

CHAPTER 3

AN ECONOMIC ANALYSIS OF THE EVOLUTION IN INTELLECTUAL PROPERTY STRATEGIES IN THE SOUTH AFRICAN AGRICULTURAL SECTOR: THE ROOIBOS INDUSTRY

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Abstract

The food consumption trend toward more diverse products with a strong cultural value is creating opportunities for producers to move away from low-value agricultural production into niche markets. The ability of local communities and enterprises to benefit from the commercial exploitation of their heritage crucially depends on their capacity to collectively define, market and protect these specific resources. This is the context of the paper as it sets out to explore how IP strategies are evolving in the South African *Rooibos* industry in response to changing consumer demand and threats of misappropriation. The subject is approached through an analysis of the private and collective quality signaling and management through the use of IP strategies. It approaches intellectual property from a marketing and labeling perspective and focuses, as such, on the use of trademarks and geographical indications within individual and collective reputation and quality signaling strategies in the *Rooibos* industry. From an economic perspective the focus falls on the move from individual or restricted group strategies of utilization of existing IP options to the incorporation of a collective approach to IP protection and how quality objectives are pursued through this. The paper proceeds by providing a legal background to geographical indications and trademarks in South Africa. This is followed by a discussion on the development of the South African *Rooibos* industry and its main features. The current IP strategies developed by the different role players in the *Rooibos* industry with respect to marketing and quality labeling associated with the name and product "*Rooibos*" are then documented. Based on this, the key dimensions and potential impacts of developing a collective IP strategy at industry level are discussed.

1. INTRODUCTION

Trends in the food sector in recent years indicate that consumers are increasingly placing value on products they can associate with a certain place and/or specific means of production (Ilbery and Kneafsey, 1998). This growing demand for authentic, traditional, wholesome and traceable food is the result of various factors such as higher awareness of food safety, the socio-cultural status of consuming certain foods and renewed interest in and nostalgia for culinary heritage (Ilbery and Kneafsey, 2000).

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This food consumption trend toward more diverse products with a strong cultural value is creating opportunities for producers to move away from low-value agricultural production into niche markets. Geographical indications for agricultural and agrifood products institutionalize the tacit reputation which consumers confer on some geographic or cultural attributes. This could potentially lead to an increase in prices paid to producers, higher profitability and spill-over effects on the local economy (local employment generation; rural economic and cultural vitality).

The commercial value of geographical names is confirmed by the increasing number of trademarks being registered which incorporate regional names, in an attempt by firms to identify and link their products to names and regions of high reputation. With this comes the threat of misappropriation, as producers not even remotely linked to the geography or the values and images of the region, exploit regional names for profit.

The ability of local communities and enterprises to benefit from the commercial exploitation of their heritage depends crucially on their capacity to collectively define, market and protect these specific resources. The South African agricultural landscape has however, been characterized by a clear lack of collective action both at local and national level for improving production, commercialization and competitiveness. Commercial farmers as well as processors are accustomed to acting on an individual basis, and emerging and resource-poor farmers are generally little involved in local farmers' organizations.

This is the context of the paper as it sets out to explore how IP strategies are evolving in the South African *Rooibos* industry in response to changing consumer demands and threats of misappropriation. The subject is approached through an analysis of the private and collective quality signaling and management through the use of IP strategies. It approaches intellectual property from a marketing and labeling perspective and will, as such, focus on the use of trademarks and geographical indications within individual and collective reputation and quality signaling strategies. Given the interesting features of the *Rooibos* industry in this regard, the analysis is based on the evolution and use of a variety and combination of IP strategies within this industry. From an economic perspective the focus falls on the move from individual or restricted group strategies of utilization of existing IP options to the incorporation of a collective approach to IP protection and how quality objectives are pursued through this. The paper proceeds by providing a legal background to geographical indications and trademarks in South Africa. This is followed by a discussion on the development of the South African *Rooibos* industry and its main features: we document the current IP strategies developed by the different role players in the *Rooibos* industry with respect to marketing and quality labeling associated with the name and product *Rooibos*. Based on this, we discuss the key dimensions and potential impacts of developing a collective IP strategy at industry level.

2. BACKGROUND

There are varying definitions for geographical indications in the different legal instruments that exist in different regions of the world (e.g. EU Regulation 510 of 2006, Indian Geographical Indication of Goods Act of 1999). Section 3 of the TRIPS Agreement defines geographical indications as:

“Indications which identify a good as originating in the territory of a Member [of the WTO], or region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”

The TRIPS Agreement sets out the minimum standards of protection that WTO Members are bound to comply with in their respective national legislation. Article 22 also states that Members shall provide “the legal means for interested parties to prevent (a) [...] the use of any means [...] which misleads the public as to the geographical origin of the good [...] or (b) any use which constitutes an act of unfair competition [...]”. A debate ensued the implementation of the TRIPS provisions on geographical indications, with the US and the EU at its helm and in opposing positions. Put simply, the US is arguing that geographical indications are sufficiently protected under trademark laws whereas the EU insists that they need a *sui generis* registration system.

In contrast with Southern European countries, South Africa does not have a cultural history of GI protection. However, as a founding member of the WTO, South Africa must comply with the minimum requirements for the protection and enforcement of IPRs, as provided for in TRIPS. South Africa complies with the TRIPS provisions through a combination of consumer protection and unfair competition laws, its trademark registration system and an administrative scheme for the protection of its geographical indication for wine (Laing, 2005). South Africa thus essentially follows the US example of protecting geographical indications under trademark laws and the only means to obtain registration in South Africa remains under the Trade Marks Act (No.194 of 1993).

The industry’s legal battle in the US, however, highlighted the specific role of GI protection and served to a large extent as a catalyst for the shift occurring in the South African *Rooibos* industry toward the incorporation of collective strategies. The origins of the dispute date back to 1994 when a South African company, Forever Young, registered the mark “*Rooibos*” in the US in connection with, among other things, herbal teas. This in effect gave Forever Young the exclusive right to market products under the name “*Rooibos*” in the US. As all *Rooibos* products are marketed as *Rooibos* (i.e. under its generic name) this gave Forever Young a virtual monopoly over the marketing of *Rooibos* products in the United States. The rights to the mark were subsequently assigned to a US citizen, Virginia Burke-Watkins, principal owner of Burke International. No longer able to market its products under the name “*Rooibos*” in the US, a South African company, Rooibos Ltd., instituted legal action in the US in order to cancel this registration on the basis that it was generic and therefore non-distinctive. After years of expensive litigation the dispute finally came to a head in 2005 when Burke-Watkins, faced with mounting legal costs and several additional lawsuits pending, agreed to voluntarily surrender her rights to the trademark.

The dispute highlights two legal options with respect to the assertion of exclusive rights in the name “*Rooibos*”. The first option would be protection under trademark law.¹ In this respect, it should be noted that registrability of a trademark depends on it being distinctive and not descriptive. This prevents the registration of terms which are or have become generic, as was found to be the case for *Rooibos* in the US dispute. A distinction should however be made between registration of an individual trademark on the one hand and registration of a collective or certification mark on the other. In terms of South African trademark law¹ it is possible to register a geographical indication as a collective mark which serves to distinguish the members of an association from persons who are not members. It may further, in certain circumstances, be possible to register a geographical indication as a certification mark, which distinguishes goods with respect to, among others, geographical origin. Therefore, although there is a prohibition on registration of a geographical indication as an individual trademark, no such prohibition exists with respect to registration as a collective or certification mark. It is important to note, however, that by providing for the protection and registration of geographical indications under the Trade Marks Act, they are treated as a species of trademarks and not a geographical indication *per se*.

