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I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. § 1.10 on May 5, 2003 and is addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Signature

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Registration No. 2,666,400
Mark: K 326
Registered: December 24, 2002

05-05-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

CROSS CREEK SEED, INC., and COATING SUPPLY, INC., Petitioners, v. **F.W. RICKARD SEEDS, INC.,** Registrant.	Cancellation No. 92041792

MOTION TO SUSPEND PROCEEDINGS
PENDING OUTCOME OF FEDERAL COURT LITIGATION

Pursuant to 37 C.F.R. § 2.117(a) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 510.02, Registrant F.W. Rickard Seeds, Inc. ("Registrant") hereby moves to suspend this cancellation proceeding pending resolution of ongoing federal court litigation between the parties concerning the trademark at issue in this proceeding. In support of this motion to suspend, Registrant states as follows:

1. Petitioner Cross Creek Seed, Inc., initiated this cancellation proceeding on January 22, 2003, seeking to cancel Registrant's United States Trademark Registration No. 2,666,400 ("the '400 Registration") for the mark K 326.

2. Petitioner Cross Creek is currently involved in litigation against Registrant in the United States District Court for the Middle District of North Carolina, Civil Action No. 1:02CV01004, concerning, among other things, the trademark that is the subject of the '400 Registration (the "U.S. District Court litigation"). In the U.S. District Court litigation, Registrant alleges that Petitioner is violating the Lanham Act, 15 U.S.C. § 1125(a), in connection with its growing and marketing of a tobacco seed product it calls "K 326." Registrant's complaint in the U.S. District Court litigation also alleges violation of the Plant Variety Protection Act, 7 U.S.C. § 2321 *et seq.* and North Carolina law. A true and correct copy of Registrant's Complaint is attached hereto as **Exhibit A**.

3. 37 C.F.R. § 2.117(a) states:

> Whenever it shall come to the attention of the Trademark Trial and Appeal Board that parties to a pending case are engaged in a civil action which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action.

See also General Motors Corp. v. Cadillac Club Fashions Inc., 22 USPQ2d 1933, 1936-37 (TTAB 1992); *Marie Claire Album S.A. v. Kruger GmbH & Co. KG*, 29 USPQ2d 1792, 1794 (TTAB 1993); TBMP § 510.02(a) ("Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.") The rationale for this rule is that, "[t]o the extent that a civil action in Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is binding upon the Board . . . ." TBMP § 510.02(a).

4. The final determination in the U.S. District Court litigation will have a bearing on this cancellation proceeding. Specifically, in the instant cancellation proceeding, Petitioner asserts that the '400 Registration should be canceled because K 326 "is an alphanumeric code for a tobacco varietal" (Petition ¶ 4) and is "a generic term and is therefore not capable of being registered." (*Id.* ¶ 6.) Similarly, in Petitioner's Answer and Counterclaims in the U.S. District Court litigation, Petitioner affirmatively alleged that Registrant has no trademark rights in K 326 (Answer and Counterclaims ¶¶ 61-63), instead repeatedly referring to K 326 as a "variety" of tobacco. (*Id.* ¶¶ 8, 9, 13, 16, 19, 23, 47, 60, 61, 64, 65.) Petitioner has also "den[ied] K 326 is a mark" (Answer ¶ 21.) A true and correct copy of Petitioner's Answer and Counterclaims is attached hereto as **Exhibit B**.

5. Registrant, in its Reply to Petitioner's Counterclaims in the U.S. District Court litigation, expressly denied the allegation that Registrant has no trademark rights in K 326. (Reply ¶¶ 61, 64.) A true and correct copy of Registrant's Reply is attached hereto as **Exhibit C**.

7. It is therefore clear that this proceeding and the U.S. District Court litigation involve identical issues—whether the use of the term K 326 pursuant to the Plant Variety protection Act as a variety of tobacco precludes or limits assertion of any trademark rights in the designation. There is no good reason to waste the parties' time and money, as well as the Board's time and resources, to rule on allegations that Petitioner has already pleaded in a U.S. District Court action.

WHEREFORE, Registrant prays that this petition to cancel be suspended pending the outcome of the U.S. District Court litigation.

Respectfully submitted,

Dated: May 5, 2003

Thomas L. Casagrande, Esq.
HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, TX 77057
(713) 787-1400

George B. Snyder, Esq.
KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 Third Avenue
New York, NY 10022
(212) 715-9100

Attorneys for Registrant F.W. Rickard Seed, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO SUSPEND PROCEEDINGS PENDING OUTCOME OF FEDERAL COURT LITIGATION has been served on May 5, 2003 by first class mail, postage prepaid, on:

Kenneth S. Kaufman, Esq.
9400 Reach Road
Potomac, MD 20854

Thomas L. Casagrande
Attorney for Registrant F.W. Rickard Seed, Inc.

H: 525880(B9RS01!.DOC)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

F.W. RICKARD SEEDS, INC. AND GOLD LEAF SEED COMPANY,	)	
Plaintiffs,	)	
v.	)	NO. 1:02-V01004
CROSS CREEK SEEDS, INC., CROSS CREEK FARMS, EDDIE BAKER, AND BILL EARLEY,	)	JURY TRIAL DEMANDED
Defendants.	)	

COMPLAINT

Plaintiffs F.W. Rickard Seeds, Inc. ("F.W. Rickard") and Gold Leaf Seed Company ("Gold Leaf") bring this action against Cross Creek Seeds, Inc. and Cross Creek Farms (collectively "Cross Creek"), Eddie Baker ("Baker"), and Bill Earley ("Earley") (collectively "Defendants") and allege as follows:

THE PARTIES

1. Plaintiff F .W. Rickard is a corporation organized and existing under the laws of the State of Kentucky, and has its principal place of business at 4274 Colby Road, Winchester, Kentucky 40391.

2. Plaintiff Gold Leaf is a corporation organized and existing under the laws of the State of South Carolina, and has its principal place of business at 900 South Fourth Street, Hartsville, South Carolina 29551.

3. On information and belief, Defendant Cross Creek Seeds, Inc. is a corporation organized and existing under the laws of the State of North Carolina and has its principal place of business at 2000 Vass Road, Raeford, North Carolina 28376, and Defendant Cross Creek

Farms is an unincorporated entity with its principal place of business at 2000 Vass Road, Raeford, North Carolina 28376.

4. On information and belief, Defendant Baker is an individual and a resident of the State of North Carolina whose address is also believed to be 2000 Vass Road, Raeford, North Carolina 28376.

5. On information and belief, Defendant Earley is an individual and a resident of the State of North Carolina whose address is believed to be 302 N. Turnpike Road, Laurinburg, North Carolina, 28352.

JURISDICTION AND VENUE

6. This is an action for infringement of a Plant Variety Protection Certification arising under the Plant Variety Protection Act ("PVPA"), Title 7, United States Code § 2321 *et seq.*, for unfair competition under the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A), (B), and for conversion, return of chattel, and unjust enrichment under North Carolina common law. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338, and under the Lanham Act, 15 U.S.C. § 1121. Diversity jurisdiction attaches under 28 U.S.C. § 1332 because the opposing parties are citizens of different states and the amount in controversy exceeds $75,000. Additionally, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over all of the Plaintiffs' non-federal question claims in that they form part of the same case or controversy.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because the Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claims have occurred in the State of North Carolina and in this judicial district.

BACKGROUND

8. Plaintiff F .W. Rickard was founded in 1937 and is a leader in the development of high quality tobacco seeds. F.W. Rickard has set the standard in the tobacco industry for seed quality, producing seeds with the highest germination rate and vigor. F.W. Rickard has maintained its position as an industry leader by engaging in a program of continuous research and development, at considerable expense. The research efforts have focused on primed seed enhancement and variety development. As part of its business, F.W. Rickard has also acquired ownership of Plant Variety Protection ("PVP") Certificates issued for certain other tobacco plant varieties, specifically PVP Certificate 8300070 covering a particular certified tobacco variety that has been marketed and is known as the "K 326" variety or "K 326 seed."

9. The K 326 variety was originally developed by the Northrup King Company ("Northrup King"). That particular variety is a novel flue-cured tobacco variety that is resistant to root knot nematode. The K 326 variety is considered by many to be the best tobacco variety that a flue-cured tobacco farmer can plant if the farmer is seeking to maximize dollars per acre. The K 326 variety of flue-cured tobacco currently comprises twenty-eight (28%) percent of the flue-cured tobacco market in the United States.

10. Northrup King applied for and was subsequently issued PVP certificate number 8300070 protecting the K 326 variety on March 26, 1984. That PVP certificate ("the 8300070 certificate") is attached as Exhibit A hereto. Under the version of the PVPA in effect at that time, the protection and rights afforded by the Act were to expire 18 years after the issuance of the PVP certificate. 7 U.S.C. § 2483(b) (1980). Accordingly, the 8300070 certificate covering the K 326 variety expired on March 26, 2002.

11. In accordance with 7 U.S.C. § 2567, notice to the public, by Gold Leaf, that the K 326 variety was protected under the PVPA and that unauthorized propagation or sexual multiplication of the variety was prohibited. Gold Leaf placed on all authorized containers of seed consisting of the K 326 variety, notice of PVPA protection, in the manner shown in Exhibit B.

12. Founded in 1995, Plaintiff Gold Leaf is a supplier of high yielding top quality tobacco flue-cured varieties that come from certified tobacco seed. Plaintiff Gold Leaf markets and sells a large selection of tobacco seed. Gold Leaf was the exclusive licensee of Northrup King for the tobacco variety known as K 326 from 1995 until July 2001, at which time Northrup King (which had become known as Syngenta Seeds, Inc. through as series of subsequent mergers and acquisitions) assigned its PVP certificates on tobacco varieties, including the 8300070 certificate, to F.W. Rickard. The assignment from Syngenta to F.W. Rickard expressly included "the right to sue for past, present, and future infringement of the PVP Certificates" being assigned. Exhibit C, at 1. Since that assignment, F.W. Rickard has been the owner of PVP Certificate 8300070 protecting the K 326 variety.

