

EXHIBIT A



09-01-1999

U.S. Patent & TMO/TM Mail RptDt. #31

**AMIANA LTD.**

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TMEO  
LAW OFFICE 111

1999 SEP -3 P 1: 34

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August 29, 1999

Ms. Tracy Whittaker-Brown  
Trademark Attorney, Law Office 111  
US Patent & Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

Re: Serial Number 75/648527  
Mark: A Line & Design

Dear Ms. Whittaker-Brown:

As we discussed, I am submitting a copy of the agreement between Amiana Ltd. and Anne Klein & Company. Based on this agreement, we have been operating separately and without confusion for over nine years. Upon your review of this agreement, I would like to discuss our application further with you and determine what is the appropriate next step.

Respectfully submitted,

  
Joe Reichbind

15653-12  
8/1/90

CONSENT AGREEMENT

AGREEMENT dated as of July 11, 1990 between AMIANA LTD., a New York corporation, of 340 East 19th Street, New York, NY 10003 ("Amiana") and ANNE KLEIN & COMPANY, a New York partnership, of 205 West 39th Street, New York, NY 10018 ("Anne Klein").

A. Amiana has adopted and used, and is using, the term A LINE & DESIGN as a trademark for children's footwear, and has applied to register the mark in the U.S. Patent and Trademark Office, Serial No. 74/004422 filed November 21, 1989, published for opposition May 15, 1990, a copy of which is attached to this agreement ("Amiana's A LINE Mark"). Amiana also has registered Amiana's A LINE Mark in Spain, Reg. No. 1574247 issued June 14, 1990 for "shoes of all types except orthopedic shoes" in Class 25.

B. Anne Klein intends to adopt and to file an intent-to-use application for registration in the U.S. Patent and Trademark Office of the term A LINE & DESIGN, in a form of display presently being created and which may change from time to time and which may or may not include the mark ANNE KLEIN, initially for women's clothing and accessories, including women's footwear, and possibly later for other products for women, men and children with the exception of children's footwear ("Anne Klein's A LINE Mark").

C. As used in this agreement, "children's footwear" is defined as footwear designed for or worn by children from "Toddlers" (infants) to "Growing Girls" (to age 14). Toddlers sizes begin at 0; the sizes increase and culminate in women's size 11. These sizes are American size designations; however, this definition includes these sizes regardless of the national or regional size designation. For example, an American size 11 is equivalent to a Continental size 41. It is also agreed that certain styles, even though designed for growing girls, are purchased and worn by women of all ages and in all sizes. However, this definition excludes footwear primarily intended for women, even though they are purchased and worn by children.

D. The parties mutually believe that the simultaneous use of their respective marks is not likely to cause confusion because of differences between their forms of display, and differences in the goods for which they respectively are to be used.

Therefore, to assure the avoidance of conflicts, and in consideration of the covenants set forth below and for other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

1. Amiana's A LINE Mark. Amiana will have the worldwide right to continue to use and to register Amiana's A LINE Mark (but only in the form of display attached to this agreement) for children's footwear, and Anne Klein will not object to such use or registration. Amiana will not use or seek to register Amiana's A LINE Mark in any other form of display, or for any goods or services other than children's footwear, nor will Amiana cause, assist or advise any third party to do so. Amiana also will not oppose any application to register, or petition to cancel any registration of, Anne Klein's A LINE Mark in any form of display (other than in the form of display attached to the agreement for Amiana's A LINE Mark) for any goods or services (other than children's footwear), nor will Amiana cause, assist or advise any third party to do so. Nothing in this agreement will limit Amiana's right to use and to register the mark AMIANA in any form or display and for any goods or services worldwide.

2. Anne Klein's A LINE Mark. Anne Klein will have the worldwide right to use and to register Anne Klein's A LINE Mark (but only in a form of display different from the form of display attached to this agreement for Amiana's A LINE Mark) (a) for any goods or services other than footwear; and (b) for footwear (other than children's footwear) provided the mark ANNE KLEIN also is used in conjunction with Anne Klein's A LINE Mark on and in connection with such footwear. Amiana will not object to such use or registration. Anne Klein will not use or seek to register Anne Klein's A LINE Mark in the form of display attached to this agreement for Amiana's A LINE Mark, or for children's footwear, nor will Anne Klein cause, assist or advise any third party to do so. Anne Klein also will not oppose any application to register, or petition to cancel any registration of, Amiana's A LINE Mark in the form of display attached to this agreement for children's footwear, nor will Anne Klein cause, assist or advise any third party to do so. Nothing in this agreement will limit Anne Klein's right to use and to register the mark ANNE KLEIN in any form of display for any goods or services worldwide.