The second legal option to asserting exclusive rights in the name “*Rooibos*” entails protection as a geographical indication under a *sui generis* system. In order to better appreciate the choice/difference between the two strategies, it is necessary to grasp some fundamental differences between the two forms of intellectual property. Both trademarks and geographical indications serve as distinctive signs whose purpose is to distinguish products and who are capable of acknowledging the link between a product and its origin. At a fundamental level, however, there is a difference in terms of what the distinctive sign is signifying (Rangnekar, 2003a). Trademarks are distinctive signs identifying the relationship between the proprietor of the mark and his goods or services, and thus not limited by any territorial link. In contrast, “geography is at the heart of geographical indications” (Moran, 1993) – they being distinctive signs identifying goods as originating from a particular geographical area. Geographical indications thus show a link between the goods and their place of origin. As the definition indicates, this form of intellectual property claims that the unique qualities of certain products derive from a combination of features of the natural environment and traditional practices of the people living there. Fundamental to this claim is that these characteristics cannot be produced elsewhere. This forms the basis of one of the most fundamental differences between trademarks and GI, in that the latter cannot be delocalized and therefore never sold as in the case of trademarks. This is in line with the good-place link on which GI protection is based and which prohibits the transfer of the indication to producers outside the demarcated area. In contrast, the right to assign or license is available to trademark proprietors. This is inconsistent with the GI philosophy which is based on collective, regional ownership.

As mentioned, South African law does not provide for protection of geographical indications *per se*. However, in this paper it will be shown how the *Rooibos* industry has, despite the absence of an appropriate domestic legal framework, moved toward embracing

collective strategies based on the GI philosophy. Although this move toward GI protection has its foundations in the threat of misappropriation (as reflected in the US dispute), the emphasis is increasingly shifting to reservation of the term “*Rooibos*” for its use as a valuable marketing tool.

3. THE *ROOIBOS* TRADE AND INDUSTRY DEVELOPMENT

Rooibos is the fermented and dried leaves of the plant *Asphalathus linearis* that is mainly used as a pure herbal tea or in many different types of blends. A wide variety of flavored *Rooibos* products is also available. It is of reddish color and is considered to be a good substitute for black teas and coffee, due to its health benefits and to its versatility and variety. *Rooibos* is also used as an ingredient, especially in the cosmetic industry. It is packaged in, and available as, loose leaves, various tea bags and powders, ready-to-drink products, self-brewed iced teas, cosmetics and shampoos, in tins, glass, cartons, cardboard boxes, cans and bottles. New innovative product applications include green (unfermented) and organically produced *Rooibos*.

According to projections by the UN Food and Agriculture Organization (FAO) in 2000, world tea production will reach an estimated 3.4 million tons in 2010, with black tea accounting for 2.4 million tons, green teas for 900,000 tons, and herbal/fruit teas for about 100,000 tons. Consumer demand for herbal, green and other health teas is likely to outstrip production and could see an upward trend in price levels. In Britain, the world's biggest tea drinker apart from Turkey, black tea sales fell from 127 million kilograms of tea bags in 1997 to 114 million kilograms in 2002, whilst sales of fruit and herbal teas rose by almost 50 per cent. The hot drinks sector in the Netherlands declined by 0.5 per cent in the 2001/2002 sales period, yet the market value of tea increased by nearly 4 per cent through the sales of herbal and fruit infusions. Germany, the world's largest importer of herbal tea products has a mature tea market with intense competition. Despite this, the tea sector grew by 10 per cent in terms of volume in 2002, purely through fruit and herbal teas. As a herbal tea with strong health properties, *Rooibos* is increasingly claiming its share of this growing market, with international demand surging since 2001. In 2005, total exports were 5,500 tons of which 4,000 tons were exported to Germany (70 per cent), 550 tons to the Netherlands (10 per cent) and 400 tons to Japan (6 per cent). Other significant export markets include Australia, the UK and the US.

The turnover of the *Rooibos* tea industry was estimated at 180 million rand in 2004 (corresponding to 22.5 million Euros). The export market represents more or less 60 per cent of the production against 40 per cent for the domestic market (TISA 2004). Contrary to the domestic market which has remained quite stable, the export market has seen huge growth over the past decade. The export growth and exploitation of the *Rooibos* market potential can, to a large extent, be attributed to the marketing initiatives of the recent entrants as well as to new consumer trends in the main export markets. Popularity of *Rooibos* among consumers at international level appears to be strongly linked to its health attributes. The rise in production and consumption can also be related to

the dynamics of innovation in the industry² and the increasing product range (not only the blended herbal and green teas but also cosmetics, soft drinks, “cappuccino” *Rooibos*, “espresso” *Rooibos*...). And according to Gress (2004) among others, *Rooibos* still has a huge market potential before reaching saturation in its main export markets.

Most *Rooibos* is exported in bulk, in loose leaf format (i.e. approximately 95 per cent). *Rooibos* export marketing and supply chains are dominated by a few leading European tea importers based in Germany who are the largest tea brokers in the world. These firms buy *Rooibos* in bulk for blending and resale to other countries. Given the almost monopsonistic situation faced by the South African role players on this market, competition is tough and the market is very price sensitive. A huge volume of *Rooibos* is sold in bulk on annually negotiated contracts within existing relationships. In addition, bilateral agreements take place on a case-by-case basis. Importantly, there is no significant market determining the price and there is generally a lack of transparency in the transactions. New relationships are being established as new markets are opening in other countries (e.g. Argentina). As these markets are still in their infancy, they are not specifically addressed in this paper.

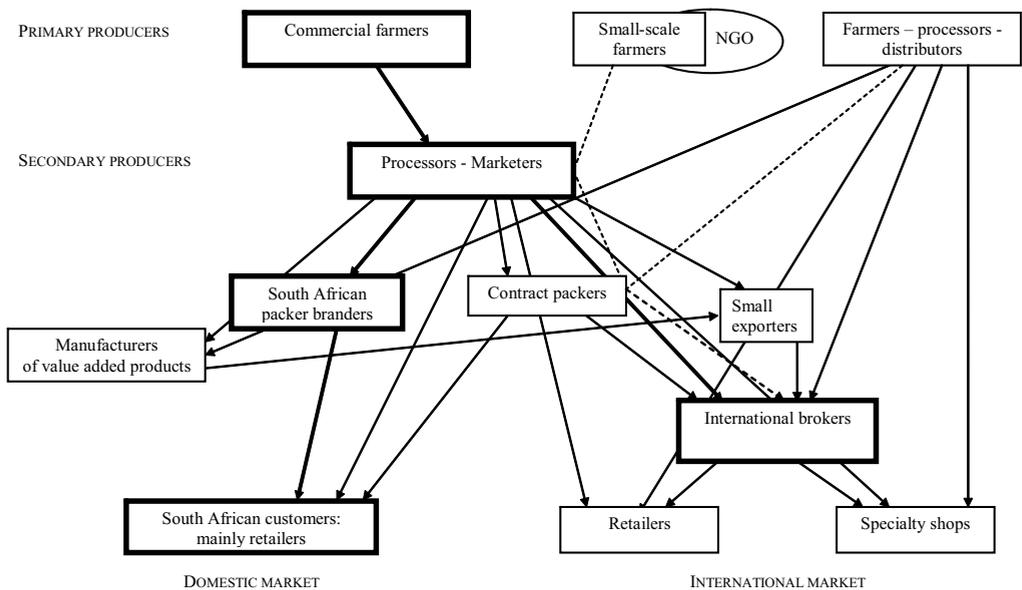
On the South African side, one large player has historically been dominating the industry and the market, and is still retaining the biggest market share domestically and at the export level as further depicted below. *Rooibos* has been used and harvested from the wild at least since the 19th century in the Cedarberg Region of South Africa and its first marketing took place in 1904 in Europe under the Eleven O’Clock brand which is still in use. However, the development of the *Rooibos* industry proper started with its cultivation in the 1930s. In 1948, in reaction to a crisis in the marketing of *Rooibos*, the Clanwilliam Tea Cooperative was established forming the basis of the *Rooibos* Control Board, which was appointed by the Minister of Agriculture in 1954. Until the 1990s, this state organization was the one and only actor engaged in processing and marketing *Rooibos*. Then, the voluntary dissolution of the *Rooibos* Control Board in 1993 transformed the industry from a regulated monopoly into a deregulated industry. As a result, on the one hand, a public company still mostly owned by producers was established based on the physical and intellectual assets of the control board. On the other hand, as indicated by Snyman (2007), many farmers broke away to form their own firms with King’s Products (Pty) Ltd. being the first to establish a processing plant in 1996.

