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**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92/040,092
)	
KAPALUA STRICKWAREN GMBH LTD.,)	
)	
Respondent.)	

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

A. INTRODUCTION

(1) Registration No. 2,016,976

Petitioner has moved to cancel the two registrations which are the subject of this proceeding. Respondent does not contest the cancellation of Registration No. 2,016,976 because Respondent did not respond to a post-registration Office Action dated October 14, 2005, issued in response to Respondent's Declaration of Excusable Non-Use. Thus, this Registration is subject to cancellation.

(2) Registration No. 2,115,124

However, Respondent opposes Petitioner's motion to cancel Registration No. 2,115,124 because there are genuine issues of material fact in dispute as demonstrated by the attached Declaration of Christiane Tan, the chief designer for and the founder of the KAPALUA line of women's clothing and accessories; the attached Declaration of Nicolaus Reusch and the exhibits thereto; Respondent's Amended Response to Petitioner's First Set of Admissions to Respondent (Exhibit 1); and Respondent's Amended Answers to Petitioner's First Set of Interrogatories to Respondent, Nos. 1-20 (Exhibit 2), which demonstrate that the mark was in use on all of the goods listed in the Registration at the time of filing the Section 8 Declaration of Use and, therefore, the Section 8 Declaration of Use was truthful.

Petitioner's sole basis for cancellation of Registration No. 2,115,124 is that the Section 8 Declaration of Use was fraudulent because Respondent's mark allegedly was not in use on all of the goods in the Registration. This argument is based on Respondent's response to Petitioner's Interrogatory Nos. 3 and 4, and Respondent's responses to Petitioner's Request for Admissions Nos. 10, 11, 12 and 26. However, those responses were incomplete and inaccurate (Reusch Declaration, paragraphs 8, 9, 10, 11 and 12). Mr. Reusch states in his Declaration that he did not fully understand what information was being requested (Reusch Decl., ¶ 8), that while he speaks German and English, all of his communications with his attorney in Germany were in German, and that he had difficulty locating documents because they were in different locations (Reusch Decl., ¶ 7). Mr. Reusch was also somewhat confused by the translation of the goods from German to English and from English to German (Reusch Decl., ¶ 9). Until July 31, 2006, all of Mr. Reusch's communications in this case were with his attorney in Hamburg (Reusch Decl., ¶ 4).

The issues were brought to Mr. Reusch's attention after Petitioner filed its Motion for Summary Judgment and were clarified for him in a telephone conference on July 31, 2006, with his attorney in Germany, Ms. Petra Goldenbaum; the U.S. attorney assisting Respondent with this matter, Joseph F. Schmidt of Michael Best & Friedrich LLP; and Ms. Chris Tan, the creative director, chief designer and founder of the KAPALUA line. Upon a further review of these issues and additional documents Mr. Reusch was then able to locate, Mr. Reusch reconfirmed that the mark KAPALUA was in use in the United States in May 2004, in connection with all of the items listed in U.S. Registration No. 2,115,124. (Reusch Decl., ¶ 11). Respondent's amended discovery responses (Exhibits 1 and 2), and the exhibits to the Reusch Declaration, demonstrate that the mark was in use on all of the goods listed in Registration No. 2,115,124 at

the time of filing the Section 8 Declaration of Use and, therefore, the Section 8 Declaration of Use was not fraudulent.

Petitioner's contention that Respondent abandoned Registration No. 2,115,124 is without merit. The Section 8 Declaration was filed by the correct party, chain of title was verified in compliance with the trademark rules (Exhibit 10), and the Section 8 Declaration is in compliance with the Examiner's requirements and is ripe for acceptance.

Accordingly, Petitioner's motion should be denied as it relates to Registration No. 2,115,124.

B. PETITIONER'S ALLEGED MATERIAL FACTS NOT IN ISSUE

Respondent responds to Petitioner's Statement of Material Facts Not in Issue as follows:

(1) Registration No. 2,016,976

1.-11. Although Respondent does not agree that alleged facts 1-11 are all true, material and not in issue, as Respondent is not contesting Petitioner's request to cancel Registration No. 2,016,976, Respondent does not contest these statements herein.

(2) Registration No. 2,115,124

12. Registration No. 2, 115,124 issued on November 25, 1997 for "clothing, namely, dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, socks, underwear, shoes, gloves, and hats" in Class 25. (Registration No. 2,115,124.)

Respondent agrees that this is an uncontested material fact.

13. A Declaration of Use for Registration No. 2,115,124 was due between November 25, 2002, and November 25, 2003. A Declaration of Use for all of the goods in Registration No. 2, 115,124 was filed, by the Declarant's U.S. attorney on May 21, 2004, with a late fee, within the grace period and under a power of attorney from the Declarant. The Declarant was Style &

Spirit GmbH, a party other than the recorded owner of the registration. (Declaration under § 8 filed May 19, 2004.)

Respondent agrees that these are uncontested material facts. However, Respondent contends that Declarant was the actual owner of Registration No. 2,115,124 when the Declaration under § 8 was filed. (Response to Office Action with Verification of Chain of Title filed May 26, 2006 (Exhibit 10).)

14. On January 5, 2005, the Post-Registration Office rejected the Declaration because it was filed by other than the recorded owner of the registration. The Declarant was given the opportunity to file assignments with the Assignment Division or to provide documents evidencing the assignment(s) to the Post-Registration Office. (Post-Registration Office, Office Action, January 5, 2005.)

Respondent agrees that this is an uncontested material fact.

15. On July 12, 2005, the Declarant's attorney filed a response listing a chain of title for the registration from the recorded owner to the Declarant. (Declarant's Response to Post - Registration Office, Office Action, July 12, 2005.)

Respondent agrees that this is an uncontested material fact.

16. On November 29, 2005, the Post-Registration Office again rejected the Declaration, stating, in part:

If the present owner prefers to ***submit actual evidence of ownership*** directly to the undersigned paralegal, copies of the actual documents transferring title or a statement explaining the valid transfer of legal title must be submitted. **If submitting a statement of facts explaining the transfer of title, this statement must be verified with an Declaration or a signed declaration under 37 C.F.R. § 2.20. See 37 C.F.R. § 3.73 and TMEP § 502.**

Please note that the acceptance notice for the Section 8 Declaration will not issue in the name of the current owner unless ownership documents are recorded with the Assignment Division. 37 C.F.R. § 3.85; TMEP § 502.02. (Post-Registration Office, Office Action, November 29, 2005.)

Respondent agrees that this is an uncontested material fact. However, Respondent contends that it made a proper response to the Post-Registration Office Action, as provided by TMEP § 1604.07(b).

17. On May 30, 2006, the Post-Registration Office received a response for the Declarant, listing the same chain of title transfers as were previously submitted signed by the Managing Director of the Declarant under a 37 C.F.R. § 2.20 declaration statement. (Declarant's Response to Post-Registration Office, Office Action, May 30, 2006.)

Respondent agrees that this is an uncontested material fact. However, Respondent contends that this was a proper response to the Post-Registration Office Action, as provided by TMEP § 1604.07(b).

18. No documents supporting the assignments were submitted to the Post-Registration Office as requested and it appears that no assignments have been filed with the Assignment Branch.

Respondent contests that documents supporting the assignments were requested. Such documents were an alternative method of proving the chain of title, not the sole method, as provided by TMEP § 1604.07(b).

19. Respondent has never sold "socks", "underwear" or "shoes" in the United States bearing the trademark KAPALUA, which are goods it claims in Registration No. 2,115,124. (Exhibit 1, Respondent's Response to Petitioner's First Set of Admissions to Respondent, responses 10, 11, 12 and 26.)

Respondent contests this alleged fact. Respondent has indeed sold socks, underwear and shoes in the United States bearing the trademark KAPALUA. (Declaration of Nicholas Reusch, Paragraphs 6, 9, 10, 11 and 12); Declaration of Christiane Tan, Paragraph 2; Respondent's Response to Petitioner's First Set of Admissions to Respondent Nos. 10, 11, 12 and 26 (Exhibit 2); and Respondent's Amended Answers to Petitioner's First Set of Interrogatories, response Nos. 3 and 4 (Exhibit 1).

20. Respondent asserts it has only used the mark KAPALUA for "pullover, T-shirts and skirts." Exhibit 2, Respondent's Answers to Petitioner's First Set of Interrogatories to Respondent, answers to Interrogatories No. 3 and No. 4 attached hereto.)

Respondent contests this alleged fact. Respondent has sold all of the goods listed in the registration in the United States under the mark KAPALUA. . (Declaration of Nicholas Reusch, Paragraphs 6, 9, 10, 11 and 12); Declaration of Christiane Tan, Paragraph 2; Respondent's Response to Petitioner's First Set of Admissions to Respondent Nos. 10, 11, 12 and 26 (Exhibit 2); and Respondent's Amended Answers to Petitioner's First Set of Interrogatories, response Nos. 3 and 4 (Exhibit 1).

21. The time for filing a Declaration of Use relative to Registration No. 2,115,124 has expired.

Respondent agrees that this is an uncontested fact but disagrees that it is material in any way.

C. RESPONDENT'S ADDITIONAL MATERIAL FACTS NOT IN ISSUE

22. Respondent's mark KAPALUA was in use on all the goods listed in Registration No. 2,115,124 on the date it filed its Section 8 Declaration of Use. (Reusch Decl., ¶¶ 6 and 11; Tan Decl., ¶ 2).

23. The Declarant of the Section 8 Declaration of Use was the owner of the mark and Registration No. 2,115,124 on the date the Declaration of Use was filed (Exhibit 10).

24. The owner of Registration No. 2,115,124 and its predecessors are German companies with offices in Germany. Documents relating to the KAPALUA mark are located in a warehouse in Hamburg and in offices in Osnabrück, Germany. For these reasons, it has been difficult for Respondent to locate all relevant documents relating to the KAPALUA mark (Reusch Decl., ¶ 3).

25. The respondent is represented by Petra Goldenbaum of the CMS Hasche Sigle law firm in Hamburg, Germany. Until July 31, 2006, all of Respondent's communications in this case were with Respondent's attorneys in Hamburg (Reusch Decl, ¶ 4).

26. In the Fall of 2005, respondent's attorneys in Germany retained new counsel in the United States to represent respondent in this matter, namely, Joseph F. Schmidt of Michael Best & Friedrich LLP, located in Chicago, Illinois (Reusch Decl, ¶ 5).

27. Respondent's original answers to Interrogatory Nos. 3 and 4 were incomplete (Reusch Decl, ¶ 8).

28. Respondent did not initially answer correctly Petitioner's First Set of Admissions to Respondent, Nos. 10, 11, 12 and 26 (Reusch Decl, ¶ 9).

29. The KAPALUA line is promoted as a line of women's knit clothing. Most of the revenue results from the sale of knit clothing. However, the line also includes various accessory

items, such as, shoes, ankle cuffs (socks), gloves, caps (hats) and undergarments (underwear) (Reusch Decl, ¶ 9).

30. In 2003 and 2004, the owner of Registration No. 2,115,124 was distributing in the United States the items listed in Registration No. 2,115,124 through Signum International in New York. All of the items listed in the Registration were shipped to Signum and on display for sale in Signum's showroom on Seventh Avenue in New York City, and/or available through sketch books which displayed the clothing and accessory lines (Reusch Decl, ¶ 12).

