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SOUTH AFRICAN NATIONAL SEED ORGANIZATION
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Brown-bag seed bootlegging stopped in its tracks - what an oats weed dispute reveals about South Africa's new Plant Breeders' Rights regulations and the protection of plant breeders' rights.

The bootlegging of unlawfully conditioned oats seed on social media in competition with Syngenta, was stopped in its tracks following a clandestine operation and engagement by KISCH IP specialist law firm in conjunction with Syngenta's Corporate Security Division.

"Every improved plant variety represents years of research and millions of rands before it reaches the market. Plant Breeders' Rights exist to protect exactly that investment and to encourage the continued development of improved genetics that benefit producers, processors and consumers alike," according to Dr Lukeshni Chetty, CEO of SANSOR (South African National Seed Organization).

The unlawful advertising and sale of a protected oats (*Avena sativa L*. SSH4185) variety demonstrate both the breadth of South Africa's Plant Breeders' Rights framework and the practical value of the Plant Breeders' Rights (and Plant Improvement) Regulations, 2025.

Information came to light suggesting that at least 65 tons of protected propagating material was being multiplied, conditioned and commercially marketed outside the authorised distribution chain, without a licence and without regulatory compliance. Subsequent investigations indicated that the dispute potentially extended far beyond mere unpaid royalties, into the realm of unlawful competition, trade mark infringement and even several criminal offences.

Faced with these issues, the infringers were invited to regularise their position before litigation became necessary. Specifically, these infringements and statutory contraventions, included:

- infringement of registered Plant Breeders' Rights in a protected oats variety;
- unauthorised (irregular) multiplication of protected propagating material;
- unauthorised conditioning (cleaning and treatment) of protected seed;
- unauthorised marketing and commercial sale of protected propagating material;

- unauthorised use of registered trademarks in connection with the marketing of protected seed;
- non-compliance with statutory requirements governing the production, conditioning and commercial movement of propagating material;
- off label use of agrochemicals thus transgressing Act 36;
- failures relating to traceability, record-keeping and labelling requirements; and
- conduct capable of attracting civil remedies, and, where applicable, criminal sanctions under the Plant Breeders' Rights Act and the Plant Improvement Act (amongst other).

The remedies available to Syngenta, as the Plant Breeders' Rights holder, were equally extensive. These potentially included interdictory relief, delivery-up of infringing propagating material, attachment of crops planted with infringing seed, payment of reasonable royalties, damages, legal costs, and any additional relief provided for under the applicable legislation.

The dispute illustrated an important point. At van Rooy, patent attorney and PBR specialist of KISCH IP, stated that: *"*The unauthorised commercial sale and use of protected propagating material is seldom a single-issue dispute. Plant Breeders' Rights frequently intersect with trade mark protection, unlawful competition, statutory regulation of propagating material, seed certification, traceability and broader agricultural compliance. A single instance of unauthorised multiplication may therefore transgress multiple areas of South African law simultaneously."

Litigation, however, ultimately proved unnecessary as the parties were able to resolve the dispute commercially by regularising the infringing actions through the framework established by Regulation 5(3)(c) of the Plant Breeders' Rights Regulations, 2025. The resolution included agreement on reasonable remuneration for the use of farm-saved propagating material together with associated commercial arrangements and a contribution towards legal fees.

This outcome illustrates why Regulation 5 represents one of the most significant developments introduced by the 2025 Regulations under the 2018 PBR Act.

For generations, retaining seed from one harvest for planting in the next season has formed part of agricultural practice. The original purpose was food security for subsistence farmers, not abuse by multi-million-rand entities. The challenge for every modern Plant Breeders' Rights system is to balance two legitimate interests: the long-standing practice of farm-saved seed and the legitimate commercial interests of those who invest in developing improved plant varieties. "This is the context in which Regulation 5(3)(c) should be understood," van Rooy says.

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While the Plant Breeders' Rights Act 12 of 2018 establishes the exclusive rights afforded to breeders, Regulation 5 provides the practical framework through which Parliament has given effect to the qualified farmer's privilege recognised in section 10 of the Act. Rather than imposing a blanket prohibition on farm-saved seed, the Regulations recognise that different categories of farmers operate under different circumstances and that commercial seed saving carries corresponding responsibilities.

Where protected propagating material is retained in quantities exceeding the prescribed thresholds, Regulation 5(3)(c) requires that the propagating material must have been legitimately obtained, that the breeder or Plant Breeders' Rights holder be notified of the quantities retained, that reasonable remuneration equivalent to a reasonable royalty be agreed upon in a written licence agreement, and that the identity of the protected variety be preserved through appropriate labelling.

These requirements reflect three principles underpinning a modern Plant Breeders' Rights system: transparency, fair remuneration and traceability.

The philosophy underpinning Regulation 5 is consistent with Article 15 of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), which permits member states to recognise a limited farmer's privilege while safeguarding the legitimate interests of breeders. South Africa's 2025 Regulations give practical effect to these principles within the local agricultural context.

The recent oats seed dispute demonstrates that effective intellectual property protection is not measured solely by the ability to institute legal proceedings. While South African law provides Plant Breeders' Rights holders with extensive civil remedies and, in appropriate circumstances, criminal sanctions for unlawful conduct, litigation should not become an end in itself.

Throughout this matter, the objective remained the protection of innovation, the integrity of the certified seed system and the restoration of lawful commercial conduct. Once the parties were able to regularise their position within the framework established by Regulation 5(3)(c), the dispute was resolved without the need for protracted litigation, preserving commercial relationships while ensuring that the legitimate interests of the Plant Breeders' Rights holder were recognised.

"The successful resolution of this matter serves as an important reminder that intellectual property protection is fundamental to a thriving seed industry and a competitive agricultural sector. Seed companies invest heavily in research and development to bring improved varieties to market, and those investments must be protected if innovation is to continue," Dr Chetty points out.

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"As an industry, we are committed to working alongside farmers and other stakeholders to build awareness of the Plant Breeders' Rights Act. A strong agricultural sector depends on trust, collaboration and respect for the systems that enable continued investment in innovation. Ultimately, that benefits farmers, consumers and South Africa's food security," Chetty adds.

Most seed companies support the notion that strong intellectual property protection and a sustainable agricultural sector are complementary objectives. Where rights must be enforced, they will be enforced firmly. Equally, where the law provides an opportunity for parties to achieve compliance through transparency, fair remuneration and responsible commercial conduct, that opportunity should be embraced. The recent resolution demonstrates that protecting innovation does not require unnecessary conflict. Rather, it requires a principled commitment to the rule of law, responsible stewardship of protected plant varieties and constructive engagement across the agricultural value chain.

In particular, seed companies are actively seeking compliance of the Agricultural sector with the provisions of the 2018 PBR Act and Regulation 5 before disputes arise.

Seed companies remain committed to working with farmers, seed processors, distributors and industry stakeholders to ensure that improved plant genetics continue to benefit South African agriculture while respecting the legal framework that encourages continued investment in plant breeding.

Ends

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