

Backus USA v. Billy Mims et al  
2005-545-CD

05-545-CD  
Backus vs. Billy Mims et al

Date: 04/28/2005

Time: 03:50 PM

Page 1 of 1

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2005-00545-CD

User: CROWLES

Current Judge: Paul E. Cherry

Backus USA, Inc. vs. Billy Mims, Billy Mims Farm && Repair

**Civil Other**

Date		Judge
04/18/2005	New Case Filed. Filing: Civil Complaint Paid by: Hopkins Law Firm Receipt number: 1899568 Dated: 4/18/2005 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
	Motion For Preliminary Injunction, filed by Atty. Heltzel 3 cert. to Atty.	No Judge
	Order, filed 3 Cert. to Atty. Heltzel	No Judge
	AND NOW, this 18th day of April, 2005, RE: Hearing on April 28th, 2005 on Motion for Preliminary Injunction.	
04/28/2005	Notice of Filing of Notice of Removal, filed by Atty. Muha no cert. copies.	Paul E. Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware  
Corporation,

Plaintiff

vs.

BILLY MIMS, an adult individual,  
BILLY MIMS FARM & REPAIR,  
Defendants

No. 2005-545-C

Type of Pleading: Complaint

Filed on behalf of: Backus USA, Inc.,  
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE  
Attorney at Law  
Supreme Court No. 83998

900 Beaver Drive  
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

APR 18 2005 (2)

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William A. Shaw  
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware :  
Corporation, :  
Plaintiff :  
: :  
vs. : No.  
: :  
BILLY MIMS, an adult individual, :  
BILLY MIMS FARM & REPAIR, :  
Defendants :  
:

**NOTICE**

TO DEFENDANTS:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware Corporation, Plaintiff vs. BILLY MIMS, an adult individual, BILLY MIMS FARM & REPAIR, Defendants

## **COMPLAINT IN EQUITY**

AND NOW, comes Plaintiff, Backus USA, Inc. ("Backus USA") by and through its attorneys, Hopkins Heltzel, LLP, and files the within complaint in equity as follows:

1. Plaintiff Backus USA, Inc., is a Delaware corporation that maintains offices within the Commonwealth of Pennsylvania at 602-9 West DuBois Avenue, DuBois, Clearfield County, Pennsylvania 15801.

2. Plaintiff is engaged in the design, building, repair, selling and engineering of fresh produce processing machines, pickle equipment and spare parts, as well as material handling and automation for other industries.

3. Defendant Billy Mims is an adult individual who maintains a principle business address at 2052 Trinity Road, Lynchburg, South Carolina 29080.

4. Defendant Billy Mims Farm and Repair is a business maintaining a principle business address at 2025 Trinity Road, Lynchburg, South Caroline 29080.

5. Defendants are independent contractors, who install and repair fresh produce processing machines for a Dutch company known as Backus Sormac b.v., as well as for Plaintiff.

6. Defendant was retained by Plaintiff from November 18, 1998 until April 2004.

7. Plaintiff and Defendant entered into a Non-Compete Agreement dated November 18, 1998, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Non-Compete Agreement").

8. The Non-Compete Agreement was given for valid consideration and is a binding contract.

9. Paragraph 1 of the Non-Compete Agreement sets forth Defendant's acknowledgement that "as a material inducement to Employer to employ Employee and to pay to Employee compensation for such services to be rendered for Employer by Employee (it being understood and agreed by the parties hereto that such non-competition shall also be paid for and received in consideration hereof) . . ."

10. The geographic restrictions set forth in the Non-Compete Agreement apply to all of North America.

11. Such geographic restriction is reasonable and necessary in light of the fact that fresh produce processing machines are sold throughout the United States.

12. Paragraph 1(A) of the Non-Compete Agreement provides that Defendant will not directly or indirectly, either for employee's own account or as a partner, shareholder . . . officer, employee, agent or otherwise be employed by, connected with, participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with employer. By way of example, and not as a limitation, the foregoing shall preclude employee from soliciting business or sales from or attempting to convert to other sellers or providers of the same or similar products or services as provided by employer any customer,

client or account of employer with which employee has had any contact during the term of employment.

13. Paragraph 1(C) of the Non-Compete Agreement also provides that for a period of five (5) years after the termination his employment with Plaintiff, that Defendant would not disclose any "Confidential Information" acquired while in the employ of Plaintiff. "Confidential Information" includes any of Plaintiff's "confidential, proprietary or trade secret information" disclosed to Defendant or that Defendant learned in the course of working with Plaintiff.

14. Paragraph 3 of the Non-Compete Agreement provides that if Defendant violates the Non-Compete Agreement, Plaintiff is entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits that Defendant directly or indirectly realized or might realize as a result of any violation of the Non-Compete Agreement.

15. Paragraph 3 also provides that in addition to the foregoing remedies, that Plaintiff is also entitled to injunctive relief and other rights or remedies to which Plaintiff may be entitled at law or in equity under the Agreement.

16. Plaintiff and Defendant are also parties to a Confidentiality Agreement dated November 18, 1998, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Confidentiality Agreement").

17. The Confidentiality Agreement provides that Defendant shall not use or disclose any Confidential Information, including "all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information" acquired by Defendant during the course of his relationship with Plaintiff.

18. The term of the Confidentiality Agreement is five (5) years from the date Plaintiff last discloses any information to Defendant pursuant to the Confidentiality Agreement.

19. Paragraph 7 of the Confidentiality Agreement provides that in addition to any legal remedies to which Backus may be entitled, Backus may obtain "such equitable relief as may be necessary to protect [Backus] against any such breach or threatened breach."

20. In or about April 2004, Defendants opened a business for the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery. Set forth on Exhibit "C" is a website for Billy Mim's Repair Service, LLC that directly violates the Non-Compete Agreement, [www.pickleman.biz](http://www.pickleman.biz).

21. In total and complete disregard of the covenants set forth in the Non-Compete Agreement, Defendants have entered into the business of repairing and selling fresh produce processing machines, pickle equipment and spare parts for such machinery. See Advertisement placed in "fresh CUT," *The Magazine for Value-Added Produce*, April 2005, attached as Exhibit "D."

22. During the week of April 11, 2005, Defendant, Billy Mims, attended a national trade show in Phoenix, Arizona representing a competitor of Backus USA in violation of the Non-Compete Agreement.

23. As a result of the actions of Defendants, Plaintiff has suffered a nearly total loss of its sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

**COUNT I**  
**Breach of Non-Compete Agreement**

24. Paragraphs 1-23 are hereby incorporated as though set forth fully herein.

25. Defendants have entered into the business of repairing and selling fresh produce food processing machines, pickle equipment and spare parts for such machinery.

26. Defendants' relationship with Plaintiff ended in or about April 2004; as such, Defendants' obligations under the Non-Compete Agreement are valid and binding until April 2009.

27. Defendants' activities involving the repair and sale of fresh produce processing machines, pickle equipment and spare parts for such machinery have taken place since April 2004.

28. As a result of the actions of Defendants, Plaintiff has suffered a nearly total loss of its business involving the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

29. Defendants' violation of the Non-Compete Agreement has caused an undue hardship on Plaintiff.

WHEREFORE, Plaintiff Backus USA, Inc., respectfully requests this Court enter an Order as follows:

A. Enjoining Defendants Billy Mims and Billy Mims Farm & Repair from participating in the business of selling, repairing, designing, engineering, or in any way being associated with companies in the fresh produce processing industry;

B. Requiring Defendants Billy Mims and Billy Mims Farm & Repair to disclose the name and address of each entity that he has worked either as an employee, agent or independent contractor or has provided consulting services;

C. Require Defendants Billy Mims and Billy Mims Farm & Repair to provide an accounting and repayment of all monies earned by him since April 2004; and

D. Require Defendants Billy Mims and Billy Mims Farm & Repair to notify each business with whom he has done business that he is prohibited by Order of this Court from performing any other work on their behalf.

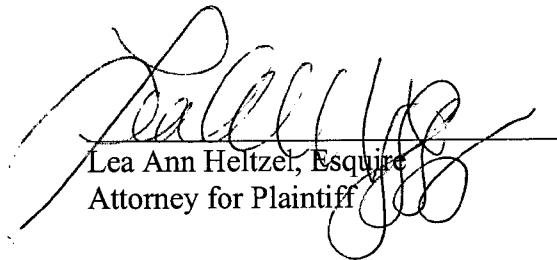
**COUNT II**  
**Breach of Confidentiality Agreement**

30. Paragraphs 1-29 above are hereby incorporated as though set forth fully herein.
31. Upon information and belief, Defendants have sold or repaired fresh produce machinery to customers or contacts with whom they became familiar as a result of his relationship with Plaintiff.
32. Upon information and belief, Defendants have used Confidential Information obtained during the course of their relationship with Plaintiff in connection with the sale and repair of fresh produce processing machinery, pickle equipment and spare parts to the detriment of Plaintiff.
33. Defendant last had access to Plaintiff's Confidential Information in April 2004; accordingly the obligations set forth in the Confidentiality Agreement are binding upon Defendants until April 2009.
34. The business in which Backus is engaged is a highly competitive industry. As such, Defendants' use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendants Billy Mims and Billy Mims Farm & Repair from further disclosing or using the Confidential Information in

violation of the Confidentiality Agreement, and further requiring Defendants to comply with the terms of the Confidentiality Agreement.

