

ARTICLE

In the Patented Bag: Peanuts, Packaging, and Intellectual Property in the United States, 1906–1932

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This article explores the early history of two American peanut companies: Planters and Tom’s. Both food manufacturers developed major commercial brands through the ownership of intellectual property. In this case, the sourcing of different peanut types figured into the marketing of salted peanuts. Through a legal dispute involving Tom’s patented retail bag, I examine how food packaging changed the way that peanuts were advertised, distributed, and consumed in the United States. The argument is made for an historical analysis of food brands that considers how intellectual property domains interacted with one another and with the material properties of food itself.

Keywords: agriculture, U.S. 20th, supply chains, patents

In the Beginning

Entering the twentieth century, transportation in the United States had redefined the distance of food sources. Meats and fruits arrived by steamship or rail from far-off places. Also, industrial processing and refrigeration added shelf life to perishable items, an annihilation of time to accompany that of space.¹ Scholars have noted how the alienation of industrial society privileged the trust and persuasion afforded by food packaging.² The era of suited salesmen yielded to promotional print as corporations found new ways to appease public worries about the convenience of processed foods.³ Packaging and advertising were joint features of modern food marketing.

1. Cronon, *Nature’s Metropolis*; Soluri, *Banana Cultures*; Kurlansky, *Birdseye*; Freidberg, *Fresh*; Specht, *Red Meat Republic*; Petrick, “Industrial Food”; Freidberg, “The Triumph of the Egg.”

2. Friedman, *Birth of a Salesman*; Maffei and Schifferstein, “Perspectives on Food”; Zachmann and Østby, “Food, Technology, and Trust.”

3. Weber, “Cult of Convenience”; Veit, “Eating Cotton.”

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Manufacturers selling similar foods at nearly identical prices sought to differentiate their mass-produced items. The legal protection afforded to trademark—a type of intellectual property that identifies a commercial source through an exclusive name or image—played a prominent role in the development of brands. Irreducible to insignia, a brand can be understood as a “product narrative,” a social phenomenon of identifying goods with symbolic meanings and desires.⁴ Scholars interested in branding have given disproportionate attention to firm-specific studies from the food and beverage industry, which David Higgins attributes to “the transformation of their famous trademarks into valuable brands.”⁵ This article adds to that body of work by examining two American peanut firms, the Planters Nut & Chocolate Company (Planters) and the Tom Huston Peanut Company (Tom’s). I argue that trademark was important to peanut branding for both companies, but only in conjunction with other domains of intellectual property.

Planters and Tom’s used various types of intellectual property to establish their businesses in the early twentieth century. The United States Patent and Trademark Office (USPTO) oversaw the application and registration of patents and trademarks. Although trademark protection endures with commercial use, patent rights (at the time) expired after seventeen years from date of grant. Trade secrets were unique insofar as protection was achieved through a lack of disclosure; exclusivity for trade secrets was not issued by the USPTO, but rather held in confidence by its possessors. The “product narrative” of salted peanuts sold by Planters and Tom’s involved some combination of these different types of intellectual property protections.⁶

Business historians have thoroughly examined the role of branding in the shift to modern consumerism.⁷ Paul Duguid, for instance, challenged the consumer-facing orthodoxy of brands. He argued that contrary to the typical interpretation by historians, who situate the rise of modern branding among vertically integrated twentieth-century corporations, examples of branding from the nineteenth century involve disputes between actors *within* the supply chain.⁸ His proposal that branding exercises control over supply relations may have particular significance for the industrial food system. Early agribusiness was marked by a lack of total vertical integration, resulting in a context in which power concentrated at specific points along the supply chain.⁹ In particular, the industrial agricultural system afforded commercial food processors substantial leverage in mediating the delivery of packaged foods. Many of these same processors became household names, including Planters and Tom’s.

By the 1910s, advertising agencies in the United States began to actively position trademarks within strategic campaigns to construct brand images.¹⁰ Art historian Carma Gorman

4. Graydon, “Marketing Fictions.”

5. Higgins, “Forgotten Heroes.”

6. This article avoids any discussion of copyright, not because it is an unimportant domain of intellectual property, even for peanuts, but what little material I have concerning the copyright by Planters and Tom’s justifies its omission.

7. Usselman, “Still Visible”; Godley, “Selling the Sewing Machine”; Carnevali and Newton, “Pianos for the People.” In relation to foodstuffs, see Lonier, “Alchemy in Eden”; Hawkins, “Advertising and the Hawaiian Pineapple”; Robinson, “Marketing Gum.”

8. Duguid, “Developing the Brand.”

9. Gisolfi, *The Takeover*.

10. Schwarzkopf, “Turning Trademarks into Brands.”

has questioned the tendency of scholars to reference avant-garde advertising firms as an explanation for the development of corporate brands. For Gorman, the company-biographical mode draws a questionable connection between personal narratives and later developments in the field of advertising.¹¹ Gorman, instead, posited that legal changes in the United States persuaded businesses to invest in visual branding. Given this reasoning, the structure of trademark law, not the ingenuity of individuals, is made responsible for changes in advertising. Historical focus on a single domain of intellectual property, however, overlooks the way trademark interacted with other domains of intellectual property to establish a brand identity.

There is a need for studies that explore the relationship between intellectual property and food history, especially with a focus on brand advertising, retail packaging, and product materiality. To the extent that intellectual property has featured in the historical analysis of food and agriculture, the emphasis has overwhelmingly been on seeds.¹² The literature has focused on the ownership of plant varieties, whereas prior developments across the food supply chain are equally important for historicizing the seed industry and intellectual property in plants. This article presents evidence that, at least with peanuts, food manufacturing companies in the early twentieth century sought to conform crop varieties—through the selection and distribution of seedstocks—to their own brand standards, prior to such crop varieties becoming eligible for intellectual property rights.¹³

Both Planters and Tom's owned the capital infrastructure to clean, sort, grade, and shell peanuts (*Arachis hypogaea*) from nearby crop fields. Each company also manufactured a line of labelled food products. The geography of peanut agriculture in the United States became embedded in these respective retail brands. Planters wed its brand identity to Virginia-type peanuts, a commercial class of large peanuts grown almost exclusively in the tidewater counties of the Virginia-Carolina region.¹⁴ Similarly, Tom's built a business empire on the Small White Spanish peanut, the standard variety grown in the Deep South peanut belt, located at the confluence of Georgia, Florida, and Alabama. Planters and Tom's used the ownership of intellectual property to differentiate their packaged products in relation to these specific peanuts.

The mass marketing strategy for salted peanuts included various types of intellectual property, which appeared in advertising and on packages. Scholars have shown how adding labels to foodstuff facilitated a redefinition of food via visual cues, regulatory standards, and social stigmas.¹⁵ Xaq Frohlich stated, for example, that nutrition labels served as part of the "information infrastructure" that organized how food was produced, distributed, and consumed.¹⁶ By positioning packaging within this information infrastructure, as the square

11. Gorman, "Role of Trademark Law," 371.

12. Sherman and Chapman, "Rethinking Intellectual Property."

13. Sexually reproduced plants, including peanuts, did not become eligible for intellectual property protection in the United States until passage of the 1970 Plant Variety Protection Act.

14. The Virginia Runner variety dominated the commercial class of Virginia peanut, but there was also a Virginia Bunch variety with a semiprostrate growth habit. See Higgins, *History of the Georgia Experiment*.

15. Fu, "Tyranny of the Bottle"; Hawkins, "Performativity of Food Packaging"; Hisano, "Selling Food in Clear Packages"; Ventimiglia, "Deceptions Have Been Practiced."

16. Frohlich, "Informational Turn."

inches on which product labels circulate, I consider how intellectual property became indispensable to peanut sales in the United States. What had been the buying and selling of an agricultural commodity by jobbers, who delivered generic produce for the wholesale trade, became a capital investment into consumer brands.

