



By Mike Knowles

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Uneasy truce in blueberry battle

Ross Berries and United Exports may have settled this season's OZblu royalty spat, but the dispute looks set to continue



The two companies fighting a legal battle over the rights to sell certain consignments of blueberries shipped from South Africa to the Netherlands have reached an uneasy truce, with both sides claiming victory following an unusually public and acrimonious dispute.

Two shipments of the fruit shipped by Ross Berries to the Netherlands were seized by Dutch customs officials in Rotterdam in late October and early November.

However, Fruitnet understands these have now been released upon instruction from United Exports, the Australian company which raised the original complaint in defence of its licensed blueberry variety series OZblu.

United Exports originally alleged that Ross Berries, part of the Rossouw group of companies, had shipped and sold the blueberries without permission, a move which it said infringed upon its proprietary trademarks.

The producer, which previously held a licence to grow OZblu berries but opted not to renew its contract with United Exports earlier in the year, argued those claims were without legal basis. Turning to Cape Town's High Court, it countered that the claimant was attempting to control the entire supply chain for the varieties in question.

For the past few weeks, the blueberries have been sealed in their shipping containers. It remains unclear whether the fruit can still be sold.

More crucially, the question of what happens to any blueberries produced by the same plants in future also remains unanswered. This week's détente came after Ross Berries agreed not to use any OZblu-related branding on the remaining harvested fruit, but several people familiar with the situation in South Africa seem to think the roots of the disagreement run deeper.

Dispute set to continue

United Exports is eager to protect its business model, which it said was based on a "sizeable investment" in research and development over more than three decades. "The protection and respect of plant based intellectual property rights by farmers in South Africa is critical to the stability and growth of South Africa's agricultural economy," it argued.

At the end of the current season, it continued, Ross Berries' right to keep producing its OZblu blueberries "must be newly agreed". Given that this week's resolution rests on an agreement to sell the fruit but not use any OZblu branding, it seems likely the dispute could flare up again as the two parties approach the 2021 export campaign.

"There are at least six other farmers that have problems with United," said one industry source, who spoke on condition of anonymity. "Some are in the process of legal action and so cannot speak on the record. Others have simply said they are taking out the blueberries and replacing them with other crops not licensed to United."

Ross Berries, for its part, does not seem happy to concede any ground as far as continuing to sell the fruit is concerned. What's more, it even plans to claim back royalties that it claims United Exports charged for varieties without adequate protection.

"An investigation unearthed that United Exports only has registered Plant Breeders Rights (PBR) for two of the nine varieties which Ross Berries acquired from United South Africa," commented Ross Berries director Chris Rossouw.

"Losses suffered as a result of the seizure of the fruit in Holland will also be claimed," he went

on. "Ongoing investigations into United's operating practices will further serve to strengthen the case for uncompetitive pricing in this sector. We are free to market our fruit as we wish, until the dispute pertaining to ownership of the plants is finally determined in March 2021."

He added: "Marketing one's products as one sees fit is the very foundation of a free-market system, which up until now, United Exports has circumvented."

United, however, rejected the suggestion that the interim arrangement was a victory for blueberry growers, describing it as "patently false".

"It misunderstands the

legal and commercial consequences of violating United Exports' proprietary rights," it said. "These rights will now form the backdrop of further confidential arbitration proceedings between the parties."

Additional reporting by Chris Komorek and Fred Meintjes

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