

## EXHIBIT B

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Lion Licensing, Ltd.  
Serial No.: 78/157,941 Sue Carruthers  
Examining Attorney  
Filed: August 26, 2002 Law Office 108  
Mark: A LINE and Design  
Our Ref: LION USA TA 02/09153

### RESPONSE TO OFFICE ACTION

#### Box RESPONSES

#### NO FEE

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

This is in response to the Office action mailed on December 9, 2002.

#### REMARKS

The Office Action has refused registration of the above mark on the ground that Applicant's mark for "clothing, namely, blouses, cardigans, bomber jackets, baseball jackets, parkas, blazers, shirts, t-shirts, straight-legged trousers, jeans, straight-legged shorts, jumpsuits, sweaters, hats, belts, scarves, neckwear, socks and leggings" is likely to be confused with Reg. No. 2,332,054 for "a LINE" (and Design) for "children's footwear." For the reasons set forth below, Applicant respectfully submits that there is no likelihood of confusion and requests that the blocking citation be withdrawn.

Certificate of Mailing Under 37 CFR 1.8(a)	
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on:	
<u>January 16, 2003</u> (Date of Deposit)	<u>Christina Williams</u> (Signature)
<u>CHRISTINA WILLIAMS</u> (Printed name of person mailing paper or fee)	<u>January 16, 2003</u> (Date of Signature)

C

The Office Action also requests that Applicant disclaim the term LINE apart from the mark as shown, as it is merely descriptive of the goods. Applicant submits that the term as used in connection with the goods under the mark is suggestive and requests that this requirement be withdrawn.

**A. THE BLOCKING CITATION SHOULD BE WITHDRAWN**

**1. The Parties Have Expressly Agreed That There Is No Likelihood of Confusion**

Both Applicant and Registrant have determined that there is no likelihood of confusion between the marks and have expressly stated such in an agreement dated August 1, 1990, a copy of which is enclosed herewith as Exhibit A. Applicant therefore respectfully requests that pursuant to §1207.01 (c) (viii) of the TMEP, the Examiner consider the attached consent agreement, (along with the other arguments set forth below) and properly accord it great weight when reconsidering the refusal to register under §2(d) of the Act. Specifically, Applicant points to Paragraph D which states that the parties do not believe that concurrent use of their respective marks is likely to cause confusion in light of the differences in the appearance of the marks as well as the differences in the goods. Applicant also notes that Paragraph D (2) expressly grants Registrant's consent for Applicant to register its mark.

In the event that the parties' explicit belief and acknowledgement that there is no likelihood of confusion between the marks does not convince the Examiner that the §2(d) citation should be withdrawn, Applicant respectfully submits the following detailed arguments in support of its position that there is no likelihood of confusion.

2. **The Goods are Different**

Applicant's goods are moderately priced women's clothing items to be offered in mass retail channels of trade. The cited goods are high-end children's shoes. The list of goods under Applicant's mark do not include shoes, let alone children's shoes. In fact, they do not contain any type of children's clothing article at all. Registrant's goods under its mark are expressly designed for the high-end toddler and children's market and are therefore aimed at prospective purchasers who are not likely to confuse Registrant's mark for children's shoes with Applicant's mark for moderately priced women's wear. The parties goods are simply non-competitive and unrelated. For this reason alone confusion is not likely and the blocking citation should be withdrawn.

