



**IN THE MATTER OF THE PROTECTION OF GEOGRAPHICAL INDICATIONS ACT, 2011
AND**

**IN THE MATTER OF THE APPLICATION FOR REQUEST OF THE RECTIFICATION OF
THE PROTECTED GEOGRAPHICAL INDICATION “JAMAICA RUM” (REGISTRATION
NO. GI/002) BY NATIONAL RUMS OF JAMAICA LIMITED**

AND

**IN THE MATTER OF THE APPLICATION FOR REQUEST FOR RECTIFICATION OF THE
PROTECTED GEOGRAPHICAL INDICATION “JAMAICA RUM’ (REGISTRATION
NO.GI/002) BY SPIRITS POOL ASSOCIATION LIMITED**

BETWEEN	SPIRITS POOL ASSOCIATION LIMITED	RESPONDENT/APPLICANT
AND	NATIONAL RUMS OF JAMAICA LIMITED	APPLICANT/ RESPONDENT
AND	J. WRAY & NEPHEW LIMITED	INTERESTED PARTY

VIRTUAL HEARING

Before Hearing Officer, Ms. Shantal English

Upon hearing Patrick Foster, KC of Nunes, Scholefield, DeLeon & Co and Grace Lindo, instructed by Carter Lindo, Attorneys-at-Law, for the Applicant/Respondent, Sanya Goffe and Camille Garrison, instructed by Hart, Muirhead, Fatta, Attorneys-at-Law for the Respondent/Applicant and M. Georgia Gibson Henlin KC, and Keisha Spence, instructed by Henlin Gibson Henlin, Attorneys-at-Law for the Interested Party.

BACKGROUND

1. The Applications before the Jamaica Intellectual Property Office (JIPO) seek to rectify the Geographical Indication Register of the Geographical Indication, Jamaica Rum.
2. On December 1, 2016, Jamaica Rum was registered as a geographical indication. The Geographical Indication was registered in the name of Spirits Pool Association Limited.
3. The Shareholders of Spirits Pool Association are National Rums of Jamaica, New Yarmouth Limited, Trelawny Estate Limited, Inswood Estate Limited, The Clarendon Sugar Company Limited, Hampden Estates Limited and J Wray & Nephew Limited.
4. The Applications before the Jamaica Intellectual Property Office (JIPO) are as follows:
 - a) Application for Request for Rectification of the Geographical Indication No. GI/002 registered in the name of Spirits Pool Association filed by Carter Lindo on behalf of National Rums dated December 17, 2020 with reference number GI/002-1GI/2020;
 - b) Application for Request for Rectification of the Geographical Indication No. GI/002 registered in the name of Spirits Pool Association filed by Hart Muirhead Fatta on behalf of Spirits Pool Association dated April 19, 2021 with reference number GI/002-1GI/2021 and
 - c) J WRAY and Nephew Limited joined the proceedings as an Interested party on April 21, 2023 pursuant to Regulations 14(5) of the Protection of the Geographical Indications Act, hereinafter referred to as “the Act.”
5. Each application for request for Rectification will be addressed in the order in which they were filed.

6. The submissions in relation to the applications filed were heard on September 25, 2023 and September 27, 2023.

Law on Geographical Indications

7. Section 2(1) of the Act, defines a Geographical Indication as an indication which identifies a good as originating in the territory of a country, 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.

What is the legal basis upon which the rectification of the Register can be made?

8. Section 12 of the Act provides that:
 - (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). Section 12 (2) of the Geographical Indications Act states:
 - (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.

What is the role of the Registrar?

9. Section 12 (3) of the Act provides that the Registrar shall rectify the Register in relation to an application under subsection (1) if he is satisfied that such rectification is necessary.

10. There are two Applications for the Rectification of the Geographical Indications Register before the JIPO which will be addressed in turn.

FIRST APPLICATION

Application for rectification of Geographical Indication filed by National Rums

Jamaica

11. National Rums of Jamaica, a shareholder of the Spirits Pool Association filed an Application for rectification of the Geographical Indications Register dated December 17, 2020, which was received by the JIPO on December 22, 2020.

12. In this Application, National Rums requested the entry into the register of the Geographical Indication, Jamaica Rum to be rectified on the basis of sections 12(2)(b) and 12(2) (c) of The Protection of the Geographical Indications Act.

13. 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.
14. All submissions made before the JIPO were considered.

**Submission by National Rum of Jamaica in support of their Application for
rectification**

15. On September 25, 2023, Mr. Patrick Foster, KC and Ms. Grace Lindo presented oral submissions in relation to their application for rectification of the geographical indications register for the firm Carter Lindo on behalf of the Applicant, National Rums of Jamaica Limited.
16. Counsel for the Applicant advanced that the Applicant has been producing rum in Jamaica since 1753. The Applicant is a leading exporter of Jamaican rum which it sells under its own brand. The Application for rectification is seeking to protect the Applicant's centuries old processes, its investors, the trade of brands which has been used for a century and an earner of foreign exchange and provision of employment.
17. It was submitted by the Applicant that the application for rectification is to protect the Applicant's distiller's century old processes and that member countries use three (3) legal mechanisms for the protection of geographical indications within their jurisdictions. These are as follows:
- 1) Regulations focusing on business practices-consumer protection and rules of origin;

- 2) Trade mark law – collective and certification marks schemes and
- 3) *Sui generis* protection- laws generally dedicated to the protection of geographical indications.

18. The Applicant advanced that the Application rest in S12(1)(b) and 12(2)(c) of The Protection Geographical Indications Act. The Applicant also provided a definition for missing or unsatisfactory. The Applicant points out that the term missing is not defined in the Act, however provided a definition for missing as “not in an expected place or absent and unsatisfactory or “not good enough or not fulfilling expectations.”
19. It was advanced that the JIPO in analysing the scope and nature of the protection of geographical indication should be precise and direct in outlining what does not constitute a GI. The Applicant refuted the Respondents reference to a strong geographical indication and posits that a perusal of cases, treaties and academic articles surrounding the concept of “geographical indication” will not reveal the existence of the legal concept of a strong Geographical Indication.
20. Counsel advanced that The Jamaica Rum Standard enacted through technical and stakeholder input was to regulate the quality of Jamaica Rum. The Standard does not define the historical characteristics of Jamaica Rum, and does not equate to an intellectual property right or quasi-intellectual property right nor does it give credibility to the reputation on the market to facilitate fair competition.
21. The Applicant relied on the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in the interpretation of The Protection of Geographical Indications Act.
22. At paragraph 43 of the Applicant’s written submission, it was pointed out that the reputation should be essentially attributable to the geographical territory. This term

or phrase is intended to establish the “link” between the product and the relevant territory.

23. The Applicant at Paragraph 50, submits that the Jamaican Rum GI, in its current form fits within the TRIPS scope without more.

Application for Rectification- Specifications are missing or unsatisfactory

24. The Applicants submitted at paragraph 65, that the market has changed somewhat since 1907 with some local based rums in the export markets and otherwise. The historical records show that the reputation developed in Jamaica rum whether through marketing, advertising or otherwise was enough to encompass all varieties.

Aged Under Supervision of Jamaican authorities or certification body approved by the members of the Respondent unanimously

25. The Applicant advanced that historically, the practice is that Jamaica Rums would be aged outside the jurisdiction. Jamaica rum will be aged as well as doubled aged oversea. The Applicants submits that it is wrong that the Jamaican rum aged overseas is considered an issue because historically rum has been aged and sold abroad as an accepted practise and it is not a recent deviation from manufacturing processes.
26. At paragraph 66, relying on Neil Glasgow’s declaration, the Applicant points out that it appears that the Respondent is seeking to re-write history, that is to say, that the reputation of Jamaica is defined to a particular type of rum i.e. rums solely aged in Jamaica. This widespread historical practice of aging overseas in Jamaica and abroad should not be a basis to remove the geographical link to Jamaica.
27. At paragraph 72, it was advanced that the supervision by the Excise Office was imposed many years ago and it is unsatisfactory that the Excise’s supervision be a part of the verification process for rum to bear the Jamaican Rum GI.

