IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MARK OPPOSED: KLONDIKE GOLD
APP. SERIAL NO.: 76/491,895
DATE FILED: FEBRUARY 21, 2003
DATE PUBLISHED: MAY 4, 2004

EARTHFRESH FOODS CORP., FORMERLY MACKAY & HUGHES (1973) LIMITED,

OPPOSER,

v.

AGROW FRESH PRODUCE, INC.,

APPLICANT.

NOTICE OF OPPOSITION

OPPOSITION NO. _____

Earthfresh Foods Corp., formerly MacKay & Hughes (1973) Limited ("Opposer"), by its attorneys, Harter, Secrest & Emery LLP, as and for its Notice of Opposition against Agrow Fresh Produce, Inc. ("Applicant"), hereby alleges as follows:

09/07/2004 KGIBBONS 00000017 76491895
01 FC:6402 300.00 OP

PARTIES

1. Opposer is a corporation, incorporated under the laws of Ontario, with its business address at 131 Browns Line, Toronto, Ontario M8W 3S2.

2. Opposer owns Application Serial No. 76/348,330 for the mark KLONDIKE ROSE, for "fresh vegetables" in international class 031 and United States classes 001 and 046, which was filed on December 11, 2001. Opposer first used KLONDIKE ROSE and first used KLONDIKE ROSE in commerce at least as early as December 10, 2001 in connection with fresh potatoes.

3. On July 19, 2004, MacKay & Hughes (1973) Limited, Earthfresh Foods Corp., and Rollande Guinios Vegetable Distributor, Inc. were amalgamated into Earthfresh Foods Corp.

MacKay & Hughes assigned its trademarks, including KLONDIKE ROSE, to Earthfresh Foods Corp. Attached hereto as **Exhibit A** is the Notice of Recordation of Assignment from the Patent and Trademark Office, dated August 25, 2004.

4. On information and belief, Applicant is an Illinois corporation, with its business address at 4540 South Kolmar, Chicago, Illinois 60632.

5. Applicant filed an intent-to-use application, Application Serial No. 76/491,895, for the mark KLONDIKE GOLD, for "fresh potatoes" in international class 031 and United States classes 001 and 046 on February 21, 2003.

STANDING

6. Opposer has standing to oppose Applicant's application because Opposer believes that it will be damaged by the registration of Applicant's mark. Applicant's mark, when used in connection with Applicant's stated goods, so resembles Opposer's mark previously used in connection with Opposer's goods, that Applicant's use is likely to cause confusion or mistake, or is likely to deceive. Registration of Applicant's mark will cast doubt on the validity or strength of Opposer's registration, when granted.

PRIORITY

7. Opposer has priority because it used KLONDIKE ROSE in connection with fresh potatoes in commerce since at least as early as December 10, 2001 and filed its United States application for registration on December 11, 2001. Also, Opposer filed a Canadian application for registration, Canadian Application No. 1106081, for KLONDIKE ROSE in connection with "fresh potatoes," among other things, on June 13, 2001. Therefore, Opposer's priority date is December 10, 2001 and potentially will be June 13, 2001.

8. Applicant filed its intent-to-use application for KLONDIKE GOLD, in connection with "fresh potatoes" on February 21, 2003, well after Opposer's use and filing dates.

GROUNDS

9. Opposer opposes Applicant's Application pursuant to Lanham Act § 2(d), 15 U.S.C. § 1052(d), on the grounds that Applicant's mark so resembles the mark that Opposer has previously used, and not abandoned, in connection with Opposer's goods, as to be likely, when used in connection with Applicant's stated goods, to cause confusion, or to cause mistake, or to deceive.

THIS OPPOSITION IS TIMELY

10. Applicant's Application was published for opposition on May 4, 2004. MacKay & Hughes's time to oppose Applicant's application was extended until September 1, 2004. Accordingly, this opposition is timely.

OPPOSER'S USE

11. Opposer has used KLONDIKE ROSE in commerce in connection with fresh potatoes since at least as early as December 10, 2001.

12. In or about June of 2001, Opposer licensed Potandon Produce, L.L.C., a Delaware limited liability company, to the use KLONDIKE ROSE for fresh potatoes in the United States.

13. Opposer has also licensed Washington Lettuce and Onion, Hughes Farms, and Troyer Bros. Florida, Inc. to use KLONDIKE ROSE for fresh potatoes.

14. Further, Opposer licensed Sysco Corporation ("Sysco") to use KLONDIKE ROSE in connection with fresh potatoes.

15. Opposer and its licensees sell KLONDIKE ROSE fresh potatoes through distributors, wholesalers, club stores, grocery stores, and jobbers throughout the United States.

16. Opposer and its licensees have sold significant amounts of fresh potatoes in connection with the KLONDIKE ROSE mark.

17. In 2002, Opposer and its licensees sold more than 218,960 fifty-pound units of fresh potatoes under the mark KLONDIKE ROSE, for a total sales amount of $2,516,188.04.

18. In 2003, Opposer and its licensees sold more than 475,166 fifty-pound units of fresh potatoes under the mark KLONDIKE ROSE, for a total sales amount of $5,344,017.15.

19. From January 1, 2004 through June 25, 2004, Opposer and its licensees sold more than 336,888 fifty-pound units of KLONDIKE ROSE fresh potatoes, for a total sales amount of $3,431,743.71.

20. In addition, Opposer has expended significant amounts of time and resources to market and promote its fresh potatoes in connection with the KLONDIKE ROSE mark.

21. During the 2002-2003 fiscal year, Opposer expended more than $125,000 to market and promote its KLONDIKE ROSE fresh potatoes. A chart showing Opposer's 2002-2003 Marketing Budget and Expenses is attached here to as **Exhibit B**.

22. During Opposer's 2003-2004 fiscal year, Opposer expended $165,000 to market and promote its KLONDIKE ROSE fresh potatoes. A chart of Opposer's 2003-2004 Marketing Budget and Expenses is attached as **Exhibit C.**

23. Opposer and its licensees sell fresh potatoes under the mark KLONDIKE ROSE in a number of different sized packages, including three, five, and ten pound bags. Attached hereto as **Exhibits D, E,** and **F,** respectively, are sample three, five, and ten pound packages. Attached hereto as **Exhibit G** are pictures of further packages in which Opposer and its licensees sell KLONDIKE GOLD potatoes, including pillow packs and various sized boxes. Attached hereto as **Exhibit H** are pictures of boxes in which Sysco sells KLONDIKE ROSE fresh potatoes.

24. Also, Opposer has advertised KLONDIKE ROSE fresh potatoes in various trade publications, including *The Packer*, a produce industry business newspaper. Attached hereto as **Exhibit I** are copies of advertisements for KLONDIKE ROSE fresh potatoes that have appeared in *The Packer*.

25. KLONDIKE ROSE fresh potatoes have also received media attention, as evidenced by the following articles, which are attached hereto as **Exhibit J**:

a. *Focus on Fresh: Spuds Rebound*, The Packer, Grocery Headquarters, January, 2003;

b. *Fresh Potatoes and Onions*, The Packer, Grocery Headquarters, September, 2003; and

c. *Focus on Fresh: The Healthy Potato*, The Packer, Grocery Headquarters, January, 2004.

26. Since Applicant's mark so resembles the mark that Opposer has previously used, and not abandoned, in connection with Opposer's goods, as to be likely, when used in connection with Applicant's stated goods, to cause confusion, or to cause mistake, or to deceive, Applicant's application should be refused registration under Lanham Act § 2(d), 15 U.S.C. § 1052(d).