Respectfully submitted,



Lea Ann Heltzel, Esquire  
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

BY: 

**EMPLOYEE NON-COMPETE AGREEMENT**

THIS EMPLOYEE NON-COMPETE AGREEMENT ("Agreement") is made as of November 18, 1998, by and between Backus USA, Inc. and Backus Sormac b.v. ("Employer") and Billy Mims ("Employee").

Employee desires to give, and Employer desires to receive from Employee, a covenant not to engage, either directly or indirectly, in competition with, or to solicit any customer, client, or account of, Employer.

Employer and Employee desire to set forth in writing the terms and conditions of their agreements and understandings.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**1. Covenants Against Competition.**

Employee acknowledges that the services to be rendered to Employer have a significant and material value to Employer, the loss of which cannot adequately be compensated by damages alone. In view of the significant and material value to Employer of the services of Employee for which Employer has employed Employee; and the confidential information obtained by or disclosed to Employee as an employee of Employer; and as a material inducement to Employer to employ Employee and to pay to Employee compensation for such services to be rendered for Employer by Employee (it being understood and agreed by the parties hereto that such non-competition shall also be paid for and received in consideration hereof), Employee covenants and agrees as follows:

A. During Employee's employment by Employer and for a period of five years after Employee ceases to be employed by Employer, Employee shall not within North America directly or indirectly, either for Employee's own account or as a partner, shareholder (other than shares regularly traded in a recognized market), officer, employee, agent or otherwise, be employed by, connected with, participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with Employer. By way of example, and not as a limitation, the foregoing shall preclude Employee from soliciting business or sales from, or attempting to convert to other sellers or providers of the same or similar products or services as provided by Employer, any customer, client or account of Employer with which Employee has had any contact during the term of employment.

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Worldwide Headquarters  
P.O. Box 419  
5900 AK Venlo  
the Netherlands

EXHIBIT "A"

B. During employment and for a period of five years thereafter, Employee shall not, directly or indirectly, solicit for employment or employ any employee of Employer.

C. During employment, and thereafter five years, Employee shall not disclose to anyone any Confidential Information. For the purposes of this Agreement, "Confidential Information" shall include any of Employer's confidential, proprietary or trade secret information that is disclosed to Employee or Employee otherwise learns in the course of employment such as, but not limited to, business plans, customer lists, financial statements, software diagrams, flow charts and product plans. Confidential Information shall not include any information which: (i) is or becomes publicly available through no act of Employee, (ii) is rightfully received by Employee from a third party without restrictions; or (iii) is independently developed by Employee.

**2. At Will.**

Employee acknowledges that Employee's employment is "at will", subject to applicable law, and that either Employer or Employee may terminate employment at any time, with or without notice, for any reason or no reason whatsoever. Nothing in this Agreement shall constitute a promise of employment for any particular duration or rate of pay.

**3. Accounting for Profits.**

Employee covenants and agrees that, if Employee shall violate any covenants or agreements in Section 1 hereof, Employer shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits which Employee directly or indirectly has realized and/or may realize as a result of, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which Employer is or may be entitled at law or in equity or under this Agreement.

**4. Reasonableness of Restrictions.**

A. Employee has carefully read and considered the provisions of Section 1 hereof and, having done so, agrees that the restrictions set forth therein (including, but not limited to, the time period of restriction and the geographical areas of restriction) are fair and reasonable and are reasonably required for the protection of the interests of Employer, its officers, directors, shareholders and other employees.

B. In the event that, notwithstanding the foregoing, any part of the covenants set forth in Section 1 hereof shall be held to be invalid or unenforceable, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of Section 1 relating to time period and/or areas of

restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or areas such court deems reasonable and enforceable, the agreed upon time period and/or areas of restriction shall be deemed to become and thereafter be the maximum time period and/or areas which such court deems reasonable and enforceable.

**5. Burden and Benefit.**

This Agreement shall be binding upon, and shall inure to the benefit of, Employer and Employee, and their respective heirs, personal and legal representatives, successors and assigns.

**6. Governing Law.**

Construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Connecticut and the international laws of the Netherlands.

**7. Severability.**

The provisions of this Agreement (including particularly, but not limited to, the provisions of Section 1 hereof) shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

**8. Employer.**

As used herein, the term "Employer" shall include any corporation which is at any time a parent or subsidiary of Employer.

**9. Notices.**

Any notice required to be or otherwise given hereunder shall be sufficient if in writing, and sent by certified or registered mail, return receipt requested, first-class postage prepaid, as follows:

**If to Employer:**

Backus USA, Inc.  
P. O. Box 585  
DuBois, PA 15801  
U.S.A.

and

Backus Sormac b.v.  
P. O. box 419  
5900 AK Venlo  
The Netherlands

**If to Employee:**

Billy Mims  
2025 Trinity Road  
Lynchburg, SC 29080

or to such other address designated by either party following notice to the other.

**10. Entire Agreement.**

This Agreement contains the entire agreement and understanding by and between Employer and Employee with respect to the covenant against competition herein referred to, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the party intended to be bound.

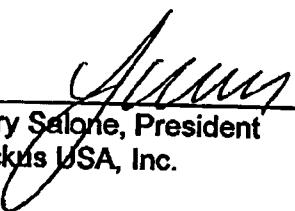
**11. No Waiver.**

No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom such waiver is sought to be enforced; moreover, no valid waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or will be deemed a valid waiver of such provision at any other time.

**12. Headings.**

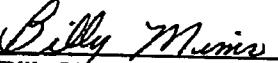
The headings used herein are for the convenience of the parties only and shall not be used to define, enlarge or limit any term of this Agreement.

**IN WITNESS WHEREOF**, Employer and Employee have duly executed this Agreement under seal as of the day and year first above written.

  
\_\_\_\_\_  
Larry Salone, President  
Backus USA, Inc.

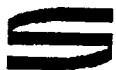
11/29/98

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Billy Mims

11/25/98

\_\_\_\_\_  
Date

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement ("Agreement") is made and effective the 18th day of November, 1998 by and between Backus USA, Inc. and Backus Sormac, b.v. ("Owner") and Billy Mims ("Recipient").

**1. Confidential Information.**

Owner proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Owner to disclose any of its information.

**2. Recipient's Obligations.**

A. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.

B. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for purposes of this Agreement. Upon the request of Owner, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. At Recipient's option, any documents or other media developed by the Recipient containing Confidential Information may be destroyed by Recipient. Recipient shall provide a written certificate to Owner regarding destruction within ten (10) days thereafter.

**3. Term.**

The obligations of Recipient herein shall be effective five years from the date Owner last discloses any Confidential Information to Recipient pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between Owner and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing

Worldwide Headquarters  
P.O. Box 419  
5900 AK Venlo  
the Netherlands

EXHIBIT "B"

under local law.

**4. Other Information.**

Recipient shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Recipient; is rightfully received by Recipient without obligations of confidentiality; or is developed by Recipient without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until thirty (30) days after written notice of intent to disclose is given to Owner along with the asserted grounds for disclosure.

**5. No License.**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Recipient agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

**6. No Publicity.**

Recipient agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Owner.

**7. Governing Law and Equitable Relief.**

This Agreement shall be governed and construed in accordance with the laws of the United States and the State of Connecticut and the international laws of the Netherlands and Recipient consents to the exclusive jurisdiction of the state courts and U.S. federal courts located there for any dispute arising out of this Agreement. Recipient agrees that in the event of any breach or threatened breach by Recipient, Owner may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Owner against any such breach or threatened breach.

**8. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**9. No Assignment.**

Recipient may not assign this Agreement or any interest herein without Owner's

express prior written consent.

**10. Severability.**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

**11. Notices.**

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to Owner:

Backus USA, Inc.  
P. O. Box 585  
DuBois, PA 15801  
U.S.A.

and

Backus Sormac b.v.  
P.O. Box 419  
5900 AK Venlo  
The Netherlands

If to Recipient:

Billy Mims  
2025 Trinity Road  
Lynchburg, SC 29080

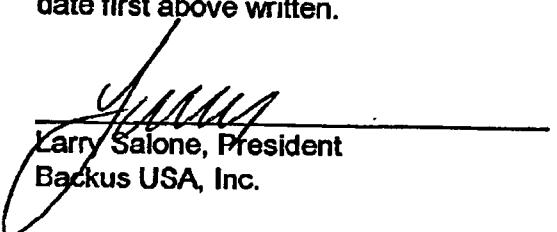
**12. No Implied Waiver.**

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

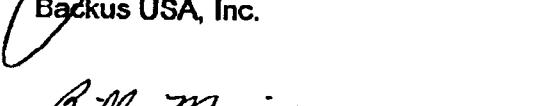
**13. Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

  
Larry Salone, President  
Backus USA, Inc.

11/27/98  
Date

  
Billy Mims

11/25/98  
Date



ONIONS

CARROTS LEAFY VEGETABLES CUCUMBERS

OTHERS



## International

Sormac operates worldwide in the potato and vegetable industry. Daily hundreds of tons food is processed with Sormac equipment.

