No. 7200055

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Ben Fish and Son

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 seventeen 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, OR IMPORTING IT, OR EXPORTING IT, OR USING IT IN PRODUCING A HYBRID OR DIFFERENT VARIETY THEREFROM, TO THE EXTENT PROVIDED BY THE PLANT VARIETY PROTECTION ACT. THE UNITED STATES SEED OF THIS VARIETY (1) SHALL BE SOLD BY VARIETY NAME ONLY AS CLASS OF CERTIFIED SEED AND (2) SHALL CONFORM TO THE NUMBER OF GENERATIONS SPECIFIED BY THE OWNER OF THE RIGHTS. (84 STAT. 1542, AS AMENDED, 7 U.S.C. 2321 ET SEQ.)

LIMA BEAN

"Mendoza"

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 *this* eighth *day of* April *in the year of our Lord one thousand nine hundred and* seventy-five

PLANT VARIETY PROTECTION OFFICE · U.S. DEPARTMENT OF AGRICULTURE

Attest:

Commissioner
Plant Variety Protection Office
Grain Division
Agricultural Marketing Service

Secretary of Agriculture

FORM GR-470
(2-12-71)

UNITED STATES DEPARTMENT OF AGRICULTURE
CONSUMER AND MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782

FORM APPROVED
OMB NO. 40-R3712

APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE

INSTRUCTIONS: *See Reverse.*

1. VARIETY NAME OR TEMPORARY DESIGNATION Mendoza ~~Bush Baby Lima~~	2. KIND NAME Bush Baby Lima	FOR OFFICIAL USE ONLY PVPO NUMBER 720055
3. GENUS AND SPECIES NAME Phaseolus lunatus ~~Green Seeded~~ ~~Bush Baby Lima~~	4. FAMILY NAME (*Botanical*) Leguminosae ~~Phaseolus lunatus~~	FILING DATE 11/23/71 TIME 11 A.M.
	5. DATE OF DETERMINATION 1962	FEE RECEIVED $ 750 CHARGES —
6. NAME OF APPLICANT(S) BEN FISH & SON	7. ADDRESS (*Street and No. or R.F.D. No., City, State, and ZIP Code*) P.O. BOX 417 Crows Landing, California 95313	8. TELEPHONE AREA CODE AND NUMBER AC 209 837-4744
9. IF THE NAMED APPLICANT IS NOT A PERSON, FORM OF ORGANIZATION: (*Corporation, partnership, association, etc.*) Division of Dompe Warehouse Co., Inc.	10. STATE OF INCORPORATION California	11. DATE OF INCORPORATION 6-17-55

12. Name and mailing address of applicant representative(s), if any, to serve in this application and receive all papers:

A. G. Mendoza
P.O. Box 417
Crows Landing, California 95313

13. CHECK BOX BELOW FOR EACH ATTACHMENT SUBMITTED:

- [X] 12A. Exhibit A, Origin and Breeding History of the Variety (*See Section 52, P.L. 91-577*)
- [X] 12B. Exhibit B, Botanical Description of the Variety
- [X] 12C. Exhibit C, Objective Description of the Variety
- [X] 12D. Exhibit D, Data Indicative of Novelty
- [X] 12E. Exhibit E, Statement of the Basis of Applicant's Ownership

The applicant declares that a viable sample of basic seed of this variety will be deposited upon request before issuance of a certificate and will be replenished periodically in accordance with such regulations as may be applicable. (*See Section 52, P.L. 91-577*).

14A. 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), P.L. 91-577*) (*If "Yes," answer 14B and 14C below.*) [X] YES [ ] NO

14B. Does the applicant(s) specify that this variety be limited as to number of generations? [ ] YES [X] NO

14C. If "Yes," to 14B, how many generations of production beyond breeder seed?

Applicant is informed that false representation herein can jeopardize protection and result in penalties.

The undersigned applicant(s) of this sexually-reproduced novel plant variety believes 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 (P.L. 91-577).

November 18, 1971
(DATE)

BEN FISH & SON - A Division of
Americo D Dompe
(SIGNATURE OF APPLICANT)
DOMPE WAREHOUSE CO.
Americo D Dompe
(SIGNATURE OF APPLICANT)

(DATE)

FORM GR-470
(2-12-71)

UNITED STATES DEPARTMENT OF AGRICULTURE
CONSUMER AND MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782

FORM APPROVED
OMB NO. 40-R3712

APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE

INSTRUCTIONS: *See Reverse.*

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6. NAME OF APPLICANT(S) BEN FISH & SON	7. ADDRESS (Street and No. or R.F.D. No., City, State, and ZIP Code) P.O. BOX 417 Crows Landing, California 95313	8. TELEPHONE AREA CODE AND NUMBER AC 209 837-4744
9. IF THE NAMED APPLICANT IS NOT A PERSON, FORM OF ORGANIZATION: (Corporation, partnership, association, etc.) Division of Dompe Warehouse Co., Inc.	10. STATE OF INCORPORATION California	11. DATE OF INCORPORATION 6-17-55

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14B. Does the applicant(s) specify that this variety be limited as to number of generations? [ ] YES [X] NO	14C. If "Yes," to 14B, how many generations of production beyond breeder seed?