WHEREFORE, Opposer respectfully requests that the Board sustain Opposer's opposition and refuse registration to Applicant's Application, Serial No. 76/491,895.

Dated: August 26, 2004

Respectfully submitted,

HARTER, SECREST & EMERY LLP

By: Kimberly I. Shimomura

Stephen B. Salai, Esq.
Reg. No. 26,990
Kimberly I. Shimomura, Esq.
Attorneys for Opposer Earthfresh Foods Corp., formerly MacKay & Hughes (1973) Limited
1600 Bausch & Lomb Place
Rochester, New York 14604
Tel: (585) 232-6500
Fax: (585) 232-2152

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Exhibit A

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

[redacted]

AUGUST 25, 2004

PTAS

900012022A

STEPHEN B. SALAI
1600 BAUSCH & LOMB PLACE
ROCHESTER, NY 14606

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 08/24/2004

REEL/FRAME: 002922/0063
NUMBER OF PAGES: 22

BRIEF: MERGER
DOCKET NUMBER: 88382.000072

ASSIGNOR:
EARTHFRESH FOODS CORP.

DOC DATE: 07/19/2004
CITIZENSHIP: CANADA
ENTITY: CORPORATION

ASSIGNOR:
MACKAY & HUGHES (1973)LIMITED

DOC DATE: 07/19/2004
CITIZENSHIP: CANADA
ENTITY: CORPORATION

ASSIGNOR:
DISTRIBUTION DE LEGUMES ROLLANDE GUINOIS INC./ROLLANDE GUINOIS VEGETABLE DISTRIBUTOR INC.

DOC DATE: 07/19/2004
CITIZENSHIP: CANADA
ENTITY: CORPORATION

ASSIGNEE:
EARTHFRESH FOODS CORP.
40 KING STREET WEST
SUITE 4400 (FSC)
TORONTO, CANADA M5H3Y4

CITIZENSHIP: CANADA
ENTITY: CORPORATION

APPLICATION NUMBER: 78354946
REGISTRATION NUMBER:

FILING DATE: 01/21/2004
ISSUE DATE:

MARK: CARROT PATCH
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78216772
REGISTRATION NUMBER:

FILING DATE: 02/20/2003
ISSUE DATE:

MARK: EARTHFRESH FOODS
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78297354
REGISTRATION NUMBER:

FILING DATE: 09/08/2003
ISSUE DATE:

MARK: KLONDIKE GOLDUST
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78177493
REGISTRATION NUMBER:

FILING DATE: 10/23/2002
ISSUE DATE:

MARK: MEGA BETA
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367540
REGISTRATION NUMBER:

FILING DATE: 02/06/2002
ISSUE DATE:

MARK: MOTHER EARTH
DRAWING TYPE: STYLIZED WORDS, LETTERS, OR NUMBERS

APPLICATION NUMBER: 76348330
REGISTRATION NUMBER:

FILING DATE: 12/11/2001
ISSUE DATE:

MARK: KLONDIKE ROSE
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76405301
REGISTRATION NUMBER: 2868068

FILING DATE: 05/09/2002
ISSUE DATE: 07/27/2004

MARK: RED YUKON
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367739
REGISTRATION NUMBER: 2715319

FILING DATE: 02/06/2002
ISSUE DATE: 05/13/2003

MARK: GOLDENBERRY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367743 FILING DATE: 02/06/2002
REGISTRATION NUMBER: 2699897 ISSUE DATE: 03/25/2003

MARK: SNOWBERRY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367742 FILING DATE: 02/06/2002
REGISTRATION NUMBER: 2718794 ISSUE DATE: 05/27/2003

MARK: WILD MIX
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367741 FILING DATE: 02/06/2002
REGISTRATION NUMBER: 2715321 ISSUE DATE: 05/13/2003

MARK: PURPLEBERRY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367740 FILING DATE: 02/06/2002
REGISTRATION NUMBER: 2715320 ISSUE DATE: 05/13/2003

MARK: CRIMSONBERRY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76367738 FILING DATE: 02/06/2002
REGISTRATION NUMBER: 2718793 ISSUE DATE: 05/27/2003

MARK: ITSY BITSY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

MARY BENTON, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OPPOSITION NO. _____

Exhibit B

KLONDIKE ROSE™

2002-2003 MARKETING BUDGET AND EXPENSES

Last Year- 2002

Consumer	
Kwik Lok tags	$23,216.62
Demos	
All done at Sam's Club on December 21st	$36,471.35
Consumer Expenditures	**$59,687.97**
Percent of Total Expenditures	46.4%
Trade	
Trade Ads	
Fresh Trends- December	
Grocery Headquarters- December, January	
Produce News- December	
The Packer- November	$21,381.66
Other Trade	$350.00
PMA Convention	$823.75
Samples (ongoing)	$7,980.95
Sales Material/ POS	$10,929.97
Trade Expenditures	**$41,466.33**
Percent of Total Expenditures	32.2%
Other	
Package design	$7,632.00
Package Plates	$15,321.38
Other	$4,177.86
Other Expenditures	**$27,131.24**
Percent of Total Expenditures	21.4%
Total Expenditures	**$128,285.54**

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Exhibit C

KLONDIKE ROSE
RED SKIN GOLDEN POTATOES
2003-2004 PROPOSED MARKETING BUDGET AND EXPENSES

Proposed Budget

Consumer	
Kwik Lok tags on 50%-100% of bags	$50,000
Demos	$40,000
Done at all Sam's Clubs in September	
Consumer Expenditures	**$90,000**
Percent of Total Expenditures	54.5%
Trade	
Trade Ads	$12,000
Produce News 2X	
The Packer 2X	
Other Trade	$5,000
PMA Convention	$2,000
Samples (ongoing)	$7,500
Sales Material/ POS	$10,000
Trade Expenditures	**$36,500**
Percent of Total Expenditures	22.2%
Other	
Web Site	$10,000
Food Service	$10,000
Miscellaneous	$8,500
Non-committed	$5,000
Package/Box design	$5,000
Other Expenditures	**$38,500**
Percent of Total Expenditures	23.3%
Total Expenditures	**$165,000**

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Exhibit D

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1

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Exhibit F

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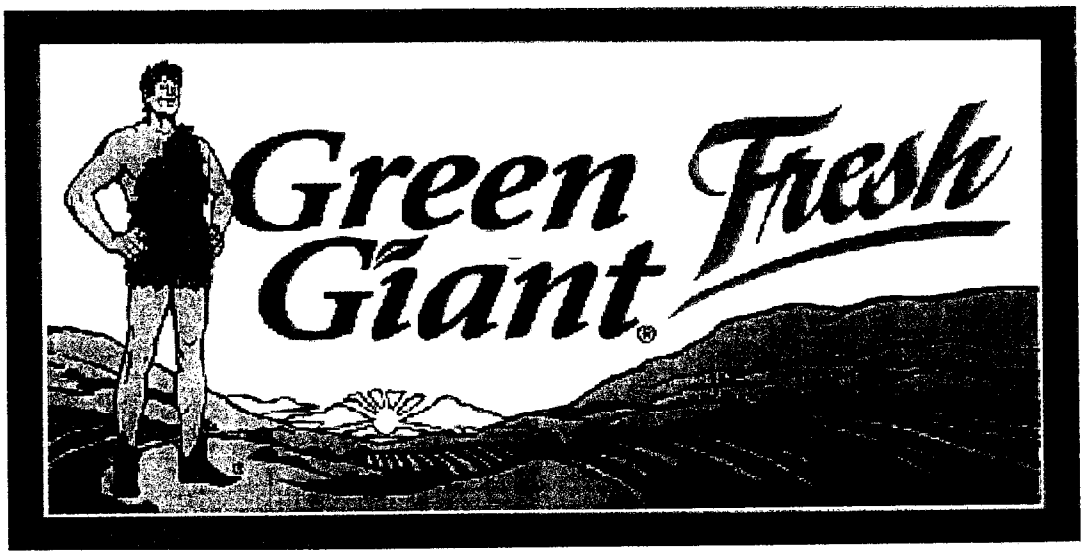
Exhibit G

