



## ***New Mexico's Regional Chiles: Opportunities and Challenges in Place-Based Food Marketing<sup>1</sup>***

### ***A Tale of Two Chiles***

The state of New Mexico is blessed with plenty of sunshine and just enough water to make its arid landscape bloom. It is also blessed with hard-working family farmers who are stewards of two regional signature foods that are among the most prized and celebrated in the world: *Hatch* and *Chimayo* chiles. These chiles are considered “place-based” specialty crops that reflect the unique growing conditions of New Mexico. These conditions include microclimates, soils and production practices, as well as a rich history that includes the development of unique varieties suited to the Southwest along with culinary traditions and foodways which take advantage of the special flavors.



Hatch chile peppers (*Capsicum annuum*) are large, mild chiles that have fans around the world. Dozens of websites laud this prized specialty crop — including a German website that encourages German tourists to attend the annual Hatch Chile Festival (see it at [www.pepperworld.com/reisen/hatch2000.html](http://www.pepperworld.com/reisen/hatch2000.html)). This international festival draws tens of



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thousands of chile fanatics (called “chile heads”) to make a fall pilgrimage to this small community on the Rio Grande in southern New Mexico. Hatch chiles are produced in the Hatch Valley section (actually called the Rincon Valley) of the Rio Grande Valley in southern New Mexico.

The Hatch chile is not actually a distinct variety of chile. It belongs to a group of long, green, mild New Mexican– or Anaheim-type chiles developed by New Mexico State University over the twentieth century to meet the burgeoning demand for consistently high-quality fresh and processed chiles. New Mexican chiles are grown throughout southern New Mexico as well as Arizona, Texas and Mexico. But those that grow in the Hatch area are called “Hatch chiles” and they are especially prized for their superior quality, especially when roasted fresh.

The Chimayo Chile (*Capsicum annuum* “Chimayo”) is another specialty chile, but it is native to the highlands of northern New Mexico. The village of Chimayo is located at an elevation of 6,000 feet, and the unique climate and cultural traditions surrounding the production and culinary use of the Chimayo chile are the stuff of legend. There is no other place in the world which produces this particular chile. Unlike the Hatch chile, the Chimayo chile is a “land race” chile that has not undergone a formal breeding program to develop specific characteristics and consistency. Over many generations, local Native American and Latino farmers have tamed the Chimayo chile, but they have not entirely removed its wildness. Chimayo’s shape, color and flavor can vary greatly from plant to plant, field to field, and year to year. The result is that Chimayos are suited to small-scale production and artisanal processing rather than mass commercial production and processing, where consistency is king.



Photo courtesy of Chimayo Chile Project.

### ***It Was the Best of Times, It Was the Worst of Times***

The fact that the Hatch and Chimayo chiles have unique history and provenance has not gone unnoticed by chile industry leaders, and the industry and government are struggling to determine the best means of capitalizing on the state’s signature foods. In the case of both the Hatch and Chimayo chiles, there have been attempts to “place brand” them through trademarking and certification marking with the United State Patent and Trademark Office. Unfortunately, the results thus far have led to consternation and conflict.

In the case of Hatch, a single company applied for and received a trademark for use of the word “Hatch” in March 2008 (*US Reg. No. 3391024*). It is unclear why the USPTO gave this company exclusive rights even though the worldwide recognition of Hatch chiles has clearly put it in the public domain for most of the last century. The Hatch Chile Growers

Association, a group composed of farmers of modest incomes, is unhappy about its inability to use the word “Hatch” when marketing its chiles. Rumors that the owner of the Hatch trademark buys considerable volumes of chiles from outside the Hatch area, and even outside the country, are disheartening and are leading to concern that the hard-fought reputation of Hatch chiles is at risk.



Photo courtesy of Chimayo Chile Project.

The case of Chimayo is similarly frustrating for local stakeholders. Bueno Foods applied for and has thus far been denied a trademark for the use of “Chimayo.” A Chimayo chile producer group called Chimayo Chile Farmers, Inc., with assistance from the Native Hispanic Institute’s Chimayo Chile Project, have applied for a certification mark for “Chimayo.” That application has been suspended (*Application Serial No(s) 78-745625 and 78-745617*), presumably until there is a final ruling on Bueno Foods’ trademark application. The New Mexican legislature has supported the Chimayo Chile Project with legislation that acknowledges that the Chimayo chile farmers are the “rightful owners of the name Chimayo with full authority to register [trademark] the name” (House Joint Memorial 38).

### ***New Mexico State Government Involvement Is Probably Warranted***

Given the confusion and conflict that has taken place over these issues, I believe it would be in the public’s best interest for the state of New Mexico to consider intervention in a positive and proactive way that advances the interests of at least majority of individual chile industry stakeholders. The state of New Mexico should take action in order to promote fairness and balance in the marketplace, help steward the state’s natural resources, and maximize economic and community development by capitalizing on unique assets and opportunities that only it possesses.