13. Gold Leaf has continued to be the exclusive licensee of the K 326 variety after the assignment to F.W. Rickard. Gold Leaf is also the exclusive distributor of K 326 for F.W. Rickard Seeds.

14. On April 12, 2001, during the term of the 8300070 certificate, Gold Leaf entered a contract entitled "Tobacco Seed Agreement" with Defendant Cross Creek Farms that was signed by Defendant Baker under which Cross Creek Farms agreed to plant and grow seed of the K 326 variety during the 2001 growing season on behalf of Gold Leaf (attached as Exhibit D hereto). That contract, also known as a "Grower Agreement" in the industry, provides the terms

and conditions under which Defendants Baker and Cross Creek Farms were to plant and produce seed of the K 326 variety on behalf of Gold Leaf using 4 acres of land in Hoke County, North Carolina. Ex. D, at 1.

15. Paragraph 8 of the "Tobacco Seed Agreement" between Gold Leaf (referred to therein as "Company") and Cross Creek Farms (referred to therein as "Grower") states specifically:

> It is mutually agreed that the title to all stock seed, growing seed crops and seed produced hereunder shall be and remain in the Company, and that the Grower shall have no title therein or lien thereon. The Grower agrees not to sell, assign, transfer, give away, or allow to pass from his possession, any portion of the seed crop except as provided herein.

The agreement further provides in paragraph 12:

> Upon Grower's failure or refusal to let the Company harvest all or any portion of his seed as above specified, the Company may specifically enforce this agreement by injunction proceedings or otherwise, and Grower agrees to pay the Company's reasonable attorney's fees in said action in addition to court costs.

The agreement further recites that "[t]his Agreement shall bind the heirs, administrators, executors, successors, and assigns of the respective parties." Ex. D, at 3 (¶13).

16. On or about November 1, 2002, Defendant Baker and Defendant Cross Creek Seeds, Inc. (a tobacco seed company owned by Baker) have offered to sell foundation and certified K 326 tobacco seed. *See* Letter attached as Exhibit E. The letter represents that "Cross Creek has produced K 326 for 18 years" and that "our certified K 326 maintains the quality and characteristics of the original K 326." *Id.* at 1.

17. In order to have sufficient quantities of allegedly "certified" K 326 seed available to make such commercial offers and sale at this time, Defendants Cross Creek and Baker would have had to retained some of the "original" K 326 seed grown on behalf of Gold Leaf under the

Growers Agreement, during the 2001 growing season (or earlier). Alternatively, Defendants would have had to have obtained K 326 seed from some other unauthorized source without license from Plaintiffs permitting such seed to be propagated or multiplied as a step in marketing the seed for growing purposes. In either case, in order to have sufficient quantities of K 326 seed available for such commercial offers and sale at this time, the Defendants would have had to have planted and grown seed of the K 326 variety prior to March 26, 2002, which was still during the valid and enforceable term of the 8300070 certificate.

18. At the time of the application for the 8300070 certificate, Defendant Earley was the Director of Tobacco Breeding for Northrup King and was the original breeder of the variety known as K 326. *See* Ex. E at 1, ¶4, lines 2-3. Currently, Earley works exclusively for Cross Creek and Baker. *See* Ex. E, at 1 As the breeder of this particular variety of tobacco, and as one involved in the PVP application process for Northrup King, Earley has full knowledge of the PVPA, of the 8300070 certificate, and the variety covered by that certificate.

19. Plaintiffs and F.W. Rickard's predecessors have continuously marketed the K 326 variety under the mark "K 326" in interstate commerce for at least 18 years. F .W. Rickard and Gold Leaf have invested and continue to invest substantial sums in promoting the K 326 variety and seeds. The Plaintiffs have developed valuable goodwill in the mark "K 326" and possess common law rights in that mark.

20. Plaintiff F.W. Rickard applied to the United States Patent and Trademark Office for federal trademark registration of the mark "K 326" on March 6, 2002, claiming a date of first use in interstate commerce of March 26, 1984 (Application Serial No. 76/378,772). The application was published for opposition on October 1, 2002.

21. Moreover, Cross Creek and Baker have represented that the K 326 seed that they are offering for sale and will sell is "certified" under the North Carolina Seed Laws, and the Defendants are using the mark K 326 to market such seed without the authorization of F.W. Rickard or Gold Leaf.

COUNT I-PVPA INFRINGEMENT

22. Plaintiffs re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

23. Defendants did not have any license or other authorization from Plaintiffs to sexually reproduce or otherwise propagate the tobacco variety known as K 326 during the term of the 8300070 certificate other than under the limited terms of the Tobacco Seed Agreement between Gold Leaf and Cross Creek Farms, which required that all seed of the K 326 variety produced be returned or provided to Gold Leaf.

24. Under 7 U.S.C. § 2541(a) of the PVPA, it is an infringement of the rights of the owner of a protected variety to perform without authorization at least the following acts prior to the expiration of the right to plant variety protection:

> (3) sexually multiply... the variety as a step in marketing (for growing purposes) the variety;
>
> (5) use seed which had been marked "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or progeny thereof to propagate the variety; ...
>
> (8) stock the variety for any of the purposes referred to in paragraphs (1) through (7).

Upon information and belief, Defendants Cross Creek and Baker infringed Plaintiffs' rights under the PVPA signified by the 8300070 certificate prior to the expiration of that certificate by

performing at least one or more of the acts listed above without authorization or license from Plaintiffs.

25. Under 7 U.S.C. § 2541 of the PVPA, it is an infringement of the rights of the owner of a protected variety to "instigate or actively induce performance of any of the foregoing acts" listed as acts of infringement under that section. Upon information and belief, Defendant Earley aided and otherwise actively induced Defendants Cross Creek and Baker to infringe Plaintiffs PVPA rights during the term of the 8300070 certificate by his acts in attempting to "insure" that the seed being offered for sale by the other Defendants was allegedly similar to the quality and characteristics of the original K 326 seed offered and sold by Gold Leaf. Upon information and belief, Earley had full knowledge that any such unauthorized reproduction, propagation, use, and/or stocking of seed of the protected K 326 variety during the term of the PVP certificate would directly violate Plaintiffs PVPA rights.

26. Upon information and belief, Defendants' acts of infringement of the 8300070 certificate prior to its expiration have been carried out in deliberate and willful disregard of Plaintiffs' rights under the PVPA. .

27. Because the 8300070 certificate is now expired, Plaintiffs are seeking only monetary and increased damages under 7 U.S.C. § 2564, and their reasonable attorney fees under 7 U.S.C. § 2565, for such acts of infringement. requested. No injunctive relief under 7 U.S.C. § 2563 is being requested.

COUNT II- BREACH OF CONTRACT

28. Plaintiffs re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

29. To the extent that the source of the Defendants' "K 326" seed currently being offered for sale is seed of the K 326 tobacco variety that was retained from plants grown from the seed stock provided by Gold Leaf under the 2001 Tobacco Seed Agreement or under a similar agreement from one or more prior growing years, the retention of all such seed by Defendants is a material breach of the applicable Tobacco Seed Agreement contract, which expressly prohibits the Grower from failing or refusing to allow Gold Leaf to harvest all or any portion of the seed grown pursuant to the agreement.

30. By retaining any portion of the seed of the K 326 variety grown pursuant to the Tobacco Seed Agreement using seed stock of that variety provided by Gold Leaf, Defendants have breached the agreement. As a direct and proximate result of this breach, Plaintiffs have been damaged and are entitled to damages.

31. Moreover, under the terms of the agreement, the parties have agreed that Gold Leaf is entitled to specific performance through injunction proceedings or otherwise of the contractual obligation that Defendant Cross Creek return all seed of the K 326 variety produced from the seed stock supplied by Gold Leaf.

32. Under the terms of the Growers Agreement, the Plaintiffs are entitled to reasonable attorney's fees.

COUNT III -CONVERSION

33. Plaintiff's re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

34. Because the Tobacco Seed Agreement contract between Gold Leaf and Cross Creek (as signed by Baker) expressly provides that "the title to all stock seed, growing seed

crops and seed produced hereunder shall be and remain in the Company, "Cross Creek and Baker either have grown, currently possess, or are attempting to sell seed that is the property of Gold Leaf, as provided in that agreement.

35. By failing to return all seed of the K 326 variety produced under the Tobacco Seed Agreements, Defendants have intentionally and wrongfully exercised dominion, ownership and control over seed that is the property of Plaintiff Gold Leaf pursuant to the Grower Agreement.

36. As a result, Gold Leaf is entitled to damages equal to the value of the seed at the time of the wrongful conversion to the extent that any such seed cannot be returned to Gold Leaf pursuant to the contract and other applicable state law.

37. Because Defendants' conversion of Gold Leaf's property was malicious and willful, Gold Leaf is entitled to punitive damages.

COUNT IV -RETURN OF CHATTEL

38. Plaintiffs re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

39. By retaining in their possession any seed produced under the Tobacco Seed Agreement, or any progeny of such seed, Defendants have retained property of the Plaintiffs. Plaintiffs are entitled to immediate possession of all such property, which is hereby demanded to be delivered to the Plaintiffs.

40. To the extent that such demand is refused, Defendants are unlawfully retaining possession of property whose title is and at all times has remained in Plaintiffs. Defendants have thereby deprived Plaintiffs of the use of their property *(i.e.,* the seed produced under the

agreement and any progeny thereto), such that Plaintiffs are entitled to damages for the period between when Defendants' unlawfully retained possession until such property is returned to Plaintiffs.