Green Giant Fresh
Klondike Rose Packaging



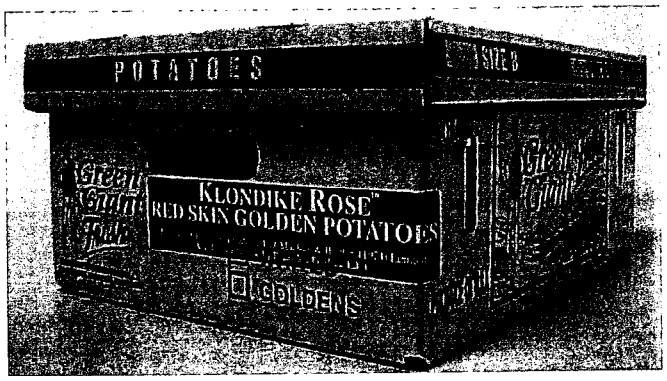
Klondike Rose Pillow Pack Bag

Klondike Rose
Pillow Pack Front

Klondike Rose
Pillow Pack Back

Product- C size only

UPC - 6-05806-00230



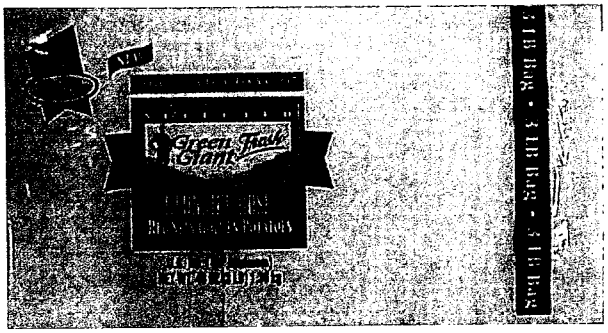
18 lb Carton

12-24oz bags
100-112 per pallet

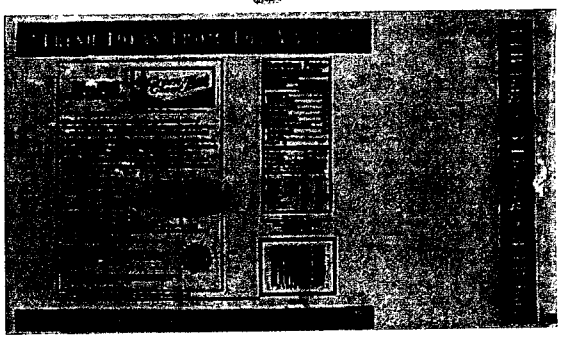
MUST use a sticker to denote Klondike Rose variety

Special Note- Must apply a Klondike Rose PSL (sticker) as shown

3lb Klondike Rose Bag



Klondike Rose Front



Klondike Rose Back

Product- A, B, or C size

UPC - 6-05806-00231

50/48 lb Paper Baler

16 bags per baler
800-840 per truckload
2,500 per railcar

Check box on bottom of bag MUST be marked appropriately!

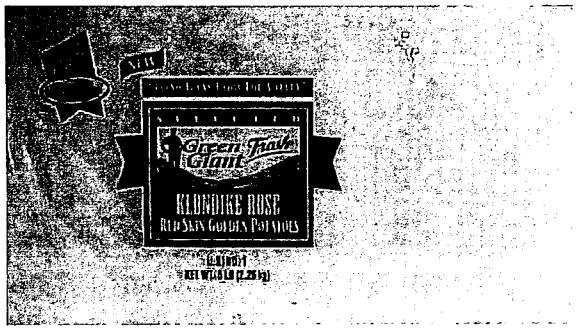
50 lb Carton

16 bags per carton
800-840 per truckload
2,300-2,370 per railcar

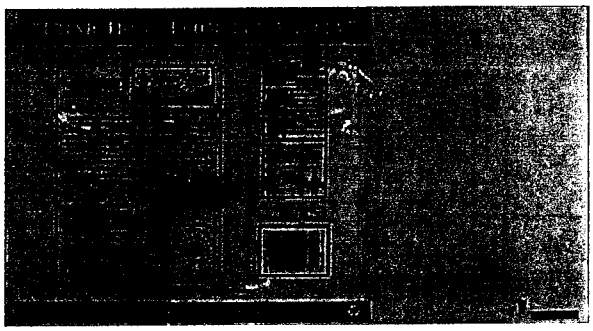
Need PSL for Carton to denote 16/3

Special Note-Paper baler and carton have a check box to denote number of bags and total weight.

5lb Klondike Rose Bag



Klondike Rose Front



Klondike Rose Back

Product- A size or B size with sticker applied

UPC - 6-05806-00232

50/48 lb Paper Baler

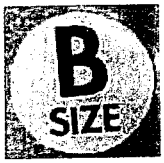
10 bags per baler
800-840 per truckload
2,500 per railcar

Check box on bottom of bag MUST be marked appropriately!

50 lb Carton

10 bags per carton
800-840 per truckload
2,300-2,370 per railcar

Check box on carton MUST be marked appropriately!



B Sized Sticker

Used on poly bags for B size product

Special Note-Paper baler and carton have a check box to denote number of bags and total weight.

