



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU 2024 CD 00403

IN THE MATTER OF Sections 12 & 15 of
the Protection of Geographical Indications
Act

AND

IN THE MATTER OF an Appeal against
the decision of the Registrar of Industrial
Property regarding rectification of the
Protected Geographical Indication
“JAMAICA RUM” – Registration No.
GI/002

BETWEEN	NATIONAL RUMS OF JAMAICA LIMITED	CLAIMANT
AND	REGISTRAR OF INDUSTRIAL PROPERTY	1ST DEFENDANT
	SHANTAL ENGLISH (HEARING OFFICER)	2ND DEFENDANT
	SPIRITS POOL ASSOCIATION LIMITED	3RD DEFENDANT
	J. WRAY & NEPHEW LIMITED	4TH DEFENDANT

Civil Practice - Rule 19.3 of the Civil Procedure Rules – The Protection of Geographical Indications Act – Appeal against a decision of the Registrar - Application to be removed as 4th Defendant – Whether an Interested Party in proceedings before the Register should be a Defendant on appeal.

Patrick Foster KC, Grace Lindo and Mark-Paul Cowan instructed by Lindo Legal for the Claimant

Tanesha Rowe-Coke and Lisa White instructed by the Director of State Proceedings for the 1st and 2nd Defendant

Sanya Goffe and Camille Garrison instructed by Hart Muirhead & Fatta for the 3rd Defendant

Stephanie Williams, Keisha Spence and Ketra-Loy Kennedy instructed by Henlin Gibson Henlin for the 4th Defendant

Heard: 7th and 14th February 2025

IN CHAMBERS (VIA VIDEOCONFERENCE)

Cor: Batts, J.

[1] On the 14th of February 2025 I made the following Orders:

1. The 4th Defendant's application to be removed as a defendant is refused.
2. Costs of the application to the Claimant and 1st, 2nd and 3rd Defendants to be taxed if not agreed.
3. Leave to appeal refused.

I promised then to put my reasons in writing, at a later date, and this judgment is the fulfilment of that promise.

[2] By way of an application filed on the 8th November 2024, the 4th Defendant sought the following orders:

1. The 4th Defendant, be removed as a Defendant and be made an Interested Party.
2. The 4th Defendant be made to participate in the claim as an Interested Party by filing evidence and submissions.
3. Costs of this Application to the 4th Defendant to be paid by the Claimant.

4. Such further and other relief as the court deems fit.

[3] The Claimant, a distiller of Jamaican rum for over 250 years, applied to the 1st Defendant for rectification of the Geographical Indication so as to clarify that Jamaican Rum includes Jamaican rum which is aged outside of Jamaica.

Rectification would amend GI No GI/002, "*Jamaica Rum*" registered in the name of the 3rd Defendant. The 3rd Defendant subsequently applied to the 1st Defendant for rectification of its aforesaid GI No. 002. The 4th Defendant lodged a Form 7 application, with the 1st Defendant, seeking to be added as an interested party in respect of the applications made by the Claimant and 3rd Defendant. The 4th Defendant was therefore added as an interested party and, throughout the hearing of the applications on 25th September 2023 and 27th September 2023, was referred to as an "*Interested Party*". On the 2nd of October 2024 the 1st and/or 2nd

Defendants rejected the Claimant's application and upheld that of the 3rd Defendant. By Fixed Date Claim filed on the 31st October 2024 the Claimant, pursuant to section 15 of the Protection of Geographical Indicators Act, appealed against the decision. The 4th Defendant, although called an Interested Party in the proceedings below, has been listed in the Fixed Date Claim as a Defendant. By Notice of Application filed on the 8th November 2024 the 4th Defendant applied to be removed as a Defendant and for permission to participate as an Interested Party in the appeal. The issue before me is whether the 4th Defendant is to continue as an interested party in the appeal.

[4] The Form 7 application, which the 4th Defendant filed in order to join the proceedings below, was made pursuant to Regulation 14(5) of the **Protection of Geographical Indications Regulations**. The relevant portions are:

"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) ...

(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).

(5) An application to be joined in the matter under section 14 of the Act shall-

(a) be made in the form set out as Form 7 in the First Schedule;

(b) state the nature of the interest of the person making the application; and

(c) be accompanied by any written submissions made by that person in relation thereto.

(6) The Registrar shall cause a copy of the application referred to in paragraph (5), to be served on the parties to proceedings.

(7) The Registrar shall on the expiration of the time specified under paragraph (3) or the receipt of written submissions, fix a date for the hearing as to whether the registration shall be cancelled or rectified as the case may require.

(8) The Registrar's decision after a hearing conducted pursuant to paragraph (7) shall be communicated in writing to the parties

(9)..... (10)....

(11).....” [Emphasis added]

[5] As regards the **Protection of Geographical Indications Act** (hereafter called “the PGI Act”), sections 2 and 14 are relevant:

“2. In this Act-

...

“interested party” means any person who is-

(a) a producer, manufacturer or merchant, engaged in the production or manufacture of or trade in goods; and

(b) established in-

i. the locality falsely indicated as the source of such goods or in the region where such locality is situated; or

ii. the country so falsely indicated or in the country where such false indication is used;

.....

14. (1) Where an application is made under section 12 or 13-

(a) a copy thereof shall be served on the person who applied for registration of the geographical indication to which the application relates;

(b) notice thereof shall be given in the prescribed manner and within the prescribed time to all persons, who, pursuant to section 11, have the right to use that geographical indication.

(2) A person referred to in subsection (1)(b) and any other interested party may apply to the Registrar to be joined in the matter and such application shall be made within such period as the Registrar shall specify.”

