

Jamaica

Tapping into the value of intellectual property

With its increasing prominence in global trade, intellectual property has become an inescapable issue for developing countries, several of which have reluctantly embraced the modern IP regimes mandated by the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of IP Rights (TRIPs).

However, given the erosive effect of globalisation on the Caribbean's prominence in the trade of traditional products such as sugar, bananas and bauxite, intellectual property is now being promoted as an area of real competitive advantage for Jamaica, with its world-renowned reggae music, jerk sauces and Blue Mountain coffee.

During the last year a number of local initiatives have endeavoured to go beyond the basics of knowing how to acquire an IP right to understanding how to value it, manage it and harness wealth from its commercial exploitation. Such efforts have been made by public bodies and private companies alike.

Taking intellectual property to the bank

Jamaica has grown more aware of the importance of intellectual property and the transformative role that it plays in turning creative activities into financial assets. However, there has been a clear gap between this awareness and actually understanding how to maximise the value of IP assets. The lack of financial support for the commercialisation of such assets in Jamaica and the under-utilisation of the IP rights system by local creators are symptomatic of this gap.

Against this background, in July 2008 the Export Import Bank of Jamaica ventured into uncharted waters by examining the options for the collateralisation and securitisation of IP assets at a seminar entitled "Intellectual Property: Take it to the Bank!" The seminar was organised by the bank in association with various organisations, including the Target Growth Competitiveness Committee of the Private Sector Development Programme, which is

funded by the European Union. The objectives of the seminar were to:

- increase participants' appreciation of the value of intellectual property;
- inform them as to proper IP portfolio management strategies;
- address the hurdles experienced by the financial sector in supporting creative industries; and
- outline financing structures such as securitisation and collateralisation, which are increasingly used internationally in respect of intellectual property.

Experts from PricewaterhouseCoopers explained the technicalities and practicalities of securitisation to an audience of accountants, bankers, lawyers, educators, businesspeople, musicians, publishers, writers, artists, inventors and other rights holders. Due to the risks involved in funding intangible assets and the lack of historical data on the performance of some of these assets, investors and financial institutions have been averse to funding their commercialisation or using them as collateral.

In addition, the Jamaica Central Bank restricts the types of asset that commercial banks can use as security. However, as a publicly owned development bank, the Export Import Bank of Jamaica is not governed by the regulations applicable to commercial banks and considers itself well positioned to take the lead in forging a partnership between financial institutions, investors and holders of IP assets in an effort to harness the economic potential of the creative industries in Jamaica.

The value of Jamaica's copyright-based industries

Given Jamaica's vibrant music, entertainment and other creative sectors that are dependent on copyright protection, the copyright-based industries arguably represent the country's most promising commercial asset

base. 'Copyright-based industries' have been defined as those industries in respect of which copyright plays an identifiable role in creating tradable private property rights and income from the exercise of those economic rights.

According to "The Contribution of Copyright-Based Industries to the Economy of Jamaica", a study conducted by Dr Vanus James for the World Intellectual Property Organisation and commissioned by the Jamaican government, in 2005 copyright-based industries contributed an estimated 4.8 per cent to Jamaica's gross domestic product – that is, around J\$29 billion in producers' values (\$464.7 million) and 3.03 per cent to employment, or 32,032 persons.

The study covered core as well as partial copyright industries, and interdependent and non-dedicated support industries. The core industries include:

- press and literature;
- music and theatrical productions;
- radio and television;
- photography;
- visual and graphic arts; and
- copyright collection societies.

The partial copyright industries include:

- museums;
- jewellery;
- architecture;
- interior design; and
- furniture design.

Interdependent industries include television sets, radios, computers and musical instruments, while non-dedicated support industries include distribution industries which facilitate the broadcasting, communication and sale of copyright products, such as general wholesale and retailing and transportation.

The study found that the main contributors to gross domestic product were:

- radio and television broadcasting – \$57.3 million;
- press and literature – \$49.5 million; and
- music and theatrical productions – \$20.2 million.

Although Jamaican copyright-based industries contributed more to gross domestic product than those of Canada (4.5 per cent) and Mexico (4.77 per cent) over the same period, they contributed less to employment. The highest employment activities were found in the press, the literary sector, radio and television and music and theatrical productions, with the music sector accounting

for 6.4 per cent of all jobs attributed to the copyright sector. The relatively low percentage contribution to employment may be indicative of the fact that more creative persons are employed outside the copyright-based industries than in them.

