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## INTELLECTUAL PROPERTY/ Johann Kirsten

# For the good name of Karoo lamb

**W**INDMILLS and sheep, farm homesteads, endless vistas, home-baked bread, hospitable nights ... these images are engrained in the minds of many South Africans when they think of the Karoo.

Because of these images, and the tranquility and honesty of the Karoo way of life, the "Karoo" concept has become synonymous with quality, tradition and wholesomeness. There is therefore a real threat that people not even remotely linked to the geography or the values and images of the region could exploit the word Karoo to make a profit.

It is such misappropriation of the names of geographical regions (and to some extent other indigenous resources) that led European nations to protect names such as Parmesan, Roquefort, Champagne, Port and Sherry through a system of "geographical indications" to ensure that only people and firms within a specific geographical region benefited from the commercial exploitation of their heritage or specific resources.

Is there not in the case of SA and of the Karoo a case to be made for a similar system of protecting our geographical names and indigenous resources from wrongful exploitation? Who guarantees that the lamb in the store is really Karoo lamb?

With the signing of the agreement on trade-related aspects of intellectual property rights (Trips), member countries of the World Trade Organisation (WTO) acknowledged geographical indications as an independent intellectual property right.

Defined 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...", geographical indications stand to protect products that are intrinsically linked to a region based on either their quality, reputation or some other characteristic.

With a long history of traditional production, European countries have for centuries recognised and fiercely protected the inherent value captured in the link between a product and its region of origin. However, this

link, embedded in the culture of the region, has sadly been left unprotected and vulnerable to misappropriation in SA. One need only call to mind products such as Rooibos, Klein Karoo ostrich or Karoo lamb to realise the commercial potential of our South African heritage. This potential is based on the reputation of quality, flavour and skill associated with the places of production.

In terms of the Trips agreement, WTO member countries have to provide the legal means to prevent the misleading or unfair use of a geographical indication.

However, "legal means" is not defined and it is left to member countries to decide on the form of protection for geographical indications.

SA's Trips compliancy is based on a combination of consumer protection and unfair competition laws, its

trademark registration system and an administrative scheme for the protection of its geographical indications for wine.

However, providing protection for geographical indications under trademark laws means that geographical indications are treated as a species of trademarks. This does not account for the unique characteristics of geographical indications.

Although both geographical indications and trademarks are considered to be distinctive signs, they differ at a fundamental level in terms of what the distinctive sign is signifying.

Trademarks are distinctive signs identifying the manufacturing unit and is therefore not limited by any territorial link. In contrast, geography is at the heart of geographical indications — they being distinctive signs identifying goods as originating

from a particular geographical area and where the unique qualities of certain products derive from a combination of features of the natural environment and traditional practices of the people living there.

Despite rights relating to intellectual property being classified as private rights, geographical indications exhibit public-good characteristics in that they are linked to a territory and cannot be privately owned by a single proprietor.

In the case of geographical indications, it is not a single person but all producers belonging to the region and adhering to product specifications that may use the designation.

The notion that a common good belonging to a specific territory could be privately owned, as is the case with trademarks, is a contentious issue.

The cost of protection under a

trademark registration system is often prohibitively high for resource-poor producers. Protection under trademark systems requires costly registrations. In order to effect full protection, multiple registrations may be necessary to protect a single geographical indication in the original language, in translated form as well as in design form.

Also, to protect geographical indications internationally under trademark law, the indication needs to be registered as a trademark in every country where protection is sought.

The fact that South African geographical indications currently have to rely on an ill-adapted trademark-registration system means that the heritage embedded in South African products is, to a large extent, left vulnerable.

Examples of misappropriation abound, and one need only recall the near loss of Rooibos in the US market to realise the potential threat.

This threat is not restricted to foreign sources, as local traders are reserving local product names by way of trademark registrations. The reputation for quality which exists in

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words such as Karoo has significant marketing potential and is as such sought after by producers with little or no link to the region.

The WTO Trips agreement has taken the first step towards providing protection for geographical indications in its member countries. However, further steps need to be taken to prevent the pillage of our South African heritage by ensuring that the appropriate legal instruments for the protection of geographical indications are in place.

This requires a greater consciousness among policy makers, and South Africans in general, of the need to recognise and protect the heritage embedded in South African geographical indications.

If this is not achieved, we could soon be faced with a situation where the words "Karoo lamb" are reserved for use by a proprietor who has never seen the arid beauty of the landscape which lends its name to his product.

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