Missing and Unsatisfactory–Water sources

28. The Applicant further advanced that in the context of climate change there is need to consider many water sources. They state that Jamaican distillers may themselves be prevented from producing quantities of rum when climate change takes greater effect, and the aquifers are unable to support production. They submit that such a GI specification is unsatisfactory.

Missing or unsatisfactory- Small Wooden Oak Barrels

29. The Applicant submits that as a reputation GI, Jamaica Rum need not be limited to being stored or aged in small wooden oak barrels. There is no evidence whether in the GI Control manual or in the Respondent's evidence that the size of the material used for ageing has a bearing on the reputation for which Jamaica is known.
30. It was further posited that bulk rum, of which the Applicant is a producer, has a reputation of being stored in the tanks especially for carriage at sea. Otherwise there is evidence of the historical use of the puncheons and vats sizes over 250 litres. Puncheons hold 500-700 litres of rum. The Applicant also points out that there is knowledge of the interested party's use of ten thousand gallon oak vats for the ageing of their Dagger Rums in the 19th Century.
31. The Applicants point out that the Respondent in its evidence has indicated that past usage should not be conclusive on current uses as a definition of Jamaica rum. The Applicants however submits that these past uses all add to the reputational link that the Jamaica Rum GI have to Jamaica.

Response to National Rums Application by Spirits Pool Association

32. The Spirits Pools Association, Attorneys-at-Law for the Respondent, Mrs Sanya Goffe and Ms Camille Garrison advanced their position in response to the submissions made by the National Rums of Jamaica Limited. They stated that the Respondent, was established in 1982 and functions as a trade association of rum distillers in Jamaica. Its main objective being the promotion and protection of the

interests of the Jamaica rum industry. The Spirits Pool's Association is owned by seven shareholder's including the National Rums of Jamaica Limited and J Wray & Nephew Limited.

33. The Spirits Pool's Association advanced that at all times the National Rums of Jamaica was aware of all the discussions and negotiations which took place in relation to the registration of the Jamaica Rum GI.
34. On April 8, 2016, Spirits Pool Association filed an application to register the Geographical indication, Jamaican Rum GI, registration No.GI/002. The Respondents established that prior to the filing of the GI, consultation was conducted between the shareholders. The Geographical Indication was registered without objection from National Rums Jamaica Limited on December 1, 2016.
35. The Respondent, Spirits Pool Association Limited stated that at all times the then Managing Director and representative of National Rums of Jamaica Limited, Evon Brown, was present at the meeting of the Board of Directors where the GI was discussed and approved. He was also integral in the discussions regarding the GI.
36. The Respondent advanced that prior to the filing of the Application to register the GI, there were discussions between the Spirits Pool Association Limited and the Jamaica Intellectual Property Office where the GI was discussed and there was no hesitation from National Rums of Jamaica.
37. It is further submitted by the Respondent that the National Rums of Jamaica only had a problem with the GI when the company was acquired by Maison Ferrand, when a French Cognac Manufacturer and pointed out that they were not in agreement with the Code of Practice.
38. The Respondent, advanced that as it relates to the National Treatment argument advanced by the Applicant, no different standard is being applied to the Applicant

or any of its shareholders. The Respondent further expressed that only persons who adhere to the specification of the Geographical indication are entitled to use the GI and the protection of the GI. They further point out that there is no discrimination as alluded by the Applicant and that if the effect of the GI is somehow detrimental or instrumentally impacts a member country of the World Trade Organisation (WTO) it does not amount to discrimination. Discrimination in their view, is when a different standard is being applied and not that the impact of the standard happens to be different amongst the different members of the WTO.

39. The Respondent does not believe that any amendments whether those advanced by the National Rums of Jamaica Limited or Spirits Pool Association if effected would have an effect of discrimination as advanced by the Applicant.
40. Following the disagreement regarding the Code of Practice at an Annual general meeting which was held on July 2, 2020, the Applicant was not satisfied with the proposed amendments to the Code of Practice. The amendments were intended to strengthen the GI, improve efficacy and bring the GI into alignment with European Standards ahead of seeking registration of the Jamaican Rum GI in the European Union.
41. The Respondent points out that under the TRIPS Agreement wines and spirits are placed at a higher standard than other products which is reflected in the Protection of Geographical Indications (Amendment) Act, 2018. There must be some evidence which grounds the product and the place of the GI. The Respondent does not agree that there should a Geographical Indication without any linkages to a particular place of origin.
42. The Respondent submits that Section 12(2)(b) is not applicable to the Applicant's Application. This section concerns a rectification of the Register on the ground that an indication for which the geographical indication is used is missing or unsatisfactory.

43. The Respondent advanced that none of the Applicant's request for rectification touch and concern the indication of the good for which the GI is to be used. There has been no evidence led which supports an application for rectification on the ground that the Geographical Indication is either missing or unsatisfactory.
44. The Respondent submits that the Applicant cannot ground their Application under section 12(2)(b) and that part of the Application should automatically fail.
45. It was also submitted that in considering section 12(2)(c), the elements of the code of practice in respect of which rectification is sought are either missing or unsatisfactory. Counsel points out that these words are not defined in the Act and in the absence an ordinary definition of the words "missing or unsatisfactory" will be accepted.
46. The Respondent also submits that the tribunal must assess each request for rectification through the lens of whether the particular element of the code of practice is either not present or does not meet an acceptable standard. Counsel submitted that the acceptable standard against which the requests should be measured is section 10(2) of the Act as this section sets out the conditions which must be satisfied by an application for registration of a Geographical Indication.

FERMENTING AGENT

47. The Respondent points out that the Applicant seeks to amend the Code of Practice to expand the class as it relates to fermenting agents which may be used during fermentation to include cultured commercial yeast of schizosaccharomyces species as well as naturally occurring yeasts in the environment. The Applicant would also wish for locally grown bacterial and yeast cultures to be used in the production of Jamaican Rum.

48. Paragraph 36 of the Statutory Declaration of Christopher Gentles, which was filed in support of the Spirits Pool Association and states that the Respondent supports the change recommended by the Applicant as follows:

- i. the fermentation takes place in designated containers known as fermenters;
- ii. the addition of the fermenting method is limited to the commercial yeast of saccharomyces types and from natural occurring yeast in the environment.
- iii. Genetically modified yeasts are strictly prohibited, locally grown bacteria and yeast cultures can be used in the production of Jamaican rum.

49. Expressed in paragraph 55 of their submission, the Respondent also points out that this change was among those agreed by the members of the Respondent at the extraordinary general meeting and forms part of the Respondent's Application for rectification of the Geographical indication. The Respondent points out that there is no objection to this change.

Water Sources

50. The Applicant seeks to amend the code of practice to delete the references to limestone water and limestone aquifer, thereby expanding the category of water which may be used in the production of rum in this country. The Applicant indicates at paragraph 12 of its statement of grounds that water wholly sourced for the production of rum in Jamaica has been historically produced with varying source of water, such as river water, pond water and a small amount of sea water or brackish water.

51. The Applicant, emphasised that the practice that was done in St. Christopher now known as St. Kitts was in or around 1801. The Respondent submits that the methods and practices in St. Kitts in the production of rum emanating from that country over two hundred (200) years ago, do not establish whether those practices were adopted

in Jamaica and that it is necessary to be used in the production of Jamaica Rum. To do this, would be a misrepresentation of the purpose of a GI because the two countries are different, with St. Kitts located in another region of the Caribbean.