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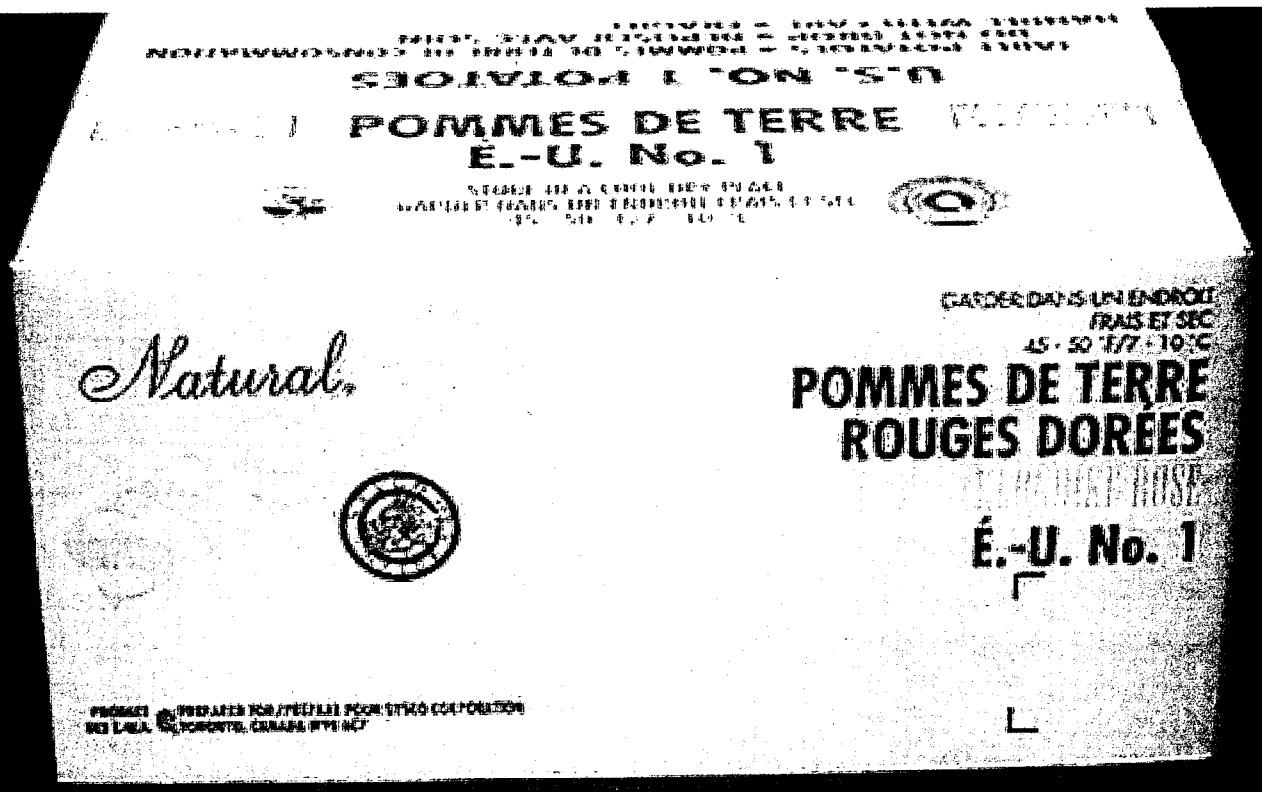
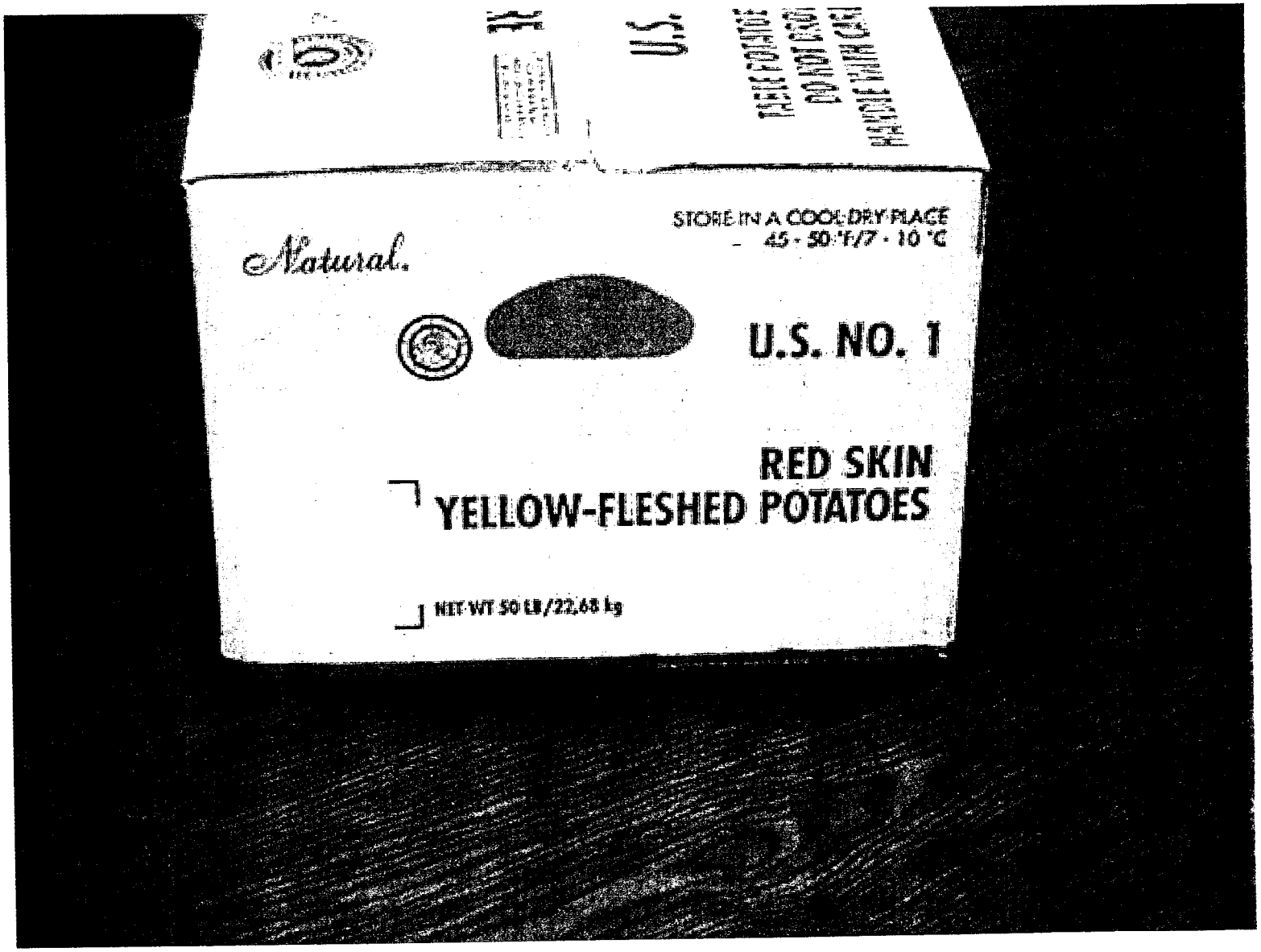
Exhibit H


POMMES DE TERRE
É.-U. No. 1
Natural.
GARDER DANS UN ENDROIT
FRAIS ET SEC
POMMES DE TERRE
ROUGES DORÉES
É.-U. No. 1


STORE IN A COOL DRY PLACE
45 - 50 °F/7 - 10 °C
Natural.
U.S. NO. 1
RED SKIN
YELLOW-FLESHED POTATOES
NET WT 50 LB/22.68 kg