Applicant is informed that false representation herein can jeopardize protection and result in penalties.

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November 18, 1971
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BEN FISH & SON - A Division of
Americo O. Dompe
(SIGNATURE OF APPLICANT)
DOMPE WAREHOUSE CO.

(DATE)

Americo O. Dompe
(SIGNATURE OF APPLICANT)

INSTRUCTIONS

GENERAL: Send an original copy of the application, exhibits and $50.00 fee to U.S. Dept. of Agriculture, Consumer and Marketing Service, Grain Division, Hyattsville, Maryland 20782. Retain one copy for your files. All items on the face of the form are self-explanatory unles noted below.

ITEM

5 Insert the date the applicant determined that he had a new variety.

12a First, give the genealogy, including public and commercial varieties, lines, or clones used, and the breeding method. Second, give the details of subsequent stages of selection and multiplication. Third, indicate the type and frequency of variants during reproduction and multiplication and state how these variants may be identified. Fourth, provide evidence on stability.

12b First, give any special characteristics of the seed and of the plant as it passes through the seedling stage, flowering stage and the fruiting stage. Second, describe the mature plant and compare it with a similar commercial variety grown under the same conditions, and indicate the differences.

12c A supplemental form will be furnished by the PVPO to describe in detail a variety for each kind of seed.

12d Provide complete data indicative of novelty. Seed and plant specimens may be submitted and seeds submitted may be sterile. Where possible, include photographs of plant comparisons, chemical tests, etc.

12e Indicate whether applicant is the actual breeder, the employer of the breeder, the owner through purchase or inheritance, etc.

EXHIBIT 12-A

Origin and History

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12a V1-57

In 1957 a pole selection was made from a field planting of an old Ben Fish & Son line, Bush Baby Green Fordhook V-12-1. We considered this to be a chance outcross between the Baby Green Fordhook and an unknown pole baby lima, as the selection was green seeded.

S-52-58/V-1-57

In 1958 the pole selection was planted and it segregated to bush and pole plants. The dominant pole were removed, leaving the recessive bush plants. Thirteen individual bush plants were selected.

S-33-59/S-52-7-58/S-52-58/V-1-57

In 1959 the thirteen bush selections from S-52-58 were planted and this selection S-52-7-58 had Early Thorogreen plant type characteristics, plain leaf coloring, compact bush, early set. The selections from S-52-58 segregated to plants having variegated leaf coloring; plain leaf; variegated and plain leaf. Some plants having early maturity, some medium and some late. Plants having small round plump seed shape, some plants with seeds like the original baby green fordhook and some plants with seeds like early thorogreen bush lima, except with a wrinkly smooth seed coat. Eight individual plants were selected from this selection S-52-7-58.

S-146-60/S-33-2-A-59/S33-59/S-52-7-58/S-52-58/V-1-57

In 1960 the eight bush selections from S-33-59 were planted and this selection S-33-2-A-59 had the following characteristics:

Medium small size seed shape
Whitish green seed coat
Medium deep green cotyledon
one seed with an extruded cotyledon
Plain green leaf coloring
$4\frac{1}{2}$ oz. planted- 24lb. yield- 90 fold increase

The other seven individual selections; two had baby green fordhook seed shape, three had medium small seed size with a flat shape, and two had medium seed size with a flat shape. All plants had plain green leaf coloring. One individual plant was selected.from this selection S-33-2-A-59

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12a S-224-62/S456-61/S-146-60/etc.

In 1962 a green sorted bulk increase of double green sorted bulk increase S-456-61 was planted.

Medium small flat seed shape.
Whitish green wrinkled seed coat.

8 lbs. planted- 437 lbs. yield- 54.6 fold increase

S-225-62/S-419-61/S-146-1-60/S-146-60/etc.

In 1962 a green sorted bulk increase of an individual bulk increase S-419-61 was planted.

Same characteristics as listed under S-419-61.

15 lbs. planted- 1,212 lbs. yield- 80.8 fold increase

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12a S-419-61/S-146-1-60/S-146-60/S-33-2-A-59/S-33-59/S-52-7-58/S-52-58/V-1-57

In 1961 the individual selection from S-146-60 was planted and this selection S-146-1-60 had the following characteristics:

Medium small size flat shape seed
Whitish green wrinkled seed coat
Fairly concentrated heavy set
Medium maturity
Plain leaf coloring
4oz. planted- 26½ lb. yield- 108 fold increase

S-456-61/S-146-60/etc.

In 1961 the individual bulk S-146-60 was planted. The bulk was green sorted with electric sorting to further purify the green seed coat factor. It had the following characteristics:
Medium small flat seed shape
Whitish green wrinkled seed coat
Two individual selections were made from this bulk increase S-456-61

S-145-62/S-456-61-1/S-456-61/S-146-60/etc.

