

**PRACTICE NOTICE**  
**RE: TRADITIONAL KNOWLEDGE**  
**AND TRADITIONAL CULTURAL EXPRESSIONS**

**1. The Law**

Section 11(4) of the Trade Marks Act 1999 provides that:

*“A trade mark is not registrable if-*

*(a) it is contrary to public policy or to accepted principles of morality;*

*(b) it is of such a nature as to deceive the public as to the nature, quality or geographical origin of the goods or services or otherwise;*

...

*(f) it is of such a nature as to-*

*(i) disparage persons (living or dead) or institutions or beliefs; or*

*(ii) falsely suggest a connection with such persons, institutions or beliefs.”*

**2. The Public Policy**

The Public Policy of the Government of Jamaica is to preserve and protect the traditional knowledge (TK) and traditional cultural expressions (TCEs) of Jamaica and of the indigenous, traditional and local communities in Jamaica. This policy is in keeping with Jamaica's CARICOM obligations under Article 66 of the Revised Treaty of Chaguaramas:

*“Protection of Intellectual Property Rights*

*COTED shall promote the protection of intellectual property rights within the Community by, inter alia:*

*(c) the identification and establishment, by the Member States of mechanisms to ensure:*

*(ii) the preservation of indigenous Caribbean culture; and*

*(iii) the legal protection of the expressions of folklore, other traditional knowledge and national heritage, particularly of indigenous populations in the Community;”*

In 1999 Jamaica was one of the countries which participated in a fact-Finding Mission by the World Intellectual Property Organization (WIPO) to the Caribbean to ascertain the intellectual property needs and expectations of traditional knowledge holders in the region. The Public Policy of the Government of Jamaica to preserve and protect the TK and TCEs of Jamaica and of the indigenous, traditional and local communities in Jamaica has also been expressed by Jamaica's active participation since 2008 in the WIPO Caribbean Technical Working Group on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources (GRs). The Working Group was formed in 2008 to devise a harmonised approach for the Caribbean in relation to the preservation and protection of the TK, TCEs and GRs of the indigenous, traditional and local communities in the Caribbean.

To that end, several meetings of the Working Group have been held in Jamaica, where extensive consultations with indigenous, traditional and local communities, particularly the Maroon and

Rastafari communities, have been undertaken. This work is being facilitated by WIPO and aims to ensure that in respect of the TK and TCEs of the relevant communities that are used, (1) the prior informed consent of the relevant communities is obtained; (2) the communities have full and effective participation in projects or programmes utilizing their TK and TCEs; and (3) any benefits derived from the utilization of their TK and TCEs are shared with the relevant communities.

The Jamaica Intellectual Property Office (JIPO) is therefore entitled to examine trade mark applications to assess their compliance with the Government of Jamaica's public policy as outlined above and to refuse applications which do not comply with the said public policy.

### **3. Identification of relevant TK and TCEs**

All trade mark applications received by JIPO will be assessed to determine whether they contain any elements of TK or TCEs of Jamaica or of any of the indigenous, traditional or local communities in Jamaica, including traditional words, signs, symbols, designs, imagery, colours, styles, or shapes or their derivatives.

Through the consultations already held under the WIPO Caribbean Technical Working Group, as well as ongoing consultations between JIPO and the Maroon and Rastafari communities in particular and the African Caribbean Institute of Jamaica/Jamaica Memory Bank (ACIJ/JMB), JIPO examiners are in a position to identify relevant TK and TCEs.

The fact that a word, of any other language, is recognised in Jamaica as a TCE attributable to, associated with or derived from a relevant community will mean that it will be treated as such, even if it has some other meaning or derivation outside of Jamaica.

The same applies to imagery, style and design. The fact that a sign, symbol or design is recognised as a TCE in Jamaica, will mean that it will be treated as such, even if it has some other meaning or derivation outside of Jamaica.

### **4. Examination of trade marks containing TK and or TCEs**

In examining such applications, examiners will draw from the general knowledge of TK and TCEs in Jamaica, as well as from reference material that is publicly available and also that may be provided to JIPO by the relevant communities and by the ACIJ/JMB.

Where an examiner is unsure whether or not the trade mark under consideration is covered by this Practice Notice, the examiner will consult and seek the advice of the leadership or recognised representatives of the relevant communities, particularly those which have been actively involved with JIPO in the protection of TK and TCEs through the WIPO Caribbean Working Group on TK. Examiners may also consult and seek the advice of the ACIJ/JMB.

If the mark is found to contain TK or TCEs of Jamaica or of any of the indigenous, traditional or local communities in Jamaica, the application for registration may be refused or where appropriate, accepted with disclaimer or limitation.

In considering whether the mark is disparaging under section 11(4)(f)(i) the examiner will consider whether a substantial section of the referenced community would find the proposed mark, as used on or in connection with the relevant goods or services, to be disparaging or offensive.

In considering whether the mark falsely suggests a connection with a person, an institution or belief under section 11(4)(f)(ii), the examiner will consider whether:

- (1) the mark is the same, similar to, or includes a word, sign, symbol, design, imagery, colour, style, or shape commonly used by or attributable to one of the relevant communities;
- (2) the mark would be recognized as such, in that it identifies or identifies with the particular community, or the mark is such that a connection with the community could be reasonably inferred; and
- (3) the community that is referenced by the mark is not connected with the activities performed by the applicant under the mark.

The question is whether, as used on the goods or services in question, consumers could possibly view the mark as identifying or identifying with a particular community or as being clearly attributable to or associated with the particular community.

If it is unclear whether the relevant community is connected to the goods sold or services performed by the applicant, the Registrar may request of the applicant any information, documentation or evidence as is reasonably required pursuant to Rule 45 of the Trade Marks Rules 2001.

If it is found upon examination that a mark falsely suggests a connection with a particular community, then it may also be deemed to be of such a nature as to deceive the public as to the nature, quality or geographical origin of the goods or services and may be refused on that basis also. If it is found by virtue of use of Jamaican TK or TCEs in a trade mark that the mark may deceive the public as to the nature, quality or geographical origin of the goods or services, it may also be refused on that basis.

## **5. Transitional provisions/existing trade marks using TK or TCEs**

Existing/prior registered trade marks which use relevant TK or TCEs will not be affected by this Practice Notice.

Trade Marks Registry  
Jamaica Intellectual Property Office  
April 30, 2012