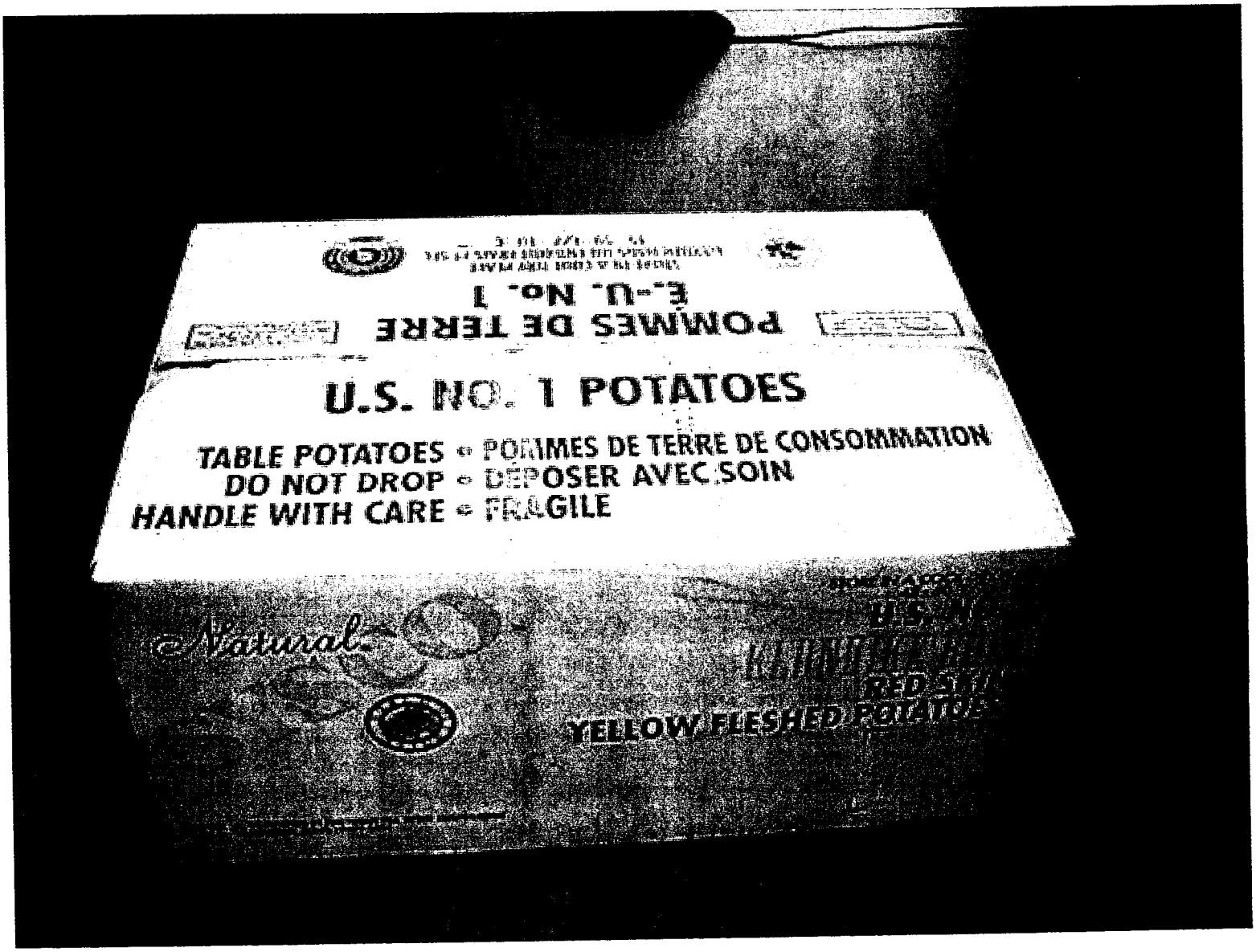

POMMES DE TERRE
E.-U. No. 1
U.S. NO. 1 POTATOES
TABLE POTATOES • POMMES DE TERRE DE CONSOMMATION
DO NOT DROP • DÉPOSER AVEC SOIN
HANDLE WITH CARE • FRAGILE
Natural
YELLOW FLESHED POTATO

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Exhibit I

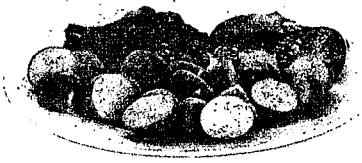
Introducing

KLONDIKE ROSE™

A Truly Remarkable Potato.

Once or twice in a lifetime we are fortunate to find a new variety of potato that is truly extraordinary; so it is with Klondike Rose.™

A beautiful rose-colored skin with an amazing gold-colored flesh and taste that is simply unbelievable! Combine this with a buttery texture so smooth and delicious that, we are certain you will agree, this is a truly remarkable potato. For a free sample and to learn more about this great new variety, availability, and pack sizes please call the potato experts at Potandon Produce, the exclusive marketer of Green Giant® Fresh potatoes.



Potandon Produce L.L.C. (800) 767-6104
In Canada please contact MacKay & Hughes Ltd. (800) 565-4915
www.klondikerose.com

Klondike Rose™ is a trademark of MacKay & Hughes (1973) Limited. Used under license by Potandon Produce L.L.C.
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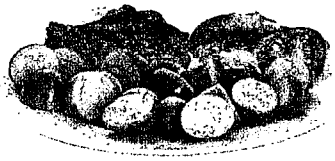

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MARK OPPOSED: KLONDIKE GOLD
APP. SERIAL NO.: 76/491,895
DATE FILED: FEBRUARY 21, 2003
DATE PUBLISHED: MAY 4, 2004

EARTHFRESH FOODS CORP., FORMERLY MACKAY & HUGHES (1973) LIMITED,

OPPOSER,

v.

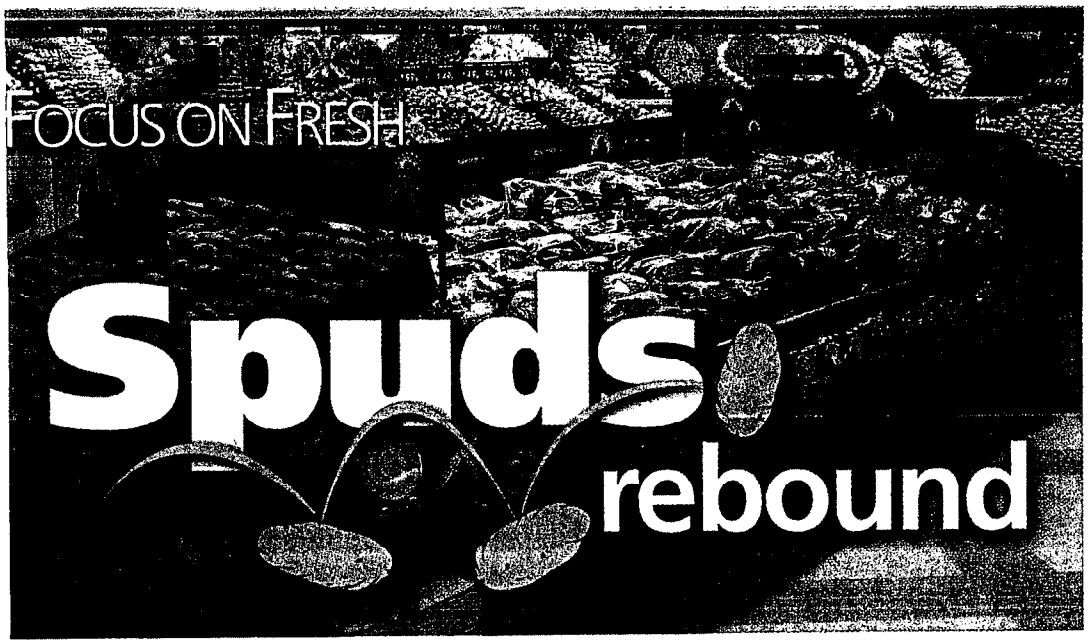
AGROW FRESH PRODUCE, INC.,

APPLICANT.

NOTICE OF OPPOSITION

OPPOSITION NO. _____

Exhibit J



Spuds rebound

Although potatoes have experienced flat sales in previous years, new varieties and convenient packaging are adding excitement to the category.

BY MOLLY McLAUGHLIN

Warding off long-time lackluster sales, the potato category is just beginning to revive its image and performance at retail. According to Schaumburg, Ill.-based ACNielsen, fresh potato sales grew 25.5% to reach $1.5 billion in food, drug and mass outlets (excluding Wal-Mart) for the period ending October 5, 2002, a significant increase from previous years. The introduction of more varieties, convenient packaging and cooking suggestions appears to have the potato segment on its feet again.