In 1962 an individual selection from S-456-61 was planted and this selection S-456-61-1 had the following characteristics:

Medium small size flat shape seed
Whitish green wrinkled seed coat
Uniform set/compact bush
Medium maturity/green cotyledon
4oz. planted- 15½lb. yield-62 fold increase
selected two individual plants from this selection S-456-61-1

S-146-62/S-456-61-2/S-456-61/S-146-60/etc.

In 1962 an individual selection from S-456-61 was planted and this selection S-456-61-2 had the following characteristics:

Medium small size flat shape seed
Whitish green wrinkled seed coat
Uniform set/compact bush
Medium maturity/green cotyledon
3½oz. planted- 15lb. yield- 68.5 fold increase
selected four individual plants from this selection S-456-61-2

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12a In 1963 we concluded that the plant structure of this new variety was stabilized to our point of view of having a bush type far superior to the standard Early Thorogreen. We then started to concentrate on the cotyledon color factor by further color sorting of the previously color bulks and by visual hand selecting for seeds with a deep green cotyledon. It was also observed in the bulk increases that there were some seeds that had a smooth seed coat characteristic so hand picked seed selections were made from one for seeds having this smooth appearance and a deep green cotyledon factor. The smooth seed observation was to ascertain if the seeds would be homozygos for this characteristic.

We observed that the individual plants from the smooth seed coat seeds were segregating to plant types having smooth and wrinkly smooth seed coats. Of five individuals selected, one was of an early maturity, and the others had a medium maturity, as compared to the standard Early Thorogreen, which we considered early maturity. All had deep green cotyledons with a whitish green seed coat, a very concentrated set and a compact plant structure.

It was further observed that the plants had multiple pods set on each fruiting stem, with as many as ten pods per stem and two to three pods per fruiting stem node. This was quite unlike the standard Early Thorogreen, which although compact setting itself, does not have this characteristic.

In 1964, the smooth seed coat individual selections were planted and individual selections were made from them for plant types having, earliness, multiple pods, and for the maintenance of a compact plant structure. The selections were made at Cornell University, our research trial station in Milford, Delaware, and our research trial station in Crows Landing, California.

Through 1965, 1966 and 1967, observational studies were conducted in the East, Midwest, Northwest, and in California to determine plant stability for the following characteristics:

Good concentrated set with multiple pods
Compact plant structure
Early maturity
Good green cotyledon color factor
Wrinkly whitish green seed coat

In 1967 the first reasonable bulk increase was made from a California individual selections having the above attributes, to enable processors in various parts of the country to conduct commercial field trial evaluations under their growing conditions.

Through 1968, 1969, and 1970, processor field trials were conducted in various parts of the United States and in the Province of Ontario, Canada, as well as a continued observational study in our research farm in California. At this time we have six individual strains undergoing bulk increase, each having the same basic characteristics established in 1967. All of these six lines were planted by a processor in the Columbia Basin of the State of Washington in their research observation program and the outcome of these trials, plus our own studies, will determine which of the six lines will become the basic seed stock for planting in 1972.

72055

BEN FISH & SON

SEED BEAN GROWERS

QUALITY SEED SINCE 1875

MAILING ADDRESS:
P. O. BOX 417
CROWS LANDING, CALIFORNIA 95313

AREA CODE 209 837-4744

OFFICE, RESEARCH and PROCESSI
25 EAST 5TH STREET
CROWS LANDING, CALIFORNIA

BEN FISH & SON WARRANTS TO THE EXTENT OF THE PURCHASE PRICE THAT SEEDS SOLD ARE AS DESCRIBED ON THE CONTAINER WITHIN RECOGNIZED TOLERANCES. SELLER GIVES NO FURTHER WARRANTY, EXPRESS OR IMPLIED.

PV #7200055

EXHIBIT 12-A Cont.

12a Results of our 1971 field trials indicates no significant difference between the six lines planted in 1970, so a general bulk was made.

Information received from our 1971 field trials corroberates the results of our observational studies of 1965-1966 and 1967, indicating stability of the line having these characteristics:

2 Good concentrated set with multiple pods
1 Compact plant structure
3 Early maturity
4 Good green cotyledon factor
5 Wrinkly whitish green seed coat

CUSTOM BRED LIMA BEAN SEED FOR CANNERS AND FREEZERS

EXHIBIT 12-B and 12-C

Botanical and objective

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12b 1. At the seedling stage the plant behaves like any other lima bean strain. Emergence between five to seven days, depending on soil moisture and temperature.

At the flowering stage, the plant develops many blossoms, primarily within the fold of the plant, having the ability to set fruit even during extended periods of extreme high temperature.

During the fruiting stage, the above characteristic manifests itself by the many pods per fruiting stem, sometimes as many as ten pods per stem and two to three pods per fruiting stem node. These pods are set well above ground level and in clusters within the fold of the plant. See photo exhibits.