Following the emergence of a number of new players in the last 10 years, the *Rooibos* supply chain has become quite complex (see Figure 1 below) with some actors specializing in one particular function and others integrating different segments.

Rooibos tea production involves cultivation and harvesting of the plant; first-level processing that transforms the wet unfermented tea into red-brown tea at the tea court and is predominantly done at the farm level; second-level processing that includes pasteurization, sieving, dust extraction and is done at a processing plant by the processors; and then packing that can be done by different actors as explained below.

There are between 350 and 550 *Rooibos* farmers (Snyman, 2007; Hansen, 2006). These consist of a number of small-scale farmers, with many of them being organized into two tea cooperatives that account for about 100 members actively involved in *Rooibos* farming. Each of these cooperatives owns 33.3 per cent of shares in a *Rooibos* packing facility in Cape Town (Snyman, 2007). These cooperatives have been specializing in marketing organic and fair-trade *Rooibos* for the export market. The combined output of the small-scale farmers, including the two cooperatives, is estimated to be about 2.5 per cent (225-250 tons), of which about 50 tons is produced by one small-scale *Rooibos* producer (TISA, 2004).

Figure 1. The Rooibos Supply Chain



Adapted from Biénabe and Troskie (2008)

On the other hand, there are a few large farmers who cultivate up to 5000 hectares. Among these large-scale farmers, some are marketing their *Rooibos* directly under their own brand names. These include The Big Five Rooibos Company (Pty) Ltd. which is the largest independent producer³ with its brand African Dawn, but also Biedouw Valley, *Oudam* Farming and *Ouhuis*. Some farmers are currently developing alternative marketing strategies, i.e. Skimmelberg, whose strategy is founded on environmentally friendly practices by linking *Rooibos* production to conservation areas. An estimated 40 per cent of all farmers have experimented with organic production or have implemented organic production principles on some of their plantations. Nevertheless, one tends to find both organic and non-organic production on the same farms except for the members of the two cooperatives who produce exclusively organic *Rooibos*.

About two thirds (i.e. approximately 250) of *Rooibos* farmers still deliver their crops to one processor, Rooibos Ltd., being both shareholders and suppliers. The second biggest producer grouping is Cape Natural Tea Products (Pty) Ltd. with approximately 40 farmers as shareholders (Snyman, 2007). It was established as a joint partnership between *Rooibos* farmers and marketers. A further role player (i.e. the second biggest processor) is the Khoisan Tea Company which consists of three separately registered companies: Khoisan Farming, Khoisan Tea and Khoisan Tea Import Export. Together they form a full service business, capable of farming *Rooibos*, fulfilling primary and secondary production, and distributing bulk *Rooibos* and *Rooibos* products globally. Although the company farms some *Rooibos* itself, it buys its largest share from approximately 100 contracted farmers. The rest of the tea is sold to other processors and buyers, mostly through annual contracts.

The South African *Rooibos* tea supply chain is currently dominated by eight large processors equipped with the facilities to undertake secondary processing. These eight main South African players (i.e. Rooibos Ltd., Khoisan Tea, Coetzee & Coetzee, Cape Natural Tea Products (CNTP), King's Products, Red T Company, Big Five Rooibos Company and Maskam Redbush) control an estimated 90 per cent of total annual supply and sales (Snyman, 2007) and are involved in all levels of the supply chain in South Africa to some extent. They collect and transform *Rooibos*, and either sell it to intermediaries who market it or market it directly. Most second-level processors have also positioned themselves as marketers as further developed below. Four of the processors have their own in-house packing facilities and also offer contract packing services, namely Rooibos Ltd, Red T Company, Khoisan Tea, and King's Products.

There also exist packers, which are companies that specialize in end-consumer packaging. These consist of packer/branders with the larger being National Brands Ltd., a wholly-owned subsidiary of Anglovaal Industries, and of contract packers that service local brand owners and exporters without packing facilities, as well as private label customers (e.g. supermarket brands). In addition, one new Black Economic Empowerment (BEE) packing plant, Fair Packers (Pty) Ltd., was recently established in Cape Town for packaging tea from the small-scale farmers' cooperatives for the fair-trade market as previously mentioned.

After packaging, distribution, both on a local and international scale, is done by roughly 25 enterprises within South Africa. Most of these enterprises are also involved in business with other natural products, ranging from honeybush, other herbal teas and medicinal herbs to wine and cosmetics.

In addition to the herbal tea industry, several other types of actors and companies are using *Rooibos* as an ingredient and are marketing *Rooibos*-based products, thereby using the name "*Rooibos*" in one sense or another. Snyman (2007) indicates that there are currently three main manufacturers specializing in value-added products like extracts, instant powders, flavors, etc. (i.e. Afriplex (Pty) Ltd., Benedict Technology Holdings (Pty) Ltd., Cape BioCeuticals (Pty) Ltd.). In cosmetics, the market leader is Annique Skincare Prod-

ucts (Pty) Ltd. which is affiliated with Forever Young (Pty) Ltd., the company which sold the “*Rooibos*” name to Burke International and which was central in the US dispute. Generally, *Rooibos* cosmetics, toiletries, iced teas, etc. are contract manufactured and only form a small portion of suppliers’ operations.

4. INSIGHTS INTO MARKETING/QUALITY SIGNALING STRATEGIES

Developments on the export market have recently been related to product differentiation dynamics. Various private marketing and branding strategies are emerging inside South Africa, especially oriented toward the export market. In addition, the recent emergence of smallholder farmers’ cooperatives with fair-trade and organic labeling strategies have led to increased certification in the industry. However, as described below these strategies are still limited in their scope and application, only representing a very small percentage of production.

Rooibos Ltd. still controls overall about 75 per cent of the market and more than 90 per cent of the domestic market. On the domestic market, Rooibos Ltd. operates mainly by providing bulk tea. It supplies Unilever Foods (Pty) Ltd. and National Brands Ltd., who are major players in the South African consumer goods industry. These two companies own the leading *Rooibos* brands (mainly Freshpak, Eleven O’Clock, Lipton, Joko, Glen)⁴ with a combined market share of between 75 per cent and 85 per cent and they supply *Rooibos* to most of the supermarket chains for their house brands. Rooibos Ltd. further supplies Joekels Tea Packers, which has become the third biggest tea packaging company out of the 23 companies operating in South Africa since buying Rooibos Laager, a well positioned *Rooibos* brand in the country, from Unilever Foods in December 2003. Joekels also supplies and packs the *Rooibos* house brand of Shoprite-Checkers, the second biggest supermarket chain in South Africa. Rooibos Ltd. is also working with CTC/Pioneer Foods (Pty) Ltd. and Vital Health Foods (Pty) Ltd. (Snyman, 2007). The only other player with significant influence in the local *Rooibos* market is Cape Natural Tea Products with a 5 per cent market share, selling in bulk locally and supplying mainly the SPAR supermarket chain.

