



CARIBBEAN COURT OF JUSTICE

**134 HENRY STREET
PORT OF SPAIN
REPUBLIC OF TRINIDAD AND TOBAGO**
Telephone: (868) 623-2CCJ Fax: (868) 624-4710
Website: www.ccj.org

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CCJ UPHOLDS CONVICTIONS FOR TRADEMARK OFFENCES

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (“CCJ”) dismissed the appeal of Mr Grenville Ricardo Delpeache (“Delpeache”) in the matter of *Delpeache v Commissioner of Police* [2021] CCJ 10 (AJ). That appeal had sought to overturn Delpeache’s conviction for certain Trademark offences. The CCJ heard the matter on 25 March 2021 and has now affirmed the orders of the Barbados Court of Appeal.

Delpeache was the sole director of Ouch Boutique Ltd (“the company”) in whose store counterfeit Puma items were sold. Delpeache operated the store and was on the premises when the counterfeit items were seized by the police. He was subsequently charged with three (3) offences under the Trade Marks Act (“the Act”). At the trial in the Magistrates Court, Delpeache was found guilty and appealed to the Court of Appeal which dismissed his appeal and affirmed his conviction and sentence.

The issues before the CCJ were (1) whether the charges brought against Delpeache personally, should have been brought against the company, which in law, is its own person, (2) whether Delpeache should have been charged for being complicit in the crimes that were allegedly committed by the company and (3) whether the Commissioner of Police should have obtained the direction of the Director of Public Prosecutions (“the DPP”) before bringing the prosecution.

The CCJ, by a majority of three to two, dismissed the appeal. In a judgment authored by Justice Barrow, the Court decided that Delpeache was properly charged. Justice Barrow was of the view that where an individual, acting for and through a company, personally performs criminal acts in conducting the company's business, that individual may be prosecuted for those acts. The individual therefore gains no protection from the law which recognized that the company is its own person. As Delpeache personally committed the crimes, there was no need to charge him for being complicit in crimes that were allegedly committed by the company. The DPP's direction was therefore not needed before charging him. In a concurring judgment, Justices Wit and Rajnauth-Lee agreed that Delpeache personally committed the offences and could be prosecuted. Where a person is prosecuted for offences, he personally committed, the direction of the DPP is not needed. In cases of prosecution for trademark offences, the statutory provision requiring such direction does not even apply.

Justice Burgess, in whose judgment Justice Anderson concurred, did not agree with the majority and was of the view that the company had, in law, committed the offences. The company was therefore liable for the commission of the offences as a principal offender and Delpeache, the director, was only liable to be prosecuted and punished as an accessory or secondary party. Consequently, Delpeache should not have been prosecuted as a principal offender nor held guilty of the offences charged. Further, the DPP's direction was required when proceeding against a director and should have been obtained in this case. As there was no evidence that the DPP gave his direction to charge Delpeache, he was not properly charged, prosecuted, and convicted for the offences. For those reasons, Justice Burgess would have allowed the appeal.

The Court was presided over by the Hon Justices Wit, Anderson, Rajnauth-Lee, Barrow and Burgess. The appellant was represented by Mr Andrew Pilgrim QC and Ms Rashida R Edwards and the respondent by Ms Olivia M Davis SC and Ms Krystal C Delaney.

The full judgment of the Court is available on the CCJ's website: www.ccj.org

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

For more information please contact:
The Public Education & Communications Unit
Tel: (868) 623-2225 exts. 2296, 2246
Email: pecu@ccj.org