2. The plant grows to a height of eighteen to twenty inches, with a spread of twenty to twenty five inches. The plant develops a very heavy pod set in clusters within the fold of the plant yet well enough above ground level so as to reduce significantly the problem water damage. The pods have two to four beans per pod with a high percentage of three bean pods. See photo exhibits.

Early Thorogreen, which has been used extensively in all lima growing areas since the early forties, was used as a comparative variety. The thorogreen has larger plant structure than the above with a noticeable absence of the multiple cluster pod setting ability.

12c This new variety was developed to replace Early Thorogreen and other green baby lima varieties in use today to better serve the needs of both farmer growers and processors for a variety which, though similar in nature, has a greater yield potential and a better more uniform appearance in both canned and frozen processing. It is not subject to the vagaries of area climactic conditions, as is Early Thorogreen, and is well adapted to all growing areas of the United States and Ontario, Canada.

The development of earliness of the line was of prime concern in our research so as to further extend the planting period for those areas having a short growing season. Plant structure, was an important factor also, from the standpoint of having a plant with a more concentrated compact setting ability, with pods well above ground level within the fold of the plant to reduce excessive water damage in those areas depending on natural rainfall.

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12d

EXHIBIT D

Data indicative of novelty

1. Photographs indicating plant structure and multiple pod setting characteristics.

2. Seed specimens of several strains of green bush baby lima types in common usage. These are submitted to show the difference in the visual physical characteristics of the seed from this new variety as compared to others of the same genus now being commercially grown.

Enclosed under 12d: Seed specimens and photographs

one package identified Exhibit 12d-A containing seed specimens of the new variety and a sibling strain S-400 Bush Lima

See also attached addendum 7/27

one package identified Exhibit 12d-B containing seed specimens of:
Early Thorogreen
Greener B aby Lima S-1
Greener Baby Lima S-4
Milres

one package identified Exhibit 12d-C containing seed specimens of:
Nemagreen
Dover
Thaxter
Kingston

12-e

EXHIBIT 12-E

Basis of Applicant's ownership

In September of 1971 Dompe Warehouse Company purchased Ben Fish & Son rights to name, physical property and good will as well as research material past and present.

72055

BEN FISH & SON

SEED BEAN GROWERS

QUALITY SEED SINCE 1875

MAILING ADDRESS:
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CROWS LANDING, CALIFORNIA 95313

AREA CODE 209 837-4744

OFFICE, RESEARCH and
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CROWS LANDING, CAL

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PV #7200055

EXHIBIT D

Data indicative of novelty

13-D Mendoza Bush most closely resembles Early Thorogreen except that in comparing the seed surface texture of the Mendoza Bush, one would observe the wrinkly whitish green appearance of the seed, as opposed to the smooth texture of Early Thorogreen.

CUSTOM BRED LIMA BEAN SEED FOR CANNERS AND FREEZERS

FORM GR-470-15
(1-15-73)

FORM APPROVED. OMB NO. 40-R3712

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782

EXHIBIT C
(Lima Bean)

OBJECTIVE DESCRIPTION OF VARIETY

LIMA BEAN (*PHASEOLUS LUNATUS*)

REFERENCES: *See Reverse.*

NAME OF APPLICANT(S)

ADDRESS (*Street and No. or R.F.D. No., City, State, and ZIP Code*)

FOR OFFICIAL USE ONLY

PVPO NUMBER: 72055

VARIETY NAME OR TEMPORARY DESIGNATION: Mendoza

Place the appropriate number that describes the varietal character of this variety 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. TYPE:

[3] 1 = GREEN SHELL 2 = DRY EDIBLE 3 = DUAL PURPOSE

2. REGION OF ADAPTABILITY IN THE U.S.:

[6] Best adapted in: 1 = NORTHWEST 2 = NORTHCENTRAL 3 = NORTHEAST 4 = SOUTHEAST 5 = SOUTHWEST 6 = MOST REGIONS

3. MATURITY (Days from seeding to first harvest):

[8][5] GREEN SHELLS [9][5] DRY SEEDS

[1][0] No. of days *Earlier* than: . . . . [2]

[0][0] No. of days *Later* than . . . . . [7]

1 = HENDERSON BUSH 2 = THAXTER 3 = BURPEE'S IMPROVED BUSH
4 = SIEVA 5 = FLORIDA BUTTER 6 = KING OF THE GARDEN
7 = OTHER (Specify) earlier than any of above

4. PLANT:

[1] 1 = DETERMINATE, ERECT BUSH 2 = DETERMINATE, SPRAWLING BUSH 3 = DETERMINATE, SEMIPOLE 4 = INDETERMINATE, POLE

[0][4][3 ~~2~~] CM. HEIGHT ~~OR LENGTH OF VINE FROM PRIMARY LEAF NODE~~

[0][1] CM. LENGTH OF FIRST INTERNODE ABOVE PRIMARY LEAF

[5 7 ~~45~~] CM. SPREAD

[0][8] NUMBER INTERNODES ON MAIN STALK BETWEEN PRIMARY LEAF AND BASE OF TERMINAL INFLORESCENCE

[0][6] MM. STALK DIAMETER ABOVE FIRST TRIFOLIATE LEAF

[2] Main stalk: 1 = BRITTLE 2 = WIREY

[1] Main stalk: 1 = STOUT 2 = THIN

[1] Flower position:

[1] Pod position:

1 = LOW, CONCENTRATED 2 = HIGH, CONCENTRATED 3 = SCATTERED

5. LEAVES:

[1] 1 = SMOOTH 2 = WRINKLED

[2] 1 = DULL 2 = GLOSSY

[1] Thickness: 1 = THIN 2 = MEDIUM 3 = THICK

[1] Size: 1 = SMALL (Sieva) 2 = MEDIUM 3 = LARGE (Prizetaker)

[4] CM. PETIOLE LENGTH (To basal leaflets of first trifoliate leaf)

[2] Tip shape of center leaflet: 1 = ROUNDED 2 = TAPER POINTED 3 = SHARP POINTED

[1] PUBESCENCE - Dorsal:

[2] PUBESCENCE - Ventral:

1 = NONE 2 = SLIGHT 3 = CONSIDERABLE

[3] Color: 1 = GRAY GREEN 2 = MEDIUM GREEN (Burpee's Improved Bush) 3 = DARK GREEN (Sieva)

6. FLOWERS:

[1] Color: 1 = WHITE 2 = CREAM 3 = PINK 4 = LILAC 5 = PURPLE 6 = OTHER (Specify)

[1][2] Racemes: CM. TO BASE OF TERMINAL FLORET

[1][5] NUMBER FLOWERS PER RACEME 4

 72055

7. FRESH PODS:

[3] Color: 1 = LIGHT GREEN (Thaxter) 2 = MEDIUM GREEN (Florida Butter) 3 = DARK GREEN (Thorogreen Early) 4 = OTHER (Specify) _____

[0 8] CM. LENGTH [2 0] MM. WIDTH (Between sutures) [0 8] MM. THICKNESS [2 5] WIDTH / THICKNESS X 10

[2] Cross section pod shape: 1 = FLAT 2 = OVAL 3 = ROUND [2] Curvature: 1 = STRAIGHT 2 = SLIGHTLY CURVED 3 = CURVED

[5] MM. SPUR LENGTH [1] Spur: 1 = STRAIGHT 2 = SLIGHTLY CURVED 3 = CURVED

[1] Surface: 1 = SHINY 2 = DULL [1] Surface: 1 = SMOOTH 2 = BLISTERED

[1] Pubescence: 1 = NONE 2 = SPARSE 3 = CONSIDERABLE [3] NUMBER OF SEEDS PER POD

[6 0] NUMBER PODS PER PLANT (Once over harvest) [1] Machine harvest: 1 = ADAPTED 2 = NOT ADAPTED

Condition of pods at once-over harvest: [0 7] % DRY [0 0] % YELLOW [9 3] % GREEN

8. SEEDS:

[1] 1 = MONOCHROME 2 = POLYCHROME [2] 1 = SHINY 2 = DULL

[0 2] Primary color: [0 3] Secondary color: 1 = WHITE 2 = GREENISH WHITE 3 = GREEN 4 = YELLOW 5 = BUFF 6 = TAN 7 = BROWN 8 = PINK 9 = RED 10 = PURPLE 11 = BLACK 12 = OTHER (Specify) _____

[0] Color pattern: 1 = SPLASHED 2 = MOTTLED 3 = STRIPED 4 = FLECKED 5 = DOTTED

[1] Secondary color location: 1 = HILAR RING 2 = HILAR SURFACE 3 = STROPHIOLE 4 = MICROPYLE 5 = SIDES 6 = DORSAL SURFACE 7 = NOT RESTRICTED TO ANY AREA 8 = COMBINATION OF LOCATIONS (Specify) _____

[2] Hilar ring: 1 = NOT PRESENT 2 = NARROW 3 = WIDE 4 = BUTTERFLY SHAPED [1] Vein-like under coat pattern: 1 = ABSENT 2 = PRESENT

[3] Cotyledon color: 1 = WHITE 2 = PALE GREEN 3 = GREEN

9. SEED SHAPE AND SIZE:

[2] Hilum view: 1 = FLAT 2 = ELLIPTICAL 3 = OVAL 4 = ROUND [1] Side view: 1 = OVAL 2 = ROUND 3 = KIDNEY 4 = TRUNCATE ENDS

[3] Cross section: 1 = FLAT 2 = ELLIPTICAL 3 = OVAL 4 = ROUND [4 3] GM. WEIGHT PER 100 SEEDS

[1] Classification: 1 = SIEVA 2 = INTERMEDIATE 3 = FORDHOOK

[1 0] MM. WIDTH (Dorsal to ventral) [0 4] MM. THICKNESS (Side to side)

