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Starlet Marketing, Patenting and Branding of the California Artichoke

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How do you tempt someone to trim, steam (or boil) artichokes and scrape spiny artichoke leaves with their front teeth?

Here's an easy answer. Crown a newly minted Marilyn Monroe as Castroville's first Artichoke Queen in February 1948.^[1] Chances are—you'd gnaw on anything she promotes with her magnetic smile.

Californians certainly followed Norma Jeane's lead. In 2013, California proclaimed the artichoke as its state vegetable. In fact, 99% of the nation's crop is grown on this strip of land angled against the Pacific.^[2]

Transforming a somewhat user-unfriendly vegetable into a staple of the American diet is a more confounding matter. This article examines innovative patenting, branding and merchandising efforts associated with this *superfood* thistle.^[3]

Artichokes Truly Arrive in California



CAPTION: MARILYN MONROE: THE ARTICHOKE QUEEN
On February 20, 1948, a young starlet appeared in Castroville, California, to inaugurate a diamond ring promotion at a local jewelry store. (Diamonds are a girl's best friend, after all.) Some fans of hers, who just happened to be involved with

Along with avocados—California's official state fruit—artichokes migrated to the Golden State from elsewhere. They've since become twin emblems of *California cuisine*.

Incorporated into the Spanish palate by the Moors, artichokes made their way to the New World by the early 16th century. In an early lesson of *goût de terroir* ("taste of the earth"), their leaves apparently "took on a bitter, disagreeable taste when planted in Hispaniola," the island comprising the Dominican Republic and Haiti.[\[4\]](#)

When first introduced into California, artichokes "were a flop, too many people being of the opinion that they were more trouble than they were worth." (The immigrant Italian community knew better because they knew how to cook them.)[\[5\]](#)

Consumer demand grew after the storied Palace Hotel in San Francisco began to feature artichokes. Its recipe for *Artichokes Barigoule* appears on an 1879 menu. Cleaned, trimmed artichokes are stuffed with a forcemeat of minced bacon, shallots, mushrooms, parsley and spices (salt, pepper, nutmeg) and then baked in stock or wine until tender.[\[6\]](#) In this early era, most artichokes were being grown around Half Moon Bay south of San Francisco.

By the 1920s, artichoke production had moved further south to Castroville, near Monterey Bay. That town is known popularly as the "Artichoke Center of the World," producing 75% of the state's crop. Castroville celebrates the artichoke annually with parades and festivals.[\[7\]](#)

By the mid-twentieth century, Californians had fully embraced artichokes as their preferred regional foodstuff. Genevieve Callahan's classic cookbook—*The California Cook Book* (1946)—describes a home cook's basic recipe:

Favorite California way is to drop some whole [trimmed] artichokes into plenty of boiling salted water containing 2 or 3 peeled cloves of garlic, 2 or 3 tablespoons of salad oil, and several slices of lemon Serve hot with little cups of melted butter, plain or mixed with lemon juice, into which to dip the tender end of each leaf before eating; or pass Hollandaise

sauce. Or serve cold with mayonnaise mixed with lemon juice and prepared mustard.[\[8\]](#)

Proving that artichokes are "not more trouble than their worth" is the abiding merchandising challenge for growers and purveyors of these immature flower buds.

Varietal Patenting Improvements

While not everyone's cup of tea, the dense text of patent specifications can occasionally make for some fascinating reading. Here, they provide insights into the most pressing issues facing artichoke growers and sellers.

Varietal improvements for artichokes can come in many forms. Currently, the season for California artichokes peaks in March through May. Extending seasonality is often a primary object of new artichoke cultivars. Others seek to patent new artichoke varieties exhibiting some other superior production or consumption value. A review of three recently issued artichoke patents illustrates these points.

[An Artichoke Plant Named "PS-MSG0619"](#). The most prolific inventor of artichoke varieties in the United States is William Colfer, with 15 patents issued to date. Most recently, he is assigning these patents to Ocean Mist Farms, the largest grower/seller of artichokes in California; and to Plant Sciences, Inc., an agricultural research company with its headquarters in Watsonville, California.[\[9\]](#)

What distinguishes this new patented variety from the prior art demonstrates what product attributes are significant in the world of artichoke commerce:

- Fleshiness of the artichoke "bracts," e., the edible leaves surrounding the fuzzy choke.
- Fleshiness of the artichoke hearts.
- Uniformity of head shapes.
- Male sterility.