52. The article entitled “How does water affect rum production?” advanced by the Applicant is disputed by the Respondent as being specifically related to the production of rum but not the production of Jamaica rum. The Respondent urges the tribunal to be cautious in the reliance on the article exhibited as providing general information on the production of rum.
53. The Respondent further submits that there is no record of sea water being used in Jamaica rum nor has the use of sea water contributed to the particular identity and reputation of “Jamaica Rum.” There are currently no distillers in Jamaica that engage in the practice, nor for that matter are there any reputable spirits making distilleries in the world that uses sea water as it is well known that salt is toxic to yeast. Pure water is required in the process of making Jamaica Rum.
54. The Respondent submits that Exhibit NG6, affidavit of Neil Glasgow does not indicate to this tribunal that the specification restricting the use of water in the production of Jamaica Rum to water from limestone aquifer basins of Jamaica is either missing or unsatisfactory within the meaning of section 12(2) (c) of the Act. The Respondent submits that the Applicant’s request for rectification of this element of the Code of Practice should be denied.

AGEING OF JAMAICAN RUM- FOOD GRADE BARRELS

55. The Respondent further submits that the Applicant wishes to amend the Code of practice to allow for aging overseas under Jamaican supervision directly or indirectly; and allow for aging of Jamaica rum in food grade wooden barrels or vats.
56. The Respondent pointed out that it is important to make a distinction between storage and ageing. Whilst storage was referred to in the submission of the

Applicant, the concern is not about storing but the ageing of the rum. The interaction with the liquid in the vessel in which it is aged is different in a smaller container than in a larger container. The main concern is not with storage when restricting the use of containers but the concern is about the aging of the rum.

57. The Respondent submits that they take no issue with the use of wooden food grade barrels. Ageing in approved food grade barrels should be restricted to barrels not exceeding 250 litres as agreed by the members. In paragraph 35 of Christopher Gentles Affidavit, he stated that it has been scientifically proven that this ratio of wood surface area to liquid alcohol achieves the best and most and consistent maturation result. The Respondent also relied on Joy Spence's Affidavit in which she stated that the larger the oak barrels is the lower the flavour development.

AGING OVERSEAS

58. The Respondent points out that in Christopher Gentle's Affidavit, he stated that rum aged overseas has a different taste profile from rum aged in Jamaica. Allowing the rum to age overseas will cause the rum to be significantly altered. If Jamaica Rum is aged overseas it would become complicated to determine whether other rums from other locations have been blended with the product. The Respondent further submits that it would be difficult to determine whether other additives have been included after distillation except for distillers' caramel and pure water, as required.
59. The Respondent continues to rely on the Affidavit evidence of Christopher Gentles on this area and submits that it is established that ageing overseas imparts significantly different taste profiles of the product compared with local or tropical ageing.
60. The Code of Practice of Jamaica allows for two categories of rum, aged rum and non-aged rum. Within the meaning of the Code of Practice, the rum must be aged in Jamaica in order to preserve the authenticity of the rum and to be able to guarantee the age of the product. If the Applicant decides to age the rum overseas,

such rum should not be referred to as aged rum as per the contemplation of the Code of Practice in Jamaica.

61. The Respondent further submits that the location in which the rum is aged is a significant factor in the maturation of the rum. The Respondent also relied on the Statutory Declaration of Joy Spence, where she pointed out that rum aged in Scotland when compared to Jamaica takes three times longer to obtain the same flavour profile.
62. The Respondent opposes any part of the Code of Practice that speaks to the Jamaican rum being aged overseas. This is because they believe that the monitoring of the product will pose significant challenge in maintaining the geographical indication.
63. The Respondent points out that in order for the Applicant's Application to be successful they must show that an element of the GI is either missing or unsatisfactory within the meaning of section 12(2) of the Act. The Respondent submits that the Applicant seeks to rectify the register mainly for commercial purposes and that the rectification of the Register being sought by the Applicant is neither missing or unsatisfactory within section 12(2) of the Act.

Response to National Rums Application by J Wray and Nephew Limited

64. The Interested party was represented by Henlin Gibson Henlin, who also established the history of the registration of the Geographical Indication as well as the shareholders of the Jamaica Spirits Pool Association (JSPA).
65. Counsel for J Wray and Nephew (JWN) submitted that National Rums of Jamaica (NRJ) has a difficulty with the existing GI Code of Practice and the proposed amendments. JWN's view is that NRJ wants the amendments to be wider than the proposed amendments because NRJ believes that the existing Code of Practice will put them out of business.

66. NRJ is seeking the specifications to be amended to permit:
- a. Aging to take place anywhere including outside of Jamaica;
 - b. Water from any source in Jamaica to be used in the process as opposed to water from the limestone aquifers;
 - c. The addition of up to 20 grams of sugar per litre as opposed to caramel in the rum making process; and
 - d. Ageing to take place in wooden barrels or vats without restriction as to size or shape.
67. The remaining shareholders of the Spirits Pool Association (JSPA) including J. Wray & Nephew Limited (the “Interested Party”) agree to ageing in small wooden barrels or vats as opposed to oak barrels. However, they oppose the remaining amendments on the basis that the proposed changes will deprive the GI of its efficacy.
68. The Interested Party further takes the position that:
- a. Ageing must take place in Jamaica;
 - b. No sugar should be added to rum;
 - c. Limited surface area to liquid of ratio barrel; and
 - d. There should be a grandfathering period to enable non-compliant procedures to come within the GI.
69. Counsel for the Interested Party advanced the position that JWN and the remaining shareholders agree that a GI must be distinctive and boast characteristics that associate it with a territory, locale or region in a country. The Interested Party further posited that the difference lies in the fact that rum aged in tropical conditions has a distinctive taste and volume that distinguishes it from rum aged in other conditions. In support of their position, the Interested Party relies on *section 34(2) of the Excise*

Duty Act which provides that no rum shall be coloured with any colouring matter save for cane sugar caramel.

70. The Interested Party explored six (6) areas in their Skeleton Submissions. They are: (a). Unfair Competition; (b). Overseas Aging; (c). Addition of Sugar; (d). Flavoured vs. Traditional Rum; (e). Size/Shape/Aging and (f). Water Sources.
71. While all arguments posited were considered, for the purpose of this application only the substantive issues will be highlighted in the judgment.

Unfair Competition

72. The first issue addressed by the Interested Party is Unfair Competition. In paragraph 19 of the Skeleton Submission, Counsel for the Interested Party, in reliance on the *Fair Competition Act* (FCA), submits that the relevant provisions of the FCA are sections 17, and 19-21 of the FCA which suggest that the mere assertion of unfair completion is not sufficient. The Interested Party further submitted that one reason for this is that the question of anti-competitive efforts depends on a definition of the relevant market. This requires an economic analysis and expert evidence. Further, it is not every restrictive provision in an agreement that will be adjudged to be unfair or anti-competitive.

Overseas Ageing

73. The second issue explored by the Interested Party is Overseas Ageing. In Paragraph 28 of the Skeleton Submissions, the Interested Party submitted that it is accepted that GIs serve to ensure compliance with well-defined stipulations and as such GIs enjoy strong protection as they must maintain that characteristic link to the country or area of origin. The Interested Party further posited that the geographical area including the climate and water source is seen as integral in the production of a distinct and superior product.