Rooibos has been sold for many years inside South Africa and branding is an important dimension of consumer demand with two brand owners dominating the market and Rooibos Ltd. enjoying almost a monopolistic situation as shown above. However, Snyman (2007) also points out that the “market is showing signs of ‘commoditizing’ with low-end products perceived as becoming a threat to established brands that carry substantial marketing investments over many years”. The domestic market has seen an annual growth of less than 5 per cent over the past decade and it appears to be becoming quite saturated (Snyman, 2007). Domestically *Rooibos* is often considered as an inexpensive alternative to other (mostly imported) hot beverages. *Rooibos* competes in a very price-sensitive market.

On the export side, three South African players account for more than 80 per cent of annual sales volumes. After Rooibos Ltd., the second largest exporter is Khoisan Tea with approximately 20 per cent, followed by Coetzee & Coetzee with about 10 per cent of market share (Snyman, 2007). Khoisan Tea mostly sells *Rooibos* in bulk. It started packaging some of its *Rooibos* only very recently (about 3 per cent) but committed not to market under its brand, in particular in the German market which represents its major outlet. Coetzee & Coetzee Distributors Company is supplied by contracted farmers from across the Western Cape. It exclusively distributes and markets its products, which include honeybush, buchu and devil's claw, as well as *Rooibos*. Its customers include tea traders and importers, who mainly trade the products without adding value. It also has its own agent/broker in Germany, who acts as a contact with the importers but does not concentrate on branding its product.

Another significant role player is Cape Natural Tea Products (CNTP), which provides custom-blending and product development facilities to suit specific customer requirements.⁵ CNTP sources, processes and exports a range of indigenous African herbal teas and botanicals in bulk and branded, including *Rooibos*, honeybush tea, rose-hip, devil's claw, lemon grass, etc. CNTP also offers flavored *Rooibos*. Most of its *Rooibos* is still exported or sold locally in bulk, but its pre-packaged tea is gaining importance. Red T Company, as well as King's Products, offers processing services to independent producers or agents. Red T Company also contracts its packaging capacity to a number of independent producers that sell *Rooibos* under their brand such as Biedouw Valley. King's Products specificity is its focus on high quality organic *Rooibos* to meet the increasing demand for it in Europe. The company sells *Rooibos* produced on its own estate as well as procured from independent farmers. It was the first ever producer of organically grown *Rooibos*.⁶ However, despite its quality focus, it sells *Rooibos* in bulk to overseas customers. Maskam Redbush has also positioned itself in the high-quality tea segment being located in a well-known high-quality production area. Forty per cent of its *Rooibos* is ECOCERT® organic certified. It is also using the estate concept as a promotion device and has introduced a vintage for its product. Its branding strategy is currently under development.

Also of particular interest are the independent farmers who are marketing *Rooibos* under their own brands. Among these, the largest is the Big Five Rooibos Company which specializes in farming, processing and distributing only *Rooibos* from its own farm and is promoting its product as being "estate" *Rooibos*, using the concept of estate wines as a sign of quality and focusing on its capacity to guarantee excellent quality control, sustainability and traceability of its product. Ninety-nine per cent of the company's business lies in exports, of which 90 per cent is sold in bulk, but its focus also lies on adding value to the products and to marketing more of its own branded products. Except for retail packaging all other tasks are handled by the company. Most of the independent producers' branding include some reference to South Africa either through use of the Afrikaans word (e.g. *Oudam Farming*, *Ouhuis*) or South African place name located in the *Rooibos* production area (e.g. Biedouw Valley).

It should be noted that it is mainly the smallest South African players that are developing differentiating strategies based on branding and labeling. Interestingly, these brands and labels are not based on the name *Rooibos* but arise from other reputational indicators.

Below are some insights on the German and UK markets which are among the most significant. As already mentioned, the leading European tea importers and largest tea brokers in the world are based in Germany. The German wholesale market for tea is dominated by 10 to 15 trading companies, the most prominent being Martin Bauer GmbH, Haelssen & Lyon, Gebr. Wollenhaupt GmbH and Kräuter Mix GmbH. These companies are tea traders or importers, buying tea directly from the producer and adding value to the product through blending, flavoring and packing it. The German tea consumer market is relatively fragmented with many different companies offering a multitude of different teas (Arnold *et al.*, 2007). The market leaders for branded teas in Germany are the specialized tea companies Teekanne GmbH and the Ostfriesische Teegesellschaft GmbH (OTG) with their brands Messmer and Milford. This segment also includes companies that sell products to wholesalers, central buying cooperatives and tea specialty shop chains under their own brands or unbranded. They either purchase their tea from the above-mentioned trading companies or include this function and deal directly with the producers. Some of the companies create their own blends and flavors; others buy the tea ready prepared to their instructions. Packaging can be in-house or outsourced to specialized packers. Twenty-five per cent of the market consists of trademarks or private labels produced for supermarket or discounter chains. Interestingly, there are many names used for *Rooibos* in Germany with the two most common being “*Rooibos*” and “*rotbush*” (Arnold *et al.*, 2007). Others are “*rooitea*”, “*rooibusch*”, “*redbos*”, “*massaitee*”, “*buschmanntee*”, “*redbuchsie*”, “*Koopmans-Tea*” reflecting the relatively long German history in trading and consuming *Rooibos*.

The market for tea in the UK is dominated by a small number of very well-established brands relying on strong advertising in mainstream media (Arnold *et al.*, 2007). Among these, Tetley is the UK market leader in black tea. However, despite recent investment and growth in the herbal and fruit tea markets, Tetley still lags behind Twinings and Clipper (Arnold *et al.*, 2007). It is worth pointing out that it has recently launched “*Tetley-Redbush*” which it procures directly from Rooibos Ltd. with the Rooibos Ltd. logo being included on the packaging and being used as an indication of authenticity and direct sourcing from the growers.⁷ Interestingly, the other leading tea supplier, PG Tips, does not, to the knowledge of the authors, offer *Rooibos* tea.

Twinings offers *Rooibos* tea as part of its herbal classical range as well as a pineapple and *Rooibos* tea under its brand. No indication could be found as to the sourcing of the product in the case of Twinings. Another well-positioned company in the herbal and fruit tea market as already mentioned is Clipper Teas which offers organic *Rooibos* tea certified by the Soil Association (the main certifier for organic foods in the UK).⁸ Otherwise, the UK herbal and specialty tea market is dominated by a large number of small suppliers. Dragonfly is offering organic *Rooibos* under the Tick Tock brand.⁹ It appar-

ently has historical connections to the early cultivation and commercialization of *Rooibos* tea (Arnold *et al.*, 2007). It also offers a range of *Rooibos* blends including, mint, breakfast and Earl Grey. Initially specialized in health food shops, Dragonfly teas are now found in supermarkets. Whittards of Chelsea focuses on the specialty and green tea sectors, but also offers fruit and herbal teas with a range of approximately eight *Rooibos* teas listed on its website. This firm markets its products through a network of small-scale high street shops. The Redbush Tea Company is specialized in marketing a variety of *Rooibos* teas and soaps through UK supermarkets and health food shops.¹⁰ The firm is offering *Rooibos* teas with different flavor blends as well as an organic version. According to Arnold *et al.* (2007), the Redbush Tea Company indicates on its website that its tea is specially blended for it by estates in Clanwilliam.

Regarding the UK market, it is worth concluding by highlighting what Arnold *et al.* point out: “consumers of ‘new’ teas tend not to be product or brand loyal, unlike consumers of traditional black tea. As befits their experimental behavior, they are more likely to buy on impulse or for a particular occasion, rather than on an habitual basis. Indeed, herbal and fruit teas are often drunk on an occasional, supplementary basis to standard black tea, rather than as a regular substitute for it. They also tend to be interested in particular flavors or blends rather than brands, which poses a challenge for suppliers of specialty teas, who may not have the marketing capability to make their brands stand out in consumers’ minds.”