### Our agents:

#### **Europe:**

Austria

Bulgaria

Czech Republic

Denmark

Finland

France

Germany

Greece

Italy

Poland

Russia

Slovakia Republic

Spain

Sweden

Switzerland

United Kingdom

#### **North America:**

United States

Worldwide distribution is dependent on skilled partners. Due to the concentration of customers in Europe and the USA, we operate with a thorough and experienced agents network. Outside these countries the sales are directly done by the sales team of Sormac.

## EUROPE:

### Austria



#### FOODCONS OHG

Fasanenstrasse 1

DE-41751 VIERSEN

Mr. Karsten Schmitz

Telephone: +49 21 62 81 75 85

Fax: +49 21 62 81 75 86

Mobile: +49 17 76 05 61 50

E-mail: [info@foodcons.de](mailto:info@foodcons.de)

## BULGARIA

### DATRA BELGIUM b.v.b.a.

"Mladost 1" area

"Jerusalem" Boul. block 54, entrance "V", app. 28

BG-1784 SOFIA

Mr. Ventzel Mihaylov

Mrs. Irina Philipova

Telephone: +359 29 74 05 48

Telephone & Fax: +359 29 74 08 17

Fax: +359 29 74 08 22

Mobile Mr. Ventzel: +359 88 74 63 067

Mobile Mrs. Irina: +359 88 73 54 682

E-mail: [venzirin@internet-bg.net](mailto:venzirin@internet-bg.net)

## CZECH REPUBLIC

E-mail: [info@watson-backus.co.uk](mailto:info@watson-backus.co.uk)

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***NORTH AMERICA:***

**UNITED STATES of AMERICA**

**BILLY MIMS FARM & REPAIR**

2025 Trinity Road  
US-LYNCHBURG, SC 29080  
Mr. Billy Mims  
Telephone: +1 80 34 53 59 01  
Fax: +1 80 34 53 57 63  
Mobile: +1 80 34 68 77 83  
Pager: 1 88 83 20 97 43  
E-mail: [pickleman@ftc-i.net](mailto:pickleman@ftc-i.net)  
Internet: [www.pickleman.biz](http://www.pickleman.biz)

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# Billy Mims Repair Service, LLC

2025 Trinity Road, Lynchburg, S.C. 29080  
Phone: 803-453-5901 Or 803-468-7783  
[pickleman@itc-i.net](mailto:pickleman@itc-i.net)

[Home](#)

[Services](#)

[About Us](#)

[Contact Us](#)

[Click here to visit Sormac's web site.](#)

## Product and customers

Reliability, hygiene, precision and a long life span are typical of all Sormac equipment as a result of the market-oriented development policy. In consultation with our customers, we try to offer a solution to their demand. Our customers are modern, progressive companies, who would like to create a value-added product. Besides stand-alone machines, Sormac supplies complete processing lines and technology, as well as a worldwide reliable service by a team of field service engineers. This all to be the customer of service as effective as possible.

## Vegetables

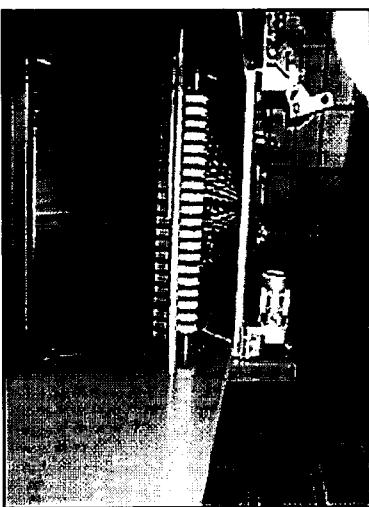
The delivery programme consists of highly, mostly patented machines for the fresh processing of a large diversity on agricultural products like:

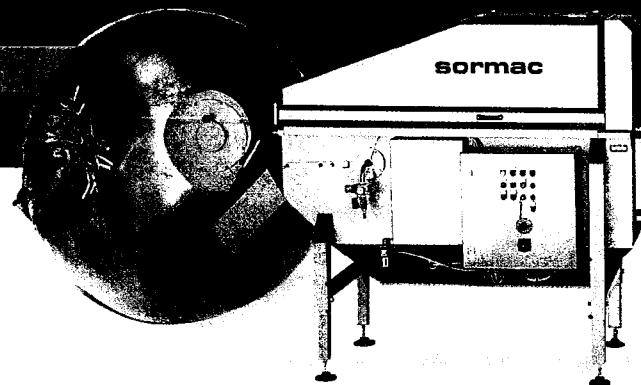
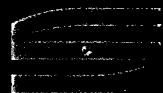
Potatoes  
Onions  
Carrots  
Cucumbers  
Leafy vegetables  
Bell peppers

The machines of Sormac are mainly developed for above-mentioned vegetables, but in practice it proves that several other vegetables like celeriac, red beets, olives, cabbage and different kind of fruits etc. can be processed by Sormac equipment.

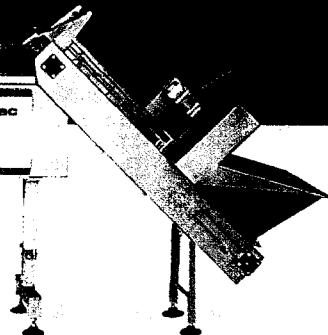
Used diverging chain grader for sale complete with scales.  
Call Billy Mims at 803-468-7783 or Don Augustyniak at 989-879-3824

© Billy Mims Repair Services, LLC. All rights reserved. Any copying, redistribution, or retransmission of any of the contents of

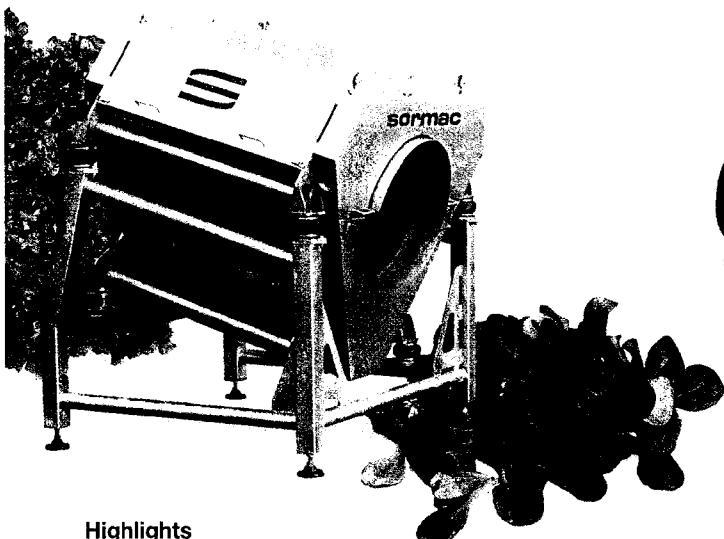




**ONION PEELER**  
**USM-100**



**CENTRIFUGE SC 740**



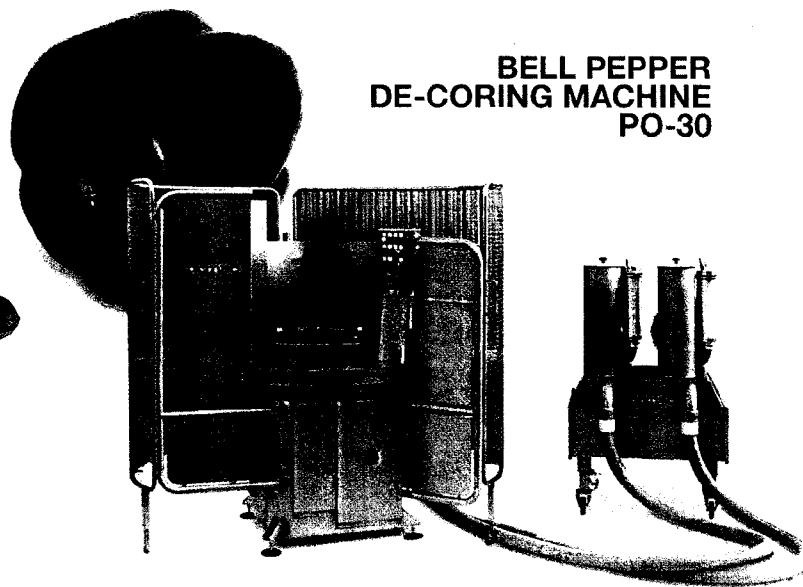
**Highlights**

- suitable for drying of all kind of leaf, prepared vegetables and herbs
- capacity up to 1.500 kg/hr
- simple unique construction of the machine with a heavy duty drive
- air pressure cleaning system for short cycle cleaning
- continuous product delivery to and from the centrifuge
- ease of access for cleaning

**Highlights**

- onion diameter of 40–140 mm
- capacity up to 4.800–6.000 onions/hr, positioned by one person
- perfect peeling quality
- complete dry peeling
- high yield (little waste)
- hygienic design (easy to clean and disinfect)
- knives with extended life-span

**BELL PEPPER**  
**DE-CORING MACHINE**  
**PO-30**



**Highlights**

- diameter between 60–115 mm. Minimum product length is 70 mm and maximum length is 140 mm
- capacity of approx. 2.800 pcs/hr
- seriously high production with one operator
- perfectly de-cored product, without seed remains

**PLEASE VISIT OUR BOOTH # 319**

We produce processing equipment for  
**POTATOES**   **CARROTS**   **LEAFY VEGETABLES**

**EXHIBIT "D"**

**CELERIAC**

**RED BEETS**

➤ **sormac bv**  
Venlo, The Netherlands  
Phone: +31 (0) 77 351 84 44  
Internet: [www.sormac.nl](http://www.sormac.nl)

Our partner in the US:  
➤ **Billy Mims Farm & Repair**  
Phone: (803) 453 5901  
Internet: [www.pickleman.biz](http://www.pickleman.biz)

*our solutions change vegetables*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware  
Corporation,

Plaintiff

vs.