Although potatoes are considered to be a staple, consumers on the run do not always turn to spuds as a fast, easy accent to their at-home meals. "Most consumers are looking for quick and easy," says Shannen Bornsen, director of marketing for the Washington State Potato Commission, based in Moses Lake, Wash. "I don't think a lot of them think about potatoes being quick and easy—that is something that we need to educate consumers on." To that end, the Washington State Potato Commission is attempting to communicate the ease of potato storage and preparation through its Spud Syllabus, a comprehensive guide to potato varieties, storage and cooking techniques.

Fad protein diets have also been a factor in consumers shying away from carbohydrate-loaded potatoes. However, potatoes are packed with fiber, potassium and vitamin C, and are low in sodium—nutritional facts that suppliers and retailers should tout on packages and in displays, says Jack Hansen, vice president retail merchandising for the Idaho Potato Commission, based in Boise, Idaho. "These are complex carbohydrates that are good for you because they fill people up, and tend to make them eat less."

Called by the French, "pomme de terre," or apple of the earth, potatoes are being treated differently by growers and retailers as they learn a few lessons from the apple category. By differentiating varieties, for example, the apple industry has recaptured consumer interest. "One of the things apple growers did very well is make consumers understand that not all apples are Red Delicious—some are better for cooking, some better for eating. It's an issue that potatoes are struggling with as an industry," says Mike Carter, executive director for the Wisconsin Potato and Vegetable Growers Association, based in Antigo, Wis. Consumers now have the choice between not only russets, but red, gold, white and blue potatoes, ranging in size and available in large and small packages.

Many potato associations are working to bridge the gap between suppliers and retailers in an effort to proactively reach consumers through point-of-sale (POS) materials and attractive displays. Furthermore, the potato industry is expanding its reach to various ethnic and demographic groups. "Basic trends have shown that Hispanics, consumers 55 and over and two-income homes are really our target markets," says Paul Budziszewski, marketing director for the Northern Plains Potato Growers Association, based in East Grand Forks, Minn.

So, what are these consumers looking for when they shop for potatoes? Here's a look at a few potato suppliers' strategies to keep potato sales rebounding.

THE HOT POTATO

UPC coded fresh potatoes

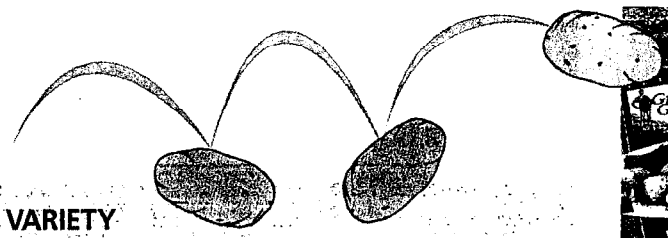
Total U.S. sales—Food, Drug, Mass (excluding Wal-Mart)

Volume	Dollar Volume $ (billions)	% Change vs. year ago
52 weeks ending 10/07/00	$1.15	4.8%
52 weeks ending 10/06/01	1.25	8.4
52 weeks ending 10/05/02	1.57	25.5

Source: ACNielsen Strategic Planner

ENVIRONMENTALLY FRIENDLY POTATOES

Developed in tandem with the World Wildlife Fund (WWF) and the University of Wisconsin, Madison, the Wisconsin Potato and Vegetable Growers Association has introduced a brand called Healthy Grown. The ecolabeled potatoes are grown by Wisconsin growers that limit pesticide use, employ integrated pest management and undergo certification by Protected Harvest, a third-party, independent non-profit organization. Although Healthy Grown potatoes are not organic, they provide consumers with a choice that supports the environment, says Carter. "The consumer is getting a potato that has been developed in an ecologically minded way. All of the information that we have gotten back through focus groups and market surveys shows that not only are people willing to buy the product, they are willing to pay a premium for it," he adds. Industry observers also note that organic potatoes make up a small, but growing segment.

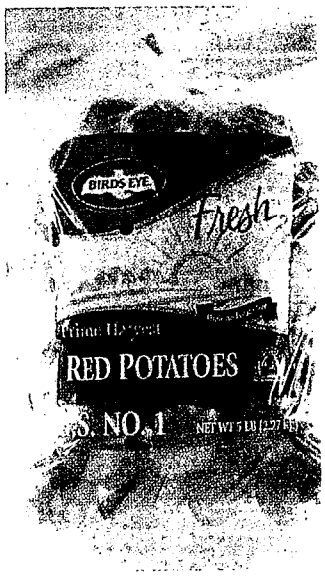


CREATING PARTNERSHIPS AND VARIETY

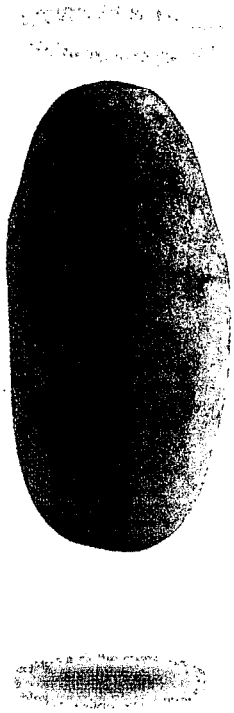
Recent mergers between potato growers have strengthened suppliers' relationships with retailers because they can now offer increased assortment. "I think that retailers have over the past several years begun to realize that the potato category is one that they need to bring some differentiation against their competitors," says Steve Ottum, chief operating officer for Potandon Produce, based in Idaho Falls, Idaho.

One way to effectively differentiate a store and its potato offerings is through variety. For instance, Potandon Produce recently introduced a new potato variety under the Green Giant brand that combines characteristics of red and gold potatoes to create its Klondike Rose variety. "It takes the best of the red potato, which is the nice skin, red color, and combines that with a yellow flesh potato with a buttery texture and hearty potato flavor," says Kent Romrell, senior vice president of sales for Potandon.

BABY POTATOES



Birds Eye Fresh, a brand under Agrilink Foods, based in Green Bay, Wis., is catering to the demand for smaller potatoes in smaller packages. Introduced last year, its 2-pound baby red, yellow and white potatoes are ideal for consumers needing only a limited amount for smaller dishes. "Obviously there are several trends," says Lynn Wilcox, president and owner of Rexburg, Idaho-based Wilcox Marketing Group, which owns the rights to the Birds Eye name for bagged potatoes. "One of those trends was smaller sized packages. You have smaller households, smaller families, and people preparing fewer meals at home." The company also works with retailers to cross-promote Birds Eye fresh and frozen items through an extensive coupon program. □



It really is God's country after all.

Even though potatoes will grow in a lot of places, Washington Potato Growers have one major advantage... it's called divine weather and soil.

You just couldn't pick a better place to grow spuds.

On the West Side of our state marine influenced conditions and rich soil coddle our red potatoes to the point of perfection.

That may have something to do with them being the #1 choice of the restaurant business.

On the East Side of the state the Columbia River Basin features soil that is mineral-rich. That soil is warmed by sunshine during the day and cools off at night thanks to the Cascade Mountains.

This combination produces a light and fluffy, high-solids Washington State Russet, the one that is #1 in the world in French fry production and in exports of dehydrated and processed potato products.

So all our man-made farming advances aside, from all appearances it would seem "Someone" thought potatoes should grow in Washington.