In what follows, I historicize developments in the U.S. peanut industry during the early twentieth century. Planters helped establish a nationwide market for salted peanuts. Few manufacturers had the purchasing power or owned the intellectual property to imitate Planters' commercial success, though some tried. With Tom's, the flattery was returned in kind. A patented retail bag brought Tom's nationwide sales in the mid-1920s and led to numerous legal disputes, including a case involving Planters. I review the litigation to show how brand development relied on various domains of intellectual property protection. The conclusion draws together changing supply relations with product marketing in the industrial food system.

Planters Peanuts' Past

Virginia was the birthplace of the American peanut industry. As a "meeting-point of five railroads," the five-story factories in Suffolk, and nearby Norfolk, combined to clean over half of the country's crop in the early 1900s.¹⁷ Trade activity in Suffolk effectively established the price received by peanut growers in the rest of the country. The city was commonly referred to as the "World's Greatest Peanut Center."¹⁸ Commercial trends originated from shelling companies in Suffolk, with Planters becoming the most famous. The company moved to Suffolk eventually, but it started elsewhere.

Planters was founded in Wilkes-Barre, Pennsylvania, by two Italian immigrants, Amedeo Obici (1877–1947) and Mario Peruzzi (1875–1955). Obici had sailed for America from his hometown on the outskirts of Venice and started peddling from a fruit cart in Wilkes-Barre at age twelve. He quickly found a following selling salted peanuts and dubbed himself "The Specialist," a name he had trademarked and emblazoned in gold letters on his horse-drawn wagon.¹⁹ Not only was Obici credited as the first peanut peddler to sport a whistle, signalling to passersby within earshot, he put one of six letters inside each manila bag of peanuts, gifting a complimentary watch to anyone who spelled the magic word "AOBICI."²⁰ Salesmanship would be a mainstay of Planters' success.

Similar to other peanut sellers in the region, Obici "confined himself chiefly to the unshelled variety."²¹ Selling whole roasted jumbo Virginia peanuts in the shell was in vogue. However, Obici would soon deviate from this trend to "shell, salt, and dress up the peanut," separating his product from other generic offers.²² As the story goes, one fateful day Obici met his would-be partner Peruzzi in a grocery store where the latter worked. With limited capital, the two

17. Roper, *Peanut*, 8.

18. "Virginia Has World's Greatest Peanut Market, Suffolk Boasts," *The World News*, December 1, 1921, 13.

19. U.S. Trademark Registration no. 38883, granted September 8, 1902.

20. "One Way to Spell It," *The Suffolk News-Herald*, March 17, 1937, Editorial and Features' Page.

21. *Ibid.*

22. "Virginia's Peanut Mogul," *The Suffolk News-Herald*, March 12, 1937.

immigrants founded Planters Peanuts in 1906. They incorporated two years later as the Planters Nut & Chocolate Company, with Obici as president and Peruzzi the secretary-treasurer.²³

The immigrant merchants struggled to turn a profit at first. There was an obvious reason for the sustained deficit. The owners had decided to source, shell, and sell the extra-large grade of Virginia peanuts, instead of “the small round red-skinned Spanish nuts that dominated the market” for shelled peanuts (without shell).²⁴ Abandoning the cheaper standard came with economic consequences. Planters compensated for the higher price point of the Virginia-type peanut by bagging their product in smaller packages, with customers getting fewer peanuts compared to the quantity of Spanish kernels received for the same price by other vendors. The change in packaging had an incidental upside.

Deterioration of product quality was a problem with many bulk edibles, and none more so than peanuts. The paper bags employed in the industry could not keep a hermetic seal, so regardless of portion size, salted peanuts attracted moisture from the atmosphere, hastening the rate at which the snack went stale. Even worse, peanut oils oxidized with exposure to air and imparted a rancid flavor. Obici wondered what could be done to prevent the unrecoverable losses to spoilage. Packaging design offered one solution. In 1908, the USPTO granted Obici a patent for “a double bag for the vending of salted peanuts.”²⁵ The invention consisted of an inner package made of moisture-proof material that increased product shelf life. The extent of its manufacture would later become a point of legal dispute. Nonetheless, Planters’ willingness to experiment with patented packaging testifies to the early potential of intellectual property in the peanut retail trade.

In 1913, Obici and Peruzzi decided to relocate operations to Suffolk, Virginia.²⁶ The owners purchased a peanut cleaning facility and, in time, expanded their commercial properties in Suffolk to include cold storage, warehouse space, and printing and packaging facilities.²⁷ The move by Planters reduced the costs involved in sourcing Virginia peanuts. Peruzzi would later state: “Because of the high price of the best grade of peanuts we were forced to go down into the Virginia fields and raise our own crops. We were told by the people in Suffolk that we had more money than brains ... that we did not know anything about peanuts.”²⁸ To what extent Planters actually produced peanuts is unknown, but the facilities in Suffolk allowed the manufacturer to buy direct from nearby producers “without the expense of long hauls of the unfinished product.”²⁹

This approach at vertical integration had precedents in the food industry. For instance, the H.J. Heinz Company of Pittsburgh, Pennsylvania, adopted a similar strategy in the late nineteenth century. Heinz manufactured its own supply of vinegar for pickling and acquired

23. “How Advertising Put Mr. Peanut on the Map,” *The Peanut Promoter* 7, no. 1 (1923): 13.

24. “City Shares Peanut Claim,” *The Wilkes-Barre Record*, October 19, 1940, 2; “Planters’ Peanuts Very Popular,” *The Scranton Republican*, March 5, 1919, 6.

25. U.S. Patent no. 892074, filed June 10, 1907, issued June 30, 1908.

26. “A Great Community Loss,” *The Suffolk News-Herald*, May 22, 1947, 6; “Planters to Open Branch in Portsmouth, Va.,” *The Peanut Promoter* 7, no. 2 (1924): 13.

27. “Planters Has Grown in 35 Years from Small Business to Tremendous Organization in America and Canada,” *The Suffolk News-Herald*, January 27, 1941, 2.

28. “Peruzzi Talk to Kiwanians,” *The Wilkes-Barre Record*, February 3, 1928, 3.

29. W.C. Johnston, “Building an Industry on Peanuts,” *The Smithfield Times*, April 9, 1936.

thousands of acres of farmland to supervise crop production.³⁰ Likewise, the Hershey Chocolate Company purchased a sugar plantation in Cuba.³¹ Control over ingredients brought assurance during a time of heightened distrust about food purity.³² In this way, the relocation to Suffolk facilitated Planters' access to and oversight of extra-large Virginia peanuts.

Close proximity to peanut fields was an element of Planters' success, an advantage shared by other companies in the area. What Obici and Peruzzi did so unique was recondition public opinion through relentless advertisement.³³ The company popularized the slogan "The Nickel Lunch" to help categorize peanuts as a substantial food and not merely a confectionary item. Most peanut jobbers at the time displayed salted peanuts in large glass jars with an accompanying supply of manila bags.³⁴ Planters did too, but the company was quick to adopt glassine paper bags, which, as a semitransparent precursor to cellophane, enabled the company to package sealed envelopes of salted nuts, such as described in Obici's patent. The company eventually introduced vacuum-sealed jars made of blue tin in the 1920s.³⁵ War rationing would force Planters to replace metal jars with glass, but its line of "Cocktail Peanuts" persisted as a staple brand of the snack food industry.