5. EVOLUTION OF IP STRATEGIES

This section explores the current status of IP use related to the name “*Rooibos*” in the *Rooibos* industry. This is approached by compiling an inventory of current IPRs with respect to the *Rooibos* name and, based on it, to explore the different quality signaling strategies developed by the different role players. This constitutes the point of departure from which the move toward a collective strategy is further explored.

The development of the database started by consulting the South African trademark register, with the aim of identifying trademarks consisting of or incorporating the name “*Rooibos*” or its use *Rooibos* in translation (redbush). Internationally, the online records of the main export markets for *Rooibos*, i.e. Australia, Germany, Netherlands, the UK and the US, were consulted.¹¹

Interestingly, the results of the searches (contained in Annex A) indicate that it is not necessarily the main actors identified above that are pursuing IP strategies surrounding the name “*Rooibos*”.

It is evident from the tables in Annex A that only two South African companies, *Rooibos* Ltd. and Annique Skincare Products (Pty) Ltd. appear to be pursuing an IP strategy around the name “*rooibos*” in international markets. Annique Skincare Products (Pty) Ltd. is mainly active in the cosmetic industry as already mentioned. Although it is not a

major player in the industry, its appropriation of the name "*Rooibos*" in the US led to the US trademark dispute. It is interesting to note that it is still one of the main registrants of trademarks surrounding the name "*Rooibos*". However, this name *Rooibos* is no longer used in isolation but in combination with other descriptive matter.

Rooibos Ltd. appears to be the most aggressive registrant of trademarks including or consisting of the word "*Rooibos*". This is in line with the fact that it is historically the largest player in the industry and it has been acting as a custodian of the name. Its role as custodian of the name can be traced back to the US trademark dispute in which it played a key role in reclaiming it. It has since been pursuing trademark registration for "*Rooibos*" internationally. Its strategy surrounding these registrations can be interpreted as not being based on individual appropriation but rather on defensive registrations to prevent similar situations, as that encountered in the US, and the associated expenses. As a consequence, Rooibos Ltd's strategy appears to be to register trademarks including the word "*Rooibos*" as widely as possible, coupled with a disclaimer to any exclusive rights to the word itself. This serves the purpose of making it more difficult for other potential registrants to obtain exclusive rights.

Apart from the firms shown in the tables, various smaller players from different countries outside South Africa are registering trademarks around the name "*Rooibos*". For a comprehensive layout of the different trademarks applied for/registered by various players in the different territories, the reader is referred to Annex A. Annex B provides a clarification of the different classes under the Nice International Classification system. Importantly, however, these firms appear to be using the name "*Rooibos*" in a descriptive manner and not as distinctive markers.¹² The use of the name as a descriptor is probably a major reason for the relatively few trademarks that consist of or include the name "*Rooibos*". This is particularly relevant in the South African context where the name is descriptive of the product.

The *Rooibos* industry's change toward the use of intellectual property is largely the consequence of its experience and near loss of its name in the US. The lengthy and costly legal battle illustrated the importance of a proactive strategy and served as the incentive for a move toward protecting the industry's collective intellectual property in view of potential global threats. This battle has been instrumental in establishing the South African *Rooibos* Council, which is a collective body representing the whole South African *Rooibos* industry (with participants elected from the small and commercial producers, laborers, processors, packagers, etc.) and which is intended to drive collective action processes. The US case highlighted the possibility of acting offensively against misappropriation by setting out to expunge irregularly registered trademarks. With the growing awareness surrounding irregular trademark registration, the threat of misappropriation is lower and the cases observed do not seem significant, as is evident from the tables.

Although trademark law in the US allowed South African producers to claim back the rights to market *Rooibos* in the US, it did not really allow them to claw back the legal

rights to the name. It only prevented others from having exclusive rights. Existing legal shortcomings in addressing the public good aspect of the name “*Rooibos*” under trademark law led the industry to explore the second legal approach, namely GI protection (as set out in the background section), to asserting exclusive rights in the name for legitimate use by the industry (i.e. only production originating from South Africa and adhering to agreed standards should be defined as *Rooibos*). The development of a GI strategy is intended to be complementary to individual trademark registrations that do not necessarily include the name *Rooibos* per se. This could be equated with strategies followed in marketing wine where there are different levels of branding.

6. QUALITY-RELATED QUESTIONS

The entrance of new players especially inside South Africa in the last decade in connection with the new export developments has been associated with increased quality-related problems being reported inside the industry with, in particular, some brands being used to package and market products foreign to the brand proprietor and of low quality.

The lack of uniform quality standards on *Rooibos* across the industry associated with the lack of transparency in the supply chain is favoring opportunistic behavior, both from South African processors and traders and from the dominant European buyers, on export tea quality. The South African processors and traders have to contend with Rooibos Ltd.’s dominant position on the supply side and are not able to compete effectively based on price. A particularly important attribute of *Rooibos* quality is determined by the quantity of sticks¹³ in the tea. Indeed, sticks increase the volume but can degrade the quality in terms of color, aroma and taste. This parameter is used in defining different grades but up to now these have been company-specific and not explicitly shared throughout the industry. Even though differences in grade definition are not necessarily significant, the lack of shared commitment to comply with certain standards contributes to putting *Rooibos* quality at risk.

Quality issues in the industry are complicated especially at the export level by the number of players along the supply chain that impact on the quality of the final product and by the distance between the production area and the places of consumption. Indeed not only is the raw material produced by the farmers instrumental in determining the final *Rooibos* product quality but so too are the sorting, blending and grinding processes that can be performed by different players in the supply chain, up to the stage where the tea is packaged for consumption. In the *Rooibos* industry, most of the production destined for the export market is sold in bulk by South African processors and traders, which means that players downstream in the supply chain can still modify the quality of the final product, in particular by changing the proportion of sticks. With more than 90 per cent of the production sold in bulk and the European market (the main buyers of *Rooibos*) being dominated by a few international tea brokers from Germany, control on overseas markets is very difficult. Currently, very few traceability systems are in place. According to Arnold *et al.* (2007), trust in the firms’ reputations and certain connec-

tions seem to constitute the basis of the wholesale business with no specific certification beyond ISO, HACCP, IFS and other general protocols. Arnold *et al.* (2007) further point out that only one company (Teekanne) has developed a tailor-made quality label for consumer reassurance. The general practice is to print the charge code on the package.

The problem of quality control and traceability is exacerbated by the fact that a significant part of the *Rooibos* production is blended with other teas or aromas. As pointed out by Raynaud *et al.* (2002), Barcala *et al.* (2006) and Ponte and Gibbon (2005), the length of the supply chain and the relationships between quality signal owners and the different suppliers in the chain significantly impact on quality signaling. Raynaud *et al.* (2002) find that, in cases where there are numerous players in the supply chain, quality signaling in final markets involves higher contractual hazards in the downstream transactions with suppliers. This is taking an increasingly important role in the *Rooibos* industry.

The risk of quality degradation, and thus of loss of reputation, is perceived as an important threat especially by the major actors in South Africa. With the expansion and opening of new markets, need for standardization becomes critical. It becomes more and more necessary for the commercial viability of the industry to define what can be called *Rooibos*¹⁴ and ensure that only the agreed minimum level of quality is sold.

