant's position in fact represents the status quo as Jamaica Rum has been historically aged overseas. Again, the moot question here is who is likely to be the most affected. To the Court's mind, the answer has to be the Claimant for reasons previously given. The Claimant is a large enterprise of international repute and connection, consequently, the balance of convenience would favor the Claimant. Of the parties before the Court, it is only the Claimant who would be so impacted by the decision to rectify the Jamaica rum GI.

Conclusion

[47] I conclude from all of the foregoing that there is a serious question to be tried and that the balance of convenience for the grant of interim relief generally favours the Claimant. Some consideration however has to be given to exactly what form such relief should take.

DECISION - THE APPROPRIATE RELIEF

[48] Counsel for the 1st and 2nd Defendants urged the Court to consider the utility, practicality and necessity of each of the relief claimed. This is a course of prudence. I agree that a stay of proceedings is not appropriate, the hearing having been concluded.

The Order to restore the status quo would face difficulties in execution since it is not agreed how the Jamaica Rum GI operated with respect to aged rum. For this purpose, the historical operations would not be relevant as the Claimant's application was not to change the Jamaica Rum GI but to clarify it. There would be no utility to Order no. 4, once the decision of the Registrar is not given effect. It follows that Orders 1, 5, 6 and 7 are the appropriate Orders to make in this application. Accordingly, the Court makes the following Orders upon the Claimant's undertaking to be given in writing to abide by any order that the court may make as to damages should the Defendants suffer any by reason of this interim order, which in the opinion of the Court, the Claimant ought to pay:

ORDERS

1. An interim declaration is granted that the decision of the 2nd Defendant rendered on the 2nd October 2024 and all actions consequent thereon are null and void.
2. The 3rd Defendant is restrained whether by its officers and/or its servants and/or agents, from receiving and/or processing any applications for certification in relation to the Jamaica Rum GI as contemplated by paragraph E(viii) of the rectified entry dated 25th October 2024 made under the hand of the 1st Defendant (the “Rectified Entry”).
3. The Defendants are restrained whether by their officers and/or their servants and/or agents from taking any steps to facilitate and/or implement any part of the Rectified Entry dated 25th October 2024 or any Jamaica Rum specifications whatsoever including, but not limited to making representations to the public at large, the European Commission, any European Union member state or any other relevant state or state actor in the international community as to the operative effect of the Rectified Entry or any similar entry whatsoever.
4. Leave to Appeal Order Number 1 is granted.
5. Application for Stay is refused.
6. Costs to be Costs in the Claim.
7. The Claimants Attorneys-at-Law to prepare file and serve this Order.

Brown Beckford J
Puisne Judge