Regardless of the choice of packing material, evidence of Planters' intellectual property appeared on each individual item. When *Modern Packaging* published an article on Planters, the magazine identified "one of the most important single factors in the development of the Planters Company, aside from packaging, was the creation of Mr. Peanut."³⁶ In 1917, Planters introduced its logo, Mr. Peanut. Obici paid five dollars to a local Italian American schoolboy who submitted the winning entry to a sponsored contest. The president promptly hired a professional artist to elaborate on the original sketches.³⁷ The two-legged peanut with a monocle, silk top hat, English cane, gloves, and pied spats became a distinct industry icon. By 1921, Mr. Peanut was "known everywhere in the broad land of America."³⁸ Planters placed advertisements in the pages of the *Saturday Evening Post*, *Good Housekeeping*, and other leading periodicals.³⁹ The strategy enjoyed success. The company achieved a steady profit a steady profit two decades after its founding.

To believe historical boosters from Virginia, few people had recognized the possibilities of peanuts prior to Planters.⁴⁰ Peanuts were long perceived as "slave food" in the United

30. Koehn, "Henry Heinz and Brand Creation," 365, 390; Petrick, "Feeding the Masses."

31. See Elmore, "Citizen Coke," 724.

32. Veit, "Eating Cotton"; Domosh, "Pickles and Purity."

33. "How Advertising Put Mr. Peanut on the Map," *The Peanut Promoter*, 13; "Back of All the Development of America is the Power of Advertising," *The Peanut Promoter* 7, no. 2 (1924): 24.

34. Newspaper clipping, "Patent on Device for Peanut Bag Held to Be Valid," September 17, 1931, Charles H. Herty Papers, Stuart A. Rose Manuscript, Archives, and Rare Book Library, Emory University (hereafter cited as Herty Papers), MSS 8, Box 106, Folder 16.

35. *The Complete World of Mr. Peanut*, 1967.

36. Quote from an August 1950 article cited in *Planters Nut & Chocolate Company v. Crown Nut Company*, Inc., 305 F.2d 916 (CCPA 1962).

37. Kathleen Franz, "Mr. Peanut and Antonio Gentile," *American History*, May 6, 2014; Rachel Kirby, "The Life and Times of Mr. Peanut," *Contingent Magazine*, February 13, 2020.

38. "Virginia Has World's Greatest Peanut Market," *World News*, December 1, 1921, 13.

39. "Sights and Insights of Everyday Life," *The Suffolk News-Herald*, April 4, 1932; "Planters to Open Branch in Portsmouth Va," *The Peanut Promoter* 7, no. 2 (1924): 13.

40. "How Advertising Put Mr. Peanut on the Map," *The Peanut Promoter* 7, no. 1 (1923): 13.

States.⁴¹ The crop was introduced to the American colonies aboard slave ships from West Africa, and by the end of the eighteenth century, the agrarian geography of peanut production was confined to southern slave-holding states.⁴² Black people grew peanuts in small food plots, with a few households in Virginia including the plant in their gardens “almost as curiosities.”⁴³ Only after Union soldiers gained familiarity with peanuts during the Civil War did the crop enter into interstate commerce. Circusgoers and pedestrians throughout the country took to buying peanuts, being viewed as something “a few farmers planted and ... a few lowly men and churlish lads cracked and crunched.”⁴⁴ This was the status of *Arachis* at the turn of the century, a racialized food of lower-class repute.

Sensing opportunity, food manufacturers ventured to capitalize on the changing demographic of the peanut-eating market. Planters displayed a special knack for remaking the snack's image and furnishing the convenience food with a new narrative. *The Suffolk News-Herald* offered this hyperbolic praise: “In Planters we have another illustration of the power of an idea, which, when guided by a master hand, develops into tangible existence to gladden him in whose mind it was born and those whose lives it touches.”⁴⁵ Selling salted peanuts by their intangibles was a way to disassociate the crop from its historical roots, yet even this marketing approach depended on the physical properties of the peanuts themselves.

Central to Planters' brand and trademark logo was the allure imparted by a trade secret. At his very first public appearance, Mr. Peanut boasted about a “secret, private process” for producing whole salted peanuts.⁴⁶ Obici had developed a method for keeping the peanut intact during the removal of peanuts skins, known as blanching. Exact details of the process were never disclosed, only its vague origins: “We discovered the process for keeping the peanut whole while preparing salted peanuts.”⁴⁷ Other manufacturers also sold nickel bags of salted peanuts, but unlike Planters, their peanuts came halved. The trade secret gave Planters a “scarcity of splits” that became “one of the marks of distinction” for its brand.⁴⁸ Packages sold with the image of Mr. Peanut exhibited a tangible quality that was absent in other offerings of extra-large Virginia peanuts.

Planters advertised this visual difference as a way to make social distinctions. Throughout the first year of the Mr. Peanut marketing campaign, the logo appeared in print media to promote the brand. The public was repeatedly reminded that Planters peanuts were the pick of the crop, “prepared by our private process.”⁴⁹ The visual appeal allowed the company to sell their product as comparable to almonds. One newspaper advertisement showcased Mr. Peanut at a “nice dinner party” offering a platter of peanuts to three uppity guests. The copywriting read: “They're not like the kind of salted peanuts you've been used

41. Carney and Rosomoff, *In the Shadow of Slavery*, 141–143.

42. Higgins, “Origin and Early History,” 24; see also, “Peanut Brand by Planters Well Known,” *Wilkes-Barre Times Leader*, October 24, 1931, 15.

43. Roper, *Peanut*, 7.

44. “Rise of the Peanut,” *Evening Star*, May 29, 1921, 53.

45. “The True Measure of Worth,” *The Suffolk News-Herald*, July 25, 1931, 4.

46. Planters, “Introducing ‘Mr. Peanut,’” advertisement, *The Barre Daily Times*, October 2, 1917.

47. *Ibid.*

48. “How Advertising Put Mr. Peanut on the Map,” *The Peanut Promoter* 7, no. 1 (1923): 13.

49. Planters, “From Sunny Southern Fields,” advertisement, *The Orlando Sentinel*, December 1, 1917.

to. No, sir. They're *whole*, and big, and appetizing *looking*."⁵⁰ Planters' branding strategy, intent on reassuring white society of its general respectability, was commonplace in the first two decades of the twentieth century.⁵¹ The object was to gentrify peanut consumption.

Obici and Peruzzi registered their anthropomorphic trademark in 1918, which granted the logo nationwide protection.⁵² The aristocratic figure appeared on every retail package that Planters sold. Mr. Peanut's image also donned the burlap sacks of peanut seed bought by the company. (see [Figure 1](#)) That Planters' trademark accompanied the movement of peanuts from harvest to retail supports Duguid's contention that branding influenced vendor relations within the same supply chain. Interestingly, Duguid took issue with business histories that attribute the rise of modern branding to packaging because of the technological determinism in that retelling. What Planters' history suggests is that packaging might not matter as much as the intellectual property it conveyed. Plus, in this case, branding rallied support for local growers. By advertising the visual attributes of the Virginia-type peanut, Planters generated demand for agricultural produce from the greater Suffolk region, a point of pride emphasized in marketing materials.⁵³

Call Him Tom

The peanut industry in the Deep South experienced several developments as a result of World War I, including a number of shelling plants. Among those plants constructed after the war was that of the Tom Huston Peanut Company in Columbus, Georgia. Unlike Planters, Tom's gave allegiance to the Small White Spanish peanut, "a crop to which the farmers of that section turned with hope after the ravages of the boll weevil had made the raising of cotton so unprofitable."⁵⁴ Small White Spanish peanuts were the standard commercial variety sold to oil mills as a substitute for cottonseed, yet Tom Huston had other ideas for the oleaginous nut.

John Thomas "Tom" Huston (1889–1972) came of age on a peanut farm in the sandhills of east Texas. Shelling peanuts by hand wore his fingers raw and inspired Huston's first invention.⁵⁵ In July 1915, he filed a patent application for a hand-crank peanut shelling machine. By adding a movable concave grate, the sheller could thresh with "minimum breakage."⁵⁶ (Allegedly, he found inspiration for the design from a similar machine for shelling corn.)