3. Spain. Notwithstanding anything to the contrary in paragraphs 1 and 2, Anne Klein will not petition to cancel Amiana's Spanish registration of Amiana's A LINE Mark, No. 1574247, provided that Amiana does not object to Anne Klein's use in Spain, without registration, of Anne Klein's A LINE Mark (in conjunction with the registered mark ANNE KLEIN) on and in connection with footwear (other than children's footwear).

4. Further Action. Without further consideration, each party will execute and deliver to the other party such other documents, and will take such other actions, as the requesting party may reasonably request to confirm, register or enforce its trademark rights. All costs incurred, with the requesting party's approval, in complying with this paragraph will be paid by the requesting party.

5. Confidentiality. Amiana acknowledges that Anne Klein's business plans (including without limitation, the fact of this agreement and the consideration for this agreement) are highly confidential trade secrets. Accordingly, Amiana and its only officers having knowledge of this agreement, Amy Buckner Reichbind and Joseph Reichbind, will hold this information in strictest confidence and will not intentionally disclose it or make it available to any third party. These confidentiality obligations will not apply to the extent the information (a) is or becomes publicly disclosed other than through Amiana's disclosure; (b) becomes rightfully available to Amiana from a source that did not directly or indirectly receive the information in confidence from Anne Klein (but Amiana will only have the obligation to contact Anne Klein's legal counsel to be advised whether such information has been properly disclosed); (c) is required for Amiana fully to respond to legal process, to enforce this agreement, or to the extent its attorneys, accountants and lending institutions need to know; or (d) is otherwise required by law to be disclosed. All these exceptions to confidentiality will apply to Amy Buckner Reichbind and Joseph Reichbind as well as Amiana.

6. (a) Representations and Warranties. Amiana represents and warrants that (i) Amiana has the full right, power and authority to execute and perform this agreement and to grant the rights granted pursuant to this agreement without violating any contractual obligation Amiana may have to any third party; (ii) except for rights licensed to Amy Buckner Reichbind and Joseph Reichbind for Spain and its territories, Amiana has not heretofore licensed, assigned or otherwise pledged or encumbered any rights in Amiana's A LINE Mark; (iii) there are no actions pending or threatened against Amiana or any of its affiliates by reason of its use of Amiana's A LINE Mark; (iv) Amiana knows of no third party whose rights infringe Amiana's A LINE Mark or whose rights are infringed by Amiana's A LINE Mark; (v) except for Amiana's pending application in the U.S. Patent and Trademark Office, Serial No. 74/004422, and Amiana's Spanish registration, No. 1574247, Amiana has not applied, or issued instructions to apply, to register Amiana's A LINE Mark anywhere in the world; and (vi) Amiana knows of no third party consents that are necessary for the consummation of the transactions contemplated by this agreement.

(b) Indemnity. Amiana hereby indemnifies Anne Klein against any and all loss, liability, damage, cost or expense (including without limitation, reasonable attorneys' fees and expenses) paid or incurred by it arising out of any breach or claim of breach of Amiana's representations or warranties in paragraph 6(a) of this agreement.

7. Assignment and Sublicensing. Each party may fully assign or sublicense any and all rights under this agreement to any third party, including without limitation, any parent, subsidiary or affiliate, provided the assignee assumes the assignor's relevant obligations under this agreement.

8. Remedies. Each party acknowledges that any breach of this agreement by it will cause irreparable harm to the aggrieved party for which there would be no adequate remedy at law. The aggrieved party, in addition to its other rights and remedies, will have the right to injunctive relief against any such threatened or actual breach.

9. Duration. This agreement will have perpetual duration unless either party abandons its mark (by discontinuing its bona fide use made in the ordinary course of trade, and not made merely to reserve a right in the mark, with intent not to resume such use), in which case the other party will be released from the restrictions set forth in this agreement.

10. General. This agreement will benefit and bind the parties and their respective parents, subsidiaries, affiliates under common ownership or control (by virtue of the ability to elect those in policy making positions), successors and assigns. This agreement, and the documents executed simultaneously herewith, contain a complete statement of all arrangements between the parties relating to its subject matter, and supersede all existing agreements between them relating to its subject matter. This agreement may not be changed orally. The failure of a party to insist upon strict adherence to any term of this agreement on any occasion will not be construed a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this agreement. All waivers must be in writing. If any provision of this agreement is invalid or unenforceable, the balance of this agreement will remain in effect, and if any provision is inapplicable to any circumstance, it will nevertheless remain applicable to all other circumstances. Neither party will be considered as, or hold itself out to be, an agent of the other party, and neither party may act for or bind the other party in any dealings with a third party. The headings in this agreement are solely for convenience of reference and will not affect its interpretation. This agreement will be governed by and construed in accordance with the internal substantive laws of the State of New York and applicable federal law regarding trademark registration rights.