WASHINGTON Potatoes STATE

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Fresh potatoes and onions

Potatoes and onions are mainstays of the produce department. Steve Ottum, COO, and Kent Romrell, senior vice president of sales, for Potandon Produce, LLC discuss the latest company events that will help retailers build sales in these categories.

What is the brief history of Potandon?

Steve Ottum and Kent Romrell: The roots of Potandon were formed in The Pillsbury Company. Potandon used to be a division of Pillsbury back in the 1980s and early 1990s, when Pillsbury had a potato processing plant and fresh shed in Shelley, Idaho, which is where the beginning of our fresh potato business originated. In March 1995, Pillsbury made a decision to spin off the fresh potato and onion business, and we completed a management-led buyout.

Along with that buyout transaction came our ability to obtain the exclusive licensing rights to use the Green Giant brand on our fresh potato and fresh onion products throughout North America. Minneapolis-based The Sholl Group, through direct sales, sub-licenses, and joint ventures is responsible for the sales and marketing of many Green Giant Fresh produce items other than potatoes and onions. We work very close with The Sholl Group on multiple Green Giant brand related activities. We've grown the Potandon business more than five-fold through business growth and recent mergers. We also added a supply base around the country.

What were the recent mergers and how are they significant?

In June of 2002 we accomplished two very significant transactions for our business. We merged the sales and marketing activities from the Idaho Fresh Cooperative, a major crop grower cooperative in Idaho. It's an approximately 70-member grower co-op. We took over its sales and marketing, and the co-op became a part owner in Potandon. We obtained the use of their brand, Sunspice. So, now we have two very good brands. Green Giant is the most widely known vegetable brand to consumers, and Sunspice is a highly regarded trade brand for both retail and foodservice.

What the merger really added for the company, aside from the brand and the customer base, is that it allowed Potandon to really be tied to the ground. We're recognized as a shipper and it added a lot of credibility to the company, which now controls the production and sales for over 35,000 acres of potatoes (packed in five facilities) in the State of Idaho.

We did a very similar transaction with another company called High Country Potato. High Country is one of the original Potandon owners, but we consolidated the sales and marketing activities of that company as well. So, between the two mergers we gained control over all these dedicated acres of production and utilize the benefits of having six production sheds here in Idaho.

How does your production and supply base benefit supermarket buyers?

We've been able to provide better and more flexible customer service because of our dedicated production. The trade views us in a more significant way. Our share of the Idaho fresh potato market is around 20%, and our share of the total national market is 10%. We sell to a lot of the major retailers, club stores, wholesalers, produce distributors and restaurant chains. We have full distribution across the country.

What is the extent of Potandon's involvement in the fresh onion category?

Fresh onions are a large category for us, a growing category with a diverse supply base around the country. We manage and participate in several growing ventures around the U.S., and then market the crop, which is a strategic benefit for us. We sell western-grown red, white and yellow onions out of Washington and California. We also sell sweet onions out of Vidalia, Ga., Mexico and Texas.

What is the Klondike Rose, the new variety of potato you recently introduced?

With a Canadian partner, we've obtained the exclusive rights to the Klondike Rose potato, which is a red-skinned, yellow-fleshed potato. It combines the beauty of a red skin and the great taste of a yellow potato. It's got a very unique and great taste. It's something new, exciting and different. The trade has been very receptive to it. We started shipping the Klondike Rose in late August. This is its second season. While we don't have enough supply for everyone to carry it, there is national distribution. It really could be a new category within the potato category. We have various point-of-sale materials to help educate and promote this variety.

POTANDON PRODUCE

FRESH POTATOES & ONIONS

Nation's Largest Fresh Potato & Onion Organization

- Exclusive sales agent for 35,000 acres of Idaho potatoes
- Nationally recognized brands

Highest Industry Quality Standards

- Stringent quality control program
- Regular QA visits to all approved packing facilities
- Independent AIB audits of all packing facilities

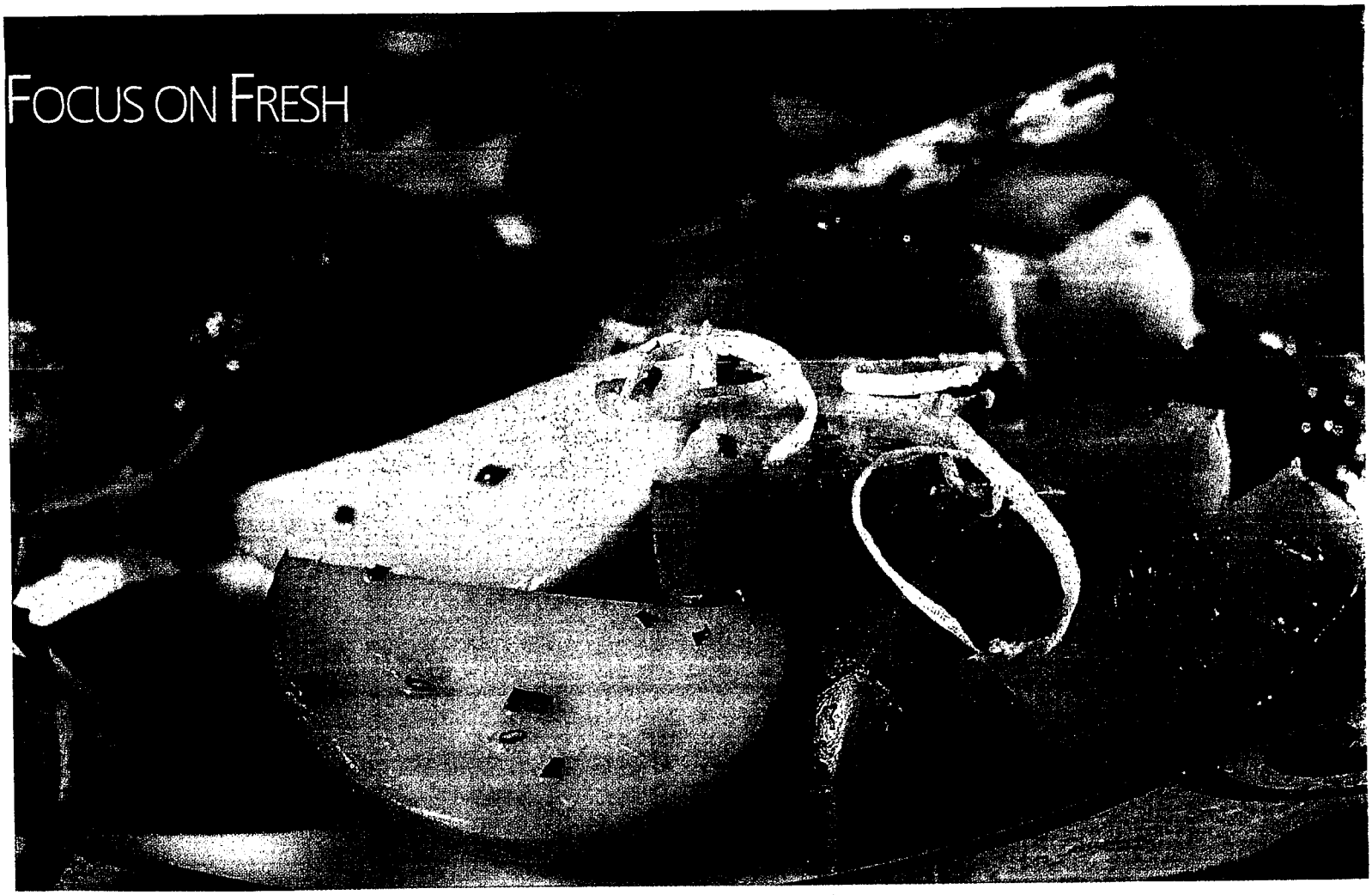
Full Line Supplier of Potatoes & Onions

- In-market distributors to deal with unanticipated spikes in demand
- Flexible sourcing network throughout North America
- Rotating shipping areas to ensure highest quality produce year-round