50. Planters, "Give Me a Place at Dinner," advertisement, *The Barre Daily Times*, October 2, 1917.

51. Pollay, "Subsiding Sizzle," 24, 30–31.

52. U.S. Trademark no. 121818, granted May 28, 1918.

53. The indication of geographical origin served the branding strategies of other agricultural crops, even in the United States. See Olsson, "Peeling Back the Layers."

54. Letter from Herty to Hoover, July 31, 1931, Herty Papers, MSS 8, Box 105, Folder 15; Giesen, *Boll Weevil Blues*.

55. "Genius in Exile," *Sunday Ledger-Enquirer Magazine*, August 29, 1965, Tom Huston Collection, Columbus State University Archives and Special Collections (hereafter cited as Huston Collection), MC37, Box 1; "Tom's Peanuts," *Time* 16, no. 8 (August 25, 1930), Huston Collection, MC37, Box 2, Folder 32; Paul Sanders, "Few Peanuts Grow into Big Business," *The Oregon Statesman* (Salem, OR), December 22, 1929, 19.

56. U.S. Patent no. 1246100, filed July 3, 1915, issued November 13, 1917.



Figure 1. Mr. Peanut, on the cover of an industry periodical, advertising Planters as a regional peanut buyer. Source: *The Peanut Promoter* 7, no. 3 (1922).

Huston soon moved to Columbus, Georgia, and signed an agreement with the Columbus Iron Works to manufacture his shellers. An advertisement from 1916 claimed, “The Tom Huston Peanut Sheller is the only successful machine on the market.”⁵⁷ Sales were encouraging.⁵⁸ Machines by the Tom Huston Manufacturing Company soon operated in shelling plants across the southern United States.⁵⁹

Processors in the peanut industry held regular dialogue with farmers, and their shared complaints led to new inventions. In April 1922, the USPTO granted Tom Huston a patent for a

57. Letter from Medley to Stuckey, April 22, 1931, H. P. Stuckey Papers, Hargrett Rare Book and Manuscript Library, University of Georgia (hereafter cited as Stuckey Papers), UA 07-022, Box 9, Folder 16; Schoen & Jordan, “Peanut Sheller,” advertisement, *The Montgomery Advertiser*, January 14, 1917, 35.

58. “Tom Huston Manufacturing Co. Incorporates,” *The Peanut Promoter* 2 (1918): 37; “A Peanut Machine,” *The Peanut Promoter* 1 (1918): 29.

59. Letter from Huston to Carver, October 18, 1924, George Washington Carver Collection, Tuskegee University Archives (hereafter cited as Carver Collection).

peanut digger with “a peculiar type of blade.”⁶⁰ The scope of the patent was not limited to the V-shaped blade, but its design specifically addressed problems with digging the taproot of Spanish peanuts. Huston was granted this patent while still manufacturing peanut shellers, yet his active interest in how peanuts were grown carried over into his career as a food processor. The restless inventor found that selling quality machines resulted in few repeat customers. So, Huston decided to sell his interest in the manufacturing company and relocate to a two-room wooden shack in Columbus to start afresh. He began packing salted peanuts in 1925 with a trademark upside-down red triangle.⁶¹

The nickel bag of peanuts was nothing new as Planters’ preceding history attests. Tom’s Toasted Peanuts made its mark, however, by possessing a special flavor, one attributed to the Small White Spanish peanut and a special method of manufacture. According to an observer, “The Huston plant has made salted peanuts taste like they have never tasted before; by toasting the succulent nut where hundreds of less imaginative manufacturers have been content to roast them.”⁶² The source of this inventive step was the subject of myth, including one tale of mechanical malfunction in which an oven failed to reach its set temperature. Regardless of actual origins, the standard method was quite simple. “The nuts were first roasted sufficiently to loosen the red skins in order that they might be blanched,” Huston explained. “Then, after the blanching process they were dipped in boiling cocoanut oil to finish the cooking process.” For the final step, the hot Spanish peanuts were “cooled as quickly as possible and then the salt was added.”⁶³ Tom’s took a special interest in figuring out a way to eliminate the oily coating that helped stick salt to the kernel.

Huston, the businessman, identified two reasons why people did not consume more peanuts. He proclaimed to have solved the nut’s first problem by ensuring the product stay crisp “almost indefinitely.” (A claim to which I will return shortly.) Huston appealed for help with the second reason, which he described as the need to “wash your hands to remove the oil and salt after you have finished eating.”⁶⁴ What Huston wanted, and for which he was willing to pay, was a chemical formula or a method of applying salt to peanuts without first coating the kernels in oil. He initially thought about impregnating peanuts with salt. Instead, he achieved his object with a patented bag and a commitment to mass marketing.

A War within the Supply Chain

Peanuts were far from the first agricultural commodity in the United States to adhere to a strategy of mass marketing. Citrus was arguably first. The historian Douglas Sackman has recounted the “near omnipresence of orange images” displayed by the pioneer marketing

60. U.S. Patent no. 1412614, filed May 2, 1919, issued April 11, 1922.

61. Newspaper clipping, “Tom Huston, 82, Founder of Tom’s Toasted Peanuts,” Huston Collection, MC 37, Box 1; “Tom’s Peanuts” Peanuts,” *Time.*, 16, no. 8 (August 25, 1930), Huston Collection, MC37, Box 2, Folder 32.

62. “Huston Peanut Plant Sets Progress Record,” *The Peanut Promoter* 10 (1927): 9.

63. Letter from Huston to Carver, October 18, 1924, Carver Collection.

64. *Ibid.*

campaign for Californian citrus.⁶⁵ Whereas other agrarian organizations in the country recoiled from the idea of consolidated industrial management, citrus growers in southern California actively adopted it. The growers' decision to form a cooperative came in response to the monopolistic behavior of fruit packers. All produce had to pass through the packing-houses. Patents for the latest methods of separating frost damaged goods, sizing fruit, and conveying citrus put packers in a strong position to set prices and force growers to sell on consignment.⁶⁶ In response, the California Fruit Growers Exchange subsumed the marketing, packaging, and shipping of grower-owned fruit under a consolidated business structure with its own brand label: Sunkist.

The West Coast forerunner set the organizational model for other cooperatives, including that for peanuts. The Virginia-Carolina Cooperative Peanut Exchange formed around 1920 as an institutional pushback against the cleaners and shellers, who "controlled about 90 per cent of the annual production of 'Virginia type' peanuts."⁶⁷ With five thousand members, the Peanut Exchange received advice directly from the California Fruit Growers Exchange. "The difference between the exchanges is largely this," a Virginia newspaperman wrote in 1922, "the fruit growers can pack their fruits and ... send them direct to the distributor, while the peanuts must undergo a very complex milling process."⁶⁸ The comparison was only partly true, but processing peanuts for food manufacturing granted the shellers great leverage.

The Peanut Exchange handled over 30 percent of the peanut crop from the Virginia-Carolina region in 1921. That same year, Congress cleared the way for the cooperative to expand its services. Legal changes under the 1922 Capper-Volstead Act exempted agricultural cooperatives from being treated as trusts.⁶⁹ The new legislation meant that the Peanut Exchange could clean and market its members' peanuts under a private label. With the green light of federal approval, the Peanut Exchange reincorporated as the Peanut Growers Association in 1922.⁷⁰

In October that year, *The Peanut Promoter* reported that Planters made "the largest single purchase" from the Peanut Growers Association.⁷¹ Planters, competing with five other major buyers in the region, purchased roughly a third of the total production of Virginia-type peanuts.⁷² The cooperative refused further sales, and with its new powers, took steps to deliver a product directly to retail. Reports from Suffolk revealed that a "brand name and trade-mark were adopted and stamped on the bags and cartons of peanuts packed by the Association."⁷³ Growers retained ownership of their harvest and now sought to capitalize on this control by advertising directly to consumers through a private label, thereby competing with the likes of Planters.