[Artichoke Plant "B13"](#). Stephen Jordan discovered this artichoke variety (and others) and assigned them to Baroda Farms, which he owns in Lompoc, California. The B13 patent notes that this artichoke cultivar can

be harvested year-round, with greatest productivity during "the warm months from March to September."

Steve Jordan is also known to many as an "Artichoke Evangelist." He helped introduce the Sangria artichoke to the public in 2013. These purple artichokes "have a pointed shape, with deep maroon, meaty leaves."^[10] The Sangria artichoke is the result of Jordan's collaboration with Italian and French plant breeders.

Hybrid Artichoke Variety NUN 4060 AR. This artichoke patent differs from those previously discussed because it is a *utility* patent, not a plant patent. The difference between the two under United States law is that plant patents only cover *asexually* reproduced plants. Utility patents can include plants produced from "seeds" rather than through asexual vegetative propagation.^[11]

Nunhems B.V. is the assignee of this hybrid artichoke variety. Under the Nunhems brand, this Bayer-affiliated company is procuring patents for a large number of vegetables, including cucumbers, lettuces, melons, leeks and carrots.

The 4060 patent reiterates plant characteristics vital to artichoke breeders and purveyors:

- Time to harvest, e., varieties adapted to early or late harvest.
- Size, shape and qualities of the head (or globe), for determining whether they are suitable for fresh or other industry purposes.
- Size of the plant.
- Spinelessness of the bracts.

The 4060 patent also explains why the shift to patentable artichoke seeds is of such commercial importance:

Artichoke cultivars have traditionally been bred as clones, using vegetative propagation (planting of basal stumps or suckers), because seed populations were not uniform enough for cultivation. * * *

The shift to seed-planted varieties (rather than vegetative cultivation) has enabled artichokes to be grown as an annual crop, although seed-planted artichokes can also be grown as perennials. Seed-planted varieties are cost and labor saving, because seeds are sown mechanically. Also yields

and quality are much higher, probably to some extent due to the fact that direct-seeded plants produce long taproots, which penetrate deeper into the soil than the vegetative propagations. Hybrid vigor also plays a role in improved yields, as does the better pest and disease control of annually seeded crops.

To satisfy enablement, written description and best mode patenting requirements, patent applicants must deposit their claimed seeds with a depository institution approved by the World Intellectual Property Organization.^[12] Plant patent applicants, in contrast, do not encounter such depository requirements.

Artichoke Branding and Merchandising Innovations

Key advances in product packaging are transforming artichokes from an unbranded, undifferentiated commodity into memorable, trademarked brands. Ocean Mist Farms leads the way with its state-of-the-art merchandising efforts.

Labeling is a necessary first step for brand recognition. Applying one's trademark directly to fresh vegetable produce, however, has always been a tricky venture. Ocean Mist Farms now relies on a patented "ElastiTag[®]" to affix its brand name and PLU bar code to artichokes. A side-by-side comparison shows that the patented tag in a real-world application:

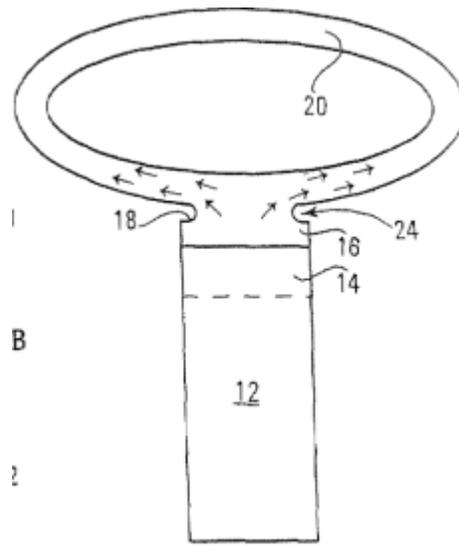


FIG. 5



The Elastitag® patent owner is Bedford Industries located in Worthington, Minnesota. In patentese, the invention relates to an article "that has a labeling tag flatly conjoined along a unifying flat bond zone with a flexible elastic layer that includes an elastic fastening loop." See [U.S. Patent No. 7,640,687](#), entitled "Merchandise Labeling" (issued on 1/5/10).

