

THE JAMAICA INTELLECTUAL PROPERTY OFFICE ACT, 2001

(Act 25 of 2001)

ARRANGEMENT OF SECTIONS

Preliminary

1. Short title and commencement.
2. Interpretation.

Establishment and Functions of Office

3. Establishment of Office.
4. Functions of Office.
5. Ministerial directions.

Financial Provisions, Annual Report

6. Funds and resources of the Office.
7. Borrowing powers.
8. Advances and grants to Office.
9. Repayment of and interest on advances and sums issued to meet guarantee.
10. General financial duties.
11. Accounts and Audit.
12. Annual report and estimates.
13. Exemption from customs duty, etc.
14. Exemption from income tax, transfer tax, stamp duty, fees.

Advisory Board

15. Advisory Board.
16. Functions of Advisory Board.

17. **Secrecy.**
18. **Regulations.**
19. **Amendment to Trade Marks Act, 1999.**
20. **Schedules.**

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

17th day of December, 2001.

AN ACT to Provide for the establishment of a body to be called the Jamaica Intellectual Property Office to be responsible for the administration of laws relating to intellectual property and for connected matters.

[The date notified by the Minister
bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

Preliminary

1. This Act may be cited as the Jamaica Intellectual Property Office Act, 2001, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

2. In this Act, unless the context otherwise requires—

Interpreta-
tion.

“Board” means the Advisory Board established under section 15;

First
Schedule.

“Executive Director” means the Executive Director of the Office appointed under paragraph 2 of the First Schedule;

“functions” includes powers and duties;

“Office” means the Jamaica Intellectual Property Office established under section 3;

“relevant law” means—

- (a) The Copyright Act;
- (b) The Designs Act;
- (c) The Layout Designs (Topographies) Act;
- (d) The Merchandise Marks Act;
- (e) The Patents Act;
- (f) The Trade Marks Act; or
- (g) any other enactment relating to the conferment of or protection and administration of intellectual property rights.

Establishment and Functions of Office

Establishment of
Office.

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

First
Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Office and otherwise in relation thereto.

Functions
of Office.

4. It shall be the duty of the Office to—

- (a) administer all relevant laws;
- (b) advise the Minister on matters relating to the administration of such laws;

- (c) promote the progressive development of intellectual property rights in Jamaica;
- (d) carry out such other functions relating to intellectual property rights as the Minister, after consultation with the Executive Director, may determine;
- (e) exercise any power and perform any function conferred on it by or under this Act or any relevant law, and to do all such other things as in the opinion of the Office are necessary or incidental to the proper performance of its functions.

5. The Minister may give to the Office such directions of a general nature, as to the policy to be followed by the Office in the performance of its functions under this Act and under any relevant law, as the Minister considers necessary in the public interest, and the Office shall give effect to those directions.

Ministerial directions.

Financial Provisions, Annual Report

6. The funds and resources of the Office shall consist of—
- (a) such sums as may be provided by Parliament for the Office in the annual estimates of revenue and expenditure;
 - (b) such sums as may be allocated from time to time to the Office from loan funds;
 - (c) any property, mortgages, debentures, or investments acquired by or vested in the Office, and any moneys earned or arising therefrom;
 - (d) sums borrowed by the Office for the purpose of meeting any of its obligations or discharging any of its functions;
 - (e) revenues derived from charges imposed by the Office for the use of any facility or service provided by it;

Funds and resources of the Office

- (f) revenue from registration or other fees charged consequent on the administration of the relevant laws;
- (g) all other sums or property which may in any manner become payable to or vested in the Office in respect of any matter incidental to its functions.

Borrowing powers.

7.—(1) Subject to the provisions of subsection (2), the Office may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The power of the Office to borrow shall be exercisable only with the approval of the Minister responsible for finance, as to the amount, as to the sources of borrowing and as to the terms on which borrowing may be effected.

(3) An approval given in any respect for the purposes of this section may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

Advances and grants to Office.

8.—(1) The Minister may from time to time make advances and grants to the Office, out of sums placed upon the estimates of revenue and expenditure for the purpose and approved by the House of Representatives.