COUNT V -UNJUST ENRICHMENT

41. Plaintiffs re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

42. To the extent Defendants have made any sales of the seed retained from the seed produced under the Tobacco Seed Agreement, or of the progeny of such seed retained, Defendants' conduct as described above has resulted in an unjust benefit being conferred upon Defendants in that Defendants will have benefited from selling seed for which the title is and has always has been held by gold Leaf under the grower agreement contract.

43. To the extent Defendants have made any sales of such seed or its progeny, Defendants did so without authorization or legal right. Defendants have benefited from obtaining profits that in equity and good conscience belong to Plaintiffs.

44. To the extent Defendants have made any such sales, Defendants' acceptance and retention of this benefit under the circumstances renders Defendants' retention of these benefits inequitable.

45. As a result, Plaintiffs are entitled to damages in an amount equal to the profit made by the Defendants for any sale of K 326 seed retained or produced from seed retained by any of the Defendants under the Tobacco Seed Agreement.

COUNTY VI – LANHAM ACT VIOLATION

46. Plaintiff's re-allege and incorporate by reference each of the above-numbered paragraphs above as set forth herein.

47. Upon information and belief, Defendants Cross Creek and Baker are engaged in the business of supplying certified tobacco seed and have recently offered for sale to distributors and retailers in this judicial district and elsewhere, raw and coated tobacco seed described, labeled, or marked as "K 326 seed." Even to the extent that any of Defendants' accused activities do not involve the production or sale of any seed of the K 326 variety obtained or produced in violation of the PVPA, the parties' contracts, or applicable state law, Defendants' offers to sell tobacco seed described or designated under the K 326 mark falsely indicates to consumers that Defendants' activities are approved, sponsored, or licensed by the Plaintiffs, or that the Defendants are affiliated or otherwise associated with F.W. Rickard or Gold Leaf. Defendant's unauthorized use of the mark K 326 and the sale of tobacco seed under the K 326 mark is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers of the parties that there is some affiliation, connection, or association of the Defendants with the Plaintiffs.

48. The Defendant's unauthorized use of K 326 and the sale of the seed under the K 326 mark unjustly enriches Defendants at the expense of Plaintiff's valuable goodwill.

49. The Defendant's acts, as set forth above, constitute unfair competition in violation of the Lanham Act, 15 U.S. C. §§ 1125(a)(1)(A) and 1125(a)(1)(B).

50. Unless the Defendants unlawful acts of unfair competition are enjoined by this Court, they will continue, causing irreparable injury to the Plaintiffs and to the public, for which there is no adequate remedy at law.

JURY DEMAND

51. Pursuant to Rule 38(b), Fed. R. Civ. P., Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs F.W. Rickard and Gold Leaf respectfully request judgment in favor of Plaintiffs and against the Defendants, providing for the following remedies:

A. Entry of judgment that Defendants have infringed and/or actively induced infringement of the 8300070 certificate under the PVPA during the term of that certificate;

B. Damages adequate to compensate for any and all infringement of the 8300070 certificate, trebling of the damages awarded for Defendants' willful and deliberate infringement of the 8300070 certificate, and an award of Plaintiffs' reasonable attorney fees;

C. Entry of temporary, preliminary, and final injunctions prohibiting Defendants from planting or from transferring or selling to a third party any seed, or progeny of any seed, of the K 326 variety obtained from growing the seed stock provided by Gold Leaf under a Tobacco Seed Agreement or similar grower's agreement;

D. Entry of judgment that Defendants breached one or more of the Tobacco Seed Agreements with Plaintiff Gold Leaf, that Defendants unlawfully converted Gold Leaf's property, and that Defendants were unjustly enriched by selling seed unlawfully retained or converted from Plaintiffs;

E. Entry of an injunction for specific performance of the Tobacco Seed Agreement or for return of chattel under the applicable state law requiring that Defendants return (or destroy at Plaintiffs election) all seed of the K 326 tobacco variety, including alleged foundation and breeder seed, in their possession, custody, or control that was obtained by

violating the express terms of the Tobacco Seed Agreement or through any other unauthorized or unlicensed means;

F. Entry of a judgment for attorney's fees under the terms of the Tobacco Seed Agreement;

G. Entry of a judgment for damages, together with interest and costs, to compensate Plaintiffs for Defendants' breach of contract, conversion, and unjust enrichment to the extent that there are such damages that are not fully remedied by the requested award of injunctive relief;

H. Entry of a punitive damages award for Defendants' willful and malicious conversion of Gold Leaf's property;

I. Entry of temporary, preliminary and permanent injunctive relief enjoining Defendants and all those in privy with them from using the mark "K 326" in a manner that is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers of the parties that there is some affiliation, connection, or association of Defendants, or Defendants' tobacco seeds, with the Plaintiffs or Plaintiffs' tobacco seeds;

J. Entry of temporary, preliminary and permanent injunctive relief enjoining Defendants and all those in privy with them from holding themselves out in advertising, promotion, or otherwise as an authorized distributor or representative of F .W. Rickard or Gold Leaf, or from suggesting that Defendant's tobacco seed or activities are approved, sponsored, or licensed by Plaintiffs, or that the Defendants are affiliated or otherwise associated with, or approved by F.W. Rickard or Gold Leaf.

K. Entry of judgment that F.W. Rickard and Gold Leaf recover all damages they have sustained as a result of the Defendant's unfair competition, that any such damages be

trebled pursuant to 15 U.S.C. §1117(a), and that this is an exceptional case entitling Plaintiffs to their reasonable attorneys' fees pursuant to 15 U.S.C. §1117(a).

L. Such other and further relief as this Court shall deem just and proper.

This the 20th day of November, 2002.

Dixie T. Wells

J. Donald Cowan, Jr.
N.C. Bar No. 0968
Dixie T. Wells
N.C. Bar No. 26816
SMITH MOORE LLP
300 N. Greene St., Suite 1400
Greensboro, N.C. 27401
Telephone: (336) 378-5329
Facsimile: (336) 378-5400

Susan K. Knoll
HOWREY, SIMON, ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057
Telephone: (713) 787-1400
Facsimile: (713) 787-1440

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

No. 8300070

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Northrup King Co.

Whereas, THERE HAS BEEN PRESENTED TO THE

Secretary of Agriculture

AN APPLICATION REQUESTING A CERTIFICATE OF PROTECTION FOR AN ALLEGED NOVEL VARIETY OF SEXUALLY REPRODUCED PLANT, THE NAME AND DESCRIPTION OF WHICH ARE CONTAINED IN THE APPLICATION AND EXHIBITS, A COPY OF WHICH IS HEREUNTO ANNEXED AND MADE A PART HEREOF, AND THE VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED HAVE BEEN COMPLIED WITH, AND THE TITLE THERETO IS, FROM THE RECORDS OF THE PLANT VARIETY PROTECTION OFFICE, IN THE APPLICANT(S) INDICATED IN THE SAID COPY, AND WHEREAS, UPON DUE EXAMINATION MADE, THE SAID APPLICANT(S) IS (ARE) ADJUDGED TO BE ENTITLED TO A CERTIFICATE OF PLANT VARIETY PROTECTION UNDER THE LAW.

NOW, THEREFORE, THIS CERTIFICATE OF PLANT VARIETY PROTECTION IS TO GRANT UNTO THE SAID APPLICANT(S) AND THE SUCCESSORS, HEIRS OR ASSIGNS OF THE SAID APPLICANT(S) FOR THE TERM OF eighteen * YEARS FROM THE DATE OF THIS GRANT, SUBJECT TO THE PAYMENT OF THE REQUIRED FEES AND PERIODIC REPLENISHMENT OF VIABLE BASIC SEED OF THE VARIETY IN A PUBLIC REPOSITORY AS PROVIDED BY LAW, THE RIGHT TO EXCLUDE OTHERS FROM SELLING THE VARIETY, OR OFFERING IT FOR SALE, OR REPRODUCING IT, [illegible]R IMPORTING IT, OR EXPORTING IT, OR USING IT IN PRODUCING A HYBRID OR DIFFERENT [illegible]IETY THEREFROM, TO THE EXTENT PROVIDED BY THE PLANT VARIETY PROTECTION ACT. [illegible]E UNITED STATES SEED OF THIS VARIETY (1) SHALL BE SOLD BY VARIETY NAME ONLY AS [illegible]S OF CERTIFIED SEED AND (2) SHALL CONFORM TO THE NUMBER OF GENERATIONS [illegible] BY THE OWNER OF THE RIGHTS. (84 STAT. 1542, AS AMENDED, 7 U.S.C. 2321 ET SEQ.)

TOBACCO

'K326'

AMENDED CERTIFICATE

*Original grant March 26, 1984

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Plant Variety Protection Office to be affixed at the City of Washington, D. C. this 29th day of September in the year of our Lord one thousand nine hundred and eighty-nine.

Attest:

Kenneth A. Evans
Commissioner
Plant Variety Protection Office
Agricultural Marketing Service

Clayton Yeutter
Secretary of Agriculture

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
LIVESTOCK, MEAT, GRAIN & SEED DIVISION

FORM APPROVED: OMB NO. 0581-0005

No certificate for plant variety protection may be issued unless a completed application form has been received (6 U.S.C. 553).

APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE

(Instructions on reverse)

1. NAME OF APPLICANT(S): Northrup King Co.
2. TEMPORARY DESIGNATION: McNair 926
3. VARIETY NAME: K326
4. ADDRESS (Street and No. or R.F.D. No., City, State, and Zip Code): 1500 Jackson St. N.E. Minneapolis, MN 55413
5. PHONE (Include area code): 612-781-5305

FOR OFFICIAL USE ONLY

PVPO NUMBER: 8300070

6. GENUS AND SPECIES NAME: Nicotiana tabacum
7. FAMILY NAME (Botanical): Solanaceae

FILING — DATE: 2/25/83 — TIME: 10:00 [X] A.M. [ ] P.M.

8. KIND NAME: Tobacco
9. DATE OF DETERMINATION: December 11, 1981

FEES RECEIVED — AMOUNT FOR FILING: $ 1,000 — DATE: 2/25/83 — AMOUNT FOR CERTIFICATE: $ 250.00 — DATE: 3/6/84

10. IF THE APPLICANT NAMED IS NOT A "PERSON," GIVE FORM OF ORGANIZATION (Corporation, partnership, association, etc.): Corporation
11. IF INCORPORATED, GIVE STATE OF INCORPORATION: Delaware
12. DATE OF INCORPORATION: 1896
13. NAME AND ADDRESS OF APPLICANT REPRESENATIVE(S), IF ANY, TO SERVE IN THIS APPLICATION AND RECEIVE ALL PAPERS:
Robert W. Romig
Northrup King Co.
1500 Jackson St. N.E.
Minneapolis, MN 55413

14. CHECK APPROPRIATE BOX FOR EACH ATTACHMENT SUBMITTED

a. [X] Exhibit A, Origin and Breeding History of the Variety (See Section 52 of the Plant Variety Protection Act.)
b. [X] Exhibit B, Novelty Statement
c. [X] Exhibit C, Objective Description of the Variety (Request form from Plant Variety Protection Office.)
d. [ ] Exhibit D, Additional Description of the Variety

15. DOES THE APPLICANT(S) SPECIFY THAT SEED OF THIS VARIETY BE SOLD BY VARIETY NAME ONLY AS A CLASS OF CERTIFIED SEED? (See Section 83(a) of the Plant Variety Protection Act.) [X] Yes (If "Yes," answer items 16 and 17 below) [X] No

16. DOES THE APPLICANT(S) SPECIFY THAT THIS VARIETY BE LIMITED AS TO NUMBER OF GENERATIONS? [ ] Yes [ ] No

17. IF "YES" TO ITEM 16, WHICH CLASSES OF PRODUCTION BEYOND BREEDER SEED? [ ] Foundation [ ] Registered [ ] Certified

18. DID THE APPLICANT(S) FILE FOR PROTECTION OF THE VARIETY IN THE U.S. OR OTHER COUNTRIES? [ ] Yes (If "Yes," give names of countries and dates) [X] No

19. HAVE RIGHTS BEEN GRANTED IN THE U.S. OR OTHER COUNTRIES? [ ] Yes (If "Yes," give names of countries and dates) [X] No

20. The applicant(s) declare(s) that a viable sample of basic seeds of this variety will be furnished with the application and will be replenished upon request in accordance with such regulations as may be applicable.

The undersigned applicant(s) is (are) the owner(s) of this sexually reproduced novel plant variety, and believe(s) that the variety is distinct, uniform, and stable as required in Section 41, and is entitled to protection under the provisions of Section 42 of the Plant Variety Protection Act.

Applicant(s) is (are) informed that false representation herein can jeopardize protection and result in penalties.

SIGNATURE OF APPLICANT: Robert W. Romig — DATE: February 11, 1983

SIGNATURE OF APPLICANT: — DATE:

FORM LMGS-470 (9-81) (Edition of 1-78 is obsolete)

EXHIBIT A

ORIGIN AND BREEDING HISTORY OF 'K326' TOBACCO

The variety 'K326' is derived from a single plant selection in the F_9 from the cross Coker 139/Coker 319//NC95/McNair 30. We have maintained it subsequently as a pure line from the F_{10} bulk. We made the cross in the field in the summer of 1971 at Laurinburg, North Carolina, and grew the F_1 in a greenhouse during the winter of 1971-72 to produce F_2 seed. The F_2 to F_5 generations were derived using a plant-to-row pedigree system.

Variety 'K326' first entered regional small plot test in 1980 and subsequently has been in the regional farm test. This variety has met the standards of the flue-cured tobacco Variety Evaluation Committee. We first produced breeders seed in 1981.

Variety 'K326' is uniform and stable. No variants have been observed since the F_9 generation.

8300670

EXHIBIT B

NOVELTY STATEMENT FOR 'K326' TOBACCO

Tobacco variety 'K326' is most similar to 'Coker 319', but differs in that 'K326' is resistant to root knot nematode (NC95 resistance); whereas, 'Coker 319' is susceptible.

EXHIBIT B

NORTHRUP KING CO.
RESEARCH CENTER, P.O. BOX 1127, LAURINBURG, NORTH CAROLINA 28352
Seedsmen since 1884
PHONE 919-276 8321

December 16, 1983

Dr. Joseph Higgins
Plant Variety Protection Office
National Agricultural Library
Fifth Floor
Beltsville, Maryland 20705

Dear Dr. Higgins:

I am enclosing data that will support the argument that K399 and K326 differ in levels of disease resistance to both bacterial wilt and black shank. The data used were collected and published by the Regional Tobacco Disease Evaluation Committee.

The bacterial wilt data were collected at Oxford, N.C. and Florence, S.C. and are presented as percent disease in Table 1. These data are quite variable when considered between years and varieties, however the data between states tend to agree very well. The percent disease loss means for these varieties when averaged over years and locations are as follows: K326 - 42.0; K399 - 18.9; and NC95 - 29.5.

K399 is considered to be equal to or better than NC95. A highly resistant variety. K326 (42% disease loss) has less bacterial wilt resistance than K399 and NC95 and falls in the moderate classification .

The black shank data presented in Table 2, were collected in North and South Carolina by the Regional Disease Committee, and tend to be in fairly good agreement as far as varietal relationships are concerned when averaged over years. The mean data for K326, K399, and NC95 when averaged over years and states are: 56.0; 47.3; and 60.9 respectively. K326 with 56.0 and NC95 with 60.9 percent disease loss are considered to have a moderate level of resistance to black shank. K399 (47.3%) is judged to be highly resistant to black shank. These conclusions are further supported by information on page 76 of a bulletin entitled 1984 Tobacco Information published by the N.C. Agricultural Extension Service.

Hopefully, this answers your questions. Best wishes for a Happy Holiday Season, I am

Sincerely yours,

Bill

William E. Earley
Director, Tobacco Breeding

F-703

Table 1. Bacterial Wilt 1980-83. Data Summarized Over 3 Reps. (Disease Loss)

	North Carolina			South Carolina			
	K326	K399	NC95	K326	K399	NC95	AVE.
1980	91.7	8.0	56.7	38.3	18.6	52.6	44.3
1981	4.6	7.5	0.0	0.9	22.0	3.6	6.4
1982	13.5	3.5	16.5	31.7	9.7	32.1	17.8
1983	56.0	24.0	37.0	100.0	57.7	37.8	52.1
AVE.	41.4	10.8	27.6	42.7	27.0	31.5	

Table 2. Black Shank 1980-83. Data Summarized Over 3 Reps. (Disease Loss)

	North Carolina			South Carolina			
	K326	K399	NC95	K326	K399	NC95	AVE.
1980	45.0	60.0	39.0	25.5	33.3	14.1	36.2
1981	41.7	25.0	61.7	64.2	80.3	72.9	57.6
1982	18.0	12.0	43.0	56.1	72.6	87.4	53.2
1983	82.0	47.0	85.0	86.0	47.8	84.5	72.1
AVE.	46.6	36.0	57.2	65.5	58.5	64.7	

FORM LPDS-470-35
17-791

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

OBJECTIVE DESCRIPTION OF VARIETY

Tobacco (Nicotiana tabacum)

FORM APPROVED: OMB NO. 40-R3822

NAME OF APPLICANT(S)
Northrup King Co.

VARIETY NAME OR TEMPORARY DESIGNATION
K326

ADDRESS (Street and No. or R.F.D. No., City, State, and Zip Code)
116 West Central St.
Maxton, NC 28364

FOR OFFICIAL USE ONLY
PVPO NUMBER
8300070

Place the appropriate number that describes the varietal character in the boxes below.
Place a zero in first box (e.g. [0][8][9] or [0][9]) when number is either 99 or less or 9 or less.