The fresh produce labeling problem solved by the '687 patent is described as follows:

In short, a one-step process using an economical unitary product for reliable and simultaneous tagging and banding of merchandise, including for tagging and banding clumps of agricultural produce, is much desired by industry and has been much sought after for a very long time.

The new merchandise labeling article of this invention relies upon entirely new physical features and relationships. Significantly, the new article is sheet-like throughout. It has a labeling tag and an elastic fastening loop conjoined along a unifying flat bonding zone. The loop extends away from the tag.

Despite the fact that the loop lacks the physical appearance of the usual rubber band, it can function much the same as a rubber band in holding a clump of merchandise together and thus effectively band merchandise. Ideal tagging products of this invention can have an easily scanned UPC bar code on the tag portion.

Eliminating Food Prep Tasks with Clever Packaging

With product branding now possible, the next consumer difficulty to be solved is making artichokes as easy to prepare as possible. Formerly, you might have learned how to clean and prepare artichokes with hands-on instruction from your mother, aunt or grandmother.

With the rise of a singles demographic seeking convenience and perhaps lacking suitable kitchen equipment, this means selling artichokes that are already prepped and ready to be microwaved. To meet such growing demand for an on-the-go consumer demographic, Ocean Mist Farms now features ready-made artichokes in a microwavable "season & steam" bag.[\[13\]](#)

Conclusion

When I was five years old and on my first family trip from Minnesota to California in 1962, my Aunt Kathy served us trimmed and boiled Globe artichokes. We ate them on a poolside veranda, with melted butter for dipping and my new buck teeth primed for leaf scraping. I tried a few—and then longed for macaroni and cheese with sliced hot dogs instead.

Many moons and cooking classes later, my palate flipped. Artichokes are now my staple comfort food, served with Hollandaise sauce and a healthy California frame-of-mind.

[1] While some internet sites incorrectly refer to Marilyn Monroe's as being crowned Artichoke Queen in 1947, the actual date is February 1948. Thanks to the excellent research assistance of Lane Powell's librarian staff—Robyn Hagle in this instance—for verifying this Marilyn Monroe timeline fact.

[2] See <http://www.thepacker.com/fruit-vegetable-news/Artichoke-state-food-of-California-202369761.html>. The reference to this "strip of land angled against the Pacific" is drawn from John Steinbeck's description of California in *Travels with Charley in Search of America* (1962).

[3] "The potential health benefits of artichoke hearts range from detoxifying and liver-cleansing effects to cholesterol-lowering properties. These juicy flower buds are also a real superfood when it comes to antioxidant activity." See <http://www.healwithfood.org/health-benefits/artichoke-hearts-superfood.php#ixzz42u9mvGGV>.

[4] W. Dunmire, *Gardens of New Spain: How Mediterranean Plants and Foods Changed America* (2004), pp. 14-14, 96-97.

[5] H.E. Brown, *Helen Brown's West Coast Cook Book* (1952), p. 357.

[6] *Id.*, p. 359.

[7] Castroville's next Artichoke Food and Wine Festival takes place on June 4-5, 2016. See <http://artichokefestival.org/general-info/artichokes-castroville/>.

[8] G. Callahan, *The California Cook Book: For Indoor and Outdoor Eating* (1946), p. 175.

[9] Ocean Mist Farms and Plant Sciences Inc. are involved in an artichoke-related joint venture. See <http://www.plantsciences.com/cms/2/324/about/>.

[10] See http://www.specialtyproduce.com/produce/Sangria_Artichokes_8966.php.

[11] Newly discovered plants are patentable subject matter under general U.S. patent law notwithstanding additional protections available under the Plant Patent Act or the Plant Variety Protection Act. See *J.E.M. Ag Supply Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124 (2001).

[12] See generally, D. Harney and T. McBride, "Deposit of Biological Materials in Support of a U.S. Patent Application," accessed online at <http://www.iphandbook.org/handbook/ch10/p10/>.

[13] See <http://www.oceanmist.com/products/season-steam/>. Ocean Mist Farms introduced a variant of this microwavable artichoke packaging at the Produce Marketing Association Fresh Summit in October 2011. See <http://www.thepacker.com/fruit-vegetable-news/Ocean-Mist-introduces-microwavable-artichokes-bag-130157538.html> and <http://www.packagingdigest.com/decorative-materials/microwavable-steamer-bag-simplifies-artichoke-prep>.