- [6] In its Form 7 application, the 4th Defendant applied to be “*joined as a party*”, and described its interest as being “*in the geographical indication as am a (sic) shareholder of Spirits Pool Association Limited, proprietor of the abovementioned geographical indication and a beneficiary of the protection that it confers.*” The 4th Defendant therefore acted in furtherance of its own private business interests when it filed the Form 7 application and supporting submissions on April 21, 2021. It noted through its Counsel that:

“[t]he applicant has been involved in the continuous production of rum in Jamaica since 1749 and therefore has an interest in and entitled to the benefit of the protections afforded by the registration.”

There is nowhere in the Form 7 application that the term “*interested party*” is used. However, the 4th Defendant places reliance on the term “*interested party*” in the Act and Regulations.

- [7] On the hearing of this application counsel for the 4th Defendant submitted that, the matter at hand is an appeal from a decision under the PGI Act and, no relief is being sought against the 4th Defendant. It was submitted that the 4th Defendant, in

the original proceedings which is being appealed, was at all material times named, and had participated as, an Interested Party. Although actively participating by making submissions and giving expert evidence counsel suggested that the 4th Defendant was correctly recognized as an Interested Party. Reference was made to judicial review proceedings in which the Attorney-General participates while being listed as an “*Interested Party*”. I do not find this to be an appropriate analogy. The Attorney-General represents the public interest and is sometimes invited to participate, by the court, where its decision may have consequences for the society at large.

[8] In the proceedings below the 4th Defendant urged the Tribunal not to rule in favour of the Claimant. This was not a neutral position. The 4th Defendant was not simply watching with interest. The 4th Defendant nevertheless wants to be named an Interested Party in this appeal and be permitted to participate. This could hardly be considered fair to the other parties. Participation as a party comes with the possibility of cost orders and other consequences. Being named an interested party may be a method of skirting such consequences. I do not accept that, because the 4th Defendant was an Interested Party below, they ought necessarily to continue as such.

[9] The 4th Defendant relied on the authorities of **The Attorney General of Jamaica v Maurice Arnold Tomlinson et al [2023] JMCA Civ 20**, **Maurice Arnold Tomlinson v The Attorney General of Jamaica [2016] JMSC Civ 119** and **R v Industrial Disputes Tribunal (Ex Parte J. Wray and Nephew Limited) (unreported) Supreme Court Jamaica Claim No. 2009 HCV 04798**. I do not find those decisions particularly helpful save that, in the **Tomlinson** case, Laing J stated, at paragraph 77 of his judgment:

“Counsel for the Claimant has made heavy weather of the distinction between an “interested party” as used in the UK CPR and an “intervener.” In my view, too much emphasis need

not be placed on the precise label used for the purposes of these applications. The use, or what is argued to be the misuse of the term “interested party” may have its origins in the absence of the term from our CPR and the fact that the term, for convenience if for no other reason, has become one that is informally used to represent a party that is joining proceedings pursuant to CPR 56.13(2)(c).”

- [10] Counsel for the Claimant in response submitted that declarations are sought in respect to what happened at the hearing before the 1st Defendant and these impact the 4th Defendant. In her affidavit, in support of the Fixed Date Claim, Martha Miller at paragraph 23 made an allegation of collusion between the 3rd and 4th Defendants. Specifically, she alleges that the 3rd Defendant *“is effectively controlled and/or aligned with the 4th Defendant and is chaired by the former Managing Director of the 4th Defendant.”* This suggests that the 4th Defendant is not a bystander in the matter but has a direct commercial interest in the outcome of the proceedings.
- [11] Having perused the Act, the Regulations, the Rules and the authorities cited it does seem to me that Laing J is correct. The term *“interested party”* has been misused and misconstrued. The law permits freedom to litigate. A person may sue anyone he chooses to sue, subject of course to a few exceptions, such as persons who enjoy diplomatic immunity or persons under disability. A Defendant has the right to have the claim summarily dismissed if there is no cause of action or if it has no real prospect of success. A Defendant may also join as ancillary parties anyone against whom an indemnity or contribution can be claimed. Furthermore, anyone who has sufficient interest in a claim, that is an interested party, may seek the court’s permission to be added as a party. The court will normally allow participation if satisfied there is a real interest and that the person to be added is not merely a busy body. In my view an interested party once added is entitled to participate in

the matter in the same way as all other parties. They similarly become liable to consequential orders if the court so determines. They are parties to the claim whether made an additional Claimant, Defendant or Ancillary Claimant or called an Interested Party.

- [12] The Interested Party is to be distinguished from the person with an interest who asks permission to watch proceedings. The request is usually made if a case is heard in chambers. In open court an attorney at law may, as a courtesy, indicate he holds only a watching brief. This means he will not participate, will keep his client fully informed and be ready to take any step necessary in the event his client stands to be adversely affected. Exceptionally, usually in proceedings for judicial review, a person with an interest is invited or permitted to make submissions, and exceptionally to give evidence, in relation to the issue to be determined.
- [13] It is apparent that, in the proceedings below, the 4th Defendant applied and was allowed to participate as an Interested Party. That nomenclature is descriptive only as, once added, the 4th Defendant was just another party appearing before the 1st Defendant. On appeal the Claimant decided to join that party as a 4th Defendant. This is appropriate primarily because the 4th Defendant has a direct interest in the outcome of the matter. It will benefit, or not, depending on the ultimate decision. It has placed evidence before the court and counsel will be making submissions on its behalf. The 4th Defendant is not merely a person, with an interest it is an Interested Party and appropriately denoted a 4th Defendant.
- [14] In the result, on the evidence and, for the reasons stated the 4th Defendant's application to be removed as a defendant was refused.

David Batts
Puisne Judge