1. CLASS:

[1] 1 = FLUE-CURED 2 = FIRE-CURED 3 = AIR-CURED 4 = CIGAR FILLER 5 = CIGAR BINDER 6 = CIGAR WRAPPER
7 = MISCELLANEOUS-DOMESTIC 8 = FOREIGN-CIGAR LEAF 9 = FOREIGN-NON-CIGAR LEAF

[ ] AIR-CURED: 1 = BURLEY 2 = MARYLAND 3 = DARK AIR-CURED

STANDARD VARIETIES

01 = NC 95 02 = NC 2326 03 = COKER 319 04 = HICKS 05 = SPEIGHT G-28 06 = SC 58
07 = Ky 151 08 = BURLEY 21 09 = BURLEY 49 10 = Ky 10 11 = MARYLAND 609 12 = Ky 165
13 = Pennbel 69 14 = HAVANA 503 15 = FLORIDA 17 16 = OTHER

2. MATURITY (Transplant to 50% plants ? Fl.) (Select code from Standard Varieties listed above)

[0][6][3] NO. OF DAYS
[0][2] DAYS EARLIER THAN [0][3]
[0][1] DAYS LATER THAN [0][1]

3. SEEDING TO TRANSPLANTING (Select code from Standard Varieties listed above)

[ ][ ] NO. OF DAYS
[ ][ ] DAYS EARLIER THAN [ ][ ]
[ ][ ] DAYS LATER THAN [ ][ ]

4. PLANT HEIGHT (After topping) (Select code from Standard Varieties listed above)

[1][0][2] CM TALL
[1][2] CM SHORTER THAN [0][3]
[ ][ ] CM TALLER THAN [ ][ ]

5. LEAF SIZE (At leaf maturity) (Select code from Standard Varieties listed above)

LENGTH

[ ][ ][ ] CM 5TH LEAF
[ ][ ] CM SHORTER THAN [ ][ ]
[ ][ ] CM LONGER THAN [ ][ ]

[ ][ ][ ] CM 10TH LEAF
[ ][ ] CM SHORTER THAN [ ][ ]
[ ][ ] CM LONGER THAN [ ][ ]

[ ][ ][ ] CM 15TH LEAF
[ ][ ] CM SHORTER THAN [ ][ ]
[ ][ ] CM LONGER THAN [ ][ ]

WIDTH

[ ][ ][ ] CM 5TH LEAF
[ ][ ] CM NARROWER THAN [ ][ ]
[ ][ ] CM WIDER THAN [ ][ ]

[ ][ ][ ] CM 10TH LEAF
[ ][ ] CM NARROWER THAN [ ][ ]
[ ][ ] CM WIDER THAN [ ][ ]

[ ][ ][ ] CM 15TH LEAF
[ ][ ] CM NARROWER THAN [ ][ ]
[ ][ ] CM WIDER THAN [ ][ ]

6. LEAF YIELD (Select code from Standard Varieties listed above)

[3][9][0][4] KG/HA
[ ][ ] % LESS THAN [ ][ ]
[1][7] % MORE THAN [0][3]

FORM LPGS-470-31 (page 2)

8300070

GROUPING:

STANDARD VARIETIES

01 = NC 95	02 = NC 2326	03 = COKER 319	04 = HICKS	05 = SPEIGHT G-28	06 = SC 58
07 = Ky 151	08 = BURLEY 21	09 = BURLEY 49	10 = Ky 10	11 = MARYLAND 609	12 = Ky 165
13 = Pennbel 69	14 = HAVANA 503	15 = FLORIDA 17	16 = OTHER		

7. LEAF NUMBER (Select code from Standard Varieties listed above)

TOPPED NORMAL:

[1 9 0] NO. PER PLANT

[ ] NO. OF LEAVES > 40.6 CM

[ ] CM HEIGHT OF LAST LEAF

NOT TOPPED:

[ ] NO. OF LEAVES OR NODES TO "CROWFOOD" FROM 1ST HARVESTABLE LEAF

8. INTERNODES (Topped) (Select code from Standard Varieties listed above)

[5 3] MM LENGTH [0 6] MM SHORTER THAN [0 3]

9. LEAF CHARACTERISTICS:

PETIOLE ANGLE:

[2 6] DEGREES [1] GROUPING 1 = < 30°

LEAF CARRIAGE

[2] 1 = ARCHED (DROOPING) 2 = HORIZONTAL

3 = UPRIGHT

LEAF SHAPE:

[3] 1 = BROADER THAN LONG 2 = LENGTH EQUAL TO BROAD

3 = LONGER THAN BROAD

TIP SHAPE

[2] 1 = ACUTE 2 = ACUMINATE

LEAF SURFACE

[1] 1 = SMOOTH (HICKS)

10. FLOWERS:

[2] COLOR: 1 = WHITE 2 = PINK

3 = RED 4 = OTHER

11. PLANT FORM

[2] 1 = PYRAMIDAL 2 = COLUMNAR

12. GROUND SUCKERS:

[0 4] NO. PER PLANT

13. DISEASE (0 = Not tested, 1 = Susceptible, 2 = Resistant)

[2]	BLACK SHANK (RACES) 0	[1]	FUSARIUM WILT (RACE)
[2]	BLACK ROOT ROT	[0]	FUSARIUM WILT (RACE)
[1]	BLUE MOLD	[0]	FROGEYE
[0]	WILDFIRE (SPECIES)	[0]	BROWN SPOT
[0]	BLACKFIRE	[2]	BACTERIAL WILT

8300070

FORM LPGS-470-31 (Page 3)

13. DISEASE (0 = Not tested, 1 = Susceptible, 2 = Resistant)

1	POTATO VIRUS Y	1	TMV
0	NEMATODE ROOT ROT (LESION, SPECIES) _____	2	ROOT KNOT NEMATODE
1	TOBACCO ETCH VIRUS	0	OZONE AIR POLLUTION
	OTHER (Specify) _____		OTHER (Specify) _____

NOTE: Under 16 "Comments", give comparative reaction with a standard variety appropriate for each disease tested and indicate if disease reaction of the variety exceeds, equals or is less than that of the standard).

14. LEAF CONSTITUENTS (Give data for described and standard variety):

VARIETY	NICOTINE %	NON NICOTINE %	TOTAL NITROGEN %	REDUCING SUGARS % (FLUE-CURED)
SUBMITTED	2.66	17		17.94
STANDARD	2.77	18		17.81
NAME OF STANDARD VARIETY	Coker 319	Coker 319		Coker 319

15. VARIETIES MOST CLOSELY RESEMBLING THAT DESCRIBED FOR THE CHARACTERS GIVEN:

CHARACTER	VARIETY	CHARACTER	VARIETY
MATURITY	Coker 319	LEAF TIP SHAPE	Coker 319
LEAF LENGTH	Coker 319	VENATION PATTERN	Coker 319
LEAF WIDTH	Coker 319	LEAF SURFACE	Coker 319
LEAF CARRIAGE	Coker 319	LEAF MARGIN	Coker 319
PETIOLE ANGLE	Coker 319	LEAF COLOR	Coker 319
LEAF SHAPE	Coker 319	PLANT FORM	Coker 319

16. COMMENTS (For increasing accuracy of description)

Information from 3-year averages of the Regional Tobacco Disease Committee tests

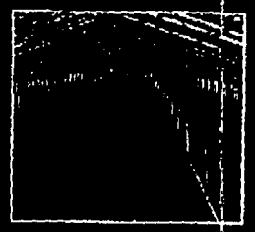
Black Shank: K326 = 63.3% loss compared with
Coker 319 = 72.2% loss

Black Root Rot: K326 = 5.7 compared with
Coker 319 = 7.0 (positive 10 = severe, 0 = none)

Bacterial Wilt: K326 = 31% loss compared with
Coker 319 = [illegible]

Root Knot Nematode: K326 = Resistant (Hypersensitive)
NC95 = Resistant (Hypersensitive)
Coker 319 = Susceptible

PREMIUM PELLETED
TOBACCO SEED



Efficient production of uniform seedlings starts with high quality Gold Leaf premium pelleted tobacco seed. For precision greenhouse seeding

K 326

PREMIUM PELLETED TOBACCO SEED

THE SEEDS IN
HAVE BEEN PRI

PVP
LEVEL
(Legend)

(UNAUT

1. U.S. Protec
To be sold
as a class o
2. U.S. Protec
3. U.S. Plant V
Applied For

CUSTOM COAT W

The seed in this container was sup
only and was coated by a standard
seller, it assumes no responsibility
seeds. SELLER AND USER ACCEPT
WARRANTY, EXPRESS OR IMPLI
agrees to look solely to seed seller
performance.

NOTICE: RE

The seed laws of several states incl
require arbitration, conciliation or m
tain legal actions may be maintaine
GA) must be filed with the Departm
seed, crops or plants (by an Arbitra
by registered mail to Gold Leaf Se
requirement may be obtained from t

NOTICE TO BUYER–

Crop yield and quality are dependen
and NO WARRANTY is made for cr
sold has been labeled as required un
forms to the label description, withi
OTHER WARRANTIES, EXPRESS O
AND FITNESS FOR A PARTICULAR
BEYOND THE DESCRIPTION ON TH
unless Buyer reports to Gold Leaf w
days), any condition that might lea
CLAIM OR LOSS RESULTING FROM
GENCE (INCLUDING BUT NOT LIMI
BE LIMITED TO REPAYMENT OF TH

By acceptance of the seed, Buyer ag
bargain and constitute the entire ag
return the original unopened seed pa
the purchase price if not accepted un

ANALYSIS

Pure Seed 3.5%
Inert Matter 96.5%
(Coating Material)

W
No
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Ha
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EXHIBIT C

ASSIGNMENT OF PVP CERTIFICATES

THIS ASSIGNMENT OF PVP CERTIFICATES ("Assignment") is made and entered into as of the 20th day of July, 2001, by and between Syngenta Seeds, Inc., (f/k/a Novartis Seeds, Inc.) a Delaware corporation ("Seller"), and F. W. Rickard Seeds, Inc., a Kentucky Corporation ("Purchaser").

WHEREAS, Seller is the owner of each of the Certificates of Protection (the "PVP Certificates") granted by the Plant Variety Protection Office of the U.S. Department of Agriculture (the "PVP Office"), as set forth on Schedule A hereto;

WHEREAS, Seller desires to sell to Purchaser, Seller's entire right, title and interest in and to each of the PVP Certificates; and

WHEREAS, Purchaser desires to purchase from Seller the entire right, title and interest in and to each of the PVP Certificates.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby assign, transfer, set over, and deliver to Purchaser all of Seller's right, title, and interest, in and to the PVP Certificates, the same to be held and enjoyed by Seller and its successors and assigns entirely as if the same would have been held and enjoyed by the Seller had this sale not been made, including any and all rights corresponding to the PVP Certificates, whether certified or uncertified, that may exist worldwide under international or bilateral agreements or treaties, including any rights under the Act of the International Convention for the Protection of New Varieties of Plants, as amended, and the International Union for the Protection of New Varieties of Plants, and the right to sue for past, present or future infringement of the PVP Certificates.