3. **Confusion is Unlikely Because Purchasers of Children's Shoes are Sophisticated**

"Purchasers of children's footwear are parents or other guardians who are particularly careful. They exercise considerable attention and inspect closely." Miles Shoes, Inc. v. R.H. Macy & Co., Inc., 92 U.S.P.Q. 64, 66 (S.D.N.Y. 1951), *rev'd another grounds*, 95 U.S.P.Q. 170 (2d Cir. 1952) (noting that "purchasers of children's shoes doubtless will use care in selecting them".) The purchaser of Registrant's goods, a parent or caregiver of the child, is not likely to be just a "casual purchaser." The parent who is shopping for shoes for a child is a particularly sensitive shopper as the fit and comfort of a toddler's shoes is important. Further, Applicant points out that the goods offered under Registrant's mark are high end children's shoes, some of which retail at a cost of \$62.00 a pair (see enclosed printout from Registrant's website annexed hereto as Exhibit B). Certainly any parent who is opting to spend such a large sum of money on a pair of toddler shoes is likely to be a sophisticated consumer, one who would be familiar with

Registrant's goods under its mark and not be confused when encountering Applicant's mark on the goods listed in its application -- none of which includes shoes, let alone children's shoes. For this reason alone, confusion is not likely and the blocking citation should be withdrawn.

4. **The Cited Mark is Based on  
An Improper Dissection of the Marks**

It is well settled that marks must be examined in their entireties. As the parties noted in their 1990 agreement, Applicant's mark is unlikely to cause confusion with Registrant's mark in light of the differences in the appearance and form of the marks. While Applicant notes that both marks contain the letter "A" and the word "Line", Applicant respectfully disagrees with the Office Action and submits that it is more than "the type styles of the words" of each mark which differ.

Registrant's mark uses a stylized *lower case* "a" that is in large font and appears directly on top of a horizontal line that is directly on top of the word "LINE". Further, the letter "a" is as wide as the entire word "LINE". Applicant's mark is readily distinguishable. Instead of using a lower case "a", Applicant uses a capital "A". Instead of the "A" appearing on top of the word "LINE", it appears to the left of it. Instead of the "A" measuring equally in any proportion to the word "LINE", it is significantly taller. And instead of the actual line separating the "A" and the "LINE" components from top to bottom as in Registrant's mark, it separates the components from left to right. These differences are not small and certainly amount to more than use of a "different type style."

Indeed, because Applicant's mark is meant to be read from left to right (as opposed to from top to bottom as is Registrant's mark), it is possible that a consumer might not even perceive Applicant's mark as two separate components composed of a letter "A" and the word

“LINE”, but instead understand it to be the original word/mark “ALINE”. Such a possibility is simply not available with respect to Registrant’s mark. “Marks tend to be perceived in their entirety, and all components thereof must be given appropriate weight.” In re Hearst Corp., 25 U.S.P.Q. 2d 1238, 1239 (Fed. Cir. 1992) (holding no likelihood of confusion between VARGA GIRL and VARGAS, both for calendars). When the totality of both marks are properly given their fair weight, Applicant’s mark is simply unlikely to be confused with Registrant’s mark.

For all of the foregoing reasons, confusion is unlikely and the blocking citation should be withdrawn.

**B. APPLICANT NEED NOT DISCLAIM THE WORD “LINE” AS WHEN USED IN CONNECTION WITH ITS GOODS IT IS NOT MERELY DESCRIPTIVE BUT IS INSTEAD SUGGESTIVE**

The Office Action has incorrectly assumed that the use of the term LINE in connection with the mark and goods is meant to refer to, or describe, the fact that a “line” of products is offered under the mark. While Applicant notes that this is one plausible meaning of the mark, the use of the term LINE as part of the mark has *another* plausible meaning, which is suggestive of the term “A-line”, an adjective used to describe the flaring nature of a garment, especially a skirt or dress. Since the goods offered under the client’s mark are women’s clothing and accessories, the mark “A LINE” suggests a particular element of women’s fashion.

