

# The Rooibos Case

François Meienberg, The Berne Declaration

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**EV B**

Erklärung von Bern

Dichiarazione di Berna

Déclaration de Berne

# Five patents on the use of Rooibos and Honeybush

- Applicant: Nestec (subsidiary of Nestlé)
- All patents published as WO patents in January 2010.
- None of them is granted now.



# The main patent claims

- use of a composition comprising Rooibos or an extract thereof for the preparation of a product to treat and/or prevent inflammatory disorders.
- an orally ingestible composition comprising Rooibos/Honeybush or an extract thereof and at least one prebiotic to treat (inter alia) skin inflammation, reactive or dry skin, psoriasis, acne, ageing, wrinkles and for preventing hair and coat loss.



## The main patent claims II

- use of a composition comprising Rooibos/ Honeybush or an extract thereof for the preparation of an orally administrable product for improving skin or hair health.

# Nestlé and Cosmetics?

- Nestlé is a major player in cosmetics. Nestlé holds a 30.5% share in L'Oréal (the biggest cosmetic producer worldwide). Further Nestlé holds 50% of Innéov, a cosmetic company specialising in food supplements for skin and hair. Products against hair loss, wrinkles or acne are the core business of Innéov.



# Origin and traditional use of Rooibos

- The ancient San and Khoi people of South Africa are believed to be the first to discover that Rooibos can be used in a refreshing brew.
- Rooibos is endemic to South Africa and only grows in the Cederberg Mountains. Efforts to grow the plant anywhere else have failed.
- Rooibos is used in South Africa for a range of medicinal uses often in the form of tea or ointments. These include skin disorders, anti-inflammatory and anti-allergic properties.



# Origin and traditional use of Honeybush

- Honeybush is a shrub that is endemic to the coastal regions of South Africa's Western Cape and Eastern Cape Provinces .
- Similar to Rooibos the plant has been traditionally used by the Khoi and San as a beverage as well as for certain medicinal use.



## Contradiction with national law / CBD

- As confirmed by the South African Government none of the necessary permits have been given to Nestlé and the exporters of the GR.



## Reply by Nestlé I

- *Nestlé said the company had not carried out any research activities in South Africa on these plants and had not collected any materials in South Africa. "South African suppliers provided Rooibos and Honeybush extracts and material to Nestlé.*
- > According to the CBD and the National law in South Africa the trigger for the need for PIC and MAT is the use of a genetic resource no matter where the use takes place.



## Reply by Nestlé I

- > That Nestle has accessed the material through a South African exporter does not exempt them from having to obtain a bioprospecting permit. In addition, the South African exporter would have to obtain an export permit, if the genetic resource is to be used for bioprospecting.
- > Nestle has an obligation to verify if the exporter had the necessary permits to export the plant extract and material for the purpose of bioprospecting. suppliers respect national law.



## Reply by Nestlé II

- *Nestec has not filed any patent relating to the plants themselves, or extracts of the plants.*
- > Nestlé clearly claims the specific use of extracts of the plants and the extracts themselves in combination with prebiotics.



## Reply by Nestlé II

-> However, the CBD and the South African Biodiversity Act refer to the use of a genetic resource. There is no doubt that rooibos and honeybush have been used to engage in the research necessary to file the patents. Therefore the patents are proof that Nestle engaged in bioprospecting in a manner that is in conflict with international and national law.

## Reply by Nestlé III

- *Nestlé has not made any commercial use of these patents, and has no plans to do so in the near future. Should Nestlé decide to make commercial use of these patents then it would of course fully comply with the benefit-sharing provisions of the South African Biodiversity Act.*



## Reply by Nestlé

-> This answer shows a fundamental misunderstanding of the current law. The South African Biodiversity Act is very clear that before a company engages in bioprospecting it would require a bioprospecting permit, which includes a benefit sharing agreement. The Biodiversity Act explicitly states that commercialization includes, among other, the following activities: *“the filing of any complete intellectual property application, whether in South Africa or elsewhere.*