One means of untangling the current morass is for the state to host a Chile Industry summit at which ALL stakeholders, groups, organizations, companies and agencies participate. This summit would review the rich history of the New Mexico chile industry, which is shared by all stakeholders, and develop a shared vision for its future. During the

submit the participants would identify strategies for attaining the shared vision (goals) and identify ways to measure progress toward those goals.

The state of New Mexico is best suited to host such a gathering since there are enormous trust issues among stakeholders, while the state is generally perceived as not being aligned with particular interests. Some critics, for example, suggest that the Chile Task Force, the New Mexico Chile Association, the Chile Pepper Institute and the New Mexico Department of Agriculture are too closely tied with and largely represent the interests of agribusiness, and that there are possible conflicts of interest. Likewise, agribusiness and the scientific community are suspicious of nongovernmental groups that oppose genetic modification and the industrialization of chile pepper production. Whether these accusations are true or not, prima fascia evidence has polarized the industry into factions that are stagnating the sustainable growth of the chile industry.

### ***Possible Action Strategies To Be Discussed at an Industry Summit***

1. Consider how the “Hatch” trademark or certification market could best suit all stakeholders. Explore the possibility of voluntary dissolution of the current Hatch trademark (*US Reg. No. 3391024*).
2. It would be unfortunate, but if there is no cooperation with the current holder of the Hatch trademark, it is possible to pursue a revocation of the trademark. This would require a skilled trademark attorney, but there is overwhelming evidence that “Hatch” is in the public domain according to common law and that the place name *alone* should not be trademarkable.
3. Wait for Bueno Foods’ “Chimayo” chile trademark application to expire.
4. Consider two alternatives for the Chimayo chile: (1) support the current suspended Chimayo chile certification mark application made by the Chimayo Chile Farmers; or (2) establish a state marketing order with an independent New Mexico Chile Pepper Commission, which would own the certification marks for Hatch, Chimayo, and any other chiles with potential geographic indications. The commission would establish the criteria for certification of these chiles, receive a per pound or bushel check-off to support research and marketing, and exact severe penalties on violators of the rules. This is similar to the approaches taken by the state of Georgia in the case of Vidalia onions and the state of Florida in the case of Indian River fruit.

### ***Geographic Indicators and Certification Marks Background Info***

The French refer to this coming together of food and place as *gout de terroir* or “taste of place.” Wine and food products that possess this rare quality are given special labels that certify their origin. In Europe, Champagne and Roquefort cheese are examples of products that can command higher prices due to the perception that the characteristics of the soil are reflected in the products labeled with these names. The French have an administrative system in place that allows these types of product names to be registered as *Appellations d’origine contrôlée* (AOC). This designation adds value to these products in consumers’ minds by acting as an indicator of the geographic origin of the product, and by certifying the methods of production, and perhaps the quality of the product.

The United States has a variety of mechanisms to protect designations of origin for U.S. products. For example, at the federal level, “Vidalia” for onions, “Idaho” for potatoes, and “Florida” for citrus are protected as U.S. certification marks. In fact, the owners of these marks are the state entities that control the production of the products and those who can use the certification mark via state regulations. However, the owner of a certification mark does not have to be a governmental body; it can be a private association or a cooperative.

The U.S. Trademark Act of 1946 defines a certification mark as “any word, name, symbol, device, or any combination, used, or intended to be used, in commerce with the owner’s permission by someone other than its owner, to certify regional or other geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone’s goods or services...”<sup>2</sup> In other words, a growers association, buyer, processor, governmental body or trade group can own the certification mark, set the quality standards, geographic origin, etc., and be responsible for policing it. Having this third-party certification keeps lower quality, imported chiles from being marketed as Hatch or Chimayo chiles.

A certification mark can be a geographic term in certain circumstances, or it can be a design element or certification seal. Whether or not there are prior trademark rights in the term Hatch or Chimayo, it still seems very sensible to use a specific symbol to identify chiles from Hatch and attempt to leverage that brand into a guarantee of quality, which will lead to higher prices. It seems worthwhile, then, to at least consult with an experienced trademark attorney to explore whether there is a potential strategy for branding chiles from Hatch that would add value for the producers and for consumers, but which does not cause legal problems at the same time. Moreover, the presence and cooperation of the New Mexico Department of Agriculture would be very useful in determining whether it would like to be part of the certification process in the way that the Departments of Agriculture in Georgia and Florida are with “Vidalia” for onions and “Florida” for citrus. Additionally, to the extent that there is a desire to approach the registrant of the “Hatch” trademark to explore whether there is an arrangement that could be worked out between the Hatch chile producers and the trademark owner for mutual use of the term “Hatch,” the government of New Mexico would be a useful party at that negotiating table.

<sup>2</sup> See [www.uspto.gov/web/offices/dcom/olia/globalip/gi\\_protection.htm](http://www.uspto.gov/web/offices/dcom/olia/globalip/gi_protection.htm).