31. In late 2003 and early 2004, the items in U.S. Registration No. 2,115,124, namely, shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and t-shirts, were shipped to Signum for delivery in January or February 2004, for display and sale in the United States in the spring and summer of 2004 (Reusch Decl, ¶ 12).

32. Respondent has sold "socks," "underwear" and "shoes" in the United States bearing the trademark KAPALUA, which are goods it claims in Registration No. 2,115,124. (Exhibit 2, Respondent's Amended Responses to Petitioner's First Set of Admissions to Respondent, responses nos. 10, 11, 12 and 26.)

33. Respondent does not assert that it has only used the mark KAPALUA for "pullovers, t-shirts and skirts," but asserts that it has used the mark on all of the goods listed in Registration No. 2,115,124. (Exhibit 1, Respondent's Amended Answers to Petitioner's First Set of Interrogatories to Respondent, Answers to Interrogatory Nos. 3 and 4).

ARGUMENT

As there are contested issues of material fact concerning both use of the mark KAPALUA on all of the goods in Registration No. 2,115,124, and that Respondent did not abandon the mark of that registration by not recording certain assignment documents, when

viewed in a light most favorable to Respondent, summary judgment is not appropriate in this case.

A. Registration No. 2,016,976

Respondent is not contesting that Registration No. 2,016,976 should be cancelled and, accordingly, does not respond to Petitioner's arguments on that issue.

B. Registration No. 2,115,124

(1) The Declaration of Use Was Not Fraudulent

(a) Petitioner Failed To Carry Its Burden Of Proof By Clear And Convincing Evidence

Petitioner's claim that Respondent committed fraud on the United States Patent and Trademark Office is based on its erroneous conclusion that Respondent did not use the mark KAPALUA on all of the goods listed in the registration at the time that it filed its Section 8 Declaration of Use. Respondent regrets the unfortunate misunderstanding of English on the part of its witnesses in responding to Petitioner's interrogatories and admissions, now corrected by its amended responses. Not only has Respondent amended its previously incomplete and inaccurate discovery responses and provided the Declarations of its witnesses explaining why this occurred, but it has also produced documentary proof of the use of the mark on the allegedly contested goods at the time the Section 8 Declaration of Use was filed.

Petitioner relies on *Medinol Ltd. v. Neuro Vasx, Inc.*, 67 U.S.P.Q.2d 1205 (TTAB 2003) and other similar cases for the proposition that a Section 8 Declaration of Use asserting use of the mark on all the goods of the registration, when not in use on all of the goods, constitutes fraud on the Trademark Office for which the registration must be cancelled. However, even if the Declarant of the Section 8 Declaration of Use was mistaken here in its belief that the mark was in use on all the goods, which it was not, that would not necessarily mean that the representation of use was fraudulent and requires the cancellation of the registration.

An “allegation of fraud must be ‘proven to the hilt’ with clear and convincing evidence.” *Grand Canyon West Ranch, LLC v. Hualapai Tribe*, Opp. No. 91162008 at p. 4 (TTAB, March 17, 2006), citing *Smith International, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1043-44 (TTAB 1981). A party commits fraud “by knowingly making false statements as to a material fact in conjunction with a trademark application or registration.” *Id.*, citing *Mister Leonard Inc. v. Jacques Leonard Couture Inc.*, 23 U.S.P.Q.2d 1063, 1065 (TTAB 1992). Even in the *Medinol* case, if the finding of fraud had been overturned, the registration could have been amended to delete the goods for which the mark had not been used and the registration would have survived with the goods as amended. *Id.* at p. 5.

“To constitute fraud on the PTO, the statement [of use] must be (1) false, (2) a material misrepresentation and (3) made knowingly.” *Maids to Order of Ohio, Inc. v. Maid-to-Order, Inc.*, Cancellation No. 92040571 at p. 15 (TTAB, March 31, 2006), citing *Torres v. Cantine Torresella S.R.L.*, 1 U.S.P.Q. 2d 1483, 1484 (Fed. Cir. 1986). Further, “fraud implies some intentional deceitful practice or act designed to obtain something to which the person practicing such deceit would not otherwise be entitled...a willful withholding from the Patent and Trademark Office by an applicant or registrant of material information or fact, which, if disclosed to the Office, would have resulted in the disallowance of the registration sought or to be maintained. Intent to deceive must be ‘willful’. If it can be shown that the statement was a ‘false misrepresentation occasioned by an ‘honest’ misunderstanding, inadvertence, negligent omission or the like rather than one made with a willful intent to deceive, fraud will not be found....There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.” *Id.*, citing *First International Services Corp. v. Chuckles Inc.*, 5 U.S.P.Q.2d 1628, 1634 (TTAB 1988).

In *Maids to Order*, the Board found that a registrant who had a reasonable or legitimate basis for its representations of use at the time they were made did not commit fraud, despite testimony during the cancellation proceeding by the petitioner that the respondent had told him that she did not have use of the mark in interstate commerce when the application was first filed. *Id.* at p. 20-21.

The Section 8 Declarant here had a good faith belief (which also happened to be true) that it had used the mark on all of the goods when the Section 8 Declaration was filed. The fact that Respondent's lay witnesses may have, in good faith, misunderstood Petitioner's discovery requests due to their difficulty understanding English and understanding the legal meaning of "use," does not mean that their statements in discovery, now corrected, negate the reasonable and legitimate basis for Declarant's previous belief that the mark had indeed been used in commerce on all of the goods.

Respondent's Declarations and exhibits submitted herewith prove that the mark was indeed in use in commerce on all of the goods at the time the Section 8 Declaration was filed. Their good faith misunderstanding of the meaning of "use" and the meaning of the English terms for certain of the goods during this proceeding does not negate that fact. At the very least, Respondent's declarations and documents have raised a contested issue of material fact as to whether the Declarant had a reasonable or legitimate basis for its representations at the time they were made.

Accordingly, summary judgment on the basis of fraud should be denied.

(b) Respondent's Section 8 Declaration Was True

As can be seen in the attached Declarations of Nicolaus Reusch and Christiane Tan, the Section 8 Declarant had made use of the KAPALUA mark on all of the goods in the registration at the time the Section 8 Declaration was filed. The statements in the record to the contrary were

inadvertent incomplete responses caused by problems in translation of the goods from German to English, difficulties in locating documents and lay misunderstandings of the legal meaning of “use” (Reusch Decl., ¶¶ 3, 7, 8, 9, 10, 11 and 12).

Until recently, all of Mr. Reusch’s communications concerning the registration have been with his attorneys in Hamburg, in Germany (Reusch Decl., ¶ 4). As Managing Director of Style & Spirit GmbH, the owner of the registration at the time the Section 8 Declaration was filed, he was responsible for determining whether the mark KAPALUA was in use on all of the goods listed in the registration (Reusch Decl., ¶ 6). He advised his counsel in Hamburg, Petra Goldenbaum of the CMS Hasche Sigle law firm, that the mark was in use in commerce on all of the listed goods and she in turn instructed Respondent’s then-U.S. counsel, Michael Striker of Striker & Striker, to file the Section 8 Declaration (Reusch Decl., ¶ 6).

In the fall of 2005, Respondent engaged new U.S. counsel for this matter, Joseph F. Schmidt of Michael Best & Friedrich LLP (Reusch Decl., ¶ 5). In December 2005 and January 2006, when Respondent’s German counsel requested that Mr. Reusch assist with responding to discovery in this matter, all of that communication was in German and solely between Mr. Reusch and Ms. Goldenbaum (Reusch Decl., ¶¶ 4, 7). At that time, Mr. Reusch had difficulty locating responsive documents (Reusch Decl., ¶¶ 3, 7).

As a result of his failure to understand fully the meaning of Petitioner’s Interrogatories 3 and 4, Mr. Reusch gave incomplete responses to those Interrogatories (Reusch Decl., ¶ 8). He has since realized that his answers were incomplete and has amended them (Exhibits 1, 2). At the same time and due to the same lack of understanding, Mr. Reusch did not initially answer correctly Admissions 10, 11, 12 and 26 (Reusch Decl., ¶ 9, 10). He was confused about the translation of the goods from German to English and English to German, and focused on the fact that the majority of the KAPALUA revenue is from a line of women’s knit clothing (Reusch

Decl., ¶¶ 7, 8, 9). However, the line also includes various accessory items, such as shoes, ankle cuffs (socks), gloves, caps (hats) and undergarments, which account for a small percentage of the sales (Reusch Decl., ¶ 9). Mr. Reusch did not initially think to refer to that accessory line when advising Ms. Goldenbaum how to respond to Admissions 10, 11, 12 and 26 (Reusch Decl., ¶ 9). Having located additional documents and through further discussions with his attorneys about the meanings of the words, he has since understood the facts and issues, and authorized amending those admissions (Reusch Decl., ¶¶ 9, 10, 11; Exhibit 2).

Upon further review of the issues and the additional documents that he located, Mr. Reusch was able to reconfirm that the mark KAPALUA was in use in the U.S. in connection with all of the items listed in the registration, on the date the Section 8 Declaration was filed (Reusch Decl., ¶ 11).

Mr. Reusch determined that in 2003 and 2004, Style & Spirit GmbH distributed its KAPALUA products through Signum International in New York (Reusch Decl., ¶ 12). All of the items listed in the registration were shipped to Signum and on display in Signum's New York showroom on Seventh Avenue in New York City and/or available through sketch books which displayed the clothing and accessory lines (Reusch Decl., ¶ 12). In late 2003 and early 2004, all of the items listed in the registration were shipped to Signum for delivery in January or February 2004, for sale in the U.S. in the spring and summer of 2004 (Reusch Decl., ¶ 12). Exhibit 5 to the Reusch Declaration shows shoes as part of the KAPALUA line 2000/2001. Exhibit 6 to the Reusch Declaration shows leg warmers and leg warmers with feet (socks), hats and gloves in 2006/2007. Exhibit 7 to the Reusch Declaration is evidence of shoes in the 2007 KAPALUA line. Most pertinent to the alleged fraud issue are Exhibits 3, 4, 8 and 9 of the Reusch Declaration. Exhibits 3 and 4 consist of excerpts from Respondent's Autumn/Winter 2003/2004 sketch books which show hats, leg warmers (socks), undergarments (underwear, i.e., corset bra),

and shoes. Exhibit 9 (Spring/Summer 2004 catalog) lists the U.S. distributor and delivery dates for the goods which are evidence of use of the mark prior to filing the Declaration of Use.

Moreover, the Declaration of Christiane Tan describes her activities in 2003 and 2004 as chief designer for the KAPALUA brand of women's clothing and founder of the KAPALUA brand line of women's clothing in 1994, and the use of the mark in the United States on all of the goods in the Registration (Tan Decl., ¶ 1).

Ms. Tan designed and applied the KAPALUA mark to all of the clothing and accessory items listed in U.S. Registration No. 2,115,124, including shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and T-shirts (Tan Decl., ¶ 2). All of those items were shipped to the U.S. in 2003 and 2004 as her Fall/Winter 2003/2004 line and Spring/Summer 2004 line and were on display at the New York showroom of Signum International in early 2004, for sale and distribution in the U.S. in the Spring and Summer of 2004 (Tan Decl., ¶ 2).

Mr. Reusch, although initially confused about what responses to make to Petitioner's discovery requests, has now explained his confusion and amended Respondent's responses. The amendments are supported by documentary evidence (Reusch Decl., Exhibits 3-9). Accordingly, it is now clear that the Section 8 Declaration filed in May 2004 was wholly truthful; therefore, no fraud was committed.