65. Sackman, "By Their Fruits," 82, 89.

66. Moses, "Citrus Monopoly."

67. "Peanut War Suit Ends in Agreement by Both Sides," *The Peanut Promoter* 6, no. 11 (1923): 28.

68. "Peanut Growers' Exchange Enters Cleaning Operation," *The Times Dispatch*, March 15, 1922, 5.

69. *Ibid.*

70. Clay, *Marketing Peanuts*.

71. "Big Deal in Peanuts," *The Peanut Promoter* 5, no. 12 (1922): 18.

72. "The Yellow Peril," *The Peanut Promoter* 7, no. 3 (1924): 11.

73. "Is the Advice Sound?" *The Suffolk News-Herald*, November 15, 1928, 28.

The experiment did not last long. The association chose the name “Pickaninny Peanuts” and opted to sell their product in one-pound packages. Neither the racist colloquialism or hefty portion size won public support. According to one person involved in the campaign, the product quality was beyond rebuke, but the label suffered from obscurity and too-little advertising.⁷⁴ In this case, Virginia growers had followed Planters’ example by shelling peanuts and applying their own product label, but their attempt to exert control within the supply chain failed to reach the consumer, illustrating a shortcoming of the brand. Establishment of a product narrative depended upon more than trademark protection and point-of-sale sloganeering.

All parties in the peanut industry did not appreciate the anticompetitive activity of the cooperative.⁷⁵ In September 1923, peanut shellers stood trial in federal court for inciting growers to renege on their contracts to the Peanut Growers Association. A Virginia newspaper described the case as a “so-called war between the growers and the shellers.”⁷⁶ Per the nature of cooperative marketing agreements, which were gaining popularity in the United States at this time, members bulked their produce to limit total trade and achieve higher sale prices. Protection, in other words, came at the expense of the opportunity to sell elsewhere. A farmer might be able to earn more by foregoing the collective agreement. When commodity prices went skyward, brokers and buying agents looked for ways to void the terms of contract and negotiate a better price through private treaty. Such were the accusations in the federal case.

The Peanut Growers Association brought charges against fifteen shelling firms for soliciting direct sales and “circulating false reports” about market activity.⁷⁷ Counsel for the plaintiff produced evidence showing that these shellers had “attempted to dominate the peanut trade” and exact revenge on the growers’ cooperative.⁷⁸ The president of Planters was put on the stand as a witness during the trial. Obici supported accusations against the shellers, alleging that they had tried to undermine growers’ prices in the past.⁷⁹ (He claimed to have disassociated with the shellers for that very reason.) Growers were aggrieved by the underhanded attempt to rebalance the terms of trade.

Ultimately, the court awarded the Peanut Growers Association payment to cover its attorney fees, but also “absolved the defendants for any intentional wrong-doing.”⁸⁰ The outcome indicated that growers could try to manipulate commodity prices by collectively withholding peanuts from the market, but shellers risked violation of antitrust law by colluding to set prices.⁸¹ Shellers may have won a battle in this so-called war, though neither sector could fully usurp the other. Exerting command over exchange relations within the agricultural supply chain required control of produce and infrastructure—both physical and informational. Tom’s, like Planters, excelled in this regard.

74. “Packaged Peanuts and the Retail Trade,” *The Peanut Promoter* 7, no. 1 (1923): 9.

75. “Making Fatal Mistake,” *The Suffolk News-Herald*, March 1, 1930, 4.

76. “Peanut Buyers Placed on Stand at Norfolk Trial,” *The Bee*, September 20, 1923, 5.

77. “Alleged Peanut Conspiracy,” *The Peanut Promoter* 5, no. 12 (1922): 18.

78. “Peanut War Suit Ends in Agreement by Both Sides,” *The Peanut Promoter* 6, no. 11 (1923): 29.

79. “Peanut Buyers Placed on Stand at Norfolk Trial,” *The Bee*, September 20, 1923, 5.

80. *Ibid.*, 1.

81. “Daugherty Hits Association Trade Secrets,” *The Peanut Promoter* 7, no. 3 (1924): 26.

In the Patented Bag

The historian Linda McMurry stated that the Tom Huston Peanut Company was “a buyer of peanuts, not a supplier.”⁸² In truth, Tom’s was both. Tom’s purchased its supply of peanuts from growers in the Deep South region, offering cash rewards for the highest-yielding stocks.⁸³ The company also stockpiled carloads of seed to sell, at cost, back to its suppliers, an example of increased vertical integration in the peanut supply chain.⁸⁴ The company advertised “fresh shelled white Spanish peanuts ready for planting” each spring.⁸⁵ The seventy-five-pound burlap sack, replete with company logo, contained the recommended amount of seed for planting one acre. This particular detail—that the shelling division at Tom’s was selecting and redistributing Small White Spanish peanuts to conform the variety to its own quality standards—demands a reconsideration about the historical role of food processors in the seed sector.⁸⁶ The brand label accompanied the movement of peanuts across the food supply chain, from producers to consumers.

In June 1925, Huston filed a patent application for exclusive rights to a bag “longer than the width of a man’s palm” yet narrow enough to insert into the mouth.⁸⁷ (see [Figure 2](#)) Not only did the package enable salted peanuts to be eaten without handheld contact, it kept the content crisp and tasting fresh. Huston’s proprietary retail bag soon transformed how peanuts were packaged, distributed, and consumed in modern America.

Before the end of 1925, Huston filed another patent, this time for a peanut display stand. The patented bag and stand were designed to go together. Tall, skinny sleeves of Tom’s Toasted Peanuts stood upright in a glass jar, mounted on an eye-catching bright red plastic base. The base was cast with a countersunk flange that allowed it to hold “an attractive five color lithographed poster,” which Tom’s regional salesmen changed every month.⁸⁸ Each poster broadcast a company slogan. Huston was credited with devising the catchiest one-liners, including “They make hunger a joy.”⁸⁹ (see [Figure 3](#)) Placed on retail counters, right beside the cash register, the display grabbed customers’ attention at their most impulsive moment.

Tom’s advertising manager was a Georgia Tech graduate by the name of Tucker Wayne. “During Mr. Wayne’s connection with the Tom Huston Peanut Company,” *The Atlanta Constitution* reported, “the concern grew to be the world’s largest packers of Spanish peanuts.”⁹⁰ Wayne made a point to frequently remind the public about Tom’s proprietary

82. McMurry, *George Washington Carver*, 221.

83. “Many Prizes Won,” *National Nut News*, March 1929, 69, Huston Collection, MC37, Box 2.

84. Letter from Huston to Stuckey, March 23, 1927, Stuckey Papers, UA 07-022 Box 5, File 8 ; Barry and Porter, *Peanuts*.

85. Tom Huston Peanut Company, “Plant Peanuts,” advertisement, *The Atlanta Constitution*, May 24, 1928, 21.

86. See Sherman and Chapman, “Rethinking Intellectual Property.”

87. U.S. Patent no. 1603207, filed June 9, 1925, issued October 12, 1926.

88. U.S. Patent no. 1603954, filed December 4, 1925, issued October 19, 1926; Minnie Huston, “Tom Fed Peanuts to All,” Special Sesquicentennial Supplement III, *Ledger-Enquirer*, April 30, 1978, S-29; “Tom Huston – Fact or Fancy,” Huston Collection, MC 37, Box 2, Folder 19.

89. “Tom Huston – Fact or Fancy,” Huston Collection, MC 37, Box 2, Folder 19.

90. “Tucker Wayne Joins J A Green & Co,” *The Atlanta Constitution*, March 13, 1932, 15.