(2) With the approval of the House of Representatives, the Minister responsible for finance may guarantee, in such manner and on such conditions as he thinks fit, the payment of the principal and interest on any authorized borrowing of the Office made otherwise than by way of advance under subsection (1).

(3) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under the provisions of this section, he shall direct the repayment out of

the Consolidated Fund of the amount in respect of which there has been such default.

9. The Office shall make to the Accountant-General, at such times and in such manner as the Minister responsible for finance may direct, payments of such amounts as may be so directed in or towards repayment of advances made to the Office under section 8, and of any sums issued in fulfilment of any guarantee given thereunder, and payments of interest on what is outstanding for the time being in respect of such advances and of any sums issued at such rate as the Minister aforesaid may direct, and different rates of interest may be directed as respects different advances or sums and as respects interest for different periods.

Repayment of and interest on advances and sums issued to meet guarantee.

10.—(1) It shall be the duty of the Office to conduct its affairs so as to ensure that its revenue (including any grant towards revenue made to it in pursuance of section 8) is not less than sufficient to meet charges properly chargeable to revenue account, taking one year with another.

General financial duties.

(2) Monies standing to the credit of the Office may from time to time be invested in securities approved either generally or specifically by the Minister; and the Office may, from time to time, with the like approval, sell all or any of such securities.

11.—(1) The Office shall keep accounts and other records in relation to its business, and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

Accounts and Audit.

(2) The accounts of the Office shall be audited annually by auditors appointed by the Office and approved by the Minister.

(3) So soon as the accounts of the Office have been audited, the Office shall send the statement of its accounts to the Minister together with a copy of the auditor's report thereon.

(4) The Auditor-General shall be entitled at all times to examine the accounts and other records in relation to the Office.

Annual
report and
estimates.

12.—(1) The Office shall, within three months after the end of each financial year, or within such longer period as the Minister may in special circumstances allow, cause to be made, and transmit to the Minister, a report dealing generally with the activities of the Office during the preceding financial year.

(2) The Minister shall cause copies of the report together with copies of the statement of accounts and the auditor's report thereon to be laid on the Table of the House of Representatives and of the Senate.

(3) The Office shall, before a date specified by the Minister, submit to the Minister for his approval, estimates of revenue and expenditure for the ensuing financial year.

Exemption
from customs
duty, etc.

13. No customs duty, tax under the General Consumption Tax Act or other similar impost shall be payable upon any article imported into Jamaica, taken out of bond in Jamaica, or purchased in Jamaica, by the Office and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Office in the performance of its functions.

Exemption
from income
tax, transfer
tax, stamp
duty, fees.

14.—(1) The income of the Office shall be exempt from income tax.

(2) The Office shall be exempt from that portion of stamp duty, and from recording and registration fees which

would otherwise be payable by it in respect of any instrument executed by it or on its behalf.

(3) There shall be exempt from taxation under the Transfer Tax Act any transfer by the Office of property belonging to it or any right or interest created in, over or otherwise with respect to such property.

Advisory Board

15.—(1) There shall be established for the purposes of this Act, an Advisory Board. Advisory Board.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Advisory Board and otherwise in relation thereto. Second Schedule.

16. The functions of the Advisory Board shall be—

- (a) to consider and to advise the Minister on all matters of general policy relating to intellectual property rights;
- (b) to advise the Office in relation to the implementation of government policy on intellectual property rights.

Functions
of Advisory
Board.

General

17.—(1) Every officer and servant of the Office or of the Advisory Board shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Office that may come to his knowledge in the course of his duties. Secrecy.

(2) An officer or servant of the Office or of the Board shall not without lawful authority publish or communicate to any person otherwise than in the ordinary course of his employment any information acquired by him in the course of his employment.

(3) Any person who contravenes this section commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding one year.

Regulations.

18. The Office with the approval of the Minister may make regulations for the better carrying out of the purposes of this Act.

**Amendment
to Trade
Marks Act,
1999.**

19. The provisions of the Trade Marks Act, 1999 specified in the first column of the Third Schedule are amended in the manner specified in the second column thereof.