No. 2005-545-CD

BILLY MIMS, an adult individual,  
BILLY MIMS FARM & REPAIR,  
Defendants

Type of Pleading: Motion for  
Preliminary Injunction

Filed on behalf of: Backus USA, Inc.,  
Plaintiff

Counsel of Record for this party:  
HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire  
Attorney at Law  
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire  
Attorney at Law  
Supreme Court No. 83998

900 Beaver Drive  
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

APR 18 2005  
0/3:10/05  
William A. Shaw  
Prothonotary  
Schenk to Attn

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

APR 18 2005

Attest.

William A. Shaw  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware :  
Corporation, :  
Plaintiff :  
vs. : No.  
: :  
BILLY MIMS, an adult individual, :  
BILLY MIMS FARM & REPAIR, :  
Defendants :  
:

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, Backus USA, Inc., a Pennsylvania corporation, by and through its undersigned counsel, hereby files the following motion for preliminary injunction as follows:

1. Plaintiff respectfully moves this Court for a preliminary injunction pursuant to Rule 1531 of the Pennsylvania Rules of Civil Procedure.
2. Contemporaneously with the filing of this Motion, Plaintiff filed its verified Complaint setting forth two Counts. A copy of the Complaint is attached hereto as Exhibit "A".
3. In Count I of Plaintiff's Complaint, Plaintiff requests that this Court enter judgment in its favor and against Defendants (1) finding that Defendants breached the terms of a Non-Compete Agreement dated as of November 18, 1998; (2) enjoining Defendants from participating in the business of selling and repairing, or in any way being associated with companies in the fresh produce processing industry; (3) requiring Defendants to disclose the name and address of each entity with which he has worked either as an employee, agent or independent contractor or has provided consulting services; (4) requiring Defendants to provide an accounting and repayment of all monies earned by him since April 2004; and (5) requiring

that Defendants notify each business for whom he has been employed that he is prohibited by Order of this Court from performing any other work on their behalf.

4. In Count II of the Complaint, Plaintiff requests that this Court enter judgment in its favor and against Defendants, finding that Defendants breached the terms of a Confidentiality Agreement dated as of November 18, 1998, requesting that the Court enjoin Defendants from further using the Confidential Information in breach of the Confidentiality Agreement, and requiring Mr. Mims to comply with the terms of that Agreement.

5. Defendant Billy Mims is an adult individual who maintains a principle business address at 2052 Trinity Road, Lynchburg, South Carolina 29080.

6. Defendant Billy Mims Farm & Repair is a business, which maintains a business address at 2052 Trinity Road, Lynchburg, South Carolina 29080.

7. As set forth in the Complaint, Plaintiff is engaged in the design, building, repair, selling and engineering of fresh produce processing machines, pickle equipment and spare parts for such machinery, as well as material handling and automation for other industries.

8. Defendants are independent contractors, who install and repair fresh produce processing machines for a Dutch company known as Backus Sormac b.v., as well as for Plaintiff.

9. Plaintiff and Defendant are also parties to a Non-Compete Agreement, a copy of which is attached to the Complaint as Exhibit "A".

10. Pursuant to that Agreement, Mr. Mims agreed that for a period of five years after he was no longer employed by Backus, he would not directly or indirectly, either for employee's own account or as a partner, shareholder . . . officer, employee, agent or otherwise be employed by, connected with, participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with employer. By way of

example, and not as a limitation, the foregoing shall preclude employee from soliciting business or sales from or attempting to convert to other sellers or providers of the same or similar products or services as provided by employer any customer, client or account of employer with which employee has had any contact during the term of employment.

11. The geographical scope of the Non-Compete Agreement was all of North America. Such geographic restriction is reasonable and necessary in light of the fact that fresh produce processing machines are sold throughout the United States.

12. Defendant also agreed that during his employment with Backus, and for a period of five years after the termination of employment, he would not disclose any Confidential Information. Confidential Information includes all confidential proprietary or trade secret information that was disclosed to Mr. Mims or which he may have otherwise learned in the course of employment.

13. Paragraph 3 of the Non-Compete Agreement provides that if Defendant violates the Non-Compete Agreement, Plaintiff is entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits that Defendant directly or indirectly realized or might realize as a result of any violation of the Non-Compete Agreement.

14. Paragraph 3 also provides that in addition to the foregoing remedies, Plaintiff is entitled to injunctive relief and other rights or remedies to which Plaintiff may be entitled at law or in equity under the Agreement.

15. In or about April 2004, Defendants opened a business for the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

16. In total and complete disregard of the covenants set forth in the Non-Compete Agreement, Defendants entered into the business of fresh produce processing machines, pickle

equipment and spare parts for such machinery. Set forth on Exhibit "C" to the Complaint is a website for Billy Mim's Repair Service, LLC that directly violates the Non-Compete Agreement, [www.pickleman.biz](http://www.pickleman.biz).

17. In total and complete disregard of the covenants set forth in the Non-Compete Agreement, Defendants have entered into the business of repairing and selling fresh produce processing machines, pickle equipment and spare parts for such machinery. See Advertisement placed in "fresh CUT," *The Magazine for Value-Added Produce*, April 2005, attached as Exhibit "D" to the Complaint.

18. During the week of April 11, 2005, Defendant, Billy Mims, attended a national trade show in Phoenix, Arizona representing a competitor of Backus USA in violation of the Non-Compete Agreement.

19. Such activities have been conducted within five (5) years from the date of the end of Defendants' relationship with Backus, USA, Inc., and said activities are in clear breach of the terms of the Non-Compete Agreement.

20. Plaintiff and Defendant are also parties to a Confidentiality Agreement dated November 18, 1998, a copy of which is attached as Exhibit "B" to the Complaint.

21. The Confidentiality Agreement provides that Defendant shall not use or disclose any of the Confidential Information which includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information acquired by Defendant during the course of his relationship with Plaintiff.

22. The term of the Confidentiality Agreement is for five (5) years from the date Plaintiff last discloses any information to Defendant pursuant to the Confidentiality Agreement.

23. Paragraph 7 of the Confidentiality Agreement provides that in addition to any legal remedies to which Backus may be entitled, Backus may obtain "such equitable relief as may be necessary to protect [Backus] against any such breach or threatened breach."

24. Upon information and belief, in total and complete disregard of the covenants set forth in the Confidentiality Agreement, Defendants have sold or repaired fresh produce processing machines, pickle equipment and spare parts for such machinery to customers or contacts with whom he became familiar as a result of the relationship with Plaintiff.

25. Further, upon information and belief, Defendants have used Confidential Information obtained during the course of the relationship with Plaintiff in connection with the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

26. The date upon which Defendant last had access to Confidential Information was April 2004; accordingly the obligations set forth in the Confidentiality Agreement are binding upon Defendant until April 2009.

27. The business in which Backus is engaged is a highly competitive industry. As such, Defendant's use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement has resulted in irreparable harm to Plaintiff, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

28. Plaintiff brings this motion for preliminary injunction to prevent Defendants from continuing to violate the Non-Compete Agreement and Confidentiality Agreement.

29. For the reasons stated herein and in Plaintiff's Complaint, unless and until Defendants are enjoined from further violation of these Agreements, Plaintiff will be irreparably harmed.

30. Plaintiff is likely to succeed on the merits of its Complaint.

31. Plaintiff has no adequate remedy at law.

32. Plaintiff shall post bond in escrow as directed by this Honorable Court.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a preliminary injunction and then a permanent injunction upon the entry of an appropriate bond by Plaintiff, enjoining and restraining Defendant and his agents, servants, employees, employers, consultants, officers, directors, attorneys, affiliates, successors, and assigns and any other individual or entity within Defendant's control or supervision and all other persons or entities acting in concert with Defendant or on his behalf or on its behalf or participating with Defendant until hearing on the matter or until further order of Court from:

(1) Enjoining Defendants from participating in the business of selling, repairing, designing, engineering, or in any way being associated with companies in the fresh produce processing industry;

(2) Requiring Defendants to disclose the name and address of each entity with which they have worked either as an employee, agent or independent contractor or has provided consulting services;

(3) Requiring Defendants to provide an accounting and repayment of all monies earned by them since April 1, 2004;

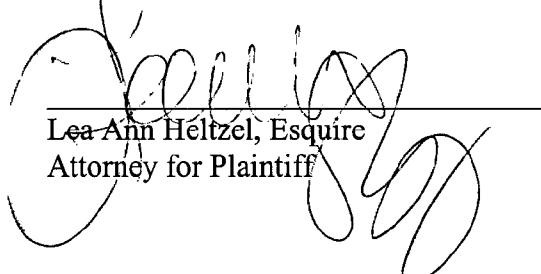
(4) Requiring that Defendants notify each business with whom they have been employed or retained that they are prohibited by Order of this Court from performing any other work on their behalf;

(5) Enjoining Defendant Billy Mims from further disclosing or using the Confidential Information in violation of the Confidentiality Agreement, and further requiring Mr. Mims to comply with the terms of the Confidentiality Agreement; and

(6) Any and all such other relief as the Court deems appropriate.