This Assignment of the PVP Certificates is being delivered in connection with the Asset Purchase and Sale Agreement (the "Asset Purchase Agreement") between Syngenta Seeds, Inc. and F.W. Rickard Seeds, Inc. dated July 20, 2001, and is subject to, and is entitled to the benefits in respect of, the Asset Purchase Agreement.

This Assignment of the PVP Certificates shall inure to the benefit of and be binding upon the Seller and Purchaser and their respective successors and assigns.

Seller hereby authorizes the PVP Office to record the transfer of the PVP Certificates to Purchaser as assignee of Seller's entire right, title and interest therein. Seller hereby agrees to execute all documents and to perform such other acts as Purchaser may deem reasonably necessary to assist Purchaser in recording Purchaser's right to the PVP Certificates with the PVP Office.

From time to time after the date hereof, at the request of the other party hereto and at the expense of the party so requesting, each of the parties hereto shall execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate more effectively the transactions contemplated hereby. Seller agrees to provide all reasonable assistance to Purchaser (at Purchaser's expense)

in protecting any or all of the Purchaser's intellectual property rights to the PVP Certificates.IN WITNESS WHEREOF, each of the undersigned has caused this Assignment of the PVP Certificates to be duly executed by its authorized officer as of the date first written above.

SYNGENTA SEEDS, INC.	F.W. RICHARD SEEDS, INC.
By: Edward C Kesler	By: _____
Name: EDWARD C. KESLER	Name:
Title: VICE PRESIDENT	Title:

Schedule A (to Assignment of PVP Certificates)

United States Plant Variety Protection Certificates

Name of Variety	PVP Number	Issue Date/Status
K399	8200001	7/15/1982 (Expired)
Coker 176	8300056	9/29/1983
K326	8300070	3/26/1984
K394	8700040	8/31/1987
Coker 371 Gold	8700049	9/30/1987
K317	8700120	8/31/1987
K340	8800070	6/30/1988
K358	8900079	10/31/1990
K346	9100160	10/31/1994
K730	9400102	9/30/1994

EXHIBIT D

TOBACCO SEED AGREEMENT

CONTRACT NO. 2001-1

This Agreement made and entered into this 27th day of April, 2001 by and between GOLD LEAF SEED COMPANY (hereinafter called "Company") and

GROWER: Cross Creek Farms

ADDRESS: 7008 Vass Road

CITY/STATE/ZIP: Raeford, NC 28376

TELEPHONE: (910) 875-0110

SSN/TAX ID#: 52-139 7132

PERCENT OF CONTRACT: 100%
(Hereinafter called "Grower")

In consideration of the premises and mutual covenants and other considerations contained below, and on the reverse hereof, which are hereby referred to and made a part of hereof, the parties agree as follows:

SEED STOCK: K326 seed stock is to be furnished by COMPANY free of charge.

PLANTING: GROWER agrees to plant and grow for COMPANY during the 2001 growing season

A. Variety K326
Acres 4

B. On land which is in possession of as (owner/renter) described as follows:
State: NC County: Hoke
Township

1. The Grower agrees, at Grower's sole expense and responsibility, to properly prepare the soil, plant and irrigate the growing crop, control weeds, grass, and insects, as well as clearly mark and identify each variety in a good farmer-like manner.

2. The Grower agrees, when two or more varieties of the same species are to be grown, to isolate seed beds and to keep seed separated by a proper distance as determined by the Company. The Grower also agrees not to plow out his stand during the term of this agreement without the prior written permission of the company.

3. The field shall be rogued as necessary to remove off-type plants and, in a separate operation, to remove weeds and other crops which are difficult to separate in cleaning and which would prevent the crop from meeting standards specified herein. Such roguing operation shall be performed by Company or by Grower, whichever Company shall designate. Regardless of which party performs such roguing operations, roguing for off-type plants shall be done at the expense of Company, and roguing for all other crop and weeds shall be done at the expense of Grower.

4. The Company reserves the right, at its expense, to enter upon the land on which the crop is being grown to inspect the fields and make suggestions for the betterment of the crop for seed purposes, and the Company shall not be liable for damage, if any, to the crop resulting there from.

5. If at any time the Grower shall, in the opinion of the Company, neglect, refuse or for any reason fail to carry out his obligations under this Agreement, the Company shall have the right, but shall not have the obligation, to take such action as in its opinion it necessary to properly care for the crop, and otherwise complete the terms of this Agreement, at the Grower's expense.

6. It is mutually agreed that the Company, as soon as practicable after delivery of the crop, shall have the same recleaned, examined and tested to determine whether it meets the quality standards specified herein. Until final acceptance of the seed crop by the Company, the Grower assumes all risk of damage to, or loss of, said crop from any cause.

7. If any of the seed delivered hereunder does not meet the quality standards specified herein, the Company shall nevertheless have the option of accepting the sub-standard seed, and, if it does so, the Company shall compensate the Grower by a reasonable sum to be determined by the Company; said sum shall be less than that herein specified as payment for growing seed which meets the quality standards specified herein.

8. It is mutually agreed that the title to all stock seed, growing seed crops and seed produced hereunder shall be and remain in the Company, and that the Grower shall have no title therein or lien thereon. The Grower agrees not to sell, assign, transfer, give away, or allow to pass from his possession, any portion of the seed crop except as provided herein

9. Any and all indebtedness of the Grower to the Company shall be due and payable on demand with legal interest unless otherwise agreed in writing, or, at the option of the Company, such indebtedness may be deducted from the amount payable to the Grower hereunder.

10. In the event of crop failure, or destruction thereof, or in the event indebtedness of the Grower to the Company exceeds the amount due the Grower for producing seed hereunder, such indebtedness shall immediately become due and payable, with legal interest.

11. The Grower is an independent contractor, not an employee of the Company, and is solely responsible for his operations.

12. Upon Grower's failure or refusal to let the Company harvest all or any portion of his seed as above specified, the Company may specifically enforce this agreement by injunction proceedings or otherwise, and Grower agrees to pay the Company's reasonable attorney's fees in said action in addition to court costs. Otherwise any controversy hereunder shall be settled by arbitration at a mutually agreeable location in accordance with the rules of the American Arbitration Association.

13. This Agreement shall bind the heirs, administrators, executors, successors, and assigns of the respective parties. Wherever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

GROWER agrees to plant the Production fields in a sequence of eight rows planted and one row skipped and to use extreme care in transplanting in order to prevent varietal mixing in the fields.

QUALITY: To be acceptable as seed hereunder, seed shall be at least 99.0% pure seed, a minimum of 90% germination and shall qualify for certification tags. **COMPANY** shall make the necessary application and pay the required fees for certification. Determination of quality shall be made by the **COMPANY** and by an official seed testing laboratory. **GROWER** agrees to accept **COMPANY** test results.

ACCEPTANCE & PAYMENT: **GROWER** agrees to accept as full payment from **COMPANY** and **COMPANY** agrees to pay **GROWER** for the net amount of acceptable seed produced hereunder as follows:

1. Each measured acre produced under this Agreement at $ 750.00 per acre.
2. Payment for the measured acres and seed produced under this Agreement shall be made to **GROWER** on May 15, 2001, September 15, 2001 and December 31, 2001 or January 15, 2002.
3. I have read all the pages of this contract and agree to the contents hereof.

PAYMENT TO BE MADE TO: Cross Creek Farms

GOLD LEAF SEED COMPANY BY: [signature]

GROWER BY: [signature]

WITNESS BY: [signature]

EXHIBIT E

Cross Creek Seed, Inc.

2000 Vass Road
Raeford, NC 28376 USA

Ph: 910-875-4400
Fax: 910-875-8516

E-mail:crosscreekseed@aol.com

Dear Sir:

I am Eddie Baker, owner of Cross Creek Seed, Inc. We are a tobacco seed company and will be selling certified tobacco seed world wide.

I have farmed tobacco as leaf crop for more than 30 years. I began growing tobacco for seed in 1984, first for Northrup King, Novartis, Syngenta, and then Gold Leaf Seed Company. During this time, I grew, cleaned, and gravitied the tobacco seed. In recent years, Cross Creek has also coated tobacco seed. In 2001, I was awarded the title of Bona Fide Breeder of Tobacco. Through the advice of NC State University, I have recently established Cross Creek Seed, Inc.

Cross Creek has a tobacco seed coating facility in Raeford, North Carolina. In 1997 we began using coating materials from Coating Supply, Inc. of Palm City, FL. Cross Creek Coating with Coating Supply, Inc. began Brasil Sementes e Tecnologia, (BST), a coating venture in Santa Cruz, Brazil where tobacco is coated and canned. Using material from Coating Supply Inc., Cross Creek and BST offer the highest quality melt-down pellet available.

Cross Creek Seed has foundation and certified K 326 seed. Cross Creek has produced K 326 for 18 years. Bill Earley, the original breeder of K 326, works exclusively for Cross Creek Seed. He insures that our certified K 326 maintains the quality and characteristics of the original K 326. With Cross Creek's experience in K 326 production, and Bill Earley maintaining the purity, without question, we offer the highest quality K 326 on the market.

We are offering a new hybrid released from North Carolina State University, NC 291, for which we have exclusive selling rights. This variety is resistant to PVY, tobacco etch, root-knot nematodes, black shank, and according to Dr. Earl Wernsman, breeder of NC 291, shows great promise in tobacco cyst nematode resistance. Yields and quality are equal to that of NC 55 with the black shank level of NC 71. In short, NC 291 takes the best of both NC 71 and NC 55 to make a variety that would certainly perform well in your area.

As for the technicalities involved in selling seed, details are as follows:

Shipping will be by common carrier.