74. The Interested Party submits in Paragraph 29 that, if ageing in Jamaica is a factor that affects quality that is attributable to the rum's location then rum must be aged in Jamaica. Like the other members of JSPA, save for NRJ, the Interested Party is of the view that the rum must be aged in Jamaica. This is because Jamaica Rum has a distinct quality due to its tropical aging which is attributable to Jamaica. The Interested Party further submitted in Paragraph 30 that this also defines its reputation as rum originating in Jamaica. However, NRJ is of the view that it is the geographical location and nothing else that gives Jamaica Rum its distinction.
75. In disputing the position of NRJ in Paragraphs 31 and 32, the Interested Party submitted to the Tribunal that the Rules of Origin, of the Revised Treaty of Chaguaramas does not support the position of NRJ. The Interested Party further submitted that Article 84 on the Rules of Origin of the Revised Treaty of Chaguaramas, speaks to goods wholly produced in the "community" even though there is allowance for materials that originate from outside the "community".
76. The Interested Party further submitted that NRJ's position is that the quality of the rum is not jeopardized if it is aged overseas as aging in different climates allows the rum to have different characteristics. NRJ is of the view that where the rum is aged does not affect its origin. However, the Interested Party submitted that the different characteristic would be attributed to rum aged in a different locale, region or territory and not its origin in Jamaica.
77. At paragraphs 34 and 35, the Interested Party examined the case of *Northern Foods plc v. Department of Rural Affairs*¹ and submits to the Tribunal that the case does not assist NRJ's position. The Interested Party submitted that in the *Northern Foods plc* case, the issue turned on the true construction of "region" or "specific place" in Article 2 of the Council Regulation 2081/92 which regulates geographical indications in the European Community. The Court dismissed the argument of the

¹ [2007] 1 All ER 216

claimant that the specifications in the application for the GI relating to ‘Melton Mowbray Pork Pie’ was too wide because it referred to an expanded region and “Melton Mowbray” was a specific place. The basis for the Court dismissing the argument is that the geographical area in which the porkpies are produced has expanded beyond the original location in “Melton Mowbray”. The Court therefore held, in agreement with all counsel, that the words ‘originating’, ‘originate’, and ‘origin’ refer to where Melton Mowbray pork pies had their origin in the past, not where they now come from.

78. The Interested Party expressed that it was never contemplated that a changed location would be outside the territory of Jamaica and if so, it would be a new origin. The Interested Party posits that the *Northern Foods plc* case was not endorsing the splitting of production as between a place or region and another country or continent. Rather, it was affirming that based on the terms of the Regulation that a GI can refer to a locale or specific place or a region which is not restricted to its original source. It was therefore held that the application was correct on the basis that the geographical area for the production of the Melton Mowbray Porkpie had expanded. The Interested Party further advanced the position that the wording does not suggest that the ‘good’ can be uprooted from its origin, historical or current location and still be attributable to that locale, region or territory.

79. The Interested Party further argued that, based on the definition of geographical indications in the Act origin is essential but not enough. They further contend that there must be a distinct quality, reputation or other characteristic that is attributable to its origin and therefore if it has a distinctive flavour it must be attributable to its origin.

80. The Interested Party submitted that part of the aging, or production can take place outside the territory, locale or region is not a strong one because Jamaica Rum indication is based on the cumulative factors set out in Articles 3(b) and 3(c) of The

Protection of Geographical Indications Regulations, 2009. There must also be distinctive qualities or characteristics associated with the GI.

81. The Interested Party submitted in paragraph 39 that ageing in Jamaica is a factor that contributes to the distinct quality and taste of 'Jamaica Rum'. In reliance on the Declaration of Joy Spence, Master Blender by the Interested Party in Response lodged in November 2021, wherein the Master Blender noted that if the rum were to be aged in Scotland it would take approximately three (3) times longer to achieve the same flavour profile than if the same rum was aged in Jamaica.
82. Additionally, the Interested Party submitted that ageing outside of Jamaica will alter the distinctive taste of Jamaica Rum, and also same will create regulatory and compliance issues. The Interested Party further argued that the Excise Duty Act is only applicable to activities within Jamaica and makes specific provisions for the production process of the rum. Accordingly, once the rum leaves the jurisdiction of Jamaica, the Excise Duty Act would not apply and responsibility to monitor in ensuring compliance with the requirements provided for in the GI would not be in the remit of Jamaican authorities.

Whether Sweeteners should be added to Rum?

83. For the purposes of this application, the above issue was explored under the heading of **Addition of Sugar and Flavoured Rum** vs. **Traditional Rum** and both headings will be treated as the same issue, particularly because similar legislations/regulations were relied on by the Interested Party in their Skeleton Submissions.
84. In Paragraph 46 of the Skeleton Submissions, the Interested Party submitted that NRJ is desirous of sugar being added to Rum up to a limit of 20 grams per litre. NRJ posits that this is consistent with the history of Rum making as well as the EU Regulation (EC) No. 2019 (PE-CONS 75/18) of the European Parliament and Council. However, the Interested Party disputes NRJ's position for sugar to be added to Rum and the authorities NRJ relies on which includes the CARICOM

Regional Standard for Rum (CRSR) on the basis that their suggestion is inconsistent with the objectives behind registering GIs and the EU Regulations.

85. The Interested Party also argued that the CRSR is inconsistent with the Jamaican position as provided for in the Excise Duty Act, particularly section 34 which outlines that nothing shall be added to any spirits in a distillery save for colouring matter or water, except as may be otherwise permitted by the Commissioner. The Excise Duty Act further provides that no rum shall be coloured with any colouring matter save for cane sugar caramel.
86. It is further submitted by the Interested Party that only traditional rum is allowed to benefit from protection as a GI. The Interested Party posits that the European Union position is that the traditional rums must not contain a sweetener, which does not affect flavoured rums.

Size/Shape/Aging Vessels

87. With respect to NRJ's request for the type of vessel to be amended, the Interested Party agrees with the requested amendment for the type of vessel from small oak to small wooden barrels. However, it would appear that the Interested Party's position regarding the size of the vessel aligns with JSPA's position, that is, aging should be restricted to food grade barrels not exceeding 250 litres.

Water Sources

88. The Interested Party is not in favour of the water sources for the GI being changed from its current source. The Interested Party posits that it cannot be cogently argued or suggested that the GI must remove the distinctiveness of the water sources, as they relate to the locale, territory or region in Jamaica or an inherent natural factor such as the limestone aquifers.

Response from National Rums Jamaica to Spirits Pool’s Association and J Wray & Nephew’s Application

89. In response to the submissions by Spirits Pool Association and J Wray and Nephew, National Rums of Jamaica posits the following in relation to bulk rum, aging of rum, EU Regulations among others which the JIPO has taken into consideration.

BULK RUM

90. The Applicant stated that at a meeting of January 30, 2016, Mr. Forbes stated that an application was being made to have Jamaica Rum registered as a GI and “SPA was requesting assistance from members as to how bulk rum could be classified as Jamaica Rum under GI.” The Applicants posits that this represents and indicates to the Applicant that any GI to be registered would include and not exclude bulk rum. They further advanced that there was no discussion at that meeting about:

- i. the exclusion of bulk rum;
- ii. any issue relating to ageing of rum abroad;
- iii. whether the rum relates to the quality;
- iv. whether the rum ought to be classified as Jamaica Rum or otherwise.

91. The Applicant submits that at the filing of an Application and the registration which excludes bulk rum demonstrates either an intention to exclude it from the beginning of the discussions or a changed position taken by the Respondent without communicating it to the Applicant.

AGEING

92. Counsel for the Applicant also submits that there has been no denial from any party, on behalf of the Respondent or the Interested party, that the ageing done in Jamaica or abroad has not been an established as a historical part of the manufacturing of the rum in Jamaica which continues to date.

93. The Applicant also stated that it is not open to the Respondent to casually reject the two hundred (200) years of history that reflects the tradition of ageing of Jamaica Rum. The Applicant further stated that an accurate GI must be inclusive and embrace Jamaica Rum in all its form, including aged rum whether done in Jamaica or overseas and we must ensure that the range of rum available for consumers who appreciate the diversity of our products can be made available under the GI.
94. The Applicants also submits where all rums have the same taste and flavour under some ageing process done only in the island under strict conditions is not the dynamic approach that should be taken. Reliance was made on the Statutory Declaration of Vivian Wisdom where he said *“This diversity and style are appreciated both locally and internationally and hence uniformity cannot be the basis for geographical indication. He went on to say that “a geographical indication based on a process which benefits one producer only will be to the detriment of the rum industry. The characteristics of Jamaican Rum come mainly from the fermentation and distillation. Ageing is secondary and tailors the rum to a particular end user’s preference and it has been the practice for centuries to age Jamaica rum outside Jamaica, a practice is largely done today.”*

EU Regulations

95. Counsel for the Applicant pointed out that there has been reliance on EU Regulations which they rebutted and stated that we should not be interpreting or rectifying a Jamaican registered GI based on legislation or subsidiary legislation of any foreign country. The Applicant further pointed out that they cannot support the concept of a stronger GI under the Act.