Respectfully submitted,

HOPKINS HELTZEL LLP

  
\_\_\_\_\_  
Lea-Ann Heltzel, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware Corporation, Plaintiff :  
vs. : No.  
BILLY MIMS, an adult individual, :  
BILLY MIMS FARM & REPAIR, :  
Defendants :  
: Type of Pleading: Complaint  
: Filed on behalf of: Backus USA, Inc.,  
: Plaintiff  
: Counsel of Record for this party:  
: HOPKINS HELTZEL LLP  
: DAVID J. HOPKINS, ESQUIRE  
: Attorney at Law  
: Supreme Court No. 42519  
: LEA ANN HELTZEL, ESQUIRE  
: Attorney at Law  
: Supreme Court No. 83998  
: 900 Beaver Drive  
: DuBois, Pennsylvania 15801  
: (814) 375-0300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware Corporation, Plaintiff  
vs. No.  
BILLY MIMS, an adult individual, Defendants

**NOTICE**

TO DEFENDANTS:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware	:	
Corporation,	:	
	Plaintiff	:
	:	
vs.	:	No.
	:	
BILLY MIMS, an adult individual,	:	
BILLY MIMS FARM & REPAIR,	:	
	Defendants	:

**COMPLAINT IN EQUITY**

AND NOW, comes Plaintiff, Backus USA, Inc. ("Backus USA") by and through its attorneys, Hopkins Heltzel, LLP, and files the within complaint in equity as follows:

1. Plaintiff Backus USA, Inc., is a Delaware corporation that maintains offices within the Commonwealth of Pennsylvania at 602-9 West DuBois Avenue, DuBois, Clearfield County, Pennsylvania 15801.
2. Plaintiff is engaged in the design, building, repair, selling and engineering of fresh produce processing machines, pickle equipment and spare parts, as well as material handling and automation for other industries.
3. Defendant Billy Mims is an adult individual who maintains a principle business address at 2052 Trinity Road, Lynchburg, South Carolina 29080.
4. Defendant Billy Mims Farm and Repair is a business maintaining a principle business address at 2025 Trinity Road, Lynchburg, South Caroline 29080.
5. Defendants are independent contractors, who install and repair fresh produce processing machines for a Dutch company known as Backus Sormac b.v., as well as for Plaintiff.

6. Defendant was retained by Plaintiff from November 18, 1998 until April 2004.
7. Plaintiff and Defendant entered into a Non-Compete Agreement dated November 18, 1998, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Non-Compete Agreement").
8. The Non-Compete Agreement was given for valid consideration and is a binding contract.
9. Paragraph 1 of the Non-Compete Agreement sets forth Defendant's acknowledgement that "as a material inducement to Employer to employ Employee and to pay to Employee compensation for such services to be rendered for Employer by Employee (it being understood and agreed by the parties hereto that such non-competition shall also be paid for and received in consideration hereof) . . ."
10. The geographic restrictions set forth in the Non-Compete Agreement apply to all of North America.
11. Such geographic restriction is reasonable and necessary in light of the fact that fresh produce processing machines are sold throughout the United States.
12. Paragraph 1(A) of the Non-Compete Agreement provides that Defendant will not directly or indirectly, either for employee's own account or as a partner, shareholder . . . officer, employee, agent or otherwise be employed by, connected with, participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with employer. By way of example, and not as a limitation, the foregoing shall preclude employee from soliciting business or sales from or attempting to convert to other sellers or providers of the same or similar products or services as provided by employer any customer,

client or account of employer with which employee has had any contact during the term of employment.

13. Paragraph 1(C) of the Non-Compete Agreement also provides that for a period of five (5) years after the termination his employment with Plaintiff, that Defendant would not disclose any "Confidential Information" acquired while in the employ of Plaintiff. "Confidential Information" includes any of Plaintiff's "confidential, proprietary or trade secret information" disclosed to Defendant or that Defendant learned in the course of working with Plaintiff.

14. Paragraph 3 of the Non-Compete Agreement provides that if Defendant violates the Non-Compete Agreement, Plaintiff is entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits that Defendant directly or indirectly realized or might realize as a result of any violation of the Non-Compete Agreement.

15. Paragraph 3 also provides that in addition to the foregoing remedies, that Plaintiff is also entitled to injunctive relief and other rights or remedies to which Plaintiff may be entitled at law or in equity under the Agreement.

16. Plaintiff and Defendant are also parties to a Confidentiality Agreement dated November 18, 1998, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Confidentiality Agreement").

17. The Confidentiality Agreement provides that Defendant shall not use or disclose any Confidential Information, including "all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information" acquired by Defendant during the course of his relationship with Plaintiff.

18. The term of the Confidentiality Agreement is five (5) years from the date Plaintiff last discloses any information to Defendant pursuant to the Confidentiality Agreement.

19. Paragraph 7 of the Confidentiality Agreement provides that in addition to any legal remedies to which Backus may be entitled, Backus may obtain "such equitable relief as may be necessary to protect [Backus] against any such breach or threatened breach."

20. In or about April 2004, Defendants opened a business for the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery. Set forth on Exhibit "C" is a website for Billy Mim's Repair Service, LLC that directly violates the Non-Compete Agreement, [www.pickleman.biz](http://www.pickleman.biz).

21. In total and complete disregard of the covenants set forth in the Non-Compete Agreement, Defendants have entered into the business of repairing and selling fresh produce processing machines, pickle equipment and spare parts for such machinery. See Advertisement placed in "fresh CUT," *The Magazine for Value-Added Produce*, April 2005, attached as Exhibit "D."

22. During the week of April 11, 2005, Defendant, Billy Mims, attended a national trade show in Phoenix, Arizona representing a competitor of Backus USA in violation of the Non-Compete Agreement.

23. As a result of the actions of Defendants, Plaintiff has suffered a nearly total loss of its sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

**COUNT I**  
**Breach of Non-Compete Agreement**

24. Paragraphs 1-23 are hereby incorporated as though set forth fully herein.

25. Defendants have entered into the business of repairing and selling fresh produce food processing machines, pickle equipment and spare parts for such machinery.

26. Defendants' relationship with Plaintiff ended in or about April 2004; as such, Defendants' obligations under the Non-Compete Agreement are valid and binding until April 2009.

27. Defendants' activities involving the repair and sale of fresh produce processing machines, pickle equipment and spare parts for such machinery have taken place since April 2004.

28. As a result of the actions of Defendants, Plaintiff has suffered a nearly total loss of its business involving the sale and repair of fresh produce processing machines, pickle equipment and spare parts for such machinery.

29. Defendants' violation of the Non-Compete Agreement has caused an undue hardship on Plaintiff.

WHEREFORE, Plaintiff Backus USA, Inc., respectfully requests this Court enter an Order as follows:

A. Enjoining Defendants Billy Mims and Billy Mims Farm & Repair from participating in the business of selling, repairing, designing, engineering, or in any way being associated with companies in the fresh produce processing industry;

B. Requiring Defendants Billy Mims and Billy Mims Farm & Repair to disclose the name and address of each entity that he has worked either as an employee, agent or independent contractor or has provided consulting services;

C. Require Defendants Billy Mims and Billy Mims Farm & Repair to provide an accounting and repayment of all monies earned by him since April 2004; and

D. Require Defendants Billy Mims and Billy Mims Farm & Repair to notify each business with whom he has done business that he is prohibited by Order of this Court from performing any other work on their behalf.

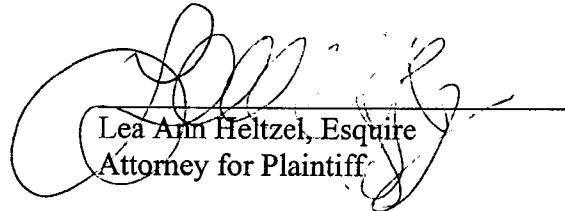
**COUNT II**  
**Breach of Confidentiality Agreement**

30. Paragraphs 1-29 above are hereby incorporated as though set forth fully herein.
31. Upon information and belief, Defendants have sold or repaired fresh produce machinery to customers or contacts with whom they became familiar as a result of his relationship with Plaintiff.
32. Upon information and belief, Defendants have used Confidential Information obtained during the course of their relationship with Plaintiff in connection with the sale and repair of fresh produce processing machinery, pickle equipment and spare parts to the detriment of Plaintiff.
33. Defendant last had access to Plaintiff's Confidential Information in April 2004; accordingly the obligations set forth in the Confidentiality Agreement are binding upon Defendants until April 2009.
34. The business in which Backus is engaged is a highly competitive industry. As such, Defendants' use and/or disclosure of such Confidential Information in breach of the Confidentiality Agreement will result in irreparable harm to Backus, which cannot be compensated by monetary damages and which harm is likely to continue and cannot be adequately remedied at law.