(2) The Registration has not been Abandoned

Petitioner claims, without support, that Registration No. 2,115,124 has been abandoned because the Section 8 Declarant did not (a) provide the Post-Registration Office with copies of the title assignments or (b) record the assignments with the Assignment Branch at the time that the Section 8 Declaration was filed. Neither of those actions was required. Respondent's verified statement of the chain of title complied with the Post Registration Action regarding the

Section 8 Declaration. It is an acceptable alternative to produce a declaration in which the chain of title is explained, as the Declarant did in this case. As the relevant section of the Trademark Manual of Examining Procedures provides:

1604.07(b) Establishing Ownership

When the affidavit is filed by someone other than the original owner of the registration, the examiner cannot accept the affidavit unless there is a clear chain of title from the original owner to the party who filed the affidavit. 37 C.F.R. §3.73(b); TMEP §502.01.

When the affidavit is filed, the examiner will check the records of the Assignment Services Division of the USPTO, available at <http://assignments.uspto.gov/assignments>. If the records of the Assignment Services Division show a clear chain of title in the party who filed the affidavit, no inquiry will be issued. The examiner will enter the change of ownership into the Trademark Reporting and Monitoring ("TRAM") System, if necessary.

If the records of the Assignment Services Division do not show a clear chain of title in the party who filed the affidavit, the examiner will issue an Office action requiring the party to establish its ownership of the registration. **To establish ownership, the party must: (1) record papers** that show each change of ownership in the Assignment Services Division of the USPTO, and include a statement in the response to the Office action that the papers have been recorded; **or (2) submit documentary evidence of a chain of title from the original owner to the party who filed the affidavit.** 37 C.F.R. §3.73(b)(1); TMEP §502.01.

"Documentary evidence of a chain of title from the original owner to the assignee" (37 C.F.R. §3.73(b)(1)(i)) normally consists of the same type of documents that would be recorded in the Assignment Services Division, *e.g.*, assignment documents, certificates of merger, or certificates of change of name. **In the alternative, an affidavit or declaration containing sufficient facts to support the transfer of title may be accepted.**

The owner may submit evidence of ownership even if the filing period set forth in §8 of the Act has expired. Where the party who filed the affidavit was the owner of the registration at the time of filing, there is no deficiency, and no deficiency surcharge is required for providing evidence to establish ownership.

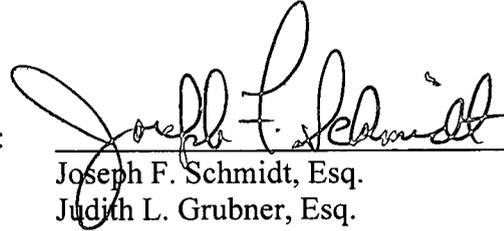
Thus, it is clear from the rules of the Trademark Office that there is no requirement to file the actual transfer documents with the Post-Registration Examiner or to record those documents. The declaration filed by Declarant was sufficient. Accordingly, the mark and registration were not abandoned and the Section 8 Declaration is in condition for acceptance.

CONCLUSION

For the above reasons, Petitioner's Motion for Summary Judgment should be denied with respect to Registration No. 2,115,124

Dated: August 8, 2006

By:



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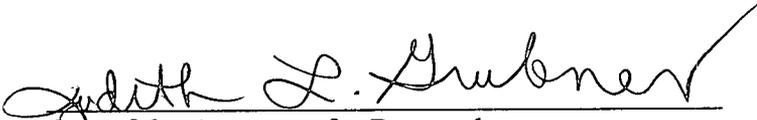
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT, DECLARATION OF NICOLAUS REUSCH, DECLARATION OF CHRISTIANE TAN, AND EXHIBITS** were served by Federal Express, on this 8th day of August 2006 upon:

W. Mack Webner
Leigh Ann Lindquist
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Washington, D.C. 20037-3202



One of the Attorneys for Respondent

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.)
)
 Petitioner,)
)
 v.)
)
 KAPALUA STRICKWAREN)
 GmbH Ltd.,)
)
 Respondent.)

Cancellation No. 92/040,092

Reg. No. 2,115,124

**DECLARATION OF CHRISTIANE TAN IN OPPOSITION TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

1. I reside in Germany and operate CTC Chris Tan Consulting, which is located in Germany. I am the Creative Director and chief designer for the KAPALUA Brand line of women's clothing for DC Design & Concept GmbH ("DC"). I am also the founder of the KAPALUA brand line of women's clothing, which I started in approximately 1994, and I have designed the KAPALUA line since 1994 for various predecessor companies to DC, including for Style & Spirit GmbH ("S&S") in 2003 and 2004.

2. I have designed and applied the KAPALUA mark to all of the clothing and accessory items listed in U.S. Registration No. 2,115,124, including shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and t-shirts. All of these items were shipped to the United States in 2003 and early 2004 as my Fall/Winter 2003/04 line and Spring/Summer 2004 line. The items were manufactured in Hong Kong by the Johnny Wong agency. All of the items were on display at the New York showroom of

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Mark A. Weaver
(Typed or Printed Name of Person Signing Certificate)
Mark A. Weaver
(Date) August 8, 2006

FROM :

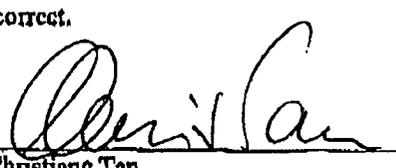
FAX NO. :

Jul. 11 2003 09:29AM P2

Signum International in early 2004, for sale and distribution in the United States in the
Spring and Summer of 2004.

I hereby declare under penalty of perjury and the penalties under 18 U.S.C.
§ 1001 that the foregoing statements are true and correct.

By:


Christiane Tan

Date: August 7, 2006

(TUE) 8 8 2006 14:34/ST. 14:33/NO. 56234412436 P. 3

FROM KAPALUA

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.)
)
) Petitioner,)
)
) v.)
)
 KAPALUA STRICKWAREN)
 GmbH Ltd.)
)
) Respondent.)

Cancellation No. 92/040,092

Reg. No. 2,115,124

**DECLARATION OF NICOLAUS REUSCH IN OPPOSITION TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

1. I reside in Germany and I am the Co-Chief Executive Officer of DC Design & Concept GmbH ("DC"), which acquired the mark KAPALUA and U.S. Registration No. 2,115,124 from Style & Spirit GmbH ("S&S") as of April 1, 2006.

2. Prior to the transfer of the mark KAPALUA and U.S. Registration No. 2,115,124 from S&S to DC, I was the Managing Director of S&S. S&S acquired the rights to the mark KAPALUA and U.S. Registration No. 2,115,124 from Kapitalua GmbH Luxus in Simplicity in November 2003. Other predecessors included Kapitalua GmbH, Intercfashion Ltd. B.V.I., and Kapitalua Strickenwaren GmbH Ltd. Kapitalua Strickenwaren GmbH Ltd., is the respondent in this proceeding. I have been involved with the KAPALUA brand line of women's clothing since J.A. 2001

3. DC and S&S are German companies with offices in Germany. S&S's office was located in Hamburg, Germany, and DC's office is located in Osnabrück, Germany. Documents relating to the KAPALUA mark are located in a warehouse in

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Mark A. Weisner
(Typed or Printed Name of Person Signing Certificate)


(Date) August 8, 2006



FROM KAPALUA

Hamburg and in DC's office in Osnabrück, Germany. For these reasons, it has been difficult for me to locate all relevant documents relating to the KAPALUA mark.

4. The respondent is represented by Petra Goldenbaum of the CMS Hasche Sigle law firm in Hamburg, Germany. Until July 31, 2006, all of my communications in this case have been with my attorneys in Hamburg.

5. In the Fall of 2005, respondent's attorneys in Germany retained new counsel in the United States to represent respondent in this matter, namely, Joseph F. Schmidt of Michael Best & Friedrich LLP, located in Chicago, Illinois.

6. In May 2004, I was contacted by my attorney in Germany, Petra Goldenbaum, who advised me that, in order to maintain U.S. Registration No. 2,115,124 for the mark KAPALUA, a Declaration of Use had to be filed by May 19, 2004. Ms. Goldenbaum inquired whether the mark KAPALUA was in use on all of the goods listed in U.S. Registration No. 2,115,124, and I advised her that it was, and I authorized the filing of the Declaration of Use by our former attorney in the United States, Michael Striker of Striker & Striker.

7. In December 2005 and in early 2006, my attorney in Germany requested that I gather information and documents for responding to petitioner's discovery requests in this cancellation proceeding. While I speak and understand English, all of my communications with my attorney in Germany were in German. Because the documents regarding the KAPALUA mark were in various locations, I have had difficulty locating documents.

8. When my attorney in Germany asked what products the mark KAPALUA had been used on, I responded "pullovers, t-shirts and shirts" because the KAPALUA



women's clothing line consisted primarily of women's knit clothing. Thus, Respondent's Answers to Petitioner's First Set of Interrogatories To Respondent, Nos. 1-20, specifically Interrogatory Nos. 3 and 4, were answered as follows:

Interrogatory No. 3. Identify each product on which Respondent has used Respondent's Mark.

ANSWER:

Pullovers, t-shirts, and shirts.

Interrogatory No. 4. With respect to each of the products identified in Registration Nos. 2,016,976 and 2,115,124, state for each such product whether Respondent has used Respondent's Mark in commerce in connection with each product and, if so, how the mark was used for each product in commerce, the date on which Respondent's Mark was first used in commerce on each product, and identify all documents evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use.

ANSWER:

The mark has been used in commerce on pullovers, t-shirts and skirts. The date of first use is at least as early as 1994. Respondent objects to identifying all documents "evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use" on the ground that this request is overly burdensome. Without waiving this objection and in lieu of identifying documents, respondent will make available for inspection and copy representative documents after a Protective Order is agreed to and entered. Respondent will also make available for inspection and copying documents showing how the mark was used for each product.

I realize now that, at that time, I did not fully understand what information was being requested, and the answers to Interrogatory Nos. 3 and 4 were incomplete. I asked my



attorney to prepare amended answers. Attached as Exhibit 1 is a copy of Respondent's Amended Answers to Petitioner's First Set of Interrogatories to Respondent, Nos. 1-20.

9. For these same reasons, I also did not initially answer correctly Petitioner's First Set of Admissions to Respondent. Respondent's Response to Petitioner's First Set of Admissions to Respondent, Nos. 10, 11, 12 and 26, were as follows:

10. Admit that Respondent has never sold or offered for sale socks under the mark KAPALUA in the United States.

RESPONSE

Admitted.

11. Admit that Respondent has never sold or offered for sale underwear under the mark KAPALUA in the United States.

RESPONSE

Admitted.

12. Admit that Respondent has never sold or offered for sale shoes under the mark KAPALUA in the United States.

RESPONSE

Admitted.

26. Admit that Respondent did not use the mark KAPALUA on all the goods listed in Registration No. 2,115,124 when Respondent filed its Section 8 Declaration on May 19, 2004.

RESPONSE

Respondent admits that the mark was not used for socks, underwear and shoes. The mark was used for dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, gloves and hats.