Stocking, payment, and return of seed:
Orders may be placed by the season or on an as needed basis and stocked with no down payment on seed. Seed is to be paid for as it is sold on a monthly basis. (i.e. at the end of each month, pay Cross Creek only for the seed you have sold.) Unsold seed will be returned by May 15, unless unusual planting conditions have delayed the season. Unopened containers that have been kept under satisfactory environmental conditions will be accepted for return. Any outstanding accounts not paid for monthly will have nominal interest added and must be paid in full by May 15.

Complaints: Farmers are asked to contact their dealers with any complaints. Dealers are asked to contact Cross Creek Seed. Every effort will be made to provide personal onsite consultation and assistance when necessary. Seed lot number required for consultation.

Cross Creek will sell raw seed by the ounce. Coated seed will be sold in plastic containers with screw on lids in sizes of 90,000 seed, 180,000 seed, and 240,000 seed. Prices for raw and coated seed are:

K 326	Raw/oz.	90's	180's	240's
Suggested Retail Price:	$ 90.00	$110.00	$220.00	$190.00
Suggested Dealer Price:	$85.00	$105.00	$210.00	$180.00
Dealer Cost:	$80.00	$ 95.00	$190.00	$165.00

NC 291	Raw/oz.	90's	180's	240's
Suggested Retail Price:	$100.00	$145.00	$290.00	$255.00
Suggested Dealer Price:	$ 95.00	$143.00	$285.00	$245.00
Dealer Cost:	$ 90.00	$135.00	$270.00	$230.00

Please contact us for any unanswered questions. We are a company who values our customers. We are truly farmer owned, farmer oriented. We strive to provide the best seed available with the best service to our dealers and farmers.

Cross Creek Seed, Inc. looks forward to doing business with you.

Thank you again,

Eddie Baker

Eddie Baker, Cross Creek Seed, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILE NO. 1:02-CV-1004

F.W. RICKARD SEEDS, INC., and GOLD LEAF SEED COMPANY Plaintiffs v. CROSS CREEK SEEDS, INC., CROSS CREEK FARMS, EDDIE BAKER and BILL EARLY Defendants	)	**ANSWER AND COUNTERCLAIMS OF DEFENDANTS CROSS CREEK SEEDS, INC., CROSS CREEK FARMS, EDDIE BAKER and BILL EARLY**

The above named Defendants, in answer and response to the complaint of Plaintiffs, allege and say:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim for which relief can be granted and should be dismissed.

SECOND DEFENSE-BACKGROUND ALLEGATIONS

1. The allegations of Paragraphs 1 of Plaintiffs' Complaint are admitted, upon information and belief.

2. The allegations of Paragraphs 2 of Plaintiffs' Complaint are admitted, upon information and belief.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted

7. Admitted.

8. The factual allegations of paragraph 8 that Plaintiff, F.W. Rickard, was founded in 1937 and that F.W. Rickard has ownership of a number of Plant Variety Protection ("PVP") Certificates, specifically the expired certificate 830070 for K 236 variety tobacco seed are admitted. As to the remaining allegations, they are statements of opinion, incapable of admission or denial. Defendants have insufficient information to form a belief as to their truth or falsity, and therefore same are denied.

9. It is denied that Northrup King Company originally developed the K 326 tobacco variety tobacco seed. It is admitted that K 326 is resistant to root knot nematode. As to the remaining allegations, they are statements of opinion, incapable of admission or denial. Defendants have insufficient information to form a belief as to their truth or falsity, and therefore same are denied.

10. Admitted.

11. Admitted, on information and belief..

12. As to the allegations in Paragraph 12 ,these Defendants have insufficient information to form a belief as to their truth or falsity, and therefore same are denied.

13. As to the allegations in Paragraph 13, these Defendants are informed and believe that Gold Leaf is the exclusive licensee and distributor of K 326 variety tobacco seed for F. W. Rickard Seeds in the United States.

14. Admitted.

15. Admitted.

16. As to the allegations of paragraph 16, it is denied any Defendant has offered to sell foundation seed of K 326 variety tobacco. The remaining allegations are admitted.

17. Denied.

18. Admitted.

19. As to the allegations in Paragraph 19, it is admitted, upon information and belief, that Plaintiffs and F.W. Rickard's predecessors have marketed the K 326 variety for 18 years. As to the remaining allegations in Paragraph 19, these Defendants have insufficient information to form a belief as to their truth or falsity, and therefore same are denied.

20. As to the allegations in Paragraph 20, Defendants are informed and believe the allegations that F.W. Rickard has filed a trademark application are true, and therefore admitted. Defendants are further informed and believe that said application has not been formally approved for registration.

21. Admitted, except Defendants deny K 326 is a mark requiring authorization from Plaintiffs to legally use.

SECOND DEFENSE COUNT I-PVPA INFRINGEMENT

22. Defendants incorporate their answers as stated above in paragraphs 1-21.

23. As to the allegations in paragraph 23 of Plaintiffs' Complaint, it is admitted that Defendants did not have a license or other authorization from Plaintiffs to sexually reproduce or otherwise propagate the tobacco seed variety known as K 326 during the term of the 8300070 certificate. As to the remaining allegations, the terms of the Tobacco Seed Agreement speak for themselves. The allegations, in so far as they may be construed to state Defendants have breached the Tobacco Seed Agreement, and otherwise, are denied.

24. As to the allegations in paragraph 24, it is denied that Defendants have infringed Plaintiffs' rights under the PVPA signified by the 830070 certificate in any way prior to its expiration. Defendants have done none of the acts alleged by Plaintiffs as violating 7 U.S.C. §2541(a)(3)(5) & (8).

25. The factual allegations of paragraph 25, being contained in the second and third sentences of said allegation and based upon Plaintiffs' information and belief, are denied. The allegation of that paragraph's first sentence is question of law not requiring answer, but to the extent the allegation does require answer, the statutory provision speaks for itself and is otherwise admitted.

26. Denied.

27. As to the allegations in Paragraph 27, these Defendants have insufficient information to form a belief as to their truth or falsity, and therefore same are denied. It is specifically alleged, however, that Plaintiffs are not entitled to any of the relief requested.

THIRD DEFENSE COUNT II-BREACH OF CONTRACT

28. Defendants re-allege and incorporate their answers in paragraphs 1-27 above.

29. Defendants specifically deny they are offering any K 326 seed retained from plants grown from seed stock provided by either Plaintiff, and that they are in breach of any applicable Tobacco Seed Agreement contract. Any remaining allegations are denied.

30. Denied.

31. Denied.

32. Denied.

FOURTH DEFENSE-COUNT III-CONVERSION

33. Defendants re-allege and incorporate their answers in paragraphs 1-32 above.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

FIFTH DEFENSE COUNT IV-RETURN OF CHATTEL

38. Defendants re-allege and incorporate their answers in paragraphs 1-37 above.

39. Denied.

40. Denied.

SIXTH DEFENSE COUNT V-UNJUST ENRICHMENT

41. Defendants re-allege and incorporate their answers in paragraphs 1-40 above.

42. Defendants have not made any sales of seed retained from seed produced under their Tobacco Seed Agreement, or progeny of said seed. Therefore, Plaintiffs allegations are speculative at best and do not require answer. To the extent answer is required, the allegations in paragraph 42 are denied.

43. Defendants have not made any sales of seed retained from seed produced under their Tobacco Seed Agreement, or progeny of said seed. Plaintiffs allegations are speculative at best and do not require answer. To the extent answer is required, the allegations in paragraph 43 are denied.

44. Defendants have not made any sales of seed retained from seed produced for either Plaintiff or progeny of said seed, and therefore have not retained any benefits from any such sales. Plaintiffs allegations are speculative at best and do not require answer. To the extent answer is required, the allegations in paragraph 44 are denied.

45. Denied.

SEVENTH DEFENSE VI- LANHAM ACT VIOLATION

46. Defendants re-allege and incorporate their answers in paragraphs 1-45 above.

47. As to the allegations of paragraph 47 that allege any actions of Defendants described falsely indicate to consumers that Defendants' activities are approved, sponsored, or licensed by Plaintiffs, or that Defendants are affiliated or associated with Plaintiffs, they are denied. In further defense, any reference by Defendants to K 326 variety tobacco seed offered for sale is required by federal statute and regulation.

48. Denied.

49. Denied.

50. Denied.

JURY DEMAND

51. Defendants join in Plaintiffs' demand for trial by jury.

FIRST COUNTERCLAIM-VIOLATION OF PVPA

52. The allegations in paragraphs 1 through 5 of Plaintiffs' Complaint are incorporated by reference and re-alleged herein.

53. Defendants' counterclaims arise under the Plant Variety Protection Act, 7 U.S.C. §2401 *et. seq.*, and Lanham Act, 15 U.S.C. §1125. Subject matter jurisdiction is proper under 28 U.S.C. §§1331 & 1338 and 15 U.S.C. §1121. Diversity jurisdiction exists under 28 U.S.C. §1332.

54. Venue is proper under 28 U.S.C. §1391.

55. Plaintiffs are engaged in the following acts prohibited by 7 U.S.C. §2568(a):

a. Using the words "U.S. Protected Variety" to import that Gold Leaf Seed material is a variety protected under certificate, when it is not.

b. Using the phrase "Unauthorized Seed Multiplication Prohibited" without reasonable basis.

56. Defendant, Cross Creek Seed Inc., is engaged in the business of selling seed, including tobacco seed. Defendant's business is, or is likely to be, damaged by Plaintiffs acts prohibited by 7 U.S.C. § 2568(a).

57. Defendant, Cross Creek Seed, Inc. is subjected to competition by Plaintiffs in connection with which those acts alleged above are performed.