Another quality dimension that has assumed importance in the *Rooibos* industry recently concerns the emerging quality differentiation strategies. Issues arise mainly because *Rooibos*, as many other agrifood products, not only exhibits search attributes that can be verified at the time of purchase but also characteristics of experience and in some respects, credence. Its actual quality is not observable before consumption and some attributes of *Rooibos* may not even be evident after consumption (Nelson, 1970). The latter attributes include aspects such as fair-trade and organic certification but also specific origin inside the *Rooibos* production area with its own reputation such as the Biedouw valley or *Rooibos* from estate producers. These different quality attributes have given rise to diverse product differentiation strategies which underlie the segmentation of the market. Some of the players in these differentiation strategies are benefiting from a significant price premium (e.g. according to Nel *et al.* (2007) the producer price of the two cooperatives which sell *Rooibos* as organic and fair-trade is 23 rand/kg. compared with the conventional producer price of 14 rand/kg). Where significant asymmetric information holds between producers and consumers, reputation and distinctive signs (private brands, labels) are important in signaling a certain level of quality and supporting producers' investments in offering high-quality products (Akerlof, 1970; Klein and Lefler, 1981; Shapiro, 1983); and there is a need for developing trustworthy and credible mechanisms to guarantee these quality levels (McCluskey, 2000; Raynaud *et al.*, 2002, 2005). As pointed out by Rangnekar (2004), "with the development of brands and advertising, the rationale for trademark protection has been modified". It has moved beyond indicating source toward protecting the investments undertaken to develop brand names and build reputation attached to them (Grossman and Shapiro, 1988). Misappropriation of a trademark affects both the consumer, by generating confusion as to the link between previous experiences of the product, perception of reputation and ex-

pectation of quality and the trademark owner by diluting its reputation (Rangnekar, 2004).

This discussion points out the need for proper quality management and control at both individual and collective levels.

7. TOWARD A COLLECTIVE STRATEGY: GI DEVELOPMENT

Discussion on developing a specific GI protection system in South Africa was raised through an initiative of the Western Cape Department of Agriculture about a decade ago. This provincial department intended to establish a *sui generis* GI system for products other than wines and spirits. This initial phase, even if inconclusive, largely contributed to raising awareness of and interest in GI, especially among other provincial departments of agriculture, as well as from some research institutions and private players. The increased incidence of usurpation of agricultural food products has also been playing an important role in this regard. The promotion and development of a specific system of protection for non-wine and spirit products is currently being debated again in the political arena.

Following the dispute in the US and in relation to a research program on GI potential for adding value to local production and improving rural communities' access to markets and livelihoods - the IPR DURAS project coordinated by the University of Pretoria - the *Rooibos* industry started investigating the possibility of reserving the name "*Rooibos*" and protecting its collective reputation and intellectual property through GI labeling with a particular view to obtaining recognition from the EU. If the interest for geographical indications was already present throughout the industry, actual discussions and activities about it took place mainly as a result of the research program when a consultation process was undertaken with a number of selected industries. Relations were established between the research team and the South African Rooibos Council (SARC).

At the outset of the SARC, there were mainly the processors with their supplier bases; and efforts for organizing and improving coordination among *Rooibos* producers and processors mainly concerned research aspects as had been the case historically under the Control Board. However, this is evolving in particular with the increased awareness of the need to protect their product and markets and the perceived risks of quality degradation. Furthermore, they are encouraged by public institutions to cooperate. Even if still in its early stages, this organization is enjoying increasing support from the industry. The small-scale farmers' community has recently become part of it.

Reservation of the name "*Rooibos*" was reaffirmed as one of the key strategic objectives of the SARC, and a specific Task Team was appointed by the industry at its 2006 Annual General Meeting to explore the potential for developing a geographical indication. This Task Team consists of representatives of commercial farmers, small-scale farmers, processors and marketers as well as a representative from the NGO sector. It is actively sup-

ported by researchers from the Western Cape Department of Agriculture (Provincial Department), the University of Pretoria, CIRAD (the French Agricultural Research Centre for International Development) and Cape Nature (the Nature Conservation Parastatal body of the Province). Different collective and territorial issues are becoming important at industry level, especially in relation to the need to codify practices. Interestingly, the recent idea of developing a geographical indication has appeared to constitute a relevant framework for discussion and negotiation around some of these issues. In particular, the Task Team is exploring the potential for using geographical indications as a tool for implementing the industry's biodiversity strategy. Indeed, *Rooibos* being an endemic species from the highly biodiverse *fynbos biome*, it is a very specific plant indigenous to South Africa. This strongly supports its potential as a geographical indication but also has significant implications from an ecological point of view. Indeed, the expansion of the cultivation area and the intensification of production constitute a threat to biodiversity. In addition to the development of biodiversity best practices as part of the *Rooibos* industry biodiversity strategy, the core biodiversity elements are being incorporated into the product specification for *Rooibos*.

The main stakes and incentives for developing an appropriate GI strategy, according to the industry, are (1) to reserve the name "*Rooibos*"; (2) to prevent potential production de-localization outside South Africa; (3) to ensure better control over quality and (4) combine the geographical indication and the biodiversity strategy. These points have already been well explored and debated as part of the Task Team activity; the biodiversity dimension in particular has been the object of a broad consultative process with farmers from the different areas of production.

It is worth pointing out that the GI strategy being pursued by the *Rooibos* industry can be clearly associated with "Regulation of Product Reputation" strategies as defined by Pacciani *et al.* (2001). Such strategies focus on managing the reputation of the product and its quality, the process is generally led by the supply chain firms themselves and the specification focuses primarily on aspects of the product and production process. This is in contrast to so-called "Territorial Quality Strategies", which focus primarily on territorial promotion and the concept of *terroir* and is often driven by local public institutions. The GI *Rooibos* strategy is essentially a supply chain strategy, the initiative being clearly driven by the South African supply chain players, in particular the processors, and the focus being mostly on reserving the name for the industry and defining a collective minimum quality standard. A number of territorial strategies do exist inside the industry with, in particular, a *Rooibos* heritage route¹⁵ that has recently been developed through the Greater Cederberg Biodiversity Corridor (GCBC) mostly with the involvement of small-scale farmers and support from NGOs and local government institutions. Many other *Rooibos* producers have developed tourist activities on their farms such as The Big Five *Rooibos* Company which receives over 1,000 tourists per annum. However, these are not considered as part of the GI initiative. As suggested by Tregear *et al.* (2007), this supply chain (or regulation of product reputation) strategy characterizing the *Rooibos* qualification process can be related to the South African socio-economic context characterized by a strong "individualistic competition convention".

Use of the name “*Rooibos*” and its reputation by related industries such as the cosmetic industry does not appear to concern the mainstream herbal tea industry. Indeed this presents a secondary market for utilization of off-cuts. Specific provisions are being made to regulate the use of the name “*Rooibos*” by these secondary industries. A local law firm was recently instructed to take the necessary legal steps toward ensuring appropriate GI protection domestically.

As already pointed out, a key challenge for the industry, apart from name reservation, is to deal with quality problems and associated risks of loss of collective reputation, especially on the export market. Winfree and McCluskey (2005), following the seminal work from Tirole (1996), assimilate the collective reputation problem as one of a common property resource extraction. Assessing collective reputation for regional or specialty products, they show that, with positive collective reputation and no traceability to specific firms or producers, there is an incentive to maximize profits by producing a lower quality. Furthermore, they find that as the number of firms in the producer group to which the collective reputation is attached increases, the incentives to provide quality decrease. The increasing number of South African players in the industry and the development of new markets at the export level have raised new quality problems, observed by many South African players; and the increased complexity of the supply chain both increases the need for traceability and renders it more difficult.