COMPETITIVE ADVANTAGE

96. The Applicant submits in response to paragraph 107 of Respondents submission which speaks to anti-competitive advantages to producers operating outside of Jamaica. Counsel for the Applicant believes that this argument reveals the true rationale for opposing the application for rectification of the GI, which is to exclude

foreign countries who purchase rum for ageing abroad from using the Jamaica Rum GI. This is not a basis in law to restrict the GI in that manner as to do so is clearly dishonest commercial practices contrary to international obligations under **TRIPS**.

CONCLUSION

97. Having regard to the foregoing, which captures both the oral and written submission of the Applicant, the Respondent and the Interested Party, the tribunal acknowledges the arguments advanced by all parties but is also minded of the principle of law as set out in the Protection of Geographical Indications Act which outlines the role of the Registrar in rectifying the GI Register. The Registrar now has to determine whether there is anything that is missing or unsatisfactory with the current Code of Practice that would warrant rectification of the Geographical Indications Register. The requested change of the Register will be addressed in turn:

CONTAINER FOR AGEING

98. The Applicant requests that the Register be amended in relation to where rum is aged. They are desirous of having rum aged locally and internationally. The proposed change is below:

“Aged rums that are aged in food grade wooden barrels or vats under Jamaican Supervision in Jamaica directly or indirectly.

Supervision of ageing overseas shall be delegated to a reputable certification organization approved by a unanimous vote of the members of the Spirits Pool Association Limited”

99. The current specification states that ageing should take place in small wooden barrels. It is the position of the Tribunal based on the submissions to agree that the current specification is not specific but general in nature. Therefore, the Tribunal is minded to amend the specification to be clearer, as follows:

- i. Ageing in approved food grade barrels; and

- ii. The size of the barrels should be restricted to barrels not exceeding 250 litres.

100. The Applicants requested the specification be amended to provide for ageing in Food Grade Barrels as well as vats. The Tribunal relies on the Declaration of Master Blender Joy Spence which provides that the larger the container, the longer it will take the rum to age and it will affect the flavour profile. If the flavour profile is affected the authenticity of Jamaica Rum GI will also be affected. In light thereof, the Tribunal is not in agreement for Jamaica Rum to be aged in Vats.

LOCATION FOR AGEING

101. As it relates to the ageing of rum overseas, the current specification remains as there was not sufficient evidence led to convince the Tribunal that there was something missing or unsatisfactory that would render rectification necessary. In light thereof, ageing of Jamaican Rum should be done exclusively in Jamaica under the supervision of the Excise Duty Act.

WATER SOURCE

102. Water sources were also discussed at length by the parties involved. The proposed amendment is outlined below:

“Only rums obtained by distillation using wash produced with water obtained from the water basins of Jamaica are entitled to use the Geographical Indication;”

103. Based on the submissions presented by all parties, the Tribunal, does not see a reason to amend the specification as there is nothing missing or unsatisfactory. The current specification remains.

104. No evidence was led to support the Applicant’s assertion that the water sources needed to be expanded at this present time. The rationale for the change was purely futuristic as the applicant submitted that climate change will eventually lead to the depletion of water sources which will in turn affect the production of Jamaica Rum.

Based on this submission, the Tribunal cannot accept that the current specification is unsatisfactory.

FERMENTING AGENTS

105. The Applicant submits that the category of fermenting agents should be expanded to read:

“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.”

106. The fermenting agents appear to be restrictive in the current specification. Based on the submissions presented, the Tribunal is minded to expand the fermenting agents and amend the Register accordingly as it is clear that using one fermenting agent is limiting and therefore satisfies one of the reasons for amending the Register, which is that it is unsatisfactory.

107. The Register is amended to include the following:

- i. The fermentation takes place in designated vessels termed as fermenters.
- ii. 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.
- iii. Genetically modified yeasts are strictly prohibited.
- iv. Locally grown bacterial and yeast cultures can be used in the production of Jamaica Rum.

SECOND APPLICATION

108. The second Application for Rectification of the Jamaica Geographical Indication, Jamaica Rum was heard by the Tribunal on September 27, 2023. The Applicant, Spirits Pool Association Limited, was represented by Sanya Goffe and Camille Garrison, instructed by Hart, Muirhead Fatta. The Respondent, National Rums of Jamaica, represented by Patrick Foster, KC of Nunes, Scholefield, DeLeon and Grace Lindo instructed by Carter Lindo. The Interested Party, J Wray and Nephew Limited, represented by M. Georgia Gibson Henlin, KC, and Sharine Willis instructed by Henlin Gibson Henlin.

109. There were oral and written submissions presented. While all arguments posited were considered, for the purpose of this application only the substantive issues will be discussed by the Tribunal.

Submissions by Spirits Pools Association Limited

110. On April 21, 2021, the Applicant, the Spirits Pool Association Limited, applied for Rectification of the Register under The Protection of Geographical Indications Act 2009 (hereinafter referred to as “the Act”) to the Jamaica Intellectual Property Office (JIPO) for rectification of the Jamaica Rum GI.

111. The Application relates to the rectification of the Jamaica Rum GI as set out in section 12(2)(c) of the Act.

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.

113. The Applicant submits that the test is whether the elements of the Code of Practice in respect of which rectification is being sought, are either missing or unsatisfactory. In the absence of a definition of the terms "missing" and "unsatisfactory" in the legislation, the Applicant adopted the ordinary dictionary definitions of these words.

114. The word "missing" means that it is 'not present when expected or supposed to be' and the word "unsatisfactory" means that it is 'not considered acceptable' or 'it is not good enough'.

115. The Tribunal must assess the Applicant's rectification requests based on whether the Code of Practice element is present or meets an acceptable standard. The Applicant submitted that section 10(2) of the Act is the acceptable standard.

116. This approach was adopted by the Federal Court of Justice in Germany in **Henstenberg GmbH & Co. KG v. Spreewaldvereine** where the Court observed at paragraph 32 of its decision:

"As a preliminary point, it should be noted that applications for a non-minor amendment of the specification of a product with a protected geographical indication, such as that at issue in the main proceedings, are, by virtue of the reference made in the first subparagraph of Article 53(2) of Regulation No 1151/2012, subject to the same procedure as that applicable to registration of a protected geographical indication..."

117. The Applicant submitted that the Tribunal should assess if an element is absent or not acceptable in the current Code of Practice. If satisfied, it must determine if rectification is necessary. If not, it must deny the application. If found, it must determine if modification is necessary.

118. The Applicant proposes the following changes in relation to:

Use of Fermenting Agents

119. The Applicant seeks to amend the Code of Practice to expand the class of fermenting agents which may be used during the fermentation process in the following terms:

"Fermentation must take place in designated vessels termed fermenters. The addition of fermenting agents is limited to the yeasts of saccharomyces types and schizoaccharomyces species. The inoculation of the prepared wash may only be carried out by cultured yeast or by commercial yeast or from naturally occurring yeast in the environment. Genetically modified yeasts are strictly prohibited. Bacterial cultures may be used in the production of High Ester Rums. Fermentation is complete when all fermentable cane sugars have been converted into component parts."

120. The Applicant asserted that this change was amongst those agreed upon by the members of the Applicant at its extraordinary general meeting and there is therefore consensus that this element of the Code of Practice is unsatisfactory within the meaning of the Act, and ought to be rectified.

121. The Applicant refers to paragraph 19 of Martha Miller's Statutory Declaration, and notes that the Respondent appears to support the change recommended by the Applicant, for including the addition of bacterial cultures and yeasts. The Applicant further noted the declarant's assertion in paragraph 19 of the said Statutory Declaration that "the Applicant has, without scientific or traditional bases, provided no basis for limiting the addition of fermenting agents to high ester rum."