11. Notices. All notices under this agreement will be in writing and will be considered given when personally delivered or mailed by prepaid certified or registered mail, return receipt requested to the parties at the respective addresses stated below (or at such other address as a party may specify in a notice given to the other):

(a) Notices to Anne Klein:

Beverly I. Katz, Esq.  
General Counsel  
Takiho, Inc.  
205 West 39th Street  
New York, NY 10018

(b) Notices to Amiana:

Mr. Joseph Reichbind  
Vice President  
Amiana Ltd.  
340 East 19th Street  
New York, NY 10003

AMIANA LTD.

By: Joseph Reichbind V.P.  
Title

ANNE KLEIN & COMPANY

By: Frank H. Mar CEO  
Title

In order to induce Anne Klein & Company to enter into the foregoing agreement, we each individually agree that we will not directly or indirectly engage or become interested again, as owner, partner, stockholder, officer, director or employee (either with or without compensation), in any business, firm or corporation which engages in activities that would violate Amiana's obligations under the foregoing agreement.

Joseph Reichbind  
Joseph Reichbind

Amy Buckner Reichbind  
Amy Buckner Reichbind

✓ SN 74-004,422. AMIANA LTD., NEW YORK, NY. FILED  
11-21-1989.

**a**  

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**LINE**

FOR CHILDREN'S FOOTWEAR (U.S. CLS. 22 AND 39).  
FIRST USE 7-18-1989; IN COMMERCE 7-18-1989.

**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

<b>SERIAL NO.</b> 75/648527 Amiana Ltd.		<b>APPLICANT</b>	<b>PAPER NO.</b>
<b>MARK</b> A LINE AND DESIGN		<b>ACTION NO.</b> 01	<b>ADDRESS:</b> Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513  If no fees are enclosed, the address should include the words "Box Responses - No Fee."
<b>ADDRESS</b> AMIANA LTD. 340 EAST 19TH STREET NEW YORK NY 10002		<b>MAILING DATE</b> 08/13/99	
FORM PTO-1525 (5-90)		<b>REF. NO.</b>	
U.S. DEPT. OF COMM. PAT. & TM OFFICE		Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	

**A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.** For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/648527

The assigned examining attorney has reviewed the referenced application and determined the following.

Refusal - Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration Nos. 1789503, 1782792, 1772678 and 1857279 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods or services, and similarity of trade channels of the goods or services.



### Similarity of Marks

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

The registrant's marks are A LINE with a line design, A LINE ANNE KLEIN with a line design, A LINE and A with a line design. Each of the registrations cited above is owned by the same registrant. The applicant's mark is A LINE with a line design. The applicant has appropriated the registrant's mark, changing the stylization of the A to lower case in order to create its own mark. The marks are identical or highly similar in sound, appearance, meaning and connotation.

### Similarity of Goods or Services and Channels of Trade

The goods or services of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

The registrant's goods are all clothing items and footwear. The applicant's goods are children's footwear. The goods are closely related. The goods share a common consumer base and flow through the same channels of trade.

For the foregoing reasons, the examining attorney refuses registration under Trademark Act Section 2(d).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

The examining attorney has reviewed the applicant's cover letter referencing an agreement between the parties, however no such agreement is of record, hence it cannot be considered in the examination of this application. *In re Hungry Pelican, Inc.*, 219 USPQ 1202 (TTAB 1983); *In re Delbar Products, Inc.*, 217 USPQ 859 (TTAB 1981); *Editorial America, S.A. v. Gruner & Jahr AG & Co.*, 213 USPQ 498 (TTAB 1982); *In re the Library Restaurant*, 194 USPQ 446 (TTAB 1977); *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974).

Response Guidelines

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

The applicant may wish to hire a trademark attorney because of the technicalities involved in the application. The Patent and Trademark Office cannot aid in the selection of an attorney.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

  
Tracy Whittaker-Brown

Trademark Attorney, Law Office 111  
U.S. Patent & Trademark Office  
Phone: (703) 308-9111, ext. 167  
Fax: (703) 308-7182