Retail Management Services

- Vendor managed inventory control services
- Category management programs

For more information call (800) 767-6104



THE HEALTHY POTATO

The low-carb diet craze has given the potato a bad rap, but suppliers and industry associations are working hard to dispel myths and promote the vegetable's true nutritional benefits. BY REBECCA ZIMOCH

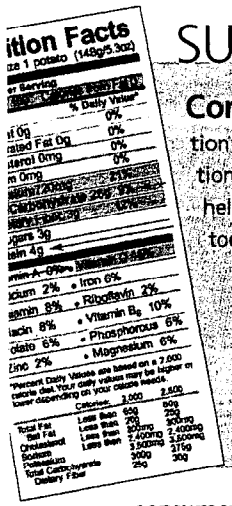
For most of the last century, the classic American meal was described as meat and potatoes. But with this century's focus on high-protein, low-carbohydrate diets, should the industry be worried that today's consumers are still eating the meat but skipping the spuds?

The short answer is no. Industry officials say that despite carb concerns, potatoes continue to be an important vegetable in people's diets. "Potatoes have been and will continue to be a staple in our diets," says Frank Muir, president of the Boise-based Idaho Potato Commission (IPC). "Consumers love the taste, texture and versatility of potatoes, not to mention the incredible price value. Potatoes are one of the best food values in the store."

However, observers agree that potato suppliers, retailers and distributors have their work cut out for them in letting consumers know that potatoes are healthy and can even be a nutritious part of a high-protein diet. So, what is the truth about this food staple? According to the U.S. Potato Board (USPB), potatoes are a good source of vitamin C, potassium and fiber, and also contain less than 10% of the daily value of carbohydrates.

But consumers are largely unaware of all these benefits. Last summer, the USPB conducted consumer focus groups and found that while people enjoy potatoes' versatility and taste, they are mostly unaware of the vegetable's health benefits. But once consumers in the focus groups were educated about the nutritious elements, they experienced a renewed interest in the vegetable. All were enthusiastic to go home and serve potatoes, and even the dieters who had been avoiding the item began to rethink their decision, according to a USPB brochure about the focus group results. The brochure even used the tagline, "Telling consumers what they don't know about potatoes will increase sales."

"If we could get this information out to every



SUPPORTING THE SPUDS

Consumers are inundated with misinformation about food, nutrition and health, says the U.S. Potato Board (USPB). The industry organization offers the following recommendations for retailers and suppliers to help clear up myths and communicate the true health benefits of potatoes to consumers:

- Double the size of the nutrition label on bagged potatoes.
- Highlight the key nutrition points.
- "Splash" those key points on the front of the package.
- Add the claim that potatoes are a good source of potassium.
- Add point-of-purchase to potato displays, highlighting the nutrition elements.

Source: U.S. Potato Board

consumer, I think it would set the record straight on what potatoes are all about," says Steve Ottum, chief operating officer for Potandon Produce LLC, a distributor of fresh potatoes and onions and the exclusive marketer of Green Giant Fresh potato and onion products. "I think there are a lot of perceptions out there about potatoes. But given the facts and the true information, I think consumers will definitely rethink their view of potatoes—at least those who are concerned about carbohydrates."

Most industry players are aware that communicating these benefits will help erase misperceptions and increase sales. IPC officials, for instance, have been meeting with food editors to help get the word out about the vegetable's nutritional value. IPC is also producing a television commercial that will clearly declare the health aspects of Idaho potatoes and has sent a variety of printed materials to its customers and shippers to better inform them of these benefits.

FLAVORFUL, NOT FATTENING

Houston-based MountainKing Potatoes has found a number of ways to remind consumers about the nutritional benefits of potatoes. It is attaching high-impact bands to bags of Russet potatoes to call attention to the fact that these products are "nature's natural diet food." The graphics are bold and highlight the fact that the potatoes have no fat and few calories, says John Pope, vice president of sales and marketing. MountainKing is promoting its Butter Red and Butter Gold varieties as having natural butter flavor without butter's fat.

MountainKing is also touting the nutritional benefits of potatoes to the next generation of consumers. Costumed characters named Tommy Tater and Farmer Lynn visit schools in a program called Tater Talk. Each Tater Talk session begins with a slide show that teaches kids how potatoes get from the field to the store and explains the many health and nutrition benefits of fresh potatoes. The program concludes with a question-and-answer session, and a chance for kids to make their own potato characters using real potatoes and costume parts.

Potandon carries nutritional information on its packaging and is exploring what health claims it can make within federal regulations. The company also works with retailers and industry associations to communicate this information to shoppers. "We provide point-of-sale (POS) materials explaining the nutritional information for retailers, and we're actively working with different industry associations to help support their efforts in getting the information out," says Ottum.

Most retailers already recognize that a strong potato section is important. However, grocers can take a few extra steps to make sure their potato departments are fresh and enticing. First, they must be sure to keep the loose pack sections well maintained, says Muir. Also, highlighting the Idaho potatoes can attract attention, as IPC research shows that many consumers are looking for that type of specification. Innovative cross-merchandising strategies can also help. High-graphic merchandising bins placed near the meat department can spur sales by at least 37%, says Pope.

The key for retailers will be to take advantage of all the information and POS materials being offered by IPC, USPB and potato suppliers. Industry officials believe that coordination and cooperation will be key to dispelling myths and educating consumers about potatoes' many benefits. "It's really going to take a complete industry effort between the suppliers, retailers, foodservice operators and industry associations," says Ottum.

GROWING SELECTION

New varieties are helping renew consumer enthusiasm for potatoes, making it easier for retailers to promote the section. According to Pope, research shows that tonnage for MountainKing's gold and red potatoes has increased dramatically during the past few years. And Potandon's Klondike Rose is in its successful second season. "Consumers are very excited about new varieties that come out and information on how to prepare potatoes in different ways that maybe they haven't [tried] in the past," says Ottum.

Frozen potatoes have also been showing strong growth. And according to Muir, Idaho's dehydrated mashed potato sales are increasing. "Some of our innovative Idaho marketers are now selling individual, microwavable potatoes that are quick, tasty and ideal for today's smaller, on-the-go families," he says. □

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TTAB

August 27, 2004

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

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Notice of Opposition

Dear Commissioner For Trademarks:

On behalf of Earthfresh Foods Corp., formerly MacKay & Hughes (1973) Limited, enclosed please find two copies of Earthfresh Foods Corp.'s Notice of Opposition, opposing Agrow Fresh Produce, Inc.'s Mark KLONDIKE GOLD, application serial number 76/491,895. Also enclosed please find a check in the amount of $300 for the Notice of Opposition filing fee, the Certificate of First Class Mailing, and acknowledgement postcard.

If you have any questions or comments, please feel free to contact me at the telephone number listed below.

Very truly yours,

HARTER, SECREST & EMERY LLP

Kimberly I. Shimomura

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E-MAIL: KSHIMOMURA@HSELAW.COM

KIS/dr
Enclosure

cc: Christopher P. Brett, Esq. (w/enclosure)

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