[1 3] MM. LENGTH [2 5] WIDTH / THICKNESS X 10

10. ANTHOCYANIN: (1 = Absent, 2 = Present)

[1] FLOWERS [1] STEM [1] PODS [1] SEEDS [1] LEAVES

11. DISEASE RESISTANCE: (0 = Not Tested, 1 = Susceptible, 2 = Resistant)

[0] RUST (Specify race) _____	[0] ANGULAR LEAF SPOT	[0] BACTERIAL WILT
[0] COMMON BEAN MOSAIC	[0] ANTHRACNOSE	[0] LIMA BEAN MOSAIC
[0] SOUTHERN BEAN MOSAIC	[0] FUSARIUM ROOT ROT	[0] CURLY TOP
[0] N.Y. 15 BEAN MOSAIC	[0] DOWNY MILDEW	[0] POWDERY MILDEW
[0] BEAN MOSAIC VIRUS 4	[0] HALO BLIGHT	[0] FUSCOUS BLIGHT
[0] ALFALFA MOSAIC VIRUS	[0] ALFALFA MOSAIC VIRUS 2	[0] POD MOTTLE VIRUS
[0] RED NODE VIRUS	[0] ROOT KNOT NEMATODE	[0] OTHER (Specify) _____

72055

12. INSECT RESISTANCE: (0 = Not Tested, 1 = Susceptible, 2 = Resistant)

0	APHIDS	0	LEAF HOPPERS	0	POD BORER	0	LYGUS
0	THRIPS	0	WEAVILS	0	SEED CORN MAGGOT	0	OTHER (Specify)

13. PHYSIOLOGICAL RESISTANCE: (0 = Not Tested, 1 = Susceptible, 2 = Resistant)

2	HEAT	2	COLD	2	DROUGHT		OTHER (Specify)

REFERENCES

The following publications may be used as references in completing this form:

1. Beans of New York. Vol. 1 Part II of Vegetables of New York. U.P. Hedrick et al. J. B. Lyon Company, Albany, N.Y. 1931.

2. Yarnell, S. H., Cytogenetics of the Vegetable Crops IV. Legumes. Bot. Rev. 31:247 - 330. 1965.

3. USDA Yearbook of Agriculture. 1937.

COLOR: Nickerson's or any recognized color fan may be used to determine the colors.

COMMENTS:

Under item six- insufficient boxes for racemes and number of flowers

Under item seven- insufficient boxes for number of pods per plant

Under item eight- no identification factor is noted for seed coat surface texture (wrinkly or shriveled as apposed to smooth). Under the novelty portion of application, the wrinkly characteristic is peculiar to this line.

United States Department of Agriculture
Agricultural Research Service
Northern Plains Area National Seed Storage Laboratory
1111 South Mason Street
Fort Collins, CO 80521-4500
Telephone: 303 495-3200
Fax: 303 221-1427

February 2, 1994

Ann Zempolich
Plant Variety Protection Office
NAL Building, Room 500
10301 Baltimore Blvd.
Beltsville, MD 20705-2351

Subject: Expiration of PVP applications and transfer of seed samples

Dear Ann:

In accordance with the Plant Variety Protection Office Official Journal dated April-June 1992, we have transferred the control of the following expired PVP samples to NSSL. We have made all necessary changes to our records.

PVP NUMBER	NSSL SERIAL	Genus	Species
7300065			
73065	89333.01	Glycine	max
7100009	89375.02	Verbena	multiflora
7100025	89315.01	Phaseolus	vulgaris
7100088	89374.01	Verbena	species
7200034	89366.01	Triticum	aestivum
7200045	89321.01	Gossypium	hirsutim
[redacted]	90082.01	Phaseolus	lunatus
7200102	86605.01	Triticum	aestivum
7300045	90081.01	Phaseolus	lunatus
7400010	90080.01	Lactuca	sativa
7400032	93983.01	Eschschoizia	californica
7400038	89373.01	Glycine	max
7400048	89371.01	Tagetes	erecta
7400049	89370.01	Tagetes	erecta
7400050	89372.01	Tagetes	erecta
7400085	90087.01	Pisum	sativum
7400087	89325.01	Triticum	aestivum
7400096	86676.01	Gossypium	hirsutim
7400105	90089.01	Glycine	max
7400106	90088.01	Glycine	max

Sincerely,

Eugene D. KEYS
Computer Assistant
Data Management & System Support

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

WASHINGTON, D.C. 20250

AUG 19 1977

Karl A. Limbach, Esquire
Limbach, Limbach & Sutton
2001 Ferry Building
San Francisco, California 94111

Dear Mr. Limbach:

Thank you for your August 12 letter. In the third paragraph, you indicate that "Maffei will sell this seed labeled lima beans and either 'Mendoza' or 'variety not stated.'" As stated in 7 CFR Section 201.2(i), regulations under the Federal Seed Act, lima bean is a vegetable seed. As such, it is required to be labeled as to kind and variety name under the Federal Seed Act. Please see 7 U.S.C. 1572 (b)(1)(A) and 1572(b)(2)(A). The option of variety name or "variety not stated" you mentioned applies only to seed classed in the regulations as agricultural seeds.