However, the study did significantly under-report the income made by the informal economy, so its findings may be an underestimation of the actual contribution.

The findings were reported at a seminar organised by the Jamaica Intellectual Property Office (JIPO) on July 1 2008 as part of the International Reggae Day celebrations.

Efforts to protect 'Brand Jamaica'

'Brand Jamaica' embodies everything authentically Jamaican that is consumed locally and abroad by virtue of its quality and uniqueness. The value of this brand has been threatened by products, services and, in some cases, personalities on foreign markets that are passed off as Jamaican, Jamaican made or in Jamaican style while bearing no genuine link to Jamaica in either quality or origin.

A number of public and private sector entities have acted to protect Brand Jamaica by, for example, developing certification and collective trademarks for use on premium-quality Jamaican products and lobbying for the protection of geographical indications (GIs). These initiatives have met with some degree of success.

The Protection for Geographical Indications Act 2004 protects GIs used by wines and spirits against use on wines or spirits that do not originate from the place denoted by the GI, even where the use is not misleading. However, GIs for other products are protected only against false and misleading uses. As a result, non-alcoholic products are not protected against Jamaican-style imposters if the product labels also bear the true place of origin. While this dichotomy in the standard of protection conforms to the requirements of the TRIPs Agreement, it is perceived as a major loophole in Jamaican law as it provides producers of food products with little or no recourse against abuses perpetrated by unscrupulous traders. Private sector lobbyists have outlined the need for the law to be revised in order to afford uniform protection, irrespective of the class of goods for which the GI is used.

Although the 2004 act is not yet operational, the Jamaican government is taking steps to ensure that indigenous GIs and local producers are adequately protected under the law. In May 2008 JIPO launched the Jamaica-Switzerland GI Project jointly with the Swiss Federal Intellectual Property Institute (IPI), under which IPI will provide JIPO with technical assistance to identify Jamaican products that are to be protected under the international GI regime. Project funds of US\$700,000 will be used for various initiatives, including:

- public education;
- specialised training for producers and government officials involved in the administration of the 2004 act; and
- expert assistance in the preparation of product specifications.

The project is governed by a two-year memorandum of understanding between the two offices and is a natural progression of the alliance which Jamaica and Switzerland share in the WTO Friends of GIs forum.

In the absence of an operational GI protection regime in Jamaica, entities such as the Jamaica Exporters' Association, in collaboration with the Bureau of Standards and the Scientific Research Council, have begun to use the trademark regime more intensively by registering certification or collective trademarks to safeguard Jamaican products from imposters.

The Jamaica Exporters' Association took the lead in December 2007 by launching five certification trademarks incorporating the words 'Jamaica's finest', covering jerk sauces, honey, ackee and Scotch bonnet peppers to be used by *bona fide* producers, as well as four collective marks in relation to fresh produce, visual arts, clothing and agrobusiness, which will be available for use by members of the association. The certification marks are supported by accreditation programmes which have been developed to ensure that each product strictly complies with standards that earn it the mark of premium quality and authenticity.

The Scientific Research Council followed this by launching a certification mark in February 2008 which

will denote the safety and quality of authentic Jamaican products for which the council has developed technical standards and formulations. In May 2008 the Jamaica Bureau of Standards applied to register a certification mark comprising the words 'Jamaican made', which covers all classes of goods and services outlined in the International Classification of Goods and Services.

Although the country name 'Jamaica' and the description 'Jamaican' are subject to a disclaimer requirement under the Trademarks Law, the marks also incorporate the bold colours of the Jamaican flag – black, green and gold – set in unique designs, which creatively capture Jamaica's essence.

Conclusion

The copyright-based industries study, which was made public only in 2008, has enabled Jamaica to place a real-dollar value on the contribution of copyright to the macro-economy. However, indications are that significant potential value remains untapped at the micro level. Moreover, the losses to the Jamaican economy through copyright piracy and misappropriation of its brand, although still unmeasured, are thought to be substantial.

Although the increased use of the trademark system is encouraging, it is hoped that the various certification and collective marks will be employed as parallel strategies to enhance the competitiveness of Jamaican producers and to ensure that Jamaica's IP legacy is properly safeguarded at every level.

Given these efforts and with tangible financial support, Jamaica should be able to harness the value of its intellectual property for generations to come.

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