WHEREFORE, Plaintiff, Backus USA, Inc., respectfully requests that an injunction issue preliminarily until final hearing and permanently thereafter, enjoining Defendants Billy Mims and Billy Mims Farm & Repair from further disclosing or using the Confidential Information in

violation of the Confidentiality Agreement, and further requiring Defendants to comply with the terms of the Confidentiality Agreement.

Respectfully submitted,



Lea Ann Heltzel, Esquire  
Attorney for Plaintiff

## VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

BY:

BY: Johnny

**EMPLOYEE NON-COMPETE AGREEMENT**

THIS EMPLOYEE NON-COMPETE AGREEMENT ("Agreement") is made as of November 18, 1998, by and between Backus USA, Inc. and Backus Sormac b.v. ("Employer") and Billy Mims ("Employee").

Employee desires to give, and Employer desires to receive from Employee, a covenant not to engage, either directly or indirectly, in competition with, or to solicit any customer, client, or account of, Employer.

Employer and Employee desire to set forth in writing the terms and conditions of their agreements and understandings.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**1. Covenants Against Competition.**

Employee acknowledges that the services to be rendered to Employer have a significant and material value to Employer, the loss of which cannot adequately be compensated by damages alone. In view of the significant and material value to Employer of the services of Employee for which Employer has employed Employee; and the confidential information obtained by or disclosed to Employee as an employee of Employer; and as a material inducement to Employer to employ Employee and to pay to Employee compensation for such services to be rendered for Employer by Employee (it being understood and agreed by the parties hereto that such non-competition shall also be paid for and received in consideration hereof), Employee covenants and agrees as follows:

A. During Employee's employment by Employer and for a period of five years after Employee ceases to be employed by Employer, Employee shall not within North America directly or indirectly, either for Employee's own account or as a partner, shareholder (other than shares regularly traded in a recognized market), officer, employee, agent or otherwise, be employed by, connected with, participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with Employer. By way of example, and not as a limitation, the foregoing shall preclude Employee from soliciting business or sales from, or attempting to convert to other sellers or providers of the same or similar products or services as provided by Employer, any customer, client or account of Employer with which Employee has had any contact during the term of employment.

---

Worldwide Headquarters  
P.O. Box 419  
5900 AK Venlo  
the Netherlands

**EXHIBIT "A"**

B. During employment and for a period of five years thereafter, Employee shall not, directly or indirectly, solicit for employment or employ any employee of Employer.

C. During employment, and thereafter five years, Employee shall not disclose to anyone any Confidential Information. For the purposes of this Agreement, "Confidential Information" shall include any of Employer's confidential, proprietary or trade secret information that is disclosed to Employee or Employee otherwise learns in the course of employment such as, but not limited to, business plans, customer lists, financial statements, software diagrams, flow charts and product plans. Confidential Information shall not include any information which: (i) is or becomes publicly available through no act of Employee, (ii) is rightfully received by Employee from a third party without restrictions; or (iii) is independently developed by Employee.

**2. At Will.**

Employee acknowledges that Employee's employment is "at will", subject to applicable law, and that either Employer or Employee may terminate employment at any time, with or without notice, for any reason or no reason whatsoever. Nothing in this Agreement shall constitute a promise of employment for any particular duration or rate of pay.

**3. Accounting for Profits.**

Employee covenants and agrees that, if Employee shall violate any covenants or agreements in Section 1 hereof, Employer shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits which Employee directly or indirectly has realized and/or may realize as a result of, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which Employer is or may be entitled at law or in equity or under this Agreement.

**4. Reasonableness of Restrictions.**

A. Employee has carefully read and considered the provisions of Section 1 hereof and, having done so, agrees that the restrictions set forth therein (including, but not limited to, the time period of restriction and the geographical areas of restriction) are fair and reasonable and are reasonably required for the protection of the interests of Employer, its officers, directors, shareholders and other employees.

B. In the event that, notwithstanding the foregoing, any part of the covenants set forth in Section 1 hereof shall be held to be invalid or unenforceable, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of Section 1 relating to time period and/or areas of

restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or areas such court deems reasonable and enforceable, the agreed upon time period and/or areas of restriction shall be deemed to become and thereafter be the maximum time period and/or areas which such court deems reasonable and enforceable.

**5. Burden and Benefit.**

This Agreement shall be binding upon, and shall inure to the benefit of, Employer and Employee, and their respective heirs, personal and legal representatives, successors and assigns.

**6. Governing Law.**

Construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Connecticut and the international laws of the Netherlands.

**7. Severability.**

The provisions of this Agreement (including particularly, but not limited to, the provisions of Section 1 hereof) shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

**8. Employer.**

As used herein, the term "Employer" shall include any corporation which is at any time a parent or subsidiary of Employer.

**9. Notices.**

Any notice required to be or otherwise given hereunder shall be sufficient if in writing, and sent by certified or registered mail, return receipt requested, first-class postage prepaid, as follows:

**If to Employer:**

Backus USA, Inc.  
P. O. Box 585  
DuBois, PA 15801  
U.S.A.

and

Backus Sormac b.v.  
P. O. box 419  
5900 AK Venlo  
The Netherlands

**If to Employee:**

Billy Mims  
2025 Trinity Road  
Lynchburg, SC 29080

or to such other address designated by either party following notice to the other.

**10. Entire Agreement.**

This Agreement contains the entire agreement and understanding by and between Employer and Employee with respect to the covenant against competition herein referred to, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the party intended to be bound.

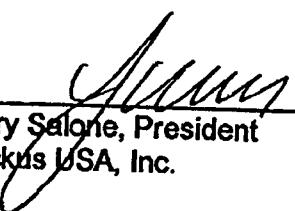
**11. No Waiver.**

No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom such waiver is sought to be enforced; moreover, no valid waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or will be deemed a valid waiver of such provision at any other time.

**12. Headings.**

The headings used herein are for the convenience of the parties only and shall not be used to define, enlarge or limit any term of this Agreement.

**IN WITNESS WHEREOF**, Employer and Employee have duly executed this Agreement under seal as of the day and year first above written.

  
\_\_\_\_\_  
Larry Salone, President  
Backus USA, Inc.

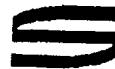
11/29/98

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Billy Mims

11/25/98

\_\_\_\_\_  
Date

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement ("Agreement") is made and effective the 18th day of November, 1998 by and between Backus USA, Inc. and Backus Sormac, b.v. ("Owner") and Billy Mims ("Recipient").

**1. Confidential Information.**

Owner proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Owner to disclose any of its information.

**2. Recipient's Obligations.**

A. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.

B. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for purposes of this Agreement. Upon the request of Owner, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. At Recipient's option, any documents or other media developed by the Recipient containing Confidential Information may be destroyed by Recipient. Recipient shall provide a written certificate to Owner regarding destruction within ten (10) days thereafter.

**3. Term.**

The obligations of Recipient herein shall be effective five years from the date Owner last discloses any Confidential Information to Recipient pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between Owner and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing

Worldwide Headquarters  
P.O. Box 419  
5900 AK Venlo  
the Netherlands

EXHIBIT "B"

under local law.

**4. Other Information.**

Recipient shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Recipient; is rightfully received by Recipient without obligations of confidentiality; or is developed by Recipient without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until thirty (30) days after written notice of intent to disclose is given to Owner along with the asserted grounds for disclosure.

**5. No License.**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Recipient agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

**6. No Publicity.**

Recipient agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Owner.

**7. Governing Law and Equitable Relief.**

This Agreement shall be governed and construed in accordance with the laws of the United States and the State of Connecticut and the international laws of the Netherlands and Recipient consents to the exclusive jurisdiction of the state courts and U.S. federal courts located there for any dispute arising out of this Agreement. Recipient agrees that in the event of any breach or threatened breach by Recipient, Owner may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Owner against any such breach or threatened breach.

**8. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**9. No Assignment.**

Recipient may not assign this Agreement or any interest herein without Owner's

express prior written consent.

**10. Severability.**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

**11. Notices.**

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to Owner:

Backus USA, Inc.  
P. O. Box 585  
DuBois, PA 15801  
U.S.A.

and

Backus Sormac b.v.  
P.O. Box 419  
5900 AK Venlo  
The Netherlands

If to Recipient:

Billy Mims  
2025 Trinity Road  
Lynchburg, SC 29080

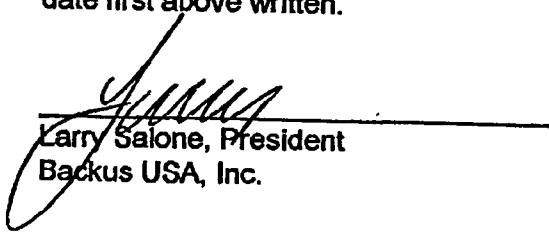
**12. No Implied Waiver.**

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

**13. Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

  
Larry Salone, President  
Backus USA, Inc.