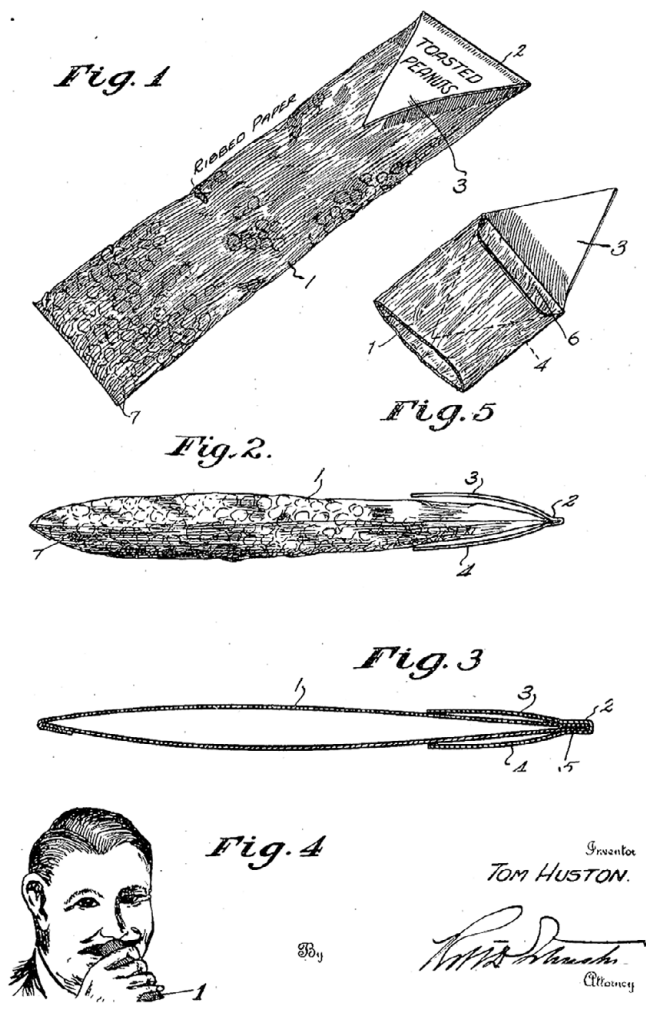


Figure 2. Illustration from Huston’s patent application for “Paper Bag and Seal.” Source: U.S Patent no. 1603207, filed June 9, 1925, issued October 12, 1926.

packaging. In one newspaper advertisement from June 1929, Tom’s reprinted a Western Union telegram sent from the top of Pike’s Peak in Colorado. The sender, Bill Williams, exclaimed, “I have won!” Admitting that others may ridicule his accomplishment—that of pushing a peanut up a mountain with one’s nose—Bill credited “the extra energy [he] received from eating plenty of Tom’s Toasted Peanuts every day” for the historic achievement. Tom Huston printed a personal note beneath the telegram. At first, the undertaking had struck him as “a ridiculous thing to attempt,” yet he soon decided better, knowing that Spanish peanuts would provide the wherewithal for any altitude. Huston likened his own ventures to that of the oddball mountaineer and described himself as “just another ‘Peanut Pusher.’” The only difference, of course,



Figure 3. Letterhead depicting Tom's countertop marketing material. Source: Image courtesy of the University of Georgia Libraries.

was that Huston pushed peanuts all over the United States in "tall, slender bags with a red seal at the top."⁹¹

Tom's ascent suggests a plausible addendum to Gorman's position on the historical importance of legal changes vis-à-vis personal careers in the development of visual branding. An exclusive emphasis on trademarks disregards how intellectual properties interact, both with each other and the material goods on display. The fame of Tom's trademark red triangle depended on the patented bag for vending Spanish peanuts. Similarly, Planter's trade secret for blanching extra-large Virginia nuts added to the goodwill afforded to Mr. Peanut. In either case, the protectability of a brand was formed in concert between a trademark and a patent or trade secret and applied to a specific agricultural commodity.

Tom's Goes to Court

Tom's experienced sizable success with the Small White Spanish peanut. In the aftermath of a fire that set his workspace ablaze in 1928, Huston built a new brick factory in Columbus to accommodate his hundreds of employees. The Tom Huston Peanut Company incorporated later that year and quickly sold out four thousand shares of preferred stock at

91. Tom Huston Peanut Company, "Bill Williams Wins," advertisement, *The Tennessean*, June 12, 1929, 3.

\$100 per share.⁹² By 1929, the company was selling \$2.5 million of peanuts a year.⁹³ Huston made each district salesman an owner. The organizational strategy paid off. In 1930, Tom's became the first company "devoted entirely to peanuts" to be listed on the New York Stock Exchange.⁹⁴

As trade journals printed the tale of Tom's success, other entrepreneurs took notice. A few also took to selling peanuts in bags that looked like Tom's patented bag. Huston immediately filed suit to protect his intellectual property. In February 1930, the Fulton County superior court of Georgia granted Tom's an interlocutory injunction that stopped the Capital City Tobacco Company from vending salted peanuts in a bag resembling Tom's own.⁹⁵ Then, the following month, a district court in Florida upheld the validity of Tom's patent in a decision against O. K. Jelks and Son.⁹⁶ Several peanut companies, Planters foremost among them, decided to aid Jelks in filing an appeal.

A circuit court of appeals reviewed the Jelks case in August 1930. The same court had already "had the occasion to consider the patent" in a prior case and "held that it was prima facie valid."⁹⁷ In that earlier case, *Huston v. Barrett*, the defendant had been denied a territorial license to sell Tom's Toasted Peanuts. Undeterred, the Barrett Potato Chip Company began to market peanuts in a bag exactly like Tom's. The circuit court of appeals reversed a trial judge's dismissal, while admitting no certainty about whether the bag embodied the claims made in the patent.⁹⁸

The case was escalated. The Supreme Court of Georgia convicted the Barrett Potato Chip Company of unfair competition. The judges concluded that the entire ensemble of Tom's packaging had "come to denote the origin of the product."⁹⁹ In the marketplace for salted peanuts, the two offerings were too similar. Barrett was guilty of passing off.¹⁰⁰ The higher court reinstated the injunction against Barrett's, which allowed it to sell peanuts in elongated bags, just not constructed of the same material as Tom's. Huston was "entitled to the *combination* exclusively", for the packaged product could not be imitated in its entirety without public deception.¹⁰¹

As with *Huston v. Barrett*, the question put before the district court in the Jelks case was whether to uphold the injunction and stop the company from selling salted peanuts in a bag the same size and material as Tom's. Emboldened by its recent victory, Tom's lawyer "filed a

92. "Tom Huston Company Declares Dividend," *The Atlanta Constitution*, December 20, 1928, 21; "Tom Huston Issue is Oversubscribed," *The Atlanta Constitution*, October 28, 1928, 40; "Peanuts Make Farm Boy Fortune," *Lubbock Avalanche Journal*, October 6, 1929, 8.

93. Sanders, "Few Peanuts Grow into Big Business," 19.

94. "Tom's Peanuts," *Time*, 16, no. 8 (August 25, 1930), Huston Collection, MC37, Box 2, Folder 32.

95. "Injunction Granted to Peanut Company," *The Atlanta Constitution*, February 21, 1930, 3.

96. "Validity of Peanut Patent Sustained," *The Atlanta Constitution*, March 13, 1930, 9.

97. *O. K. Jelks & Son v. Tom Huston Peanut Company*, 52 F 2d 4 (Ga 5th Cir, 1931).

98. *Huston v. Barrett*, 23 F 907 (Ga 5th Cir, 1928).

99. *Huston v. Barrett*, 166 Ga 261 (Ga Sup Ct, 1928); *Barrett v. Huston*, 166 Ga 261 (Ga Sup Ct, 1928).

