

20 JUNE 2019

AGRICULTURE ALERT

IN THIS ISSUE

Karoo lamb, rooibos tea, Bapsfontein... What's in a name?

On 22 March 2019, the Minister of Agriculture, Forestry and Fisheries published regulations to the Agricultural Product Standards Act (1990) relating to the registration and protection of geographical indicators (GIs) used in respect of agricultural products intended for sale in South Africa.

Karoo lamb, rooibos tea, Bapsfontein... What's in a name?

The international protection of GIs, amongst other things, was established by the Agreement on Trade-Related Aspects of Intellectual Property, set out in the World Trade Organisation Agreement (1994).

On 22 March 2019, the Minister of Agriculture, Forestry and Fisheries published regulations to the Agricultural Product Standards Act (1990) relating to the registration and protection of geographical indicators (GIs) used in respect of agricultural products intended for sale in South Africa.

Albeit an interesting context for purposes of this discussion, Juliet might have had a noble point to make in willing her love, Romeo, to simply be called by another name when she said:

"O, be some other name!"

What's in a name? That which we call a rose by any other name would smell as sweet

Juliet is arguably guilty of a serious oversimplification of their 'issues' here, what with her falling in love so quickly and agreeing to drink untested substances and then waking up literally a minute too late... She raises an important point, though: *What's in a name?* Well, in the 21st century context of international trade, the commercialisation of names and indicators and luxury brands, a rose by any other name may not smell as sweet.

A geographical indicator (or GI) is a name that identifies an agricultural product (i) as originating from a certain territory or locality in such territory, and (ii) whose qualities or other characteristics are essentially attributable to such territory. The international protection of GIs, amongst other things, was established by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), set out in the World Trade Organisation Agreement (1994).

Internationally, most jurisdictions require the registration (on application) of GIs. Examples of well-known European GIs (which are also synonymous with good food and drink) include "Bordeaux" wines (Bordeaux, France), "Brie" cheese (Brie, France), "Champagne" (Champagne, France), "Manchego" cheese (La Mancha region, Spain), "Cognac" (Cognac, France), "Parma" ham and "Parmesan" cheese (Parma, Italy), "Kalamata" olives (Kalamata, Greece).

South African examples of GIs protected through international protocols include "Honeybush tea" (Eastern Cape and Western Cape), "Rooibos" tea (Cedarberg area), "Karoo lamb" (Karoo region) and various wines. Until recently, South Africa did not have a registration process in place for GIs, with the effect that individuals had to rely on existing international recognition, certain industry-specific laws and remedies available in common law to defend GIs. The position changed when, on 22 March 2019, the Minister of Agriculture, Forestry and Fisheries published regulations to the Agricultural Product Standards Act (1990) relating to the protection of GIs used in respect of agricultural products intended for sale in South Africa (Regulations). The Regulations *inter alia* seek to protect parties' intellectual property rights to GIs, and to protect consumers from being misled into believing certain products to be of a certain quality or origin.

Registration of GIs can be obtained through an electronic registration process and applications are ultimately published and open to objections from the public.

Karoo lamb, rooibos tea, Bapsfontein... What's in a name?...*continued*

With the advent of the registration process, who knows what GIs South African agricultural entrepreneurs will seek to register. We may soon see some interesting ones. Perhaps it is time for the Bapsfontein broiler to take its rightful place!

To register a GI, the Regulations require, amongst other things, that the relevant GI not:

- be identical to an existing (registered) GI originating from the same or similar geographical area;
- be a generic or common term (for example, 'French' fries, 'Brussel' sprouts);
- falsely communicate the origin of the relevant product to consumers;
- sound like an existing (registered) GI;
- be the same or similar to an existing trade mark used in South Africa;
- be intended to be used in translation or be accompanied by words such as "type", "kind", "style", "imitation", "method" or similar words or expressions.

The successful registration of a GI would entitle the holder thereof to include words such as "Protected Geographical Indicator", "Registered Geographical Indicator", "PGI", "RGI" or "RSA-GI" on the packaging of the relevant agricultural products.