I did not fully understand the questions, and I was somewhat confused by the translation and meaning of the goods from German to English and from English to German. The



KAPALUA line is promoted as a line of women's knit clothing. Most of the revenue results from the sale of knit clothing. However, the line also includes various accessory items, such as, shoes, ankle cuffs (socks), gloves, caps (hats) and undergarments (underwear). The various accessory items are also shown in "Look Books." Attached as Exhibit 5 are excerpts from the Autumn/Winter 2000/2001 "LOOK BOOK" which consists of photographs of the KAPALUA line from a fashion show, and lists the article number and color of the shoes in the line in the index of items depicted in the "LOOK BOOK." Attached as Exhibit 6 are excerpts from the 2006/2007 KAPALUA accessories book, which shows leg warmers and leg warmers with feet (socks), hats and gloves. Attached as Exhibit 7 are excerpts from the Spring/Summer 2006 Accessories catalog which depict shoes. These accessory items help to give the line a complete look, but account for a small percentage of overall sales of KAPALUA brand products. Therefore, I do not always refer to the accessory items when describing and promoting the line, and did not think to do so when advising my attorney how to respond to Petitioner's Requests to Admit, Nos. 10, 11, 12 and 26.

10. I believe I also was confused as to what products are covered by U.S. Registration No. 2,115,124. The identification of goods lists certain words, such as "underwear." I am not sure exactly what that term encompasses in English. When asked if the KAPALUA mark is used on underwear, my initial reaction was that it is not to the extent that underwear is commonly referred to as men's or women's briefs. However, the KAPALUA mark is applied to undergarments, such as a corset bra. Also, while the KAPALUA mark is not applied to traditional socks, it is used on "ankle cuffs" and "leg warmers," which I believe fall within the category of socks. When initially responding to


FROM KAPALUA

the Petitioner's Interrogatories and Admissions, I did not consider these issues in such detail. I did not understand the significance of these points at that time.

11. The issues were brought to my attention after Petitioner filed its Motion for Summary Judgment and the issues were clarified for me in a telephone conference on July 31, 2006, with my attorney in Germany, Ms. Petra Goldenbaum, the U.S. attorney assisting my company with this matter, Joseph F. Schmidt of Michael Best & Friedrich LLP, and Ms. Chris Tan, the creative director, chief designer and founder of the KAPALUA line. Upon a further review of these issues and additional documents I was able to locate, I am able to confirm that the mark KAPALUA was in use in the United States in May 2004, in connection with all of the items listed in U.S. Registration No. 2,115,124. Accordingly, I asked my attorney to prepare amended responses. Attached as Exhibit 2 is a copy of Respondent's Amended Response to Petitioner's First Set of Admissions to Respondent.

12. In 2003 and 2004, S&S was distributing in the United States the items listed in Registration No. 2,115,124 through Signum International in New York. All of the items listed in the Registration were shipped to Signum and on display for sale in Signum's showroom on Seventh Avenue in New York City, and/or available through sketch books which displayed the clothing and accessory lines. Attached as Exhibit 3 are excerpts from the KAPALUA Autumn/Winter 2003/2004 sketch books (collection 1) which shows many different examples of the KAPALUA clothing line, including accessories such as hats and leg warmers (socks). Attached as Exhibit 4 are excerpts from the KAPALUA Autumn/Winter 2003/2004 sketch book (collection 2) which also shows numerous examples of the KAPALUA clothing line, including undergarments,



such as corset bras and gloves. Attached as Exhibit 8 is a copy of a Fall/Winter 2003 KAPALUA catalog. Attached as Exhibit 9 is a copy of a Spring/Summer 2004 KAPALUA catalog. The catalogs depict shoes sold as part of the KAPALUA line in 2003 and 2004. Exhibit 9 lists the delivery dates as February and March 2004, and lists the U.S. distributor, Signum International. In late 2003 and early 2004, the items in U.S. Registration No. 2,115,124, namely, shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and t-shirts, were shipped to Signum for delivery in January or February 2004, for display and sale in the United States in the spring and summer of 2004.

I hereby declare under penalty of perjury and the penalties under 18 U.S.C. § 1001 that the foregoing statements are true and correct.

By 
 Nicolaus Reusch

Date: August 8, 2006


 FROM KAPALUA

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.,)
)
Petitioner,)
)
v.)
)
KAPALUA STRICKWAREN GMBH)
LTD.,)
)
)
Respondent.)

Cancellation No. 92/040,092

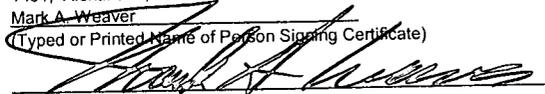
EXHIBIT LIST

1. Respondent's Amended Answers to Petitioner's First Set Of Interrogatories
2. Respondent's Amended Response To Petitioner's First Set Of Admissions
3. KAPALUA luxus in simplicity Autumn/Winter 2003-2004 Collection 1 Catalog
4. KAPALUA luxus in simplicity Autumn/Winter 2003-2004 Collection 2 Catalog
5. LOOK BOOK Autumn/Winter 2000/01 Catalog
6. KAPALUA luxus in simplicity Autumn/Winter 2006/07 Accessories Catalog
7. KAPALUA driven by knits Spring/Summer 2006 Accessories Catalog
8. KAPALUA luxus in simplicity Fall/Winter 2003 Catalog
9. KAPALUA luxus in simplicity Spring/Summer 2004 Catalog
10. Response To Office Action re U.S. Reg. 2115124 (Section 8 Declaration)

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Mark A. Weaver
(Typed or Printed Name of Person Signing Certificate)


(Date) August 8, 2006

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

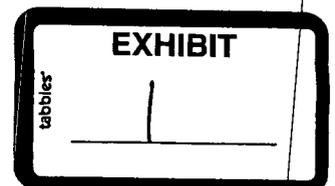
KAPALUA LAND CO., LTD.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92/040,092
)	
KAPALUA STRICKWAREN GmbH)	
)	
Respondent.)	

**RESPONDENT'S AMENDED ANSWERS TO PETITIONER'S
FIRST SET OF INTERROGATORIES TO RESPONDENT, NOS. 1-20**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Respondent, by and through its attorneys MICHAEL BEST & FRIEDRICH, LLP, 401 North Michigan Avenue, Suite 1900, Chicago, Illinois 60611, hereby answers Petitioner's First Set of Interrogatories as follows:

Each answer is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such answers were asked of, or statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial. The answers given herein are without prejudice to respondent's right to supplement or to revise these answers if further investigation or discovery so indicates.

Respondent's answers shall not be deemed to constitute an admission (i) that any particular information or document(s) exists, is relevant, non-privileged, or admissible in evidence, or (ii) that any statement or characterization in Petitioner's interrogatories is accurate or complete. In addition, willingness to produce documents in answer to any particular request is



in no way a concession that such documents exist, or that any such documents are within respondent's possession, custody or control.

GENERAL OBJECTIONS

A. Respondent objects to these discovery requests to the extent they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure and by the Local Rules of this Court.

B. Respondent objects to these discovery requests to the extent that they seek information which does not appear reasonably calculated to lead to discovery of admissible evidence and, thus, are not within the scope of permissible discovery under Rule 26 of the Federal Rules of Civil Procedure.

C. Respondent objects to these discovery requests to the extent the requests seek information and documents protected by the attorney-client privilege, the attorney work-product immunity, or any other privilege or immunity.

D. Respondent objects to these discovery requests to the extent the requests seek information and documents in respondent's possession, the disclosure of which is subject to or precluded by restrictions of confidentiality imposed by, or pursuant to an agreement with, a third party.

E. Respondent will respond to these discovery requests based upon its current understanding of the facts of the case and the investigation it has conducted to date. Respondent specifically reserves the right to revise, correct, supplement or clarify any of these answers at any time during the discovery and trial preparation processes. Respondent objects to these discovery requests to the extent that they are inconsistent with these conditions.

Respondent specifically incorporates each of these General Objections into its specific answers to each of respondent's discovery requests, whether or not each such General Objection is expressly referred to in respondent's answer to a specific discovery request.

INTERROGATORY NO. 1

State the type of business in which Respondent is engaged, and identify any subsidiaries, parent companies or related companies which use Respondent's Mark or any other name or mark in which the term KAPALUA appears.

ANSWER:

Manufacture and distribution of clothing and accessories.

INTERROGATORY NO. 2

Identify the person(s) most knowledgeable about the selection, adoption, use and registration of Respondent's Mark and identify all documents which are relevant to Respondent's selection, adoption and use of Respondent's Mark.

ANSWER:

Ms. Tan. In lieu of identifying documents, respondent will make available for inspection and copying non-privileged documents responsive to this request subject to entry of a protective order.

INTERROGATORY NO. 3

Identify each product on which Respondent has used Respondent's Mark.

ANSWER:

Shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and t-shirts

INTERROGATORY NO. 4

With respect to each of the products identified in Registration Nos. 2,016,976 and 2,115,124, state for each such product whether Respondent has used Respondent's Mark in commerce in connection with each product and, if so, how the mark was used for each product in commerce, the date on which Respondent's Mark was first used in commerce on each product, and identify all documents evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use.

ANSWER:

The mark has been used in commerce on shoes, undergarments (underwear), ankle cuffs (socks), gloves, caps (hats), dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts and t-shirts. The date of first use is at least as early as 1994. Respondent objects to identifying all documents "evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use" on the ground that this request is overly burdensome. Without waiving this objection and in lieu of identifying documents, respondent will make available for inspection and copy representative documents after a Protective Order is agreed to and entered. Respondent will also make available for inspection and copying documents showing how the mark was used for each product.

INTERROGATORY NO. 5

For each product identified in Registration Nos. 2,016,976 and 2,115,124 state if the use of the Respondent's Mark has been continuous.

ANSWER:

No.

INTERROGATORY NO. 6

For each product listed in Registration No. 2,016,976, indicate the first sale date in the United States for such product.

ANSWER:

Unknown.

INTERROGATORY NO. 7

For each product listed in Registration No. 2,115,124, indicate the first sale date in the United States for such product.

ANSWER:

Respondent objects to this interrogatory on the ground that it is redundant of Interrogatory No. 4. Notwithstanding this objection, the first sale was at least as early as 1994.

INTERROGATORY NO. 8

If Respondent asserts a different date than set forth in response to Interrogatory Nos. 5 and 6 for its first sales in "commerce", state such date for each product and describe such sales.

ANSWER:

No response required.

INTERROGATORY NO. 9

State in round numbers the dollar amount of gross sales in commerce in connection with each product rendered under Respondent's Mark for each year beginning with the date of first use.

ANSWER:

The information requested is confidential. Respondent defers disclosing such information until a suitable Protective Order is entered by the Trademark Trial and Appeal Board.

INTERROGATORY NO. 10

Identify all documents on which Respondent relies to establish its sales of each of Respondent's Products in commerce.

ANSWER:

In lieu of identifying such documents, respondent will make available for inspection and copying non-privileged documents responsive to this interrogatory upon entry of a Protective Order by the Trademark Trial and Appeal Board.

INTERROGATORY NO. 11

Identify all media forms in which Respondent's Products have been advertised or promoted in connection with Respondent's Mark through the date of response to this Interrogatory.

ANSWER:

Respondent is checking its records and will supplement this response in due course.

INTERROGATORY NO. 12

State in round numbers the dollar amount Respondent has expended in connection with each medium identified in response to the preceding interrogatory for each year beginning with the date of first use of the Respondent's Mark in connection with such product up to the present.