However, given the diverse positioning, capacity and current quality signaling strategies of the players in the *Rooibos* industry, not everyone faces the same incentives to extract from or build on the collective reputation and thus provide lower or higher quality. Winfree and McCluskey (2005) and Carriquiri and Babcock (2007) argue that introducing traceability and developing minimum quality standards could provide solutions to the common good problem of collective reputation. The *Rooibos* industry’s current GI development initiative tends to support this argument. The Task Team is close to finalizing a product specification that will make provision for quality, traceability and inspection concerns. In developing the GI product specification, emphasis has been put strongly on ensuring that a minimum quality standard is enforced across the industry. Indeed, the geographical indication is intended to protect the name “*Rooibos*” *per se* and not a specific quality or *terroir* of *Rooibos*; and it is thus to include all the South African production that will respect the minimum quality conditions for it to be called “*Rooibos*”. The expected impact of the industry GI strategy is its improved ability to control and enforce quality standards along the supply chain as well as to ensure the origin of the *Rooibos*. This would be supported by the industry obtaining GI protection in the EU, which requires a high level of collective commitment and definition of proper standards, but then provides support in enforcing these quality standards and the traceability procedure associated with them.

It is interesting to highlight how the current industry organization with a major role player, *Rooibos* Ltd., together with a number of recent entrants has influenced the dynamics toward this collective strategy. *Rooibos* Ltd., which is in a clearly dominant position at the processing level, has been instrumental in the move toward the GI strategy

with a strong focus on developing a proper quality standard and the ways to control it. As was previously suggested, Rooibos Ltd. is at least partly assuming the role of custodian with regard to name protection. This role as well as its efforts to set up a more stringent collective quality management system can be explained by it being the industry's single largest player, and thus being more exposed to risks associated with loss of reputation. Furthermore, Rooibos Ltd. already has a sophisticated quality management system. It is therefore unlikely to be a costly process to implement a collectively agreed quality-management system. On the other hand, it is mainly producing conventional quality *Rooibos* in bulk without differentiating through branding and/or labeling in most cases.

The differentiation of *Rooibos* from other herbal teas stands to benefit the entire industry in view of its positioning *Rooibos* as a distinct herbal tea in the international market. The increased risk of low quality *Rooibos* reaching the market poses a serious threat to everyone through the concomitant loss of reputation. In this respect, it is clear that individual and collective strategies have a complementary role to play. As observed in the wine industry, a combination of private and collective differentiation strategies can be harnessed to protect both individual firm and collective industry reputations. Despite seemingly wide heterogeneity of producers, which has been argued by Tregear *et al.* (2007) to be associated with conflicts in product qualification, discussions regarding the GI qualification process have been characterized by constructive debates, and a consensus over most of the GI specification was reached relatively easily. This can be linked to the homogenous production practices at processor level, with these practices being considered as the most significant for the GI specification and the processors leading most of the discussions.

An aspect which has not been explored thus far is the question of designing collective differentiation strategies within the broader GI initiative. This would entail designing a so-called sub-specification under the GI umbrella (as in the case of the PGI Tomme des Pyrénées in France, for example). It is difficult to predict at this stage whether such a strategy would be adopted by the industry. The relevance of such a strategy derives from strong terroir elements within the *Rooibos* production area being proclaimed by various players, which allows for further differentiation. This GI-based collective qualification could complement existing differentiation within the industry, which has up to now been managed through individual or restricted collective strategies. This could have a strong impact in particular for the resource-strapped small-scale farmers. Indeed, even if many of them have succeeded in better penetrating markets through alternative marketing channels (i.e. fair-trade and organic labeling), their equity participation is still not secure inside the industry, due mainly to their financial and land constraints and their small volume of production compared with the major companies. Their positioning in the fair-trade market could be challenged if some large *Rooibos* plantation were recognized as fair-trade certified and marketed its products under this label. *Rooibos* constitutes the main resource of these two communities of small-scale farmers. It is envisioned that, if the GI label were considered as an umbrella under which could be defined different specifications to account for the different qualities, *terroirs* and processes of production,

this could reinforce small-scale farmers' communities. Indeed, their communities by being located in recognized high-quality areas have potential for strengthening their position and identity in the market by benefiting from the recognition of their specific quality through GIs. They are settled in one of the best *terroirs* for *Rooibos* production. However, it is worth mentioning that this has not yet been widely discussed inside the industry, which is first concentrating on properly establishing a geographical indication for the name "*Rooibos*".

8. CONCLUSION

The recent global food quality trends have triggered the development of significant differentiation strategies in the agrifood sector, which have been supported by different types of IP protection. While these have mainly consisted in South Africa in individual or limited collective strategies based on trademarks, the current initiative toward developing geographical indications in South Africa which is based on significant collective features could have important implications, not only at the industry level but also at the level of the individual players in different sectors. To obtain deeper insights into these trends, we have been focusing on the set of alternative IP and quality management strategies in the *Rooibos* industry and how these strategies have been evolving. The South African *Rooibos* industry constitutes an interesting case in terms of the use of IPRs and how these are related to different quality management strategies. It presents a good illustration of recent food-quality trends and its implications on IP strategies. It is more and more an export-driven industry facing increasing misappropriation of intellectual property; it has moved from a control board to a deregulated industry with the entrance of new companies and the proliferation of IP strategies from South African and foreign actors; it is the first industry taking steps toward explicitly establishing a geographical indication in South Africa; and it is exhibiting significant tendencies toward collective action.

Being the most advanced initiative at the industry level and the only industry that has formally taken steps toward developing a geographical indication in South Africa, the *Rooibos* industry is, to a large extent, serving as a pilot case in South Africa. Even internationally, if successful in drafting its application, it will be among the first non-EU industries to apply for registration of its geographical indication with the EU. Up to now, only the Colombian coffee producers very recently succeeded in obtaining recognition from the EU of the name "Colombian Coffee" as a Protected Geographical Indication.

It is envisaged that recognition of the name "*Rooibos*" as a Protected Denomination of Origin in the EU could impact on the governance in the supply chain through the definition and enforcement of the associated quality standards. The standards, being defined by the *Rooibos* producers and processors locally as part of the PDO specification could give them greater control in the supply chain and the ability to manage quality and fight against IP misappropriation.

Notes

- 1 Possibility of registering collective and/or certification trademarks differ across jurisdictions.
- 2 On innovation and use of patents in the *Rooibos* industry, see Wynberg *et al.* (this publication).
- 3 With approximately 350 to 500 tons of *Rooibos* per year, it is the third largest single producer in South Africa.
- 4 Freshpak Rooibos is the most popular brand (26.3 per cent), followed by Joko (23.2 per cent), Eleven O'Clock (18.7 per cent), Five Roses (17.7 per cent) and 14.1 per cent shared by Glen, Laager, Vital, Southhalls, Twinings, and Phendula Tips respectively (South African Advertising Research Foundation Study, quoted in Snyman, 2007).
- 5 Available at <http://www.Rooibostea.co.za>.
- 6 Website of the Perishable Products Exports Control Board 2003.
- 7 Available at <http://www.mad.co.uk/BreakingNews/BreakingNews/Articles/c55e37e26cce49b3a189ea18b8a38d4c/Tetley-launches-Redbush.html> and <http://www.tetley.co.uk/Our-Products/Ranges/New-Tetley-Redbush>.
- 8 Available at <http://www.clipper-teas.com>.
- 9 Available at <http://www.dragonflytea.com>.
- 10 Available at <http://www.redbushtea.com>.
- 11 It should be noted that these databases have not been designed as comprehensive trademark searching facilities and the accuracy of our database is therefore subject to the accuracy and comprehensiveness of the official records at the time of research.
- 12 This information is not always ascertainable from the Internet databases consulted.
- 13 Sticks are the woody remnants of stems added to or remaining in the product after sorting. A low proportion of sticks is required in order to ensure acceptable quality as sticks contribute poorly to aroma, taste and color.
- 14 According to the industry, not all herbal teas derived from the *Aspalathus linearis* plant can be defined as *Rooibos*. Implicit minimum quality standards are adhered to by the industry.
- 15 This route features biodiversity and scenery, adventure activities, cultural activities, *Rooibos* products and the people of the region.