FIRST SCHEDULE (Sections 2 and 3)

Constitution of Jamaica Intellectual Property Office

Constitution of Office. 1. The Office shall consist of the Executive Director and such number of Deputy Directors as may be appointed pursuant to this Schedule.

Appointment of Executive Director. 2.—(1) There shall be an Executive Director of the Executive Office, who, subject to the provisions of this Act, shall be appointed by the Minister from among persons appearing to the Minister to be qualified as having experience of and shown capacity in matters relating to intellectual property rights.

(2) The Executive Director shall be responsible for the day-to-day management and operation of the Office and for the execution of the policy of the Office.

(3) The appointment of the Executive Director shall be for a period of not less than three years nor more than seven years and the person so appointed shall be eligible for re-appointment.

(4) The Minister may at any time revoke the appointment of the Executive Director if he is satisfied that the Executive Director is guilty of neglect of duty, inefficiency, incompetence, misconduct or malfeasance.

Appointment of Deputy Directors. 3.—(1) The Minister may, subject to the provisions of this Schedule, appoint so many Deputy Directors as he thinks necessary for the proper carrying out of the functions of the Office.

(2) One of the Deputy Directors shall exercise the functions assigned to the Registrar under the relevant laws and shall be designated the Registrar of Industrial Property.

(3) The appointment of a Deputy Director shall be for a period of not less than three years nor more than seven years and the person so appointed shall be eligible for re-appointment.

(4) The Minister may at any time revoke the appointment of a Deputy Director if he is satisfied, after consultation with the Executive Director, that the Deputy Director is guilty of neglect of duty, inefficiency, incompetence, misconduct or malfeasance.

Temporary appointment. 4. The Minister may appoint any person qualified for appointment as Executive Director or Deputy Director, as the case may require, to act temporarily in

the place of the Executive Director or Deputy Director in the case of the absence or inability to act of the incumbent.

Resignations. 5.—(1) The Executive Director may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

(2) Any Deputy Director may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Executive Director, and the resignation shall have effect from the date of the receipt of the instrument by the Minister.

Publication. 6. The name of any person appointed as Executive Director or Deputy Director shall be published in the *Gazette*.

Procedure and meetings. 7.—(1) The Office shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Office shall determine.

(2) The Executive Director may at any time call a special meeting of the Office, and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any Deputy Director.

(3) The Executive Director, or in the case of the absence or inability to act of the Executive Director, a Deputy Director shall preside at the meetings of the Office and when so presiding the Executive Director or the Deputy Director, as the case may be, shall have an original and a casting vote.

(4) The quorum of meetings of the Office shall be two or such higher number as the Office shall determine.

(5) Subject to the provisions of this Schedule, the Office may regulate its own proceedings.

(6) The validity of any proceedings of the Office shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Remuneration of members. 8. There shall be paid to the Executive Director and any Deputy Director such remuneration (whether by way of salaries or travelling or other allowances), as the

Minister may determine with the prior approval of the Cabinet.

Declaration of interest 9.—(1) A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Office, or in any other matter whatsoever which falls to be considered by the Office, shall disclose the nature of his interest at a meeting of the Office and the disclosure shall be recorded in the minutes of the meeting and the member shall not—

- (a) in the case of a contract, take part in any deliberation or decision of the Office with respect to the contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Office with respect to the matter, if the Office decides that the interest in question might affect prejudicially the member's consideration of the matter.

(2) A notice given by a member at a meeting of the Office to the effect that he is a member of a particular body or firm and is to be regarded as interested in any contract which is made after the date of the notice with the body or firm shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

Seal. 10.—(1) The seal of the Office shall be authenticated by the signature of the Executive Director, Deputy Director or other officer duly authorized by the Executive Director in that behalf and shall be judicially noticed.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Office shall be signified under the hand of the Executive Director, any Deputy Director or any other officer of the Office authorized to act in that behalf by the Executive Director.

Appointment of staff. 11.—(1) The Office shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit such other officers, servants and agents as it thinks necessary for the proper carrying out of its functions.