11/29/98  
Date

  
Billy Mims

11/25/98  
Date

**ONIONS****CARROTS LEAFY VEGETABLES CUCUMBERS****OTHERS**

## International

Sormac operates worldwide in the potato and vegetable industry. Daily hundreds of tons food is processed with Sormac equipment.

### Our agents:

***Europe:***AustriaBulgariaCzech RepublicDenmarkFinlandFranceGermanyGreeceItalyPolandRussiaSlovakia RepublicSpainSwedenSwitzerlandUnited Kingdom***North America:***United States

Worldwide distribution is dependent on skilled partners. Due to the concentration of customers in Europe and the USA, we operate with a thorough and experienced agents network. Outside these countries the sales are directly done by the sales team of Sormac.

## EUROPE:

### Austria

**FOODCONS****FOODCONS OHG**

Fasanenstrasse 1

DE-41751 VIERSEN

Mr. Karsten Schmitz

Telephone: +49 21 62 81 75 85

Fax: +49 21 62 81 75 86

Mobile: +49 17 76 05 61 50

E-mail: [info@foodcons.de](mailto:info@foodcons.de)

## BULGARIA

**DATRA BELGIUM b.v.b.a.**

"Mladost 1" area

"Jerusalem" Boul. block 54, entrance "V", app. 28

BG-1784 SOFIA

Mr. Ventzel Mihaylov

Mrs. Irina Philipova

Telephone: +359 29 74 05 48

Telephone &amp; Fax: +359 29 74 08 17

Fax: +359 29 74 08 22

Mobile Mr. Ventzel: +359 88 74 63 067

Mobile Mrs. Irina: +359 88 73 54 682

E-mail: [venzirin@internet-bg.net](mailto:venzirin@internet-bg.net)

## CZECH REPUBLIC

E-mail: [info@watson-backus.co.uk](mailto:info@watson-backus.co.uk)

---



**NORTH AMERICA:**  
**UNITED STATES of AMERICA**

**BILLY MIMS FARM & REPAIR**  
2025 Trinity Road  
US-LYNCHBURG, SC 29080  
Mr. Billy Mims  
Telephone: +1 80 34 53 59 01  
Fax: +1 80 34 53 57 63  
Mobile: +1 80 34 68 77 83  
Pager: 1 88 83 20 97 43  
E-mail: [pickleman@ftc-i.net](mailto:pickleman@ftc-i.net)  
Internet: [www.pickleman.biz](http://www.pickleman.biz)

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# Billy Mims Repair Service, LLC

2025 Trinity Road, Lynchburg, S.C. 29080  
Phone: 803-453-5901 Or 803-468-7783  
[pickleman@ftc-i.net](mailto:pickleman@ftc-i.net)

[Home](#)

[Services](#)

[About Us](#)

[Contact Us](#)

[Click here to visit Sormac's web site.](#)

## Product and customers

Reliability, hygiene, precision and a long life span are typical of all Sormac equipment as a result of the market-oriented development policy. In consultation with our customers, we try to offer a solution to their demand. Our customers are modern, progressive companies, who would like to create a value-added product. Besides stand-alone machines, Sormac supplies complete processing lines and technology, as well as a worldwide reliable service by a team of field service engineers. This all to be the customer of service as effective as possible.

## Vegetables

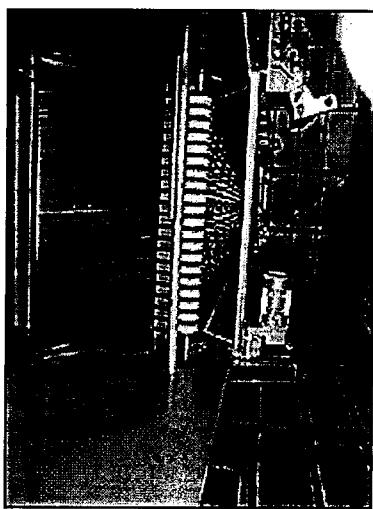
The delivery programme consists of highly, mostly patented machines for the fresh processing of a large diversity on agricultural products like:

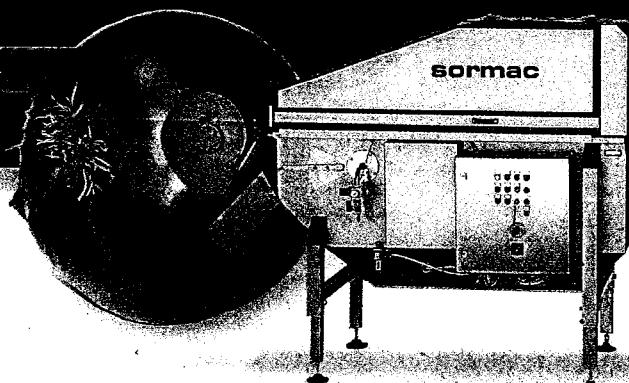
- Potatoes
- Onions
- Carrots
- Cucumbers
- Leafy vegetables
- Bell peppers

The machines of Sormac are mainly developed for above-mentioned vegetables, but in practice it proves that several other vegetables like celeriac, red beets, olives, cabbage and different kind of fruits etc. can be processed by Sormac equipment.

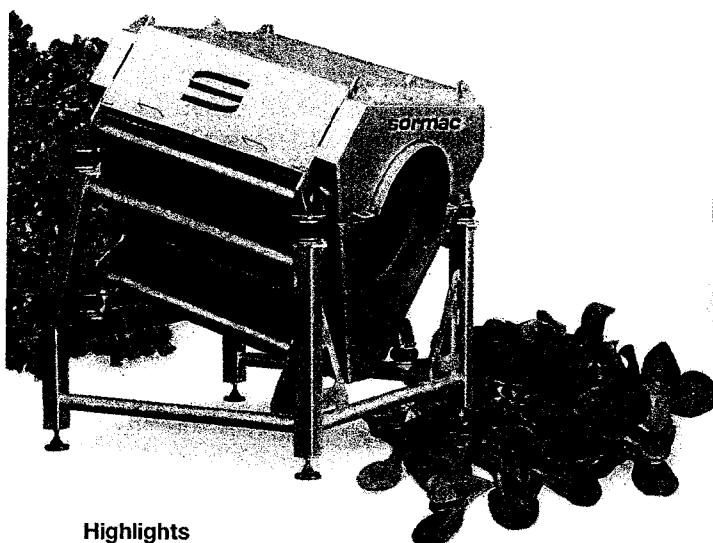
Used diverging chain grader for sale complete with scales.

Call Billy Mims at 803-468-7783 or Don Augustyniak at 989-879-3824





**CENTRIFUGE SC 740**



**Highlights**

- > suitable for drying of all kind of leaf, prepared vegetables and herbs
- > capacity up to 1.500 kg/hr
- > simple unique construction of the machine with a heavy duty drive
- > air pressure cleaning system for short cycle cleaning
- > continuous product delivery to and from the centrifuge
- > ease of access for cleaning

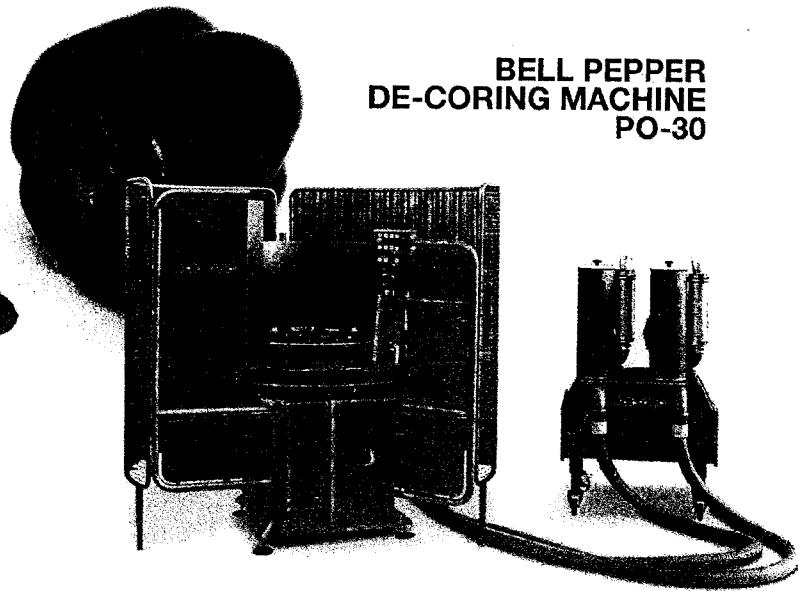
**ONION PEELER  
USM-100**



**Highlights**

- > onion diameter of 40–140 mm
- > capacity up to 4.800–6.000 onions/hr, positioned by one person
- > perfect peeling quality
- > complete dry peeling
- > high yield (little waste)
- > hygienic design (easy to clean and disinfect)
- > knives with extended life-span

**BELL PEPPER  
DE-CORING MACHINE  
PO-30**



**Highlights**

- > diameter between 60–115 mm. Minimum product length is 70 mm and maximum length is 140 mm
- > capacity of approx. 2.800 pcs/hr
- > seriously high production with one operator
- > perfectly de-cored product, without seed remains

PLEASE VISIT OUR BOOTH # 319

EXHIBIT "D"