100. In common law countries, such as the United States, unfair competition involves deception. It includes practices that create confusion with the business of a competitor, those that falsely discredit a competitor's business, and those that mislead the public as to the characteristics of the goods being offered. In civil law countries, unfair competition has a broader scope that does not involve deception.

101. *Huston v. Barrett*, 166 Ga 261 (Ga Sup Ct, 1928); *Barrett v. Huston*, 166 Ga 261 (Ga Sup Ct, 1928); italics in original.

cross-appeal on the question of unfair competition,” which the court of appeals dismissed.¹⁰² *O. K. Jelks & Son v. Tom Huston Peanut Company* would be judged as a case of patent infringement.

Jelks’ counsel attempted to overturn Tom’s patent by showing that the invention had been anticipated by Planters. Witnesses for the defense testified that, starting in 1910, Planters had sold over ten thousand boxes of salted almonds each month. The boxes, made in-house by Planters, were divided by internal compartments, “each containing two transparent bags.” Jelks’ counsel argued that these bags—being over twice as long as wide—discredited Huston’s patent. An inability to produce physical samples of the bag irritated the judges, and four copies of a trade catalogue showcasing Planters’ bagged almonds did not satisfy the legal standard for prior art. In a last effort, the defendants tried to submit that Obici’s patented double-bag from 1908 invalidated Tom’s patent. The bid proved baseless.

The court of appeals upheld Tom’s patent in the Jelks case, yet one judge disagreed with the verdict. Again, the issue returned to the scope of invention. The dissenting judge stated that manufacturers generally agreed that the “cheapest way to make a small paper bag” was to make it flat. For this reason, Tom’s could not claim novelty for that aspect, nor could the use of transparent paper pass as a patentable idea. “There is therefore no possible novelty left,” the judge concluded, “but the idea of making a bag small enough to be grasped by the hand and to go into the mouth,” a form of consumption as old as the bottle itself. Consequently, the patent seemed “to rest on mere dimension” while providing none. This judge concluded that such an unspecific specification was outside the most liberal scope of patentability.¹⁰³ Jelks wanted a rehearing in the circuit court of appeals. The petition was denied.¹⁰⁴

One detail in the case revealed how Tom’s had changed the industry with a simple inventive step. Salted peanuts in the early 1900s were either packed loose or in square paper bags. If bagged, these items were placed, flat or sideways, inside tin canisters and tended to burst in transit, resulting in losses. Tom’s, too, shipped peanuts in canisters, but because of the patented bag, the company was able to pack each item vertically.¹⁰⁵ The sealed joinery of the elongated bag held up under stress and did not break, a feat governed by the dimensions of the patented design. The utility of the bag enabled nationwide distribution. Sales skyrocketed after Huston obtained the patent. Although the bag alone could not be held responsible for Tom’s sudden growth, the company wed its trademark to the unique packaging. This combination transformed the retail landscape for salted peanuts in the United States.

The importance of intellectual property to the distribution of agricultural products is generally subsumed within larger historical narratives of technological change. For instance, Gabriella Petrick showed that iceberg lettuce from California became available all year round in distant markets following World War I.¹⁰⁶ The Grower-Shipper Vegetable Association of Central California—composed of “lettuce barons” with capital equity in

102. *O. K. Jelks & Son v. Tom Huston Peanut Company*, 52 F 2d 4 (Ga 5th Cir, 1931).

103. *Ibid.* (Sibley J).

104. “Decisions Denying Certiorari,” 284 US 617 (1931) 686.

105. *O. K. Jelks & Son v. Tom Huston Peanut Company*, 52 F 2d 4 (Ga 5th Cir, 1931).

106. Petrick, “Like Ribbons of Green and Gold,” 269.

shipping firms, ice houses, and packing sheds—organized in 1930 “to reduce the power of the large vegetable marketing firms” in eastern cities.¹⁰⁷ By the late 1940s, steam-driven vacuum cooling was proven at commercial scale, boding to replace ice as a cheaper way to regulate the temperature of packed lettuce on eastbound trains. Petrick noted that, much like the “previous foray into ice manufacturing, once vacuum cooling was clearly the dominant technology,” a lettuce baron acquired its patent and restored power in the industry to the grower-shippers.¹⁰⁸ Whomsoever owned exclusive rights in the method of distribution could exert demands on other actors within the supply chain. As with lettuce, so too peanuts.

Thanks to Planters’ sponsorship, Jelks continued to try to overturn the decision on the patentability of Tom’s bag. In December 1931, Jelks appealed to the Supreme Court of the United States for a writ of certiorari.¹⁰⁹ Tom’s counsel responded by lodging a brief to address two unsubstantiated allegations about the patented bag. The first point was about the “indefiniteness” of its specifications. Because the description was sufficient to enable manufacture, Tom’s attorney saw no further interpretation as being necessary. Replying to the second concern, a “lack of invention,” he argued that Tom’s bag combined elements in a way that improved upon prior art. That it did so was undeniable. The counsel gushed, “*No bag ever accomplished these results before.*”¹¹⁰ Other peanut packers had illegally replicated the patented bag for this very reason.

By 1931, Tom’s had made a settlement or placed an injunction on thirty-two peanut dealers.¹¹¹ The bag’s basic patent specifications did not disqualify it as an invention, but rather upheld the limits of patentability, even if the “outermost limits.”¹¹² The Supreme Court refused to review the judgment.¹¹³ Tom’s patented bag could not be copied. It could only be improved upon.

Prepackaged Peanuts

Failure to overturn the patent on Tom’s bag did not stop Planters from pursuing novel packaging ideas. Obici and Peruzzi were considering dispensing with the bag altogether. After all, people had been serving roasted peanuts in the shell for centuries, and Planters had the advantage of the large-podded Virginia peanuts. There was one obvious benefit to packing peanuts in a bag. The bag had surface area for branding. Planters had become the largest peanut manufacturer in the world through the constant display of its iconographic brand. Selling peanuts without packaging would deprive the company of this distinct marketing advantage. It was preposterous to think that Tom’s glassine bag could be countered by a return to plain old unshelled peanuts.

107. *Ibid.*, 276.

108. *Ibid.*, 283.

109. *O. K. Jelks & Son v. Tom Huston Peanut Company*, No 577 (U.S. Supreme Court, 1931).

110. *Ibid.*, “Brief in Opposition to Petition,” 4; italics in original.

111. *O. K. Jelks & Son v. Tom Huston Peanut Company*, 52 F 2d 4 (Ga 5th Cir, 1931) 3.

112. *Westcott Hosiery Mills v. Rich’s* 56 F 2d 234 (1932).

113. *O. K. Jelks & Son v. Tom Huston Peanut Company*, No 577 (U.S. Supreme Court, 1931).

In 1929, Amedeo Obici filed another patent application. He secured rights for a method of applying a trademark or logo directly to a peanut shell. By conveying unshelled peanuts to a set of inking rollers, the device printed a mark directly across the irregular surface of the oblong pods “without breaking the hull.”¹¹⁴ Each individual Virginia peanut could now be transformed into a branded item, voiding the need for convoluted packaging. The patented technology presented a way to erode the limited monopoly granted to Tom’s by making the bag outdated. When it came to selling peanuts in a branded pod, the lesser size of the Small White Spanish could not compete with extra-large Virginia peanuts.