58. Defendants are entitled to relief pursuant to 7 U.S.C. § 2568(c).

SECOND COUNTERCLAIM-VIOLATION OF LANHAM ACT

59. The allegations on paragraph 52-57 above are incorporated herein by reference and realleged.

60. Cross Creek Seed, Inc. is currently marketing its K326 variety tobacco seeds under the Cross Creek trademark.

61. Plaintiffs are competitors of Cross Creek Seed, Inc. and have made false claims to the marketplace, *inter alia*, that

(a) Plaintiffs have trademark rights in "K326";

(b) Plaintiffs are marking a TM on their packaging of K326 variety tobacco seed;

(c) Plaintiffs are claiming the are the sole party who can sell K326 variety tobacco seed;

(d) Plaintiffs are claiming that Defendants cannot legally market K326 variety tobacco seed.; and

(d) Plaintiffs are claiming Defendants are infringing on Plaintiffs' intellectual property, including their "trademark" of K326.

62. Plaintiffs' product labeling activities misrepresent the nature, characteristics and quality of their goods.

63. Plaintiffs' false claims of infringement by Defendants of Plaintiffs' "trademark" misrepresent the nature, characteristics and quality of Defendants' goods.

64. Defendants are informed and believe, and therefore allege, that Plaintiffs have and are now marketing K326 variety tobacco seed as being trademarked, as well as enjoying continuing under the protection of the Plant Variety Protection Act.

65. Defendants are informed and believe, and therefore allege, that Plaintiffs have and are violating the Federal Seed Act, 7 U.S.C. §1571(d) by offering to sell, in interstate

commerce, K326 variety tobacco seed that is falsely labeled and advertised as being trademarked and under the protection of the Plant Variety Protection Act.

66. The conduct of Plaintiffs alleged above constitutes unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125 *et. seq.*

67. Defendants are informed and believe that unless Plaintiffs' unlawful acts of unfair competition are enjoined, they will likely continue, and Defendants, and the public, will suffer irreparable injury.

68. In the alternative, Defendants have been, and will be, damaged by Plaintiffs' unlawful acts of unfair competition, and are entitled to an award of damages as allowed by law.

69. Defendants are informed and believe this claim to be an extraordinary case, entitling them to an award of attorney's fees.

JURY DEMAND FOR COUNTERCLAIMS

72. Defendants request trial by jury of their counterclaims.

PRAYER FOR RELIEF

Defendants pray the court as follows:

A. Dismiss Plaintiffs' complaint with prejudice.

B. Enter a judgment and award of damages from Plaintiffs to compensate Defendants for injury and/or likely injury pursuant to 7 U.S.C § 2568(c).

C. Issue injunctive relief enjoining Plaintiffs from engaging in unlawful acts in unfair competition with Defendants.

D. Enter judgment in favor of Defendants for recovery of all damages they have sustained as a result of Plaintiffs' unfair competition, and that those damages be trebled pursuant to 15 U.S.C. § 1117(a).

E. Determine that this matter is an exceptional case and award of attorney fees pursuant to 15 U.S.C. §1117(a).

F. For such other and further relief as the Court deems just and proper.

This, the 23 day of December, 2002.

BEAVER HOLT STERNLICHT GLAZIER
CARLIN BRITTON & COURIE, PA

BY: _____

F. THOMAS HOLT III
State Bar No. 9267
Attorney for Defendants, Cross Creek Seeds, Inc.,
Cross Creek Farms and Eddie Baker
230 Green Street, P.O. Drawer 2275
Fayetteville, NC 28302-2275
Telephone: 910/323-4600
Facsimile: 910/323-3403

CERTIFICATE OF SERVICE

I, F. Thomas Holt III, attorney for Defendants in the foregoing action, hereby certify that I have this day served the parties in this action with a copy of the foregoing Answer and Counterclaims by mailing a copy of same through first-class mail, postage prepaid to:

J. Donald Cowan, Jr.
Dixie T. Wells
Smith Moore LLP
300 N. Greene St. Suite 1400
Greensboro, NC 27401

Susan K. Knoll
Howery, Simon, Arnold & White, LLP
750 Bering Drive
Houston, TX 77057

Respectfully submitted, this 23rd day of December, 2002.

F. THOMAS HOLT III
State Bar No. 9267
Attorney for Defendants, Cross Creek Seeds, Inc.,
Cross Creek Farms and Eddie Baker
230 Green Street, P.O. Drawer 2275
Fayetteville, NC 28302-2275
Telephone: 910/323-4600
Facsimile: 910/323-3403

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
FILE NO. 1:02-CV-1004

F.W. RICKARD SEEDS, INC., and GOLD LEAF SEED COMPANY Plaintiffs/Counterclaim Defendants, v. CROSS CREEK SEED, INC., CROSS CREEK FARMS, EDDIE BAKER, and BILL EARLEY Defendants/Counterclaimants.	)	JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANTS' COUNTERCLAIMS

Pursuant to FED. R. CIV. P. 12(a)(2), plaintiffs F.W. Rickard Seeds, Inc. and Gold Leaf Seed Company hereby reply to the Counterclaims of defendants Cross Creek Seed, Inc., Cross Creek Farms (collectively "Cross Creek"), Eddie Baker ("Baker"), and Bill Earley ("Earley") as follows:

First Counterclaim – Alleged Violation of PVPA

52. Admitted.

53. Admitted.

54. Admitted.

55. Denied.

56. Denied, except to admit that defendant Cross Creek Seed, Inc. is engaged in the business of selling seed, including tobacco seed.

57. Denied, except to admit that defendant Cross Creek Seed, Inc. and plaintiffs compete in sales of tobacco seed.

58. Denied.

Second Counterclaim – Alleged Violation of Lanham Act

59. Plaintiffs hereby incorporate their reply to paragraphs 52-57 as if fully set forth herein.

60. Denied, except to admit that Cross Creek Seed, Inc. is currently marketing what it represents as being K 326 variety tobacco seeds under the Cross Creek trademark.

61. The allegations in paragraph 61 preceding subparagraphs (a)–(d) are denied, except to admit that plaintiffs and Cross Creek Seed, Inc. compete for sales of tobacco seed. Plaintiffs further reply to subparagraphs (a)–(d) as follows:

(a) Denied, except to admit that plaintiffs' position is that, as a legal matter, they do possess trademark rights in the designation "K 326."

(b) Admitted.

(c) Denied.

(d) Denied, except to admit that plaintiffs allege in their complaint in this action that defendants have marketed, and/or are currently marketing, purported "K 326" tobacco seed in violation of the following laws: Plant Variety Protection Act, Title 7, United States Code § 2321 *et seq.* ("PVPA"); the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) and 1125(a)(1)(B); and North Carolina law.

(d) [*sic*, should be "(e)"] Denied, except to admit that plaintiffs allege in their complaint in this action that defendants have marketed, and/or are currently marketing, purported "K 326" tobacco seed in violation of the Plant Variety Protection Act, 7 U.S.C. § 2321 *et seq.* ("PVPA") and the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) and 1125(a)(1)(B).

62. Denied.

63. Denied.

64. Denied, except to admit that plaintiffs' position is that, as a legal matter, they do possess trademark rights in the designation "K 326."

65. Denied, except to admit that plaintiffs are lawfully offering to sell K 326 tobacco seed in interstate commerce.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

ADDITIONAL DEFENSES TO DEFENDANTS' COUNTERCLAIMS

First Defense to Defendants' Counterclaims

Defendants' Counterclaims fail to state a claim upon which relief may be granted.

Second Defense to Defendants' Counterclaims

Defendants have unclean hands and therefore are disentitled to any relief on their counterclaims.

PRAYER FOR RELIEF ON DEFENDANTS' COUNTERCLAIMS

WHEREFORE, plaintiffs respectfully request judgment on defendants' Counterclaims as follows:

A. That defendants' Counterclaims be dismissed with prejudice and the Court enter judgment in favor of plaintiffs on said Counterclaims;

B. That the Court find this to be exceptional case and that plaintiffs be awarded their reasonable attorneys' fees for defending these Counterclaims pursuant to 15 U.S.C. § 1117(a);

C. That the Court find this to be exceptional case and that plaintiffs be awarded their reasonable attorneys' fees for defending these Counterclaims pursuant to 7 U.S.C. § 2565;

D. That the Court award plaintiffs their costs and expenses in defending against these Counterclaims; and

E. Such other and further relief as this Court shall deem just and proper.

This the 15th day of January, 2003.

Dixie T. Wells
J. Donald Cowan, Jr.
N.C. Bar No. 0968
Dixie T. Wells
N.C. Bar No. 26816
SMITH MOORE LLP
300 N. Greene St., Suite 1400
Greensboro, NC 27401
Telephone: (336) 378-5329
Facsimile: (336) 378-5400

Susan K. Knoll
Thomas L. Casagrande
HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057
Telephone: (713) 787-1400
Facsimile: (713) 787-1440

Attorneys for Plaintiffs/Counterclaim Defendants

CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiffs F.W. Rickard Seeds, Inc. and Gold Leaf Seed Company hereby certifies that a true copy of Plaintiffs' Reply to Defendants' Counterclaims was served by first-class mail, postage prepaid, upon the following:

F. Thomas Holt III
BEAVER HOLT STERNLICHT GLAZIER
CARLIN BRITTON & COURIE, PA
230 Green Street, P.O. Drawer 2275
Fayetteville, NC 28302-2275

David A. Harlow
MOORE & VAN ALLEN
Suite 800
2200 West Main Street
Post Office Box 3843
Durham, North Carolina 27702-3843

Mr. Bill Earley
302 North Turnpike Road
Laurinburg, NC 28352

This the 15th day of January, 2003.

Dixie T. Wells

Dixie T. Wells