ANSWER:

The information requested is confidential. Respondent defers disclosing such information until a suitable Protective Order is entered by the Trademark Trial and Appeal Board.

INTERROGATORY NO. 13

Identify all documents relating to or referring to expenditures for advertising and/or promoting Respondent's Products under Respondent's Mark.

ANSWER:

The information requested is confidential. Respondent defers disclosing such information until a suitable Protective Order is entered by the Trademark Trial and Appeal Board.

INTERROGATORY NO. 14

(a) Describe the channels of distribution through which Respondent's Products are sold under Respondent's Mark and identify the types of classes of purchasers or prospective purchasers of such products at each level of distribution.

(b) Describe the demographics of the typical consumer of Respondent's Products.

ANSWER:

(a) This information is being gathered and respondent will supplement this answer in due course.

(b) This information is being gathered and respondent will supplement this answer in due course.

INTERROGATORY NO. 15

Identify all web sites where goods bearing Respondent's Mark have been available and/or are currently available.

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

INTERROGATORY NO. 16

- (a) State if Respondent has a web site.

ANSWER:

Yes

- (b) If so, what is the domain name?

ANSWER:

www.kapalua.de

- (c) If so, how long has Respondent's website been active?

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

- (d) If so, can a consumer order Respondent's Products on-line or is the website only for promotional purposes

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

- (e) If so, identify the dollar amount of sales of Respondent's Products through Respondent's website,

ANSWER:

The information requested is confidential. Respondent defers disclosing such information until a suitable Protective Order is entered by the Trademark Trial and Appeal Board.

- (f) If so, identify customers in the U.S. who purchase Respondent's Products through Respondent's website.

ANSWER:

The information requested is confidential. Respondent defers disclosing such information until a suitable Protective Order is entered by the Trademark Trial and Appeal Board.

INTERROGATORY NO. 17

Identify every trade show or meeting of any type where Respondent has displayed, advertised and/or promoted its products in association with Respondent's Marks and for each:

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

- (a) state the years Respondent attended each such show or meeting; and identify all documents relating to or referring to each such show or meeting identified in this interrogatory.

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

INTERROGATORY NO. 18

Identify representative samples of advertisements, labels, brochures, catalogs, packages or other physical indicia employed by Respondent in the use of Respondent's Mark for each of the products listed in Respondent's registrations involved herein.

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

INTERROGATORY NO. 19

Identify each and every U.S. retailer of Respondent's Products.

ANSWER:

Respondent is checking its records and will supplement this answer in due course.

INTERROGATORY NO. 20

Identify all persons who participated in answering the foregoing interrogatories.

ANSWER:

Respondent will supplement its answer when it supplements the preceding interrogatory.

August 8, 2006

By:



Joseph F. Schmidt, Esq.

Judith L. Grubner, Esq.

MICHAEL BEST & FRIEDRICH LLP

Two Prudential Plaza

180 North Stetson Avenue

Suite 2000

Chicago, IL 60611

(312) 222-0800

(312) 222-0818 (fax)

Attorneys for Respondent

VERIFICATION

I, Nicolaus Reusch declare as follows:

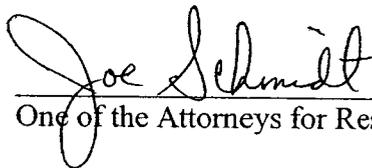
1. I am the Co-Chief Executive Officer of DC Design & Concept GmbH.
2. Respondent's Amended Answers to Petitioner's First Set of Interrogatories to Respondent, Nos. 1-20 were prepared by counsel in consultation with me in a telephone conference on July 31, 2006.
3. The facts stated in the Amended Answers are based in part on the business records of the various companies that have owned the KAPALUA mark and U.S. Registration No.2,115,124, and in part upon my personal knowledge.
4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

J.S.06 

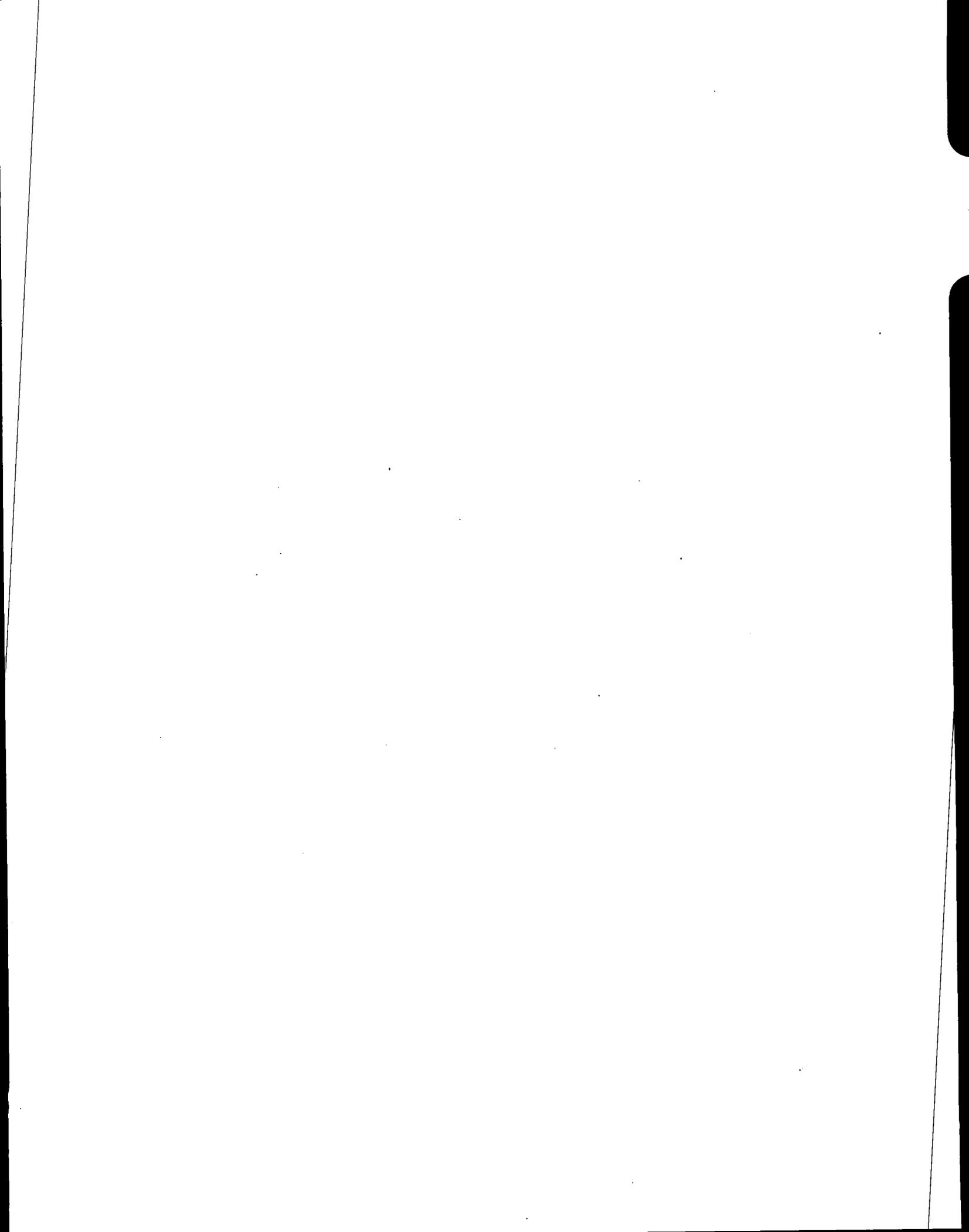
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **RESPONDENT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT, NOS. 1-20** was served by first class mail, postage pre-paid, on this 8th day of August 2006 upon:

W. Mack Webner
Leigh Ann Lindquist
SUGHRUE, MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202



One of the Attorneys for Respondent



**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92/040,092
)	
KAPALUA STRICKWAREN GmbH)	
)	
Respondent.)	

**RESPONDENT'S AMENDED RESPONSE TO PETITIONER'S
FIRST SET OF ADMISSIONS TO RESPONDENT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Respondent Kapalua Strickwaren GmbH responds to Petitioner Kapalua Land Co., Ltd.'s First Set of Admissions to Respondent as follows:

1. Admit that Respondent was aware of Petitioner's KAPALUA mark when it filed U.S. trademark application Serial Nos. 74/657,998 and 75/038,334.

RESPONSE:

Denied.

2. Admit that Respondent was aware of Petitioner's KAPALUA trade name when it filed U.S. trademark application Serial Nos. 74/657,998 and 75/038,334.

RESPONSE:

Denied.

3. Admit that Respondent has never sold or offered for sale dresses under the mark KAPALUA in the United States.

RESPONSE:

Denied.



4. Admit that Respondent has never sold or offered for sale jackets under the mark KAPALUA in the United States.

RESPONSE:

Denied.

5. Admit that Respondent has never sold or offered for sale suits under the mark KAPALUA in the United States.

RESPONSE:

Denied.

6. Admit that Respondent has never sold or offered for sale sweaters under the mark KAPALUA in the United States.

RESPONSE:

Denied.

7. Admit that Respondent has never sold or offered for sale pants under the mark KAPALUA in the United States.

RESPONSE:

Denied.

8. Admit that Respondent has never sold or offered for sale shorts under the mark KAPALUA in the United States.

RESPONSE:

Denied.

9. Admit that Respondent has never sold or offered for sale shirts under the mark KAPALUA in the United States.

RESPONSE:

Denied.

10. Admit that Respondent has never sold or offered for sale socks under the mark KAPALUA in the United States.

RESPONSE:

Denied.

11. Admit that Respondent has never sold or offered for sale underwear under the mark KAPALUA in the United States.

RESPONSE:

Denied.

12. Admit that Respondent has never sold or offered for sale shoes under the mark KAPALUA in the United States.

RESPONSE:

Denied.

13. Admit that Respondent has never sold or offered for sale gloves under the mark KAPALUA in the United States.

RESPONSE:

Denied.

14. Admit that Respondent has never sold or offered for sale hats under the mark KAPALUA in the United States.

RESPONSE:

Denied.

15. Admit that Respondent has never sold or offered for sale laundry bleach under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

16. Admit that Respondent has never sold or offered for sale laundry detergent under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

17. Admit that Respondent has never sold or offered for sale perfumes under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

18. Admit that Respondent has never sold or offered for sale essentially oils for personal use under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

19. Admit that Respondent has never sold or offered for sale lipstick under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

20. Admit that Respondent has never sold or offered for sale rouge under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

21. Admit that Respondent has never sold or offered for sale eyeliner under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

22. Admit that Respondent has never sold or offered for sale hair lotion under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

23. Admit that Respondent has never sold or offered for sale dentifrice under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

24. Admit that Respondent has not used the KAPALUA mark continuously from the date of registration to the present on the goods listed in Registration No. 2,016,976.

RESPONSE:

Admitted.

25. Admit that Respondent has not used the KAPALUA mark continuously from the date of registration to the present on the goods listed in Registration No. 2,115,124.

RESPONSE:

Admitted.

26. Admit that Respondent did not use the mark KAPALUA on all the goods listed in Registration No. 2,115,124 when Respondent filed its Section 8 Declaration on May 19, 2004.

RESPONSE:

Denied.