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ANNEX A DIFFERENT TRADEMARK APPLICATIONS/REGISTRATIONS IN DIFFERENT TERRITORIES

Table 4. UK Applications/Registrations for *Rooibos* and/or *Redbush*

Trademark*	Proprietor	Filing Date	Registration Date/Status	Image	Classes
The Rooibos People Health And Skincare	Annique Skincare Products (Pty) Ltd. (South Africa)	August 9, 2006	registered		03, 05, 35, 44
The Redbush Tea Company	The Redbush Tea Company Ltd. (UK)	April 16, 2003	registered		03, 16, 30, 32, 43
Redbush Tea	The Redbush Tea Company Ltd. (UK)	March 2, 2005	registered		03, 16, 30, 32, 43
Redbush Tea	The Redbush Tea Company Ltd (UK)	March 2, 2005	registered		03, 16, 30, 32, 43
Redbush The Redbush Tea Company	The Redbush Tea Company Ltd. (LUK)	October 16, 2003	new application		03, 16, 30, 32, 43, 44
Redbush	The Redbush Tea Company Ltd. (UK)	October 16, 2003	new application	(word mark)	03, 16, 30, 32, 43, 44
Rooibos	Rooibos Ltd. (South Africa)	February 15, 1996	registered		05, 30
Rooibos	Rooibos Ltd. (South Africa)	November 11, 2003	registered		05, 30, 32
Eleven O'clock Rooibosch Tea	National Brands Ltd. (South Africa)	December 15, 1988	registered		30
The Rooibos Tea Company	Wistbray Ltd. (UK)	August 21, 2006	registered		30
Lixi Rooibos Iced Herbal Tea	AZANIA FOOD INNOVATIONS LIMITED (UK)	16 October 2006	Application		30
Greenfield HONEY ROOIBOS	"KARAVAN" LTD (Russian Federation)	8 May 2007	Application		30
Rauch Nativa Redbush Tea	Rauch Fruchtsafe Gesellschaft mbH (Austria)	6 February 2001	registered		30, 32

* Word mark or verbal elements of picture mark

Table 5. US Applications/Registrations for Rooibos and/or Redbush

Trademark*	Proprietor	Filing Date	Status	Image	Nice Classification
Greenfield Honey Rooibos	Karavan Ltd . (Russian Federation)	May 8, 2007	registered		30
Rooibos Therema Tea	Cott Beverages Inc.	July 21, 2006	application		30
Rooibos	Burke - Watkins (US)	June 30, 2005	registered		30
Rooibos	Burke - Watkins (US)	June 30, 2005	registered		03
Rooibos	Burke - Watkins (US)	June 30, 2005	registered		05
Awimoweh Zulu Nectar South African Rooibos Tea	Stones Throw Enterprises (US)	March 7, 2005	registered		30
African Red Tea Rooibos	Broomberg Michael (US)	August 23, 2000	registered		30
Sunnrooibos	SunnGroup LLC L td. (US)	January 24, 2003	application	[Typed drawing]	03
Rooibos Ala Moana	Teavana Corporation (US)	January 8, 2008	application	ROOIBOS ALA MOANA	30
Rooibos Tropica	Teavana Corporation (US)	January 8, 2008	application	ROOIBOS TROPICA	30
Rooibos Rose Garden	Teavana Corporation (US)	July 20, 2007	application	ROOIBOS ROSE GARDEN	30
Rooibos Sweet Amore	Teavana Corporation (US)	July 20, 2007	application	ROOIBOS SWEET AMORE	30
Cloud 9 Rooibos	Teavana Corporation (US)	July 19, 2007	application	CLOUD 9 ROOIBOS	30

* Word mark or verbal elements of picture mark

The Rooibos People Health And Skincare	Forever Young (Pty) Ltd . (South Africa)	January 12, 2007	application		01, 03, 05, 35, 44,
Rooibos The Red Tea	Rooibos Ltd . (South Africa)	March 6, 2007	application		05
Rooibos	Rooibos Ltd . (South Africa)	October 26, 1995	registered		05

Table 6. Australian Trademark Applications/Registrations for Rooibos and/or Redbush

Trademark*	Proprietor	Filing date	Status	Image	Nice Classification
Freshpak 40 Rooibos Teabags Nature's Health Tea	National Brands Ltd. (South Africa)	October 7, 1994	registered		30
Rooibos	Rooibos Ltd. (South Africa)	April 20, 1995	registered		05, 30
The Rooibos People Health & Skincare	Annique Skincare Products (Pty) Ltd. (South Africa)	October 16, 2006	registered		03, 05, 35, 44
Greenfield Honey Rooibos	Karavan Ltd. (Russian Federation)	May 8, 2007	registered		30
The Rooibos People Health & Skincare	Annique Skincare Products (Pty) Ltd. (South Africa)	September 12, 2007	application		30

* Word mark or verbal elements of picture mark

Table 7. Trademark Applications/Registrations for Rooibos and/or Redbush in Germany

Trademark*	Proprietor	Filing Date	Status	Image	Nice Classification
Freshpak Rooibos Teabags	National Brands Ltd. (South Africa)	July 10, 2007	registered		30
Rooibos	Alpenlandisches Krauterhaus Gmb H & Co. (Germany)	December 12, 2000	registered		30
Rooibos	Rooibos Ltd. (South Africa)	October 25, 1993	registered		05
Rooibos Cappucino	J Bunting Teehandelshaus GmbH & Co. (Germany)	July 16, 2003	registered		30
Rooibos Produkte Annique	Biese-meier Gisela (Germany)	November 11, 2004	registered		03, 30, 32

* Word mark or verbal elements of picture mark

Table 8. Trademark Applications/Registrations for *Rooibos* and/or *Redbush* in South Africa (images not electronically available)

Trademark	Proprietor	Filing date	Status	Nice International Classification
Rooibosch Tea Eleven O'Clock	National Brands Ltd. (South Africa)	April 11, 1940	registered	30
Oude Kaap Traditional Rooibos Tea	Natural Formulas Ltd. (British Virgin Islands)	February 26, 1979	registered	30
Freshpak Rooibos Tea	National Brands Ltd. (South Africa)	August 9, 1985	registered	30
Cederberg Rooibos Kafeienvrye Rooibostee	SADPRO (Sentraal Kooperatief Ltd.) (South Africa)	July 12, 1988	registered	30
Rooibos Connection Die Rooibos Konneksie (The)	Forever Young (Pty) Ltd. (South Africa)	August 24, 1993	registered	05; 30;31
Suiwer.Pure Rooibos Die Tee Van Afrika	Rooibos Ltd. (South Africa)	March 7, 1995	registered	30
Eleven O'Clock/The Original Rooibosch Tea	National Brands Ltd. (South Africa)	May 10, 1995	registered	30
Rooibos The Tea Of Africa	Rooibos Ltd. (South Africa)	November 13, 1998	registered	30
Red Bush Beverages	Sinkel Trading CC (South Africa)	November 30, 2000	accepted	30

ANNEX B
INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF
THE REGISTRATION OF MARKS (NICE CLASSIFICATION), 9TH EDITION

Class 05	Pharmaceutical and veterinary preparations including vitamins; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
Class 30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery; ices; honey; treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.
Class 32	Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
Class 33	Alcoholic beverages (except beers).
Class 35	Retail and wholesale services including supermarket services for the provision of food; export and import services.
Class 42	[Until the 6 th edition, contained services that are now falling under classes 35 and 43.]
Class 43	Services for providing food and drink including restaurant, café and delicatessen services.