122. The Applicant submitted that the number of esters in rum production depends on fermentation duration and purity. Yeasts and bacteria are responsible for creating rum flavor. Jamaican rums are typically high in esters due to an extended, less controlled fermentation process. Higher ester Jamaican rums may ferment for one to three weeks or longer.

123. The Applicant submitted further that heavier rums may employ the saccharomyces and schizosaccharomyces types of yeast, and some of the heavy rums may employ special bacterial cultures in fruit fermentation pits.

Location and Container for Ageing

124. The Applicant submitted that the geographical indication register should be rectified to reflect that:

“Rums must be produced in accordance with the distillation certificate. Rum shall be colourless except where the colour is derived from food grade wood during maturation or from caramel produced from cane sugars. No additives shall be made to the rum after distillation save and except for pure filtered water and distiller's caramel for the sake of colour correction.”

125. Ageing in approved food grade wooden barrels should be restricted to barrels not exceeding 250 litres and approved by the Spirits Pool Association Limited.

126. The Applicant is proposing to amend the Code of Practice to permit Jamaica Rum ageing in food grade wooden barrels under Jamaican Excise Office supervision, without supporting overseas aging. The request aims to clarify the Code and strengthen Jamaica Rum, based on Article 35 of the Spirits Regulations. The Applicant referred to paragraphs 6 and 7 of the Statutory Declaration of Martha Miller and notes the Respondent's objection to the request for rectification made by the Applicant in respect of the matter of ageing.

127. Declarant Miller asserts that in paragraphs 6 and 7 of her Affidavit respectfully that:

"In the light of the inclusive nature of the GI, it is not surprising that the current specifications do not preclude ageing in an overseas jurisdiction as the Respondent's continued interpretation of the words "aged... under Jamaica Excise Office supervision" is that this supervision would extend to and or be delegated to a body in an overseas jurisdiction. That at a meeting of the directors in September 2016, the definition of Jamaica Rum did not require ageing in the jurisdiction of Jamaica."

128. The Declarant further states that *"the filing of the application by the SPA, under the guise of the "strengthening of the GI", seeks to change this interpretation to mean that "ageing shall be carried out in Jamaica and approved by the Spirits Pool Association" without more."*

129. The Applicant relies on paragraphs 6, 13 and 14 of the Statutory Declaration of Joy Spence dated the 25th day of November 2021 (the "Spence Declaration" wherein the declarant states that:

"I also refer to paragraph 6 of Martha's Declaration. During the drafting of the GI documents from 2009 through 2016 while discussing oversight and traceability regarding aging overseas and the related age statement, the Committee could not agree on the issue of overseas ageing. As a result, no decision was made in particular because Jamaica Excise had not been brought to the table to be part of the discussion or of the GI Committee and so the Committee did not want to venture into making decisions on an area that required their involvement.

She continued by saying that the National Rums of Jamaica Limited (NRJ) was at the time selling bulk unaged rum. This rum was then aged overseas, and the Committee's concern was the difficulty of policing aging overseas. As can be seen in the Minutes of the 20th January 2016, the Committee grappled with the issue and concluded that rum held outside the jurisdiction would require verification. This was

meant to confirm that the rum was indeed Jamaican Rum. However, neither the SPA nor any individual producer was willing to cover the cost or logistics of the audit with the rum being sold in so many countries. The matter remained unsettled therefore as there was the outstanding question of "who would be responsible for managing the process once it left Jamaica to ensure that end-to-end it was indeed still Jamaican Rum. It was in those circumstances that the language "aged under the supervision of Jamaica excise was included specifically in the Jamaica Rum GI to cover rum that was being aged in Jamaica as the provisions of the Excise Act only reference the activities within Jamaica and so no provisions could be inserted outside of the ambit of that law."

[13]"Once local producers recognized that purchasers were blending Jamaica Rum with other spirits and calling it 100% Jamaica rum and also aging it under different conditions, the government took steps to protect the reputation of Jamaican rum because it was being diluted by this activity."

[14]"... ageing overseas is therefore inconsistent with the institutional framework that has been put in place for the protection of Jamaican rum and by extension the GI Jamaica Rum."

130. The Applicant further states that it is this very dilutive conduct which is being undertaken by foreign producers of rum which the Applicant seeks to prohibit by restricting the ageing of Jamaica rum to the territorial limits of Jamaica.

131. The Applicant further refers to paragraph 4 of the Statutory Declaration of Mark McDonald filed on the 21st day of December 2021 wherein the declarant states:
"...the 2016 GI specification documents are silent on ageing rums outside of Jamaica and despite being the subject of several discussions at meetings of the board of the SPA since the GI was registered in 2016, this has still not been settled. The brief paragraphs in the GI specification documents that refer to ageing under the supervision of Jamaica Excise, and which mention

that a transition period is to be agreed shows an attempt to do this, but it not conclusive and needs more substance."

132. The positions advanced by both Joy Spence and Mark McDonald are supported by the Statutory Declarations of Gordon Clarke and Andrew Hussey respectively.

133. At paragraph 17 of the Statutory Declaration of Gordon Clarke, the declarant states:

*"At the April 2016 meeting of the Board of Directors of the Applicant, the Board agreed that in regard to all stocks of rum held outside of Jamaica, the local primary buyers or the distilleries will have a limited time of 18 months to work with the GI sub-committee in order for them to be approved as Jamaica Rum. **The provision mentioned by Martha Miller in her Statutory Declaration dealt with bulk rum that was exported prior to the registration of JAMAICA RUM GI.**"*

134. At paragraph 15 of the Statutory Declaration of Andrew Hussey, the declarant states:

"In relation to paragraphs 6 and 7 of the Miller Declaration, I say that Everglades firmly believes that Jamaican rums should be aged in Jamaica in small oak barrels. The supervision of ageing overseas complicates the traceability and verification of the actual age of Jamaica Rum and its purity. Ageing in small oak barrels adds a dimension of reliable ageing, or rounding of the Jamaica Rum, and any Jamaica Rum GI, which does not specify ageing in Jamaica makes for a weaker Jamaica Rum GI.

135. The Applicant submits that the current formulation of the Code of Practice in relation to the matter of ageing lacks specificity and clarity in relation to the requirement of ageing. The Applicant further submits that there is still no agreement by the members of the Applicant on the matter of overseas ageing, and in particular, the issue of supervision of the ageing process by the Jamaica Excise Office once rum leaves the Jamaican jurisdiction. In the absence of provisions being made to

assure the integrity of Jamaican rum during any ageing overseas, it is the Applicant's position that ageing should be restricted to taking place in Jamaica.

136. In light of the foregoing, the Applicant asserts that the current Code of Practice relating to ageing of Jamaica Rum is both "missing" and "unsatisfactory" within the meaning of the Act as the current wording does not clearly set out the requirement for ageing.

137. The Applicant is requesting that the Jamaica Rum GI be rectified to be read as follows:

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

(1) "non aged" rums that require no ageing; or

(2) "aged" rums are aged in small wooden barrels made of food grade wood and warehoused under the Jamaican Excise office supervision.

Rums must be produced in accordance with the distillation certificate. Rum shall be colourless except where the colour is derived from food grade wood during maturation or from caramel produced from cane sugars. No additives shall be made to the rum after distillation save and except for pure filtered water and distiller's caramel for the sake of colour correction.

Ageing shall be carried out in Jamaica and approved by the Spirits Pool Association Limited. The minimum age of these rums being stored in a barrel of less than 250 litres made of approved food grade wood and must be certified by the Jamaican Excise Officer."

138. The Applicant believes that wording is more robust and clearly sets out the parameters for use by producers in the manufacture of Jamaica Rum and in the circumstances should be approved.

Additional Specification

139. The Applicant also proposes the inclusion of an additional specification as follows:

"That the producers and owners of stocks of rum produced in Jamaica that has been ageing and / or stored overseas may within a period of four months after the publication of the present decree, apply for the approval of their production and stock with Geographical Indication 'Jamaica Rum" from the date of certification. The Jamaica Rum GI logo and marks can be used on these rums for a period of twenty-four months after the publication of this decree.