We produce processing equipment for  
**POTATOES ONIONS CARROTS LEAFY VEGETABLES CUCUMBERS CELERIAC BELL PEPPERS RED BEETS**



*our solutions change vegetables*

> **sormac bv**  
Venlo, The Netherlands  
Phone: +31 (0) 77 351 84 44  
Internet: [www.sormac.nl](http://www.sormac.nl)

Our partner in the US:  
> **Billy Mims Farm & Repair**  
Phone: (803) 453 5901  
Internet: [www.pickleman.biz](http://www.pickleman.biz)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
(CIVIL DIVISION)

BACKUS USA, INC., a Delaware Corporation, Plaintiff  
vs. No. 2005-545-Cp  
BILLY MIMS, an adult individual, BILLY MIMS FARM & REPAIR, Defendants

**ORDER OF COURT GRANTING PRELIMINARY INJUNCTION**

AND NOW, this 18<sup>th</sup> day of April, 2005, upon consideration of Plaintiff's Motion for Preliminary Injunction and Plaintiff's Complaint, filed in conjunction therewith, and having determined that Plaintiff will suffer immediate and irreparable injury, it is hereby ordered, adjudged, and decreed that Defendants and their agents, servants, employees, employers, consultants, officers, directors, attorneys, affiliates, successors and assigns, and any other individual or entity within their control or supervision and all other persons or entities acting in concert or on their behalf are enjoined and/or directed until hearing on the matter or until further order of Court, directly or indirectly:

A. from participating in the business of selling, repairing, designing, engineering, or in any way being associated with companies in the fresh produce processing industry;

B. to disclose the name and address of each entity for which Mr. Mims or Billy Mims Farm & Repair has worked either as an employee, agent or independent contractor or has provided consulting services;

C. to provide an accounting and repayment of all monies earned by Mr. Mims or Billy Mims Farm & Repair since April 2004; and

**FILED**

APR 18 2005

03:10  
3 cent  
William A. Shaw  
Prothonotary  
to MTC

D. to notify each business with whom Mr. Mims or Billy Mims Farm & Repair has done business that Mr. Mims and Billy Mims Farm & Repair are prohibited by Order of this Court from performing any other work on their behalf.

Plaintiff is hereby directed to place a bond into escrow with the Court in the amount of \$\_\_\_\_\_.

A hearing on Plaintiff's Motion for Preliminary Injunction is scheduled for April 28, 2005 at 3:00 P.m., in Courtroom No. 2 at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

  
\_\_\_\_\_  
JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA (CIVIL DIVISION)

---

BACKUS USA, INC.,	)	No. 2005-545-CD
	)	
Plaintiff,	)	Type of Pleading:
	)	<b>NOTICE OF FILING OF</b>
v.	)	<b>NOTICE OF REMOVAL</b>
	)	
BILLY MIMS and BILLY MIMS FARM	)	Filed on Behalf of:
& REPAIR,	)	Defendants, William Mims and
	)	Billy Mims Farm & Repair
Defendants.	)	
	)	Counsel of Record for Defendants:

---

Brian T. Himmel, Esq.  
(Pa. I.D. # 66086)  
Andrew J. Muha, Esq.  
(Pa. I.D. # 87788)

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3131  
(Fax) (412) 288-3063

FILED  
APR 28 2005  
m/18/05  
NO CC  
FBI

William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA (CIVIL DIVISION)**

BACKUS USA, INC., )  
v. )  
Plaintiff, )  
BILLY MIMS and BILLY MIMS FARM )  
& REPAIR, )  
Defendants. )  
No. 2005-545-CD

**NOTICE OF FILING OF NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

PLEASE TAKE NOTICE that on the 27th day of April, 2005, Defendants William Mims -- improperly sued as "Billy Mims" -- and Billy Mims Farm & Repair (the "Defendants") filed with the Clerk of the United States District Court for the Western District of Pennsylvania the attached Notice of Removal, together with copies of all process, pleadings and orders served upon them in the action pending against them in the Court of Common Pleas of Clearfield County, Pennsylvania, styled Backus USA, Inc. v. Billy Mims and Billy Mims Farm & Repair, Civil Division No. 2005-545-CD. A true and correct copy of the Notice of Removal is attached hereto as Exhibit A, and is incorporated herein by reference for all purposes.

Further, this Court is required to take no further action unless and until further order is forthcoming from the United States District Court for the Western District of Pennsylvania (the “District Court”) remanding the aforementioned civil action to this Court.

Absent entry of a Remand Order issued by the District Court, this Court is divested of jurisdiction over this action.

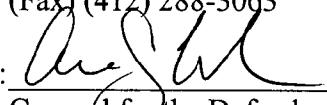
Dated: April 27, 2005

Respectfully submitted,

Brian T. Himmel, Esq.  
(Pa. I.D. # 66086)

Andrew J. Muha, Esq.  
(Pa. I.D. # 87788)

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3131  
(Fax) (412) 288-3063

By:   
Counsel for the Defendants  
William Mims and Billy Mims  
Farm & Repair

## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
JOHNSTOWN DIVISION

*Copy*

BACKUS USA, INC., ) Civil Action No. 05-231 J  
                          )  
                          )  
Plaintiff,            )  
                          )  
v.                     )  
                          )  
BILLY MIMS and BILLY MIMS FARM )  
& REPAIR,             )  
                          )  
Defendants.            )  
                          )

**DEFENDANTS' NOTICE OF REMOVAL**

Defendants William Mims -- improperly sued as "Billy Mims" -- and Billy Mims Farm & Repair (collectively the "Defendants"), by and through undersigned counsel, hereby remove the above-captioned cause of action presently pending in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Division No. 2005-544-CD, to the United States District Court for the Western District of Pennsylvania (the "District Court"), and in support of said removal state as follows:

1. On April 18, 2005, Plaintiff Backus USA, Inc. filed a Complaint in Equity ("Complaint") in the Court of Common Pleas of Clearfield County, Pennsylvania, styled Backus USA, Inc. v. Billy Mims and Billy Mims Farm & Repair, Civil Division No. 2005-545-CD. All process, pleadings and orders from the Court of Common Pleas of Clearfield County, including copies of the Plaintiff's *ex parte* Motion for Preliminary Injunction and an Order of Court Granting Preliminary Injunction (entered without notice or hearing on April 18, 2005), are attached collectively as Exhibit A to this Notice of Removal.

2. This Notice of Removal is being filed within thirty (30) days of Defendants' receipt of notice of Plaintiff's filing of its Complaint in the Court of Common Pleas of Clearfield County. Accordingly, the removal of this action is timely, in accordance with 28 U.S.C. § 1446(b).

**DIVERSITY JURISDICTION**

3. Plaintiff Backus USA, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in DuBois, Pennsylvania.

4. Defendant Billy Mims is an individual who is a citizen of the State of South Carolina.

5. Defendant Billy Mims Farm & Repair is a business organization that maintains its principal place of business in the State of South Carolina.

6. The value of the claims raised and equitable relief sought by the Plaintiff in its Complaint exceeds \$75,000, exclusive of interest or costs.

7. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction over this action by reason of complete diversity of citizenship and an amount in controversy that exceeds the value of \$75,000, exclusive of interest and costs.

8. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(a), which authorizes a defendant or defendants to remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction . . . to the district court of the United States for the district and division embracing the place where such action is pending."

9. The undersigned promptly shall provide notice of the removal of this action to the Court of Common Pleas of Clearfield County by filing a "Notice of Filing of Notice

of Removal," with an attached copy of this Notice of Removal, with the Clearfield County Prothonotary, pursuant to 28 U.S.C. § 1446(d). Copies of this Notice of Removal and the "Notice of Filing of Removal" shall also be served upon the Plaintiff through its counsel of record, also pursuant to 28 U.S.C. § 1446(d).

10. Because this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332; and because all other procedural requisites to removal have been met, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1441.

11. Defendants expressly reserve their right to move for dismissal of this action on the basis of this Court's lack of personal jurisdiction over each of the Defendants, as well as their right to move for dismissal upon any and all other procedural and/or substantive grounds.

WHEREFORE, Billy Mims and Billy Mims Farm & Repair respectfully request that this action be removed to this Court.

Dated: April 27, 2005

Respectfully submitted,

Brian T. Himmel, Esq.  
(Pa. I.D. # 66086)  
Andrew J. Muha, Esq.  
(Pa. I.D. # 87788)

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3131  
(Fax) (412) 288-3063

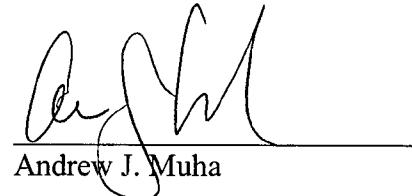
By:   
Counsel for the Defendants  
William Mims and Billy Mims  
Farm & Repair

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 27, 2005, the foregoing NOTICE OF FILING OF NOTICE OF REMOVAL was sent via first-class United States mail, postage prepaid, to the following:

David J. Hopkins, Esq.  
Lea Ann Heltzel, Esq.  
Hopkins Heltzel LLP  
900 Beaver Drive  
DuBois, PA 15801  
(814) 375-0300  
(Fax) (814) 375-5035

Counsel for the Plaintiff, Backus USA, Inc.



Andrew J. Muha