It is well established that “a mark which connotes two meanings – one possibly descriptive, and the other suggestive of some other association – can be called suggestive, as the mark is not ‘merely’ descriptive.” 2 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition § 11:19 (2002). For example, in In re Colonial Stores, Inc., 157 U.S.P.Q. 382 (CCPA 1968), the Court of Customs and Patent Appeals held that the mark SUGAR AND SPICE was not merely descriptive of baked goods, despite the fact that sugar and spice were ingredients thereof, because the mark called to mind the well-known nursery rhyme (“sugar and

spice and everything nice.”) Similarly, in Blisscraft of Hollywood v. United Plastics Co., 131 U.S.P.Q. 55, 60 (2d Cir. 1961), the Court held that the mark POLY PITCHER was not merely descriptive of polyethylene pitchers (polyethylene was the plastic ingredient of the product), because the mark “is reminiscent or suggestive of Molly Pitcher of Revolutionary time. As used, it is an incongruous expression and has the characteristics of a coined or fanciful mark.”

The mark – or more specifically – the use of the term “LINE” as part of Applicant’s mark, is suggestive of a double entendre, playing upon both the fashion term referring to a shape of a dress as well as upon the concept of a designer’s seasonal line of clothing and accessories, such as the “spring line” or “winter line”. In light of the alternative meanings of the mark and more specifically – of the term LINE, Applicant respectfully submits that it need not disclaim the term.

### CONCLUSION

Based on the above, Applicant submits that all questions are now answered and respectfully requests that a registration be issued for this mark.

Dated: New York, New York  
January 16, 2003

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU,  
P.C.

By: 

Michelle P. Foxman

Attorneys for Applicant  
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New York, New York 10017  
(212) 813-5900

RECYCLED



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: Franklin D. ... 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**  
—  
LINE

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

RECYCLED



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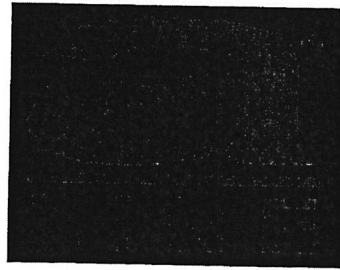
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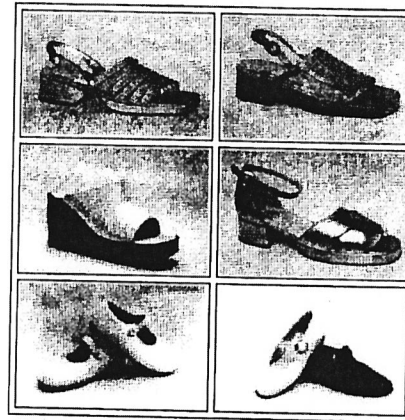
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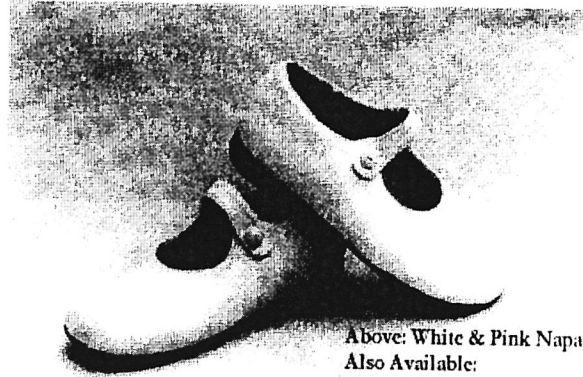
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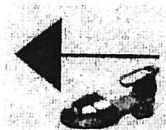
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back 1 style

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SIZES: <a href="#">see chart</a>	5-2 (Full and Half Sizes)
PRICES:	\$62.00

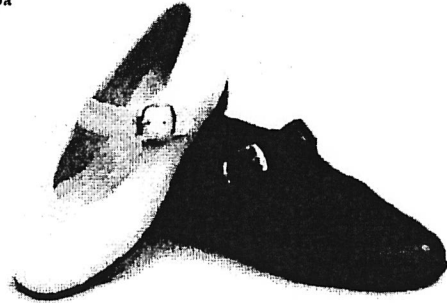
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COLOR:	Black, White, Bone
SIZES: <a href="#">see chart</a>	6 - 4 (Full and Half Sizes)
PRICES:	\$62.00

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