With the advent of the registration process, who knows what GIs South African agricultural entrepreneurs will seek to register. We may soon see some interesting ones. Perhaps it is time for the Bapsfontein broiler to take its rightful place!

Click on the [link](#) to see a copy of the new Regulations.

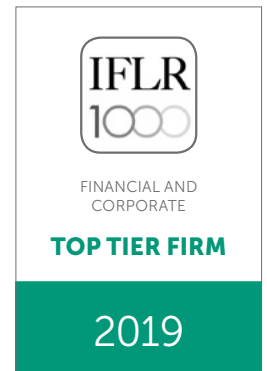
*Christine Bodenstein and
André de Lange*



**AGRICULTURAL SECTOR
SERVICE OFFERING**

CLICK HERE TO READ OUR NEW BROCHURE.

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.



2018 1ST BY M&A DEAL FLOW FOR THE 10TH YEAR IN A ROW.

DealMakers

<p>2018 1st by M&A Deal Flow. 1st by M&A Deal Value. 2nd by General Corporate Finance Deal Flow. 1st by BEE M&A Deal Value. 2nd by BEE M&A Deal Flow. Lead legal advisers on the Private Equity Deal of the Year.</p>	<p>2017 2nd by M&A Deal Value. 1st by General Corporate Finance Deal Flow for the 6th time in 7 years. 1st by General Corporate Finance Deal Value. 2nd by M&A Deal Flow and Deal Value (Africa, excluding South Africa). 2nd by BEE Deal Flow and Deal Value.</p>	<p>2016 1st by M&A Deal Flow. 1st by General Corporate Finance Deal Flow. 2nd by M&A Deal Value. 3rd by General Corporate Finance Deal Value.</p> <p>2015 1st by M&A Deal Flow. 1st by General Corporate Finance Deal Flow.</p>	<p>2014 1st by M&A Deal Flow. 1st by M&A Deal Value. 1st by General Corporate Finance Deal Flow.</p> <p>2013 1st by M&A Deal Flow. 1st by M&A Deal Value. 1st by Unlisted Deals - Deal Flow.</p>
---	--	---	--

OUR TEAM

For more information about our Agricultural sector and services, please contact:



André de Lange
Sector Head
Director
Corporate & Commercial
T +27 (0)21 405 6165
E andre.delange@cdhlegal.com



Tobie Jordaan
Director
Dispute Resolution
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com



Hugo Pienaar
Director
Employment
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Emil Brincker
National Practice Head
Director
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Johan Latsky
Executive Consultant
Corporate & Commercial
T +27 (0)11 562 1149
E johan.latsky@cdhlegal.com



Verushca Pillay
Director
Corporate & Commercial
T +27 (0)11 562 1800
E verushca.pillay@cdhlegal.com



Gillian Lumb
Regional Practice Head
Director
Employment
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Andries Le Grange
Director
Competition
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com



Lucinde Rhoodie
Director
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com



Roy Barendse
Director
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com



Richard Marcus
Director
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com



Belinda Scriba
Director
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com



Daniël Fyfer
Director
Real Estate
T +27 (0)21 405 6084
E daniel.fyfer@cdhlegal.com



Burton Meyer
Director
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com



Roux van der Merwe
Director
Corporate & Commercial
T +27 (0)11 562 1199
E roux.vandermerwe@cdhlegal.com



Sandra Gore
Director
Corporate & Commercial
T +27 (0)11 562 1433
E sandra.gore@cdhlegal.com



Susan Meyer
Director
Competition
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Charl Williams
Director
Corporate & Commercial
T +27 (0)21 405 6037
E charl.williams@cdhlegal.com



Allan Hannie
Director
Corporate & Commercial
T +27 (0)21 405 6010
E allan.hannie@cdhlegal.com



Jo Nesor
Director
Corporate & Commercial
T +27 (0)21 481 6329
E jo.nesor@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

©2019 8008/JUNE