27. Admit that Respondent has documents in its possession which refer to Petitioner.

RESPONSE:

Respondent's attorney has documents in its possession which refer to Petitioner which Respondent's attorney received from Petitioner's attorney after this dispute began.

28. Admit that Registration No. 2,115,124 was assigned by Interfashion Ltd. BVI to Chris Tan Vermoögensverwaltungsgesellschaft mbH on or about August 8, 2001.

RESPONSE:

Admitted.

29. Admit that Registration No. 2,016,976 was assigned by Interfashion Ltd. BVI to Chris Tan Vermoögensverwaltungsgesellschaft mbH on or about August 8, 2001.

RESPONSE:

Admitted.

30. Admit that Chris Tan Vermoögensverwaltungsgesellschaft mbH assigned Registration No. 2,115,124 to Kapalua GmbH on or about September 14, 2001.

RESPONSE:

Admitted.

31. Admit that Chris Tan Vermoögensverwaltungsgesellschaft mbH assigned Registration No. 2,016,976 to Kapalua GmbH on or about September 14, 2001.

RESPONSE:

Admitted.

32. Admit that Kapalua GmbH assigned Registration No. 2,115,124 to Nelly GmbH on or about October 30, 2002.

RESPONSE:

Admitted.

33. Admit that Kapalua GmbH assigned Registration No. 2,016,976 to Nelly GmbH on or about October 30, 2002.

RESPONSE:

Admitted.

34. Admit that Nelly GmbH changed its name to Kapalua GmbH Luxus in Simplicity on or about April 14, 2003.

RESPONSE:

Admitted.

35. Admit that Kapalua GmbH Luxus in Simplicity assigned Registration No. 2,115,124 to Style & Spirit GmbH on or about November 4, 2003.

RESPONSE:

Admitted.

36. Admit that Kapalua GmbH Luxus in Simplicity assigned Registration No. 2,016,976 to Style & Spirit GmbH on or about November 4, 2003.

RESPONSE:

Admitted.

37. Admit that Nicolaus Reusch is the CEO of Style & Spirit GmbH.

RESPONSE:

Admitted.

38. Admit that there has never been any use of the mark KAPALUA on shoes, gloves or socks anywhere in the world by any of the owners of the mark in the chain of title of Registration No. 2,115,124.

RESPONSE:

Denied.

39. Admit that there has never been any use of the mark KAPALUA on laundry bleach, laundry detergent, essential oils or dentifrice anywhere in the world by any of the owners of the mark in the chain of title of Registration No. 2,016,976.

RESPONSE:

Admitted.

Dated: August 8th, 2006

By:

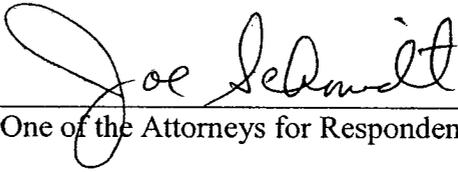


Joseph F. Schmidt, Esq.
Judith L. Grubner, Esq.
MICHAEL BEST & FRIEDRICH LLP
Two Prudential Plaza
180 North Stetson
Suite 2000
Chicago, IL 60601
(312) 661-2100
(312) 222-0818 (fax)
Attorneys for Respondent

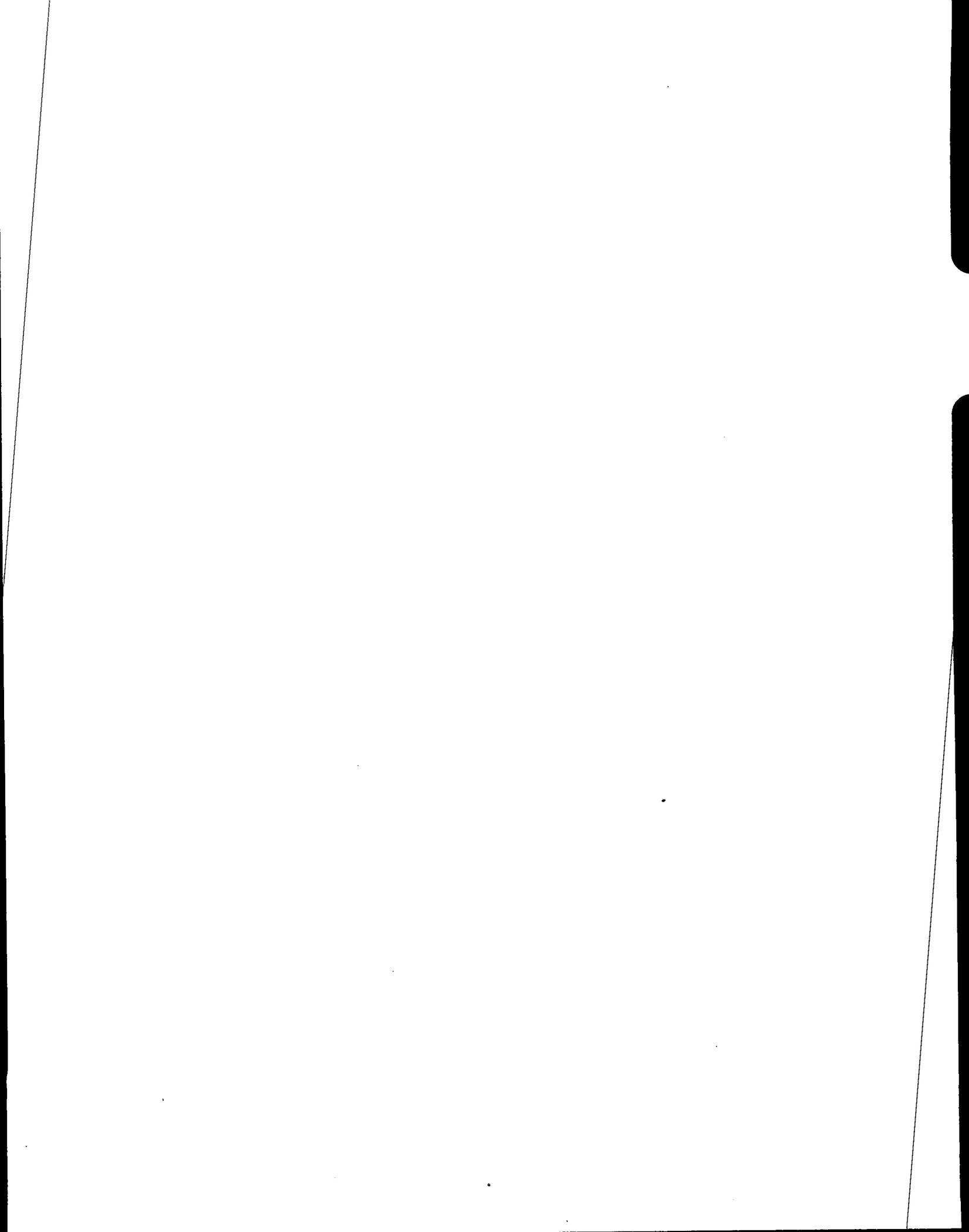
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF ADMISSIONS TO RESPONDENT** was served by first class mail, postage pre-paid, on this 8th day of August 2006 upon:

W. Mack Webner
Leigh Ann Lindquist
SUGHRUE, MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202



One of the Attorneys for Respondent



KAPALUA®

luxus in simplicity

tabbles®
EXHIBIT
3

KAPALUA®

Autumn / Winter 2003/4
1. Kollektion



011 Perlière - Perlmuschel



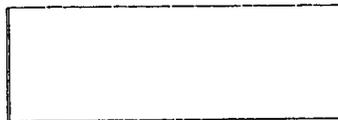
012 Crin - Schweiß



015 Nuage - Wolke



032 Sable - Sand



035 Poudre - Puder



089 Ciel - Himmel



031 Pierre - Stein



098 Argile - Ton



063 Turquoise - Türkis



060 Ardoise - Schiefer



062 Orage - Gewitter



064 Tempête - Sturm



099 Noir - Schwarz

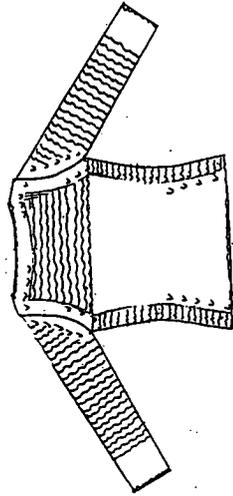
Artikel: **117222**

Prototyp: P.01.027 Koll.: 1

Farbkarte 20
100 Merino Extra Fein

56,00 € Retail **139,00 €**

Farben/Colours:
099 Noir
M 381 Sabler/pierre/perlière



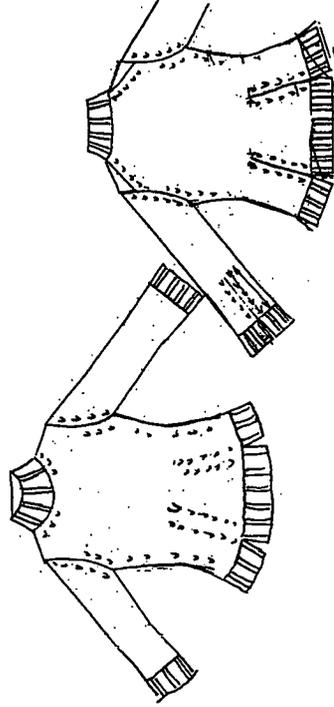
Artikel: **117322**

Prototyp: P.01.029 Koll.: 1

Farbkarte 1
100 Merino Extra Fein

68,00 € Retail **169,00 €**

Farben/Colours:
012 Crin
M 015 Poudre
089 Orage
099 Noir



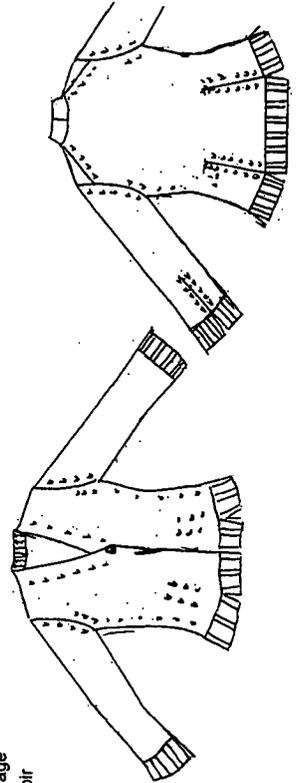
Artikel: **117422**

Prototyp: P.01.030 Koll.: 1

Farbkarte 1
100 Merino Extra Fein

80,00 € Retail **199,00 €**

Farben/Colours:
012 Crin
M 015 Poudre
089 Orage
099 Noir



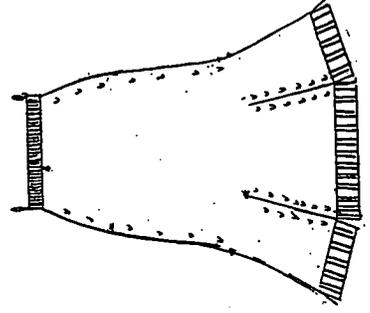
Artikel: **117522**

Prototyp: P.01.031 Koll.: 1

Farbkarte 1
100 Merino Extra Fein

68,00 € Retail **169,00 €**

Farben/Colours:
012 Crin
M 015 Poudre
089 Orage
099 Noir



Artikel: **201623**

Prototyp: P.01.097 Koll.: 1

Farbkarte 1

100 Merino Extra Fein

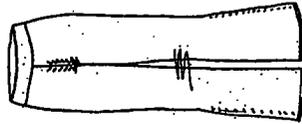
50,00 € Retail **129,00 €**

Farben/Colours:

064 Tempête

M 089 Orage

099 Noir



Artikel: **201723**

Prototyp: P.01.098 Koll.: 1

Farbkarte 1

100 Merino Extra Fein

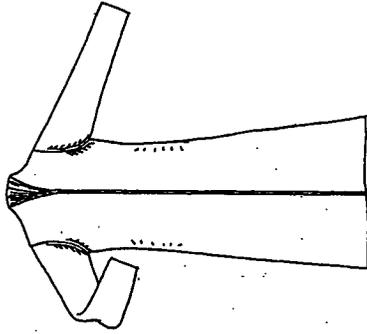
76,00 € Retail **189,00 €**

Farben/Colours:

064 Tempête

M 089 Orage

099 Noir



Artikel: **201823**

Prototyp: P.01.099 Koll.: 1

Farbkarte 7

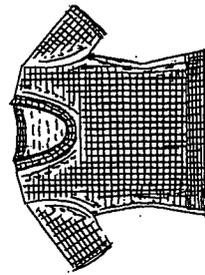
50 Virgin Wool 50 Polyacryl

42,00 € Retail **109,00 €**

Farben/Colours:

M 263 Orage/turquoise

299 Noir/perlière



Artikel: **201923**

Prototyp: P.01.100 Koll.: 1

Farbkarte 7

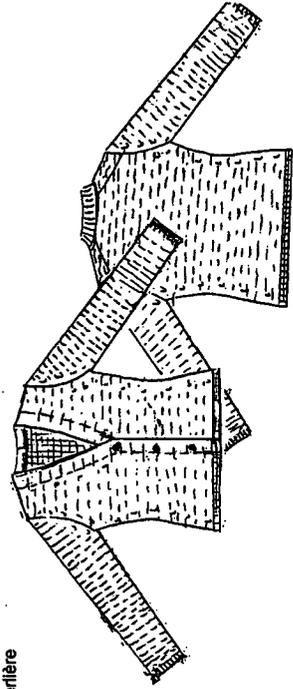
50 Virgin Wool 50 Polyacryl

50,00 € Retail **129,00 €**

Farben/Colours:

M 263 Orage/turquoise

299 Noir/perlière



Artikel: **377021**

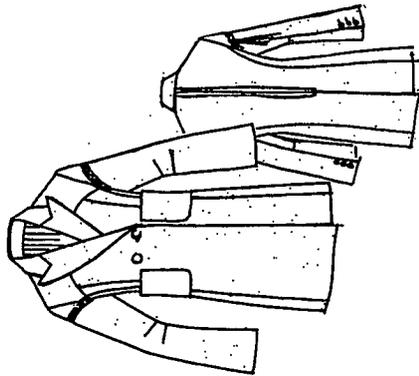
Prototyp: P.42.007 Koll.: 1

Nur im Original.

63 Acetat 37 Polyester

80,00 € Retail **199,00 €**

Farben/Colours:
M 099 Noir



Artikel: **377121**

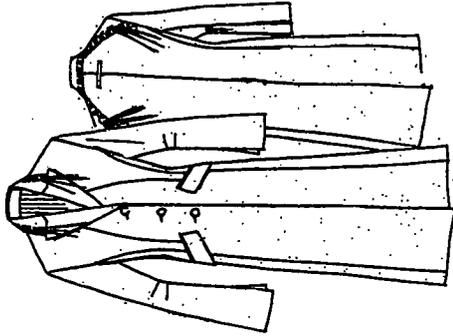
Prototyp: P.42.008 Koll.: 1

Nur im Original.

63 Acetat 37 Polyester

140,00 € Retail **349,00 €**

Farben/Colours:
M 099 Noir



Artikel: **377221**

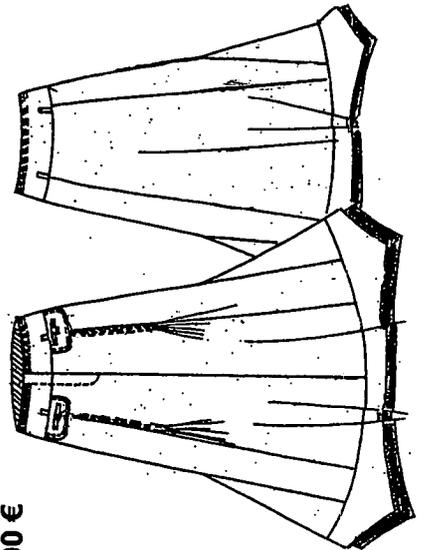
Prototyp: P.42.009 Koll.: 1

Nur im Original.

63 Acetat 37 Polyester

120,00 € Retail **299,00 €**

Farben/Colours:
M 099 Noir



Artikel: **377321**

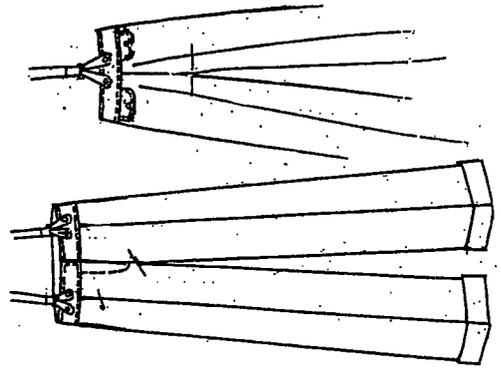
Prototyp: P.42.010 Koll.: 1

Nur im Original.

63 Acetat 37 Polyester

80,00 € Retail **199,00 €**

Farben/Colours:
M 099 Noir



Artikel: **408321**

Prototyp: P.35.009 Koll.: 1

Farbkarte 1

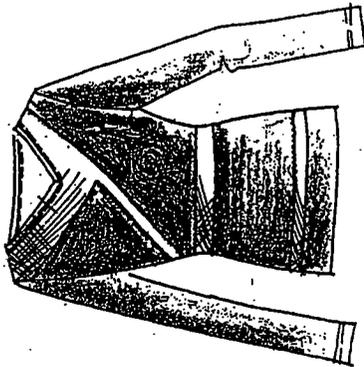
88 Viscose 12 Elasthan

50,00 € Retail **129,00 €**

Farben/Colours:

M 031 Pierre

099 Noir



Artikel: **408421**

Prototyp: P.35.010 Koll.: 1

Farbkarte 1

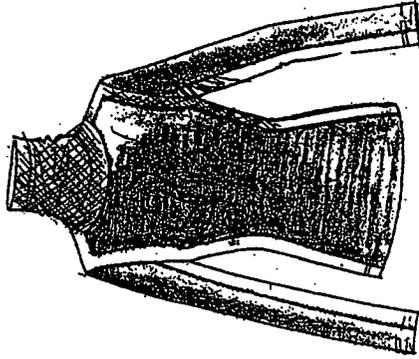
88 Viscose 12 Elasthan

50,00 € Retail **129,00 €**

Farben/Colours:

031 Pierre

M 099 Noir



Artikel: **408521**

Prototyp: P.35.011 Koll.: 1

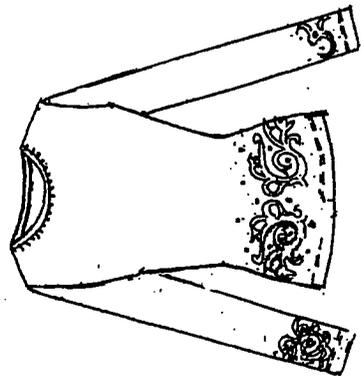
Nur im Original

88 Viscose 12 Elasthan

50,00 € Retail **129,00 €**

Farben/Colours:

M 099 Noir



Artikel: **408621**

Prototyp: P.35.012 Koll.: 1

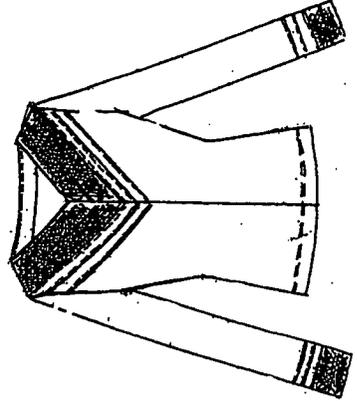
Nur im Original

88 Viscose 12 Elasthan

40,00 € Retail **99,95 €**

Farben/Colours:

M 099 Noir



Artikel: **720222**

Prototyp: P.46.002 Koll.: 1

Farbkarte 1.

100 Cotton

42,00 € Retail **109,00 €**

Farben/Colours:

011 Perliere

012 Crin

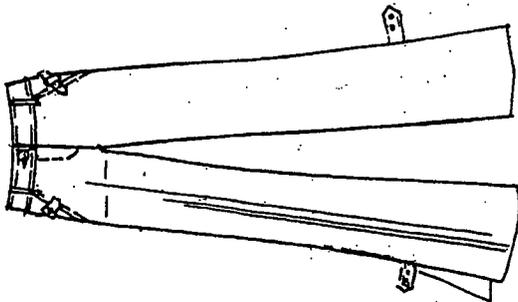
015 Poudre

031 Pierre

082 Argille

M 089 Orage

089 Noir



Artikel: **902021**

Prototyp: P.B Koll.: 1

Farbkarte 1.

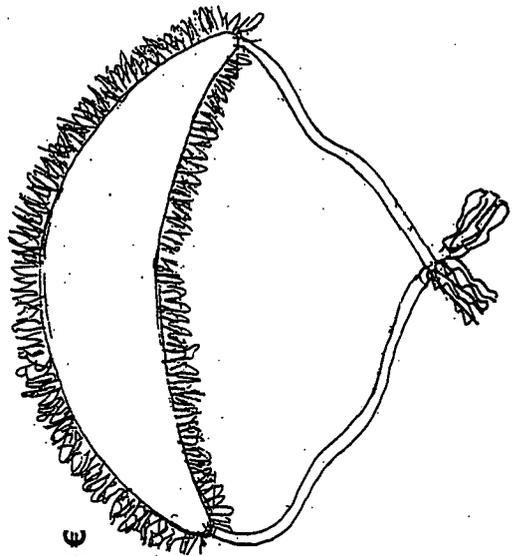
100 FELL

68,00 € Retail **169,00 €**

Farben/Colours:

M 011 Perliere

089 Orage



Artikel: **902221**

Prototyp: P.K-4 Koll.: 1

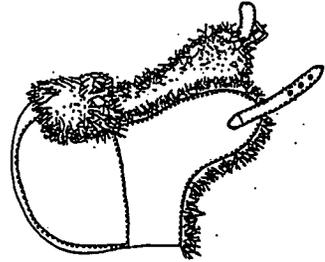
Nur im Original.

100 FELL

46,00 € Retail **119,00 €**

Farben/Colours:

M 089 Noir



Artikel: **902321**

Prototyp: P.01.103 Koll.: 1

Farbkarte 1.

100 Merino Extra Fein

30,00 € Retail **79,95 €**

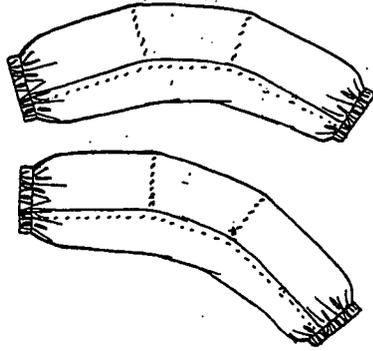
Farben/Colours:

M 012 Crin

015 Poudre

062 Ciel

099 Noir



Artikel: **902421**

Prototyp: P.01.600 Koll.: 1

Farbkarte 1.