(2) Except with the prior approval of the Minister—

- (a) no salary in excess of the prescribed rate shall be assigned to any post;

- (b) no appointment shall be made to any post to which a salary in excess of the prescribed rate is assigned.

(3) In sub-paragraph (2) the prescribed rate means one million dollars or such higher rate as may be approved by the Minister by order.

(4) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Office and any officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government.

(5) The Office may, with the approval of the Minister—

- (a) enter into arrangements respecting schemes whether by way of insurance policies or not;
or
(b) make regulations for pensions, gratuities and other retiring or disability or death benefits—

relating to members and employees of the Office and such arrangements or regulations may include provisions for the grant of benefits to the dependents and legal personal representatives of such members or employees.

Protection of members. 12.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Office in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

(2) Where any member of the Office is exempt from liability by reason only of the provisions of this paragraph, the Office shall be liable to the extent that it would be if the said member were a servant or agent of the Office.

SECOND SCHEDULE

(Section 15)

Constitution of Advisory Board

Constitution of Board. 1.—(1) The Board shall consist of such number of persons (“the appointed members”) being not less than ten nor more than fifteen as the Minister may from time to time appoint and—

- (a) two shall be persons appearing to the Minister to be representative of the music industry in Jamaica;
- (b) one shall be a person appearing to the Minister to be representative of authors in Jamaica;
- (c) one shall be a person appearing to the Minister to be representative of the computer software industry in Jamaica;
- (d) one shall be a person appearing to the Minister to be representative of inventors and innovators in Jamaica.
- (e) one shall be a person appearing to the Minister to be representative of publishers in Jamaica.

(2) The Executive Director shall be a member *ex officio* of the Board and may designate a nominee in the case of the absence or inability of the Executive Director to act.

Temporary appointment. 2. The Minister may appoint any person to act temporarily in the place of any appointed member of the Board in the case of the absence or inability to act of such member.

Chairman. 3.—(1) The Minister shall appoint one of the members of the Board to be the chairman thereof.

(2) In the case of the absence or inability to act at any meeting of the chairman, the members of the Board present at such meeting shall elect one of their number to act as chairman at that meeting.

Tenure of office. 4.—(1) The appointment of every appointed member of the Board shall be evidenced by an instrument in writing, and such instrument shall state the period of office of the member which shall not exceed three years.

(2) Every appointed member of the Board shall be eligible for reappointment.

Resignation. 5. Any appointed member of the Board may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Board.

Revocation. 6. The Minister may terminate the appointment of any member other than the Executive Director if such member—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) is convicted and sentenced to a term of imprisonment;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under this Act; or
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Board.

Publication of membership. 7. The names of all appointed members of the Board as first constituted and every change in the membership thereof shall be published in the *Gazette*.

Procedure and meetings. 8.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the person elected to act as chairman in accordance with the provisions of sub-paragraph (2) of paragraph 3 shall preside at the meetings of the Board, and when so presiding the chairman or the person elected to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be five members of the Board including the chairman or the person elected to act as chairman as aforesaid.

(5) Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

(6) The validity of any proceedings of the Board shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

Remuneration of appointed members. 9. There shall be paid to the appointed members of the Board such remuneration, if any, whether by way of salaries, honoraria, travelling or other allowances as the Minister may determine.

THIRD SCHEDULE

(Section 19)

The Trade Marks Act,
1999

Section 2

Delete the definition of “Registrar” and substitute therefor the following—

“ “Registrar” means the Registrar of Industrial Property, designated as such pursuant to the Jamaica Intellectual Property Office Act;”.

Section 24

Delete from subsection (5) the words “which shall be in the prescribed form”.

Section 43

In subsection (3)—

- (a) delete the letter “(b)” and substitute therefor the letter “(a)”;
- (b) delete the word “registration” and substitute therefor the word “revocation”;
- (c) delete the words “five year” and substitute therefor the words “three year”.

Section 52

Delete subsections (5) and (6) and substitute therefor the following—

“ (5) Nothing in this section affects the rights of a person whose *bona fide* use of the trade mark in question began before the specified date.

(6) In subsection (5), the specified date means the date when the relevant provisions of the Paris Convention enter into force in relation to Jamaica.”.