140. All Jamaica rums in storage outside of Jamaica will require independent audit verification by International Auditors prior to approval as Jamaica Rum GI.

141. *The purpose of the audit verification is as follows:*

For Bulk Jamaica Rums, evidence of the following documents must be made available for scrutiny:

- *Distillation Certificate*
- *Country of Origin*
- *Transfer Control Document (document that allowed movement of rum into bull stores)*

142. *For Blended (finished) Jamaican rums, evidence of the following documents must be made available for scrutiny:*

- *Excisable goods from the received form in that jurisdiction noting receipt of goods into the blending hall stores*
- *Document allowing movement of product into bottling hall (production)*
- *Document allowing movement of product from bottling (production) into Finished Goods Excise Warehouse in that Jurisdiction.*

143. *These rums must have been crafted consistent with the Jamaica Rum Standard and therefore would not apply to any rums for to which additions have been made after distillation save and accept filtered water and distiller's caramel.*

144. *The certificate of approval will be issued by the Spirits Pool Association approved authority after those rums have satisfied the demands of the analytical examinations, according to the procedure defined by the code relating to the approval of rums with Geographical Indication.*

Respondent's Response to Applicant's Submission

145. The Respondent arguments to the submission of the Applicant are as follows:

Principles of Unfair Competition

146. The Respondent objects to the Applicant's application for rectification on the ground of unfair competition. The Respondent relied on section 3(1)(b) of **The Protection of Geographical Indication Act, the Fair Competition Act** and **TRIPS**. They submitted under Article 22 of TRIPS, members, including Jamaica, are under an obligation to prevent "any use (of a geographical indication) which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967)." The word "use" in its ordinary and natural meaning would include any use being the operationalization, application or affixation to goods of the geographical indication on the market. TRIPS uses the term "unfair competition" and a cross reference to Article 10bis of the Paris Convention to guide the context in which the treaty obligation should be applied.

147. The Paris Convention for the Protection of Industrial Property (1883) is the first convention to harmonise intellectual property laws pertaining to patents, trademarks, industrial designs, utility models, trade names and geographical indications. The Treaty requires States to grant the same protections to non-nationals as they do to nationals. Jamaica is one of 174 contracting parties to the Paris Convention.

Article 10bis of the Paris Convention states:

Unfair Competition

1. The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
3. The following in particular shall be prohibited:
 - a. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - b. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - c. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

WTO/TRIPS Rules National Treatment

148. To support this, claim the Respondent made reference to paragraph 23 of the affidavit of Lloyd Forbes and noted that:

"Maison Ferrand therefore has a vested interest in the ability to use the JAMAICA RUM GI on its products in respect of which neither the Applicant, the Bureau of Standards nor the Jamaican Excise will have supervision. A loosening of the JAMAICA RUM GI would allow Maison Ferrand's brands to be associated with the Jamaican jurisdiction and adorned with the designation JAMAICA RUM without actually adding value to the local economy."

149. The Respondent submitted that the above evinces the true objective of the Applicant and Interested Party. It is further submitted that this is a misplaced sense of nationalism which is not borne in the PGI Act nor in the international laws to which Jamaica is a party.

Right of Respondent, as bulk rum producer, to Object (Estoppel)

150. The Respondent posits that their silence at the relevant board meetings would not amount to an unequivocal statement. Reliance was made on the case of **Argo Systems FZE v Liberty Insurance Pte Ltd** [2011] EWCA Civ 1572, in which the court stated:

"Saying nothing and "standing by", i.e. doing nothing, are, to my mind, equivocal actions. This court has stated that, in the absence of special circumstances, silence and inaction are, when objectively considered, equivocal and cannot, of themselves, constitute an unequivocal representation as to whether a person will or will not rely on a particular legal right in the future."

151. The Respondent submitted that the Tribunal should consider whether the principles of estoppel by representation arise in this matter so as to prevent the Applicant from objecting to the application for rectification of the Respondent or indirectly doing so by filing its own application for rectification under GI/0002-IGI-2020.

152. In **Jones & anon v Lydon & Ors**, the [UK Court of Appeal] [2021] EWHC 2321 (Ch) provided extensive dictum on the tenets of estoppel in its various forms.

"Estoppel by convention arises where parties share a common understanding or assumption of a state of affairs which is not necessarily accurate, or where one party acquiesces in the erroneous misunderstanding or assumption of the other, and it is unjust to go back on the assumption."

153. The Respondent contends minutes of the board meetings of the Respondent/Applicant do not reveal a common assumption that bulk rum producers would not be able to use the JAMAICA RUM GI. The proceedings show a decision to make provision perhaps through a compromise position on verification. The agreement on the final document approved, which does not exclude the bulk rum

producers, prevent any assumption on the part of the parties or even one party which assumes and holds a common view that the other party acquiesces.

154. The Respondent further submitted the Tribunal should also consider whether any other forms of estoppel are applicable, including estoppel by representation the principles of which are summarized in **Splithoff's Bevrascningskantoor BV v. Bank of China Limited** [2015] EWHC 999 (Comm) as follows:

"The legal requirements of an estoppel by representation of fact are well known: (i) a representation which is in law deemed a representation of fact, (ii) that the precise representation was in fact made, (iii) that the later position taken contradicts in substance the original representation, (iv) that the original representation was of a nature to induce and was made with the intention and result of inducing the party raising the estoppel to alter his position on the faith of it and to his detriment, and (v) that the original representation was made by the party sought to be estopped and was made to the party setting up the estoppels."

155. The Respondent submitted its position does not contradict its earlier position and is consistent that accommodation should be made for the type of rum which is sold off the stills for ageing or use at a later date by its commercial buyers outside of Jamaica.

156. The Respondent further relies on **Robert Goff LJ in Allied Marine Transport Ltd v. Vale Do Rio Doce Navigado SA** [1985] 1 WLR 925 at 937E which states, *"[i]t is well settled that that principle [of equitable estoppel] requires that one party should have made an unequivocal representation that he does not intend to enforce his strict legal rights against the other; yet it is difficult to imagine how silence and inaction can be anything but equivocal"*.

157. The Respondent maintains that its belief prior to the filing in 2016 was that provision would be made for bulk rum, there does not appear to be recording of this

position in the minutes of the entity prior to April 2016 when the application in respect of the GI was filed. In the absence of the such statements, the Tribunal should not construe its seeming silence or more vocal action as a clear and unequivocal representation.

Unsatisfactory – Verification of Bulk Rum Overseas (Transitory Measures)

158. The Respondent submitted that it not within the statutory powers of JIPO to facilitate this change. The Respondent and other distillers are willing to undertake the cost of overseas verification as this is a system which will ensure to the benefit of Jamaica Rum and their commercial undertaking.

159. The Respondent further submitted, the Tribunal should take judicial notice of the verification system used in other *sui generis* system, with reference made to European Union Regulation 2017/265, which makes rules for certification exercises carried out by competent authorities.

160. It is submitted that the Applicant's proposal, under its application, to use a verification system even for twenty-four months, is evidence that they are open to using a verification system over a longer term. The Applicant's Christopher Gentles in his evidence has noted that this would be costly. However, the cost of maintaining a GI, should not be a determinant in deciphering the producers which are capable of using the GI. The assertion itself indicates that the Applicant intends to use the GI, JAMAICA RUM, in a manner which encourages unfair competition in the trade of Jamaican rum. Such actions are contrary to the tenets of TRIPS.

INTRESTED PARTY'S RESPONSE

161. In response to the submission, the Interested Party points out that NRJ does not seek to have the GI de-registered. They submit that the law is clear in that goods that are covered by the GI must be natural, agricultural, or a product of industry that comes from a specific geographical region.

162. The evidence of the interested party has shown that the GI was not the first step taken to protect Jamaica Rum. A concern was raised that people were blending Jamaican rum with other rums and calling it Jamaica Rum.