Outside the courthouse, Tom’s was busy addressing some missteps of its own. Huston had apparently not solved the problem of keeping peanuts crisp “almost indefinitely.” In February 1930, the vice president of Tom’s wrote to the industrial chemist Charles Herty for advice. Herty was involved in the chemurgic movement, applying chemistry to the manufacture of new products from agricultural crops.¹¹⁵ Tom’s vice president asked Herty to investigate what might be causing Tom’s Toasted Peanuts to go rancid. The company hired Herty as a consultant, and he immediately began testing various materials involved in the packing and shipping of the product.¹¹⁶ Tom’s shipped five million cartons each year, so each decision on material sourcing was pricey.¹¹⁷

Herty’s initial experiments implicated the bag in imparting a sour, musty smell to Tom’s peanuts. Further findings confirmed that physical contact between the salted Spanish peanuts and wax paper resulted in oil spots. The airtight tin cartons used to ship Tom’s Toasted Peanuts were releasing a noticeable odor upon opening because of spoilage. Tom’s either needed a new type of packaging or less oily peanuts. Because the company owed its success, and that of its brand, to the Small White Spanish peanuts, Herty suggested that Tom’s consider using cellophane by DuPont, as “used on the Camel cigarette packages.”¹¹⁸ He noted that substitution of wax paper with cellophane could force Tom’s to reconsider how it applied labels to packaged peanuts. Herty wanted to submit all inks and gums for further testing, including those used to adhere the trademark red triangle to Tom’s patented bag. In this sense, labels were not only useful in denoting content, but, as Xan Frohlich argued, the added information reformed the nature and circulation of goods.

Tom’s ended its relations with Herty in January 1932 because of severe economic constraints.¹¹⁹ With Herty gone, the founder continued to secure intellectual property protection to improve his patented bag. The USPTO granted Huston patent rights to a bag-filling apparatus in May 1932. The invention covered machines that were designed to apportion “material having a tendency to adhere to and clog,” like salted peanuts.¹²⁰ The then-current practice for preventing the accrual of salt on packing machinery involved the manual action of brushes and scrapers. Tom’s new bagging apparatus dispensed with the need for archaic tools by

114. U.S. Patent no. 1735471, filed October 16, 1928, issued November 12, 1929.

115. Finlay, “Failure of Chemurgy,” 85.

116. These tests seem to have been done in cooperation with the Robert Gair Company, whose founder patented the cardboard box. Letter from Anon to Herty, April 15, 1931, Herty Papers, MSS 8, Box 106, Folder 15.

117. Letter from Woleben to Herty, November 12, 1930, Herty Papers, MSS 8, Box 107, Folder 4.

118. Letter from Herty to Woleben, November 15, 1930, Herty Papers, MSS 8, Box 107, Folder 4.

119. Letter from Richards to Herty, December 27, 1933, Herty Papers, MSS 8, Box 107, Folder 1.

120. U.S. Patent no. 1859562, filed December 14, 1929, issued May 24, 1932.

incorporating a heating element. Delivery of the right amount of heat kept salt-coated peanuts free from glomming on to the machine. The machine was also equipped with a nozzle for “directing an air blast downwardly into the bags.”¹²¹ With a combination of heat and air, the apparatus discharged the right portion of warm peanuts into an open bag. More improvements to the bag were soon to follow.

In November 1932, a patentee from Columbus, Georgia, assigned Tom’s exclusive rights to a bag seal. What this patent claimed was an origami-like method of folding bags made of cellophane. Ordinary adhesives did not perform particularly well with cellophane. To redress the foibles of prior art, including Huston’s patented bag, the inventor disclosed a method for how “to seal the bag substantially air tight” without pasting the flimsy material together.¹²² The seal did away with weaker binding, while not sacrificing the bag’s ability to “bear advertising.”¹²³ The contents and dimensions of Tom’s product, combined with a limited monopoly on methods for filling and sealing the bag, set it apart. Neither Planters vacuum-sealed tins, nor their au naturel branded pods, assembled a company trademark quite like Tom’s bag.

Concluding Remarks

This article has illustrated how two peanut manufacturing companies, Planters and Tom’s, used trademarks in concert with other intellectual property to develop their brands. What is more, the biology of peanut types influenced how intellectual property protections were combined. Extra-large Virginia peanuts gave Planters a distinct visual advantage, one reinforced by its popular logo and secret processing method. Tom’s, on the other hand, delivered Small White Spanish peanuts to retail countertops nationwide through the combined protection of its bag, stand, and trademark. Branding was a package deal.

Planters remained a dominant firm in the peanut trade, regardless of Tom’s exclusive rights to the patented bag. Again, advertising was key. Planters’ gross sales expanded from \$7 million in 1924 to upwards of \$10 million in 1931, with the “world-famous trademark” found everywhere in the world, including on the marquee of retail outlets operated by the National Peanut Corporation.¹²⁴ The company increased spending on publicity despite the toll of the Depression.¹²⁵

Tom Huston chose a different trajectory. He decided to diversify beyond the underground legume synonymous with his name. The founder crossed into the frozen fruit business and went broke.¹²⁶ A bank took possession of Tom’s, the financial executive became the next

121. Ibid.

122. U.S. Patent no. 1889001, filed April 16, 1932, issued November 29, 1932, for a bag seal, which the patentee Belmont D. Osteen assigned to the Tom Huston Peanut Company.

123. Ibid., 1.

124. “Peanut Brand by Planters Well Known,” *Wilkes-Barre Times Leader*, 15; Smith, *Peanuts*, 51–54.

125. Smith, *Peanuts*, 55.

126. “Tom Huston - Fact or Fancy,” Huston Collection, MC 37, Box 2, Folder 19; Jean Thwaite, “Georgia Frozen Food Pioneer Failed in ‘30s,” *The Atlanta Constitution*, October 6, 1966, 63.

president, and Huston relocated to Miami in “a self-imposed exile,” only to start other lucrative businesses.¹²⁷

These examples from the early American peanut industry complement Duguid’s proposal that branding exercises power *within* supply chains. Not all attempts to exert control were successful. The Peanut Growers Association tried to bypass food manufacturers with release of a private retail label, although buyers were ultimately wary of the unknown brand. On the whole, supply relations were supportive as well as hostile. Planters and Tom’s made an effort to align their interests with peanut producers through product branding. Both companies showed a commitment to regional suppliers by sourcing and marketing specific peanut types. This allegiance would change over time. Corporate growth and an expanded product line eventually uprooted the place-based devotion to a specific type of peanut.¹²⁸

To conclude, the historical study of peanuts suggests an interesting aspect of intellectual property in agricultural supply chains, one that should be explored further with other food products. Brand labels increasingly dispensed with the geographical particulars of crop type on which trademarks were popularized. An opposite trend may be in effect nowadays, yet the larger point stays intact. Processing and packaging changed the information conveyed from the seed sown in tilled fields to the same sold salted beside the till.

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Acknowledgments

This article was made possible with support from the TC Beirne School of Law, the Australian Research Council (#FL150100104) and the Wellcome Trust (217968/Z/19/Z). I thank Brad Sherman, Andrew Ventimiglia, Xan Chacko, Susannah Chapman, and Helen Curry for comments on various drafts. Material in the paper was presented at the American Anthropological Association meeting in 2019 and the 2020 Symposium of Australian Gastronomy. Edith Powell assisted with research in the archives at Tuskegee University. Editor Andrew Popp and two anonymous reviewers at *Enterprise & Society* provided guidance, insight, and clarification, for which I am most grateful. Any errors are mine alone.

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127. “W.A. Richards to Head Tom Huston Company,” *The Atlanta Constitution*, January 28, 1932, 7; Letter from Richards to Huston, June 4, 1954, Huston Collection, MC 37, Box 2; “Genius in Exile,” *Sunday Ledger-Enquirer Magazine*, August 29, 1965, Huston Collection, MC 37, Box 2, Folder 31.

128. Planters did continue to market Virginia peanuts for certain products, yet the company increasingly sourced the commercial class of Virginia peanuts from overseas suppliers. Meanwhile, Tom’s employees investigated how to grow other types of peanuts than Spanish in the Deep South.

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Cite this article: Brown, Tad. "In the Patented Bag: Peanuts, Packaging, and Intellectual Property in the United States, 1906–1932." *Enterprise & Society* (2023): 1–24.