You are aware that the Mendoza variety is considered subject to 7 U.S.C. 1611, which prohibits sale of seed by variety name unless the seed is certified by an official seed certifying agency.

Your letter is being forwarded to:

Mr. S. F. Rollin, Commissioner
Plant Variety Protection Office
USDA, National Agricultural Library
Beltsville, Maryland 20705

for reply to your request for a determination of the validity of the certificate of protection on the Mendoza variety.

Sincerely,

/s/ C. R. Edwards

C. R. Edwards
Chief, Seed Branch

cc:
Thomas O. Herbert, Esquire
S. F. Rollin

CERTIFIED MAIL

415-433-4150

August 22, 1977

Karl A. Limbach, Esquire
Limbach, Limbach & Sutton
2001 Ferry Building
San Francisco, California 94111

Dear Mr. Limbach:

Subject: Plant Variety Protection Certificate
No. 7200055, 'Mendoza' Lima Bean

This Office has received from the Seed Branch a copy of your letter of August 12, 1977, addressed to Mr. Clyde R. Edwards, in which you question the validity of the plant variety protection certificate No. 7200055 issued by this Office on April 8, 1975, to Ben Fish and Son for 'Mendoza' lima bean.

In accordance with section 91 of the Plant Variety Protection Act (84 Stat. 1542) and section 180.200 of the Regulations and Rules of Practice thereunder (7 U.S.C. 2321 et seq.), it will first be necessary for you to submit to this Office, in duplicate, a petition, in writing, supported by affidavits showing the reason or reasons for opposing the certificate.

A copy of the booklet containing the wording of the Plant Variety Protection Act and the Regulations and Rules of Practice thereunder is enclosed. Please refer to pages 12, 36 and 37 for the sections referred to above.

Sincerely,

S. F. Rollin
Commissioner
Plant Variety Protection Office

Enclosure

cc:
Clyde Edwards

AMS:G&S:SFRollin:dw:8/22/77

FSA

PAUL D. FLEHR
HAROLD C. HOHBACH
ALDO J. TEST
ELMER S. ALBRITTON
THOMAS O. HERBERT
MILTON W. SCHLEMMER
DONALD N. MACINTOSH
JERRY G. WRIGHT
EDWARD S. WRIGHT
DAVID J. BREZNER
RICHARD E. BACKUS
DAVID E. LOVEJOY
ROBERT B. BLOCK
HENRY M. STANLEY
EDWARD H. MAKER II
STEPHEN E. BALDWIN
DAVID C. RIPMA

FLEHR, HOHBACH, TEST, ALBRITTON & HERBERT
ATTORNEYS AT LAW
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160 SANSOME STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 781-1989

CABLE: FLEHRSF
TWX: 910 372-6669
FLEHR SFO

PENINSULA OFFICE
260 SHERIDAN AVENUE
PALO ALTO, CALIF. 94306
(415) 326-0747

BAYLOR G. RIDDELL
OF COUNSEL

August 18, 1977

Mr. Clyde R. Edwards
Chief, Seed Branch
Grain and Seed Division
United States Department of Agriculture
Agricultural Marketing Service
Room 0097, South Agriculture Building
14th and Independence
Washington, D.C. 20250

Re: FSA 77-W-26

Dear Mr. Edwards:

Thank you for your letter of August 1, 1977, giving your opinion in the "Mendoza" lima bean matter that there are two distinct populations of the plant and that the first of these populations--the Mendoza variety--is that which L. D. Maffei Seed Company has been selling as the "S-33" variety.

In addition, we have received a copy of Mr. Karl Limbach's letter to you dated August 12, 1977, and must join with him to the limited extent of requesting that you pursue your investigation and determine the validity of our client's certificate of protection. In addition, however, we ask that you pursue the cease and desist proceedings against Maffei.

As indicated clearly on the chart presented to Miss Colbry on June 9, 1977, as well as from our client's records, the population of plants made available to Inglis and Stokely in 1969 were not the first population identified as "Mendoza" but were in fact of the "second" population decendent from the individual plant S-83-63-5. Whether the plants of that "second" population were or were not in the public domain clearly should not effect the validity of the certificate of protection relative to the distinct variety descending from the three plants identified as S-83-63-1, S-83-63-2, and S-83-63-3.

With respect to the alleged "good faith" of Maffei in the purchase and growth of the Dompe seeds it should be pointed that the purchase was by surreptitious means through a party whom Maffei still maintains confidential. The purchase was under the guise of a purchase for a legitimate grower on behalf of a Dompe customer after which the seed was rebagged stripping it of its Dompe Brothers tags and substituting tags of L.D. Maffei Seed Company itself. Moreover there was no indication at all that Maffei considered the variety purchased to be in the public domain at that time. Rather, the "public domain" argument appears to be an attorney spawned afterthought to justify Maffei's action. According to Karl Limbach's letter, it was only "when Dompe charged Maffei with the infringement of the registration" that the sales history records were even examined to determine whether there was any seed in the public domain.