Bulk Rum

163. It is also submitted that it is not true that it was not clear as to how to deal with bulk rum or that SPA seeks to totally exclude bulk rum. The minutes of the meeting of SPA of December 16, 2015, states that following application for registration there would be discussions among members about how to treat with bulk rum.

164. The Interested Party rejected the comparison between Jamaica rum and Demerara Rum. They stated that there is no evidence before the Tribunal that speaks to the production process in Guyana. It is not as stringent in its production requirements as Jamaica Rum. It does not require the fermentation source material to be from Guyana, nor does it impose any significant restriction on fermentation or distillation.

165. The Interested Party places reliance on the article “Jamaica Rum” written by H.H. Cousins, observed that Jamaica rum is to a large extent, the natural outcome of local conditions that are “apparently unique to Jamaica. He also stated that the laborious and slow minutiae of a highly flavoured rum process could never form part of the industrial working of a large sugar factory in Cuba or in Guyana.

EXCISE DUTY ACT

166. The Interested Party points out that the Excise Duty Act is relevant to the supervisory process of the Jamaica Rum. They rely on Mark McDonald in his affidavit where he stated that, “it would be quite foolhardy to put something in place that the current framework is not fully equipped to regulate without putting forward how it would overcome extra-territorial and jurisdictional overreach issues or would bear the cost of the inspections”.

167. The Interested Party argued that the Application by NRJ is limited and made for selfish purposes and based on NRJ commercial bias.

ANALYSIS

168. Having regard to the foregoing, which captures both the oral and written submissions of the Applicant, the Respondent and the Interested Party, the Tribunal acknowledges the arguments advanced by all parties but is also minded of the principle of law as set out in the Protection of Geographical Indications Act which outlines the role of the Registrar in rectifying the GI Register. The Registrar now has to determine whether there is anything that is missing or unsatisfactory within the current Code of Practice that would warrant rectification of the Geographical Indications Register. The requested changes of the Register will be addressed in turn:

USE OF FERMENTING AGENTS

169. In applying the test stipulated in section 12(2) and (3) of the Act, the Tribunal must decide whether a consensus among the stakeholders of a GI relating to a section of the Code of Practice would render the requirement missing or 'unsatisfactory'. All the Parties are interested in widening the category of the fermenting agents. The Tribunal is not of the opinion that mere consensus for a change to the Code of Practice is an automatic satisfaction of section 12(2) and (3) of the Act, as the GI does not only affect the relevant stakeholders but also the wider Jamaica brand and the public at large.

170. Based on the submissions by all the Parties, it appears however, that it is necessary to modify the GI with respect to fermenting agents. The Tribunal is in agreement with the proposed use of bacterial cultures given the fact that these bacterial cultures will reduce the fermentation time for heavier rums.

171. The Jamaica Rum GI is therefore revised to include specific guidelines for fermentation, including the use of yeasts of *Saccharomyces* types and

Schizosaccharomyces species, inoculation using cultured or commercial yeast, and the prohibition of genetically modified yeasts. Bacterial cultures may be used for High Ester Rum production, and fermentation is considered completed when all fermentable cane sugars are converted into component parts.

AGEING

172. The Tribunal understands the definition of GI to mean a good having been completely manufactured in the relevant territory and would not include ageing overseas, as this would remove the full control of the territory to maintain the quality and reputation of the good. The current specification speaks to ageing in Jamaica. The Tribunal wishes to make it abundantly clear that ageing should only be carried out in Jamaica and therefore amends the Register to include, “only” before “Jamaica”. The Register shall now read: “Ageing shall be carried out **only** in Jamaica.”

173. The Tribunal however does not accept that approval of the location of Ageing by the Spirits Pool Association Limited is necessary and therefore rejects this proposed change and maintains that supervision would remain under the Jamaican Excise office.

174. Another issue raised is whether supervision can be satisfied by delegation to a similar body in an overseas jurisdiction approved by the Applicant. With the removal of overseas aging of Jamaica Rum, this issue will become a moot point.

SIZE OF CONTAINERS

175. The Applicant is requesting an amendment to the Code of Practice, allowing ageing of Jamaica Rum in small, food grade wooden barrels instead of small wooden oak barrels. The Respondent has also requested this change, but also requests the use of vats and barrels of any size. The Applicant submits that approved food grade wooden barrels should be restricted to barrels not exceeding 250 litres.

176. As discussed in relation to the size of containers in the First Application, the Tribunal maintains the amendments to the specification as follows:

- i. Ageing in approved food grade barrels; and
- ii. The size of the barrels should be restricted to barrels not exceeding 250 litres.

FINISHING - ADDITIVES TO JAMAICA RUM

177. The Applicant seeks to amend the Code of Practice to make clear that nothing should be added to rum after distillation save and except for pure filtered water and distiller's caramel for the sake of colour correction.

178. In support of its request, the Applicant refers to section 34 of the Excise Duty Act, which provides as follows:

"(1) Except as may be otherwise permitted by the Commissioner, nothing shall be added to any spirits in a distillery save colouring matter or water.

(2) No rum shall be coloured with any colouring matter save cane sugar caramel."

179. The Applicant's request is attempting to adhere more strictly with the Excise Duty Act and aligns with its overall objective of strengthening the Jamaica Rum GI. The Applicant is not in support of any amendment to the Code of Practice which would allow producers to contravene the Excise Duty Act.

180. In the circumstances, the Applicant asserts that the current Code of Practice in relation to this element, is both "missing" and "unsatisfactory" in this regard and its request for rectification should be approved.

181. Based on the evidence presented, the Tribunal agrees in parts and accepts the submissions that the current Code of Practices relating to the "finishing process" of the Jamaica Rum is "missing" and/or "unsatisfactory". The Tribunal is also satisfied that the rectification is 'necessary' regarding the inclusion of "pure filtered water" but is refused in relation to the request to include "distiller's caramel" because

“distiller’s caramel is not mentioned in the Excise Duty Act, for the following reasons:

- i. The current Code of Practice in Article 7 “Finished product” is not in unison with section 34 of the Excise Duty Act. This is unsatisfactory within the meaning of section 12 of the Act.
- ii. The Tribunal further agrees that this change is necessary to ensure that the Code of Practice aligns with the supervisory body and its related Act.

182. The Tribunal disagrees with the Applicant’s proposed change regarding the inclusion of “distiller’s caramel” which is not present in section 34 of the Excise Duty Act and could raise the issue of subjective interpretations.

183. The Tribunal holds that the amendment shall read, “At the end of distillation nothing should be added to the rum save and except for pure filtered water and cane sugar caramel for the sake of colour correction”.

TRANSITORY PERIOD

184. The Applicant also seeks to amend the Code of Practice to allow for a transition period for the certification of rum stored overseas for a period of twenty-four (24) months from the date of rectification of the Jamaica Rum GI.

185. The transition period shall be 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.

OPPRESSIVE AND UNFAIRLY PREJUDICIAL TO RESPONDENT AS SHAREHOLDER

186. The Respondent's claim of oppressive and unfairly prejudicial to Respondent as Shareholder, is refused by the Tribunal. No evidence has been presented to indicate that the Respondent was excluded or disadvantaged in any shareholder activity.

WTO/TRIPS RULES NATIONAL TREATMENT

187. This claim argued by the Respondent is not accepted as the Tribunal is not of the opinion that any the proposed changes to the Codes of Practice discriminates against foreigners and/or foreign owned entities. In addition, the current and proposed changes impose the same requirements to nationals and foreigners.

UNFAIR COMPETITION

188. The Tribunal is of the opinion that the Jamaica Intellectual Property Office is not the correct forum to have the matter of unfair competition adjudicated.

CONCLUSION

189. The Register is therefore 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
- iv. Ageing shall be carried out only in Jamaica.
- v. Ageing shall take place in approved food wooden grade barrels.
- vi. The size of the barrels should be restricted to barrels not exceeding 250 litres.
- vii. "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".

- viii. 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.

Hearing Officer

Shantal English

Deputy Director/ Legal Counsel

October 2, 2024