44 Cotton 28 Wolle 28 Polyacryl

34,00 € Retail **89,95 €**

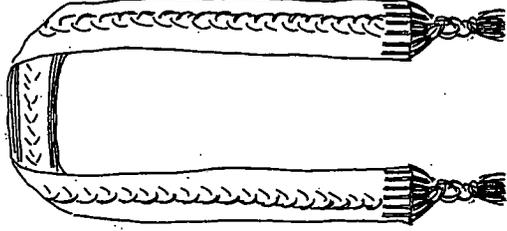
Farben/Colours:

M 011 Perliere

015 Poudre

062 Ciel

099 Noir



Artikel: **902521**

Prototyp: P.01.601 Koll.: 1

Farbkarte 1.

44 Cotton 34 Wolle 22 Polyacrylic

18,00 € Retail **44,95 €**

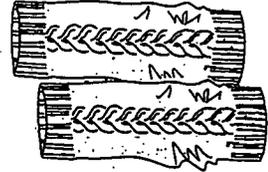
Farben/Colours:

M 011 Perliere

015 Poudre

062 Ciel

099 Noir



Artikel: **902621**

Prototyp: P.36.002 Koll.: 1

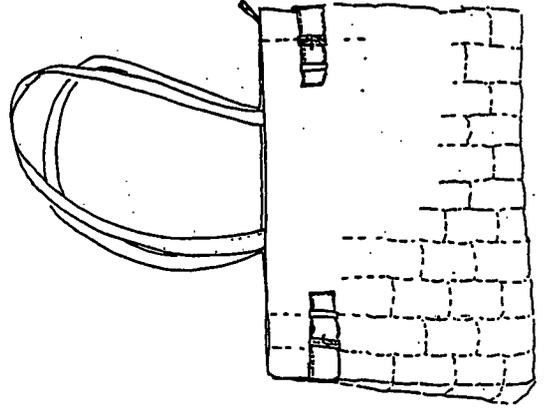
Nur im Original.

100 Polyamid

24,00 € Retail **59,95 €**

Farben/Colours:

M 099 Noir



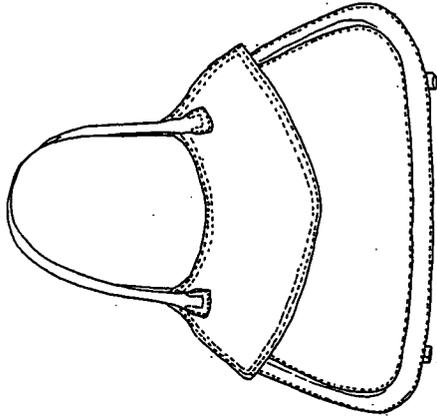
Artikel: **902721**

Prototyp: P.36.007 Koll.: 1

Nur im Original.
100 Polyamid

40,00 € Retail **99,95 €**

Farben/Colours:
M 099 Noir



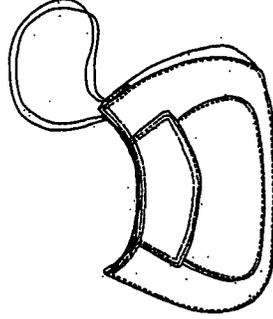
Artikel: **902821**

Prototyp: P.36.008 Koll.: 1

Nur im Original.
100 Polyamid

18,00 € Retail **44,95 €**

Farben/Colours:
M 099 Noir



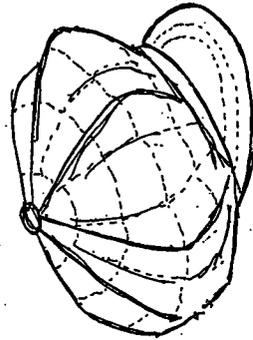
Artikel: **902921**

Prototyp: P.42.200 Koll.: 1

Nur im Original.
100 Polyamid

24,00 € Retail **59,95 €**

Farben/Colours:
M 099 Noir



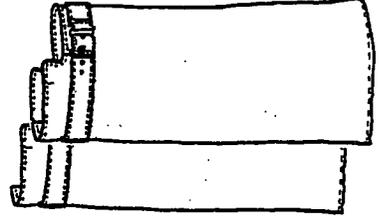
Artikel: **903021**

Prototyp: P.42.201 Koll.: 1

Nur im Original.
82 Viscose 18 Seide

28,00 € Retail **69,95 €**

Farben/Colours:
M 099 Noir



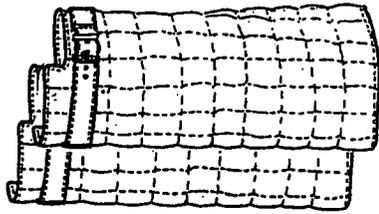
Artikel: **903221**

Prototyp: P.42.203 Koll.: 1

Nur im Original.
100 Polyamid

24,00 € Retail **59,95 €**

Farben/Colours:
M 099 Noir



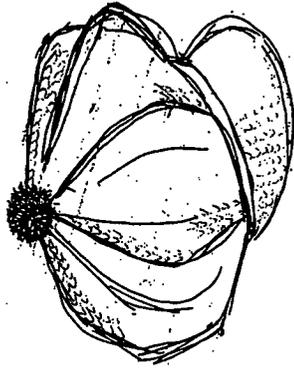
Artikel: **903321**

Prototyp: P.42.205 Koll.: 1

Farbkarte 1.
100 Merino Extra Fein

30,00 € Retail **79,95 €**

Farben/Colours:
012 Crin
M 099 Noir



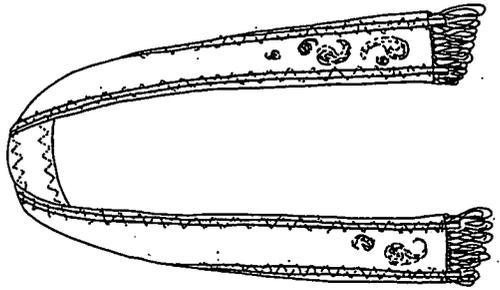
Artikel: **903422**

Prototyp: P.01.603 Koll.: 1

Farbkarte 20.
44 Cotton 28 Wolle 28 Polyacryl

48,00 € Retail **119,00 €**

Farben/Colours:
M 011 Perliere
099 Noir



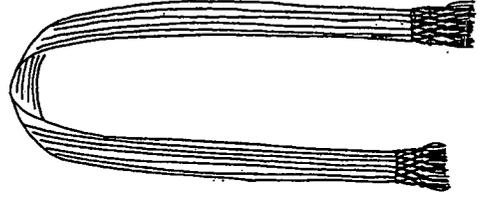
Artikel: **903522**

Prototyp: P.01.604 Koll.: 1

Farbkarte 1.
100 Merino Extra Fein

38,00 € Retail **99,95 €**

Farben/Colours:
012 Crin
015 Poudre
064 Tempête
M 085 Roseau
099 Noir



Artikel: **905121**

Prototyp: P.K-3

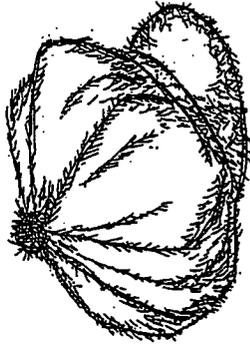
Koll.: 1

Nur im Original.

100 Kanin

54,00 € Retail **139,00 €**

Farben/Colours:
M 099 Noir



Artikel: **905221**

Prototyp: P.K-5

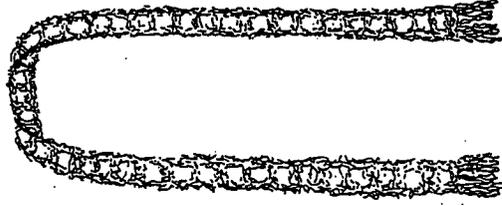
Koll.: 1

Farbkarte 1.

100 Kanin

68,00 € Retail **169,00 €**

Farben/Colours:
011 Perliere
M 099 Noir



Artikel: **905321**

Prototyp: P.K-6

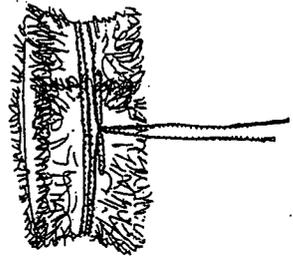
Koll.: 1

Nur im Original.

100 Kanin

38,00 € Retail **99,95 €**

Farben/Colours:
M 099 Noir



Artikel: **905421**

Prototyp: P.K-7

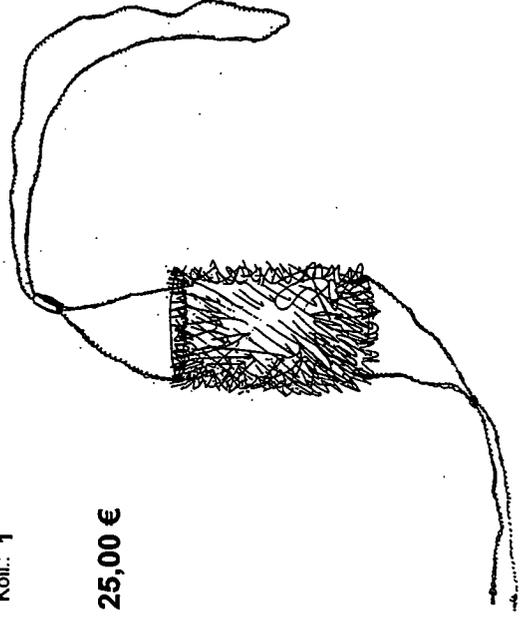
Koll.: 1

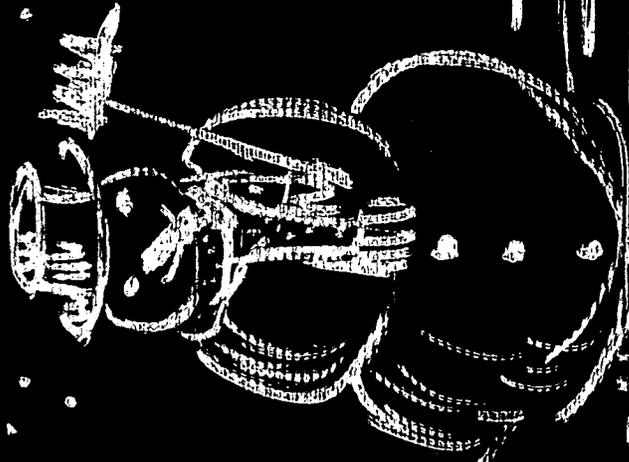
Farbkarte 1.

100 Kanin

10,00 € Retail **25,00 €**

Farben/Colours:
011 Perliere
M 099 Noir





2 KOLEKTORNI
#1/W 03/04

tabbles[®]
EXHIBIT
4

KAPALUA[®]

luxus in simplicity

KAPALUA[®]

Autumn / Winter 2003/04
2. Kollektion



011 Perlière - Perle



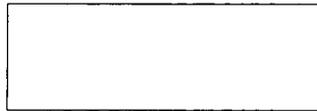
013 Crème - Creme