With respect to Mr. Limbach's statement that Dompe has adopted a new position inconsistent with the declaration, it should be pointed out that Dompe's position has been consistent throughout. Although a tentative determination was made in 1962 the final determination was not made until Dompe was specifically requested to do so by the Department of Agriculture in its letter of June 21, 1974 starting in the second paragraph, "Exhibit A is incomplete. You had not made your final selection from the 1972 planting at the time the application was filed."

In view of all of the above, we very much encourage you to proceed with the cease and desist proceedings we previously requested.

Very truly yours,

FLEHR, HOHBACH, TEST
ALBRITTON & HERBERT

Thomas O. Herbert

TOH:tp

cc: Mr. Karl A. Limbach
Mr. Paul Dompe

KARL A. LIMBACH
GEORGE C. LIMBACH
JOHN P. SUTTON
THOMAS A. GALLAGHER
J. WILLIAM WIGERT, JR.
GERALD P. PARSONS
PHILIP M. SHAW, JR.
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FRANK E. JOHNSTON
OF COUNSEL

LAW OFFICES
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(415) 433-4150

PATENT AND TRADEMARK MATTERS

PENINSULA OFFICE
2600 EL CAMINO REAL
PALO ALTO, CA 94306
(415) 327-3450

CABLE ADDRESS LLS
TELEX 278356

August 19, 1977

Mr. Clyde R. Edwards
Chief, Seed Branch
Grain and Seed Division
United States Department of Agriculture
Agricultural Marketing Service
Room 0097, South Agriculture Building
14th and Independence
Washington, D.C. 20250

Re - Your File FSA 77-W-26

Dear Mr. Edwards:

I don't want to prolong the exchange of correspondence on this subject, but Mr. Herbert's letter of August 18 raises two points.

First of all, his challenge to the good faith of Maffei is a new injection of antagonism in this case which really doesn't belong here. I would like to just ignore this so that this determination doesn't turn into a mud-slinging contest, but without throwing any mud back, let me just say this. The Maffei's wanted to buy some S-33 seed which was well-known and known by that name, and Dompe apparently acknowledges now that S-33 was in the public domain at that time. The Maffei's bought what they thought was S-33 seed through normal commercial channels, and this controversy has apparently developed because Dompe chose that instant to start supplying some different S-33 strains under a mixed S-33 Mendoza label. I don't see any justification for trying to inject into the controversy some challenge to the good faith of my client.

Mr. Herbert refers in his letter to a new concept that "the final selection" from the 1972 planting was a "final determination" which somehow changed the fact that there was an original determination of the protected variety in 1962. If the final selection had been a new determination, Dompe could have amended the application to indicate that fact, but Dompe still claims that the new variety was determined in 1962, and the records show that what was determined in 1962 included all of the plants on Dompe's chart. More importantly, if the 1972 selection was to have any effect in narrowing the certificate from the 1962 genus to a 1972 specie, the application should have been amended to provide a new definition of the variety including what had been sold as S-33. Title 7, Section 2422(2) requires that the application contain a description of the new variety and states that "an applicant may add to or correct the description at any time, before the certificate is issued,...". The description of the variety as "most closely resembling Early Thorogreen" was never amended to indicate that the variety to be protected was the 1972 selection instead of the entire 1962 genus.

The fact remains that the certificate, the validity of which is at issue, states that the new variety was determined in 1962 and that it is defined as "most closely resembling Early Thorogreen". The only variety to which these facts apply is the genus which includes all of the plants on the chart supplied to you by Dompe.

I will look forward to hearing from you when you have completed your determination.

In the meantime, Maffei has not sold any seed under the Mendoza label and will not do so until we hear from you.

Very truly yours,

LIMBACH, LIMBACH & SUTTON

Karl A. Limbach

Karl A. Limbach KK

KAL:kk
cc - T. O. Herbert
J. D. Maffei

U.S. DEPARTMENT OF AGRICULTUR

DATE 8-26-77

REFERENCE SLIP

TO

Sol Rollin

~~Lodge~~

~~Fisher~~

Return to Woomer

- [ ] ACTION
- [ ] NOTE AND RETURN
- [ ] APPROVAL
- [ ] PER PHONE CALL
- [ ] AS REQUESTED
- [ ] RECOMMENDATION
- [ ] FOR COMMENT
- [ ] REPLY FOR SIGNATURE OF
- [x] FOR INFORMATION
- [ ] RETURNED
- [ ] INITIALS
- [ ] SEE ME
- [ ] NOTE AND FILE
- [ ] YOUR SIGNATURE

REMARKS

FROM

Z.D.H.

GPO c48- 16—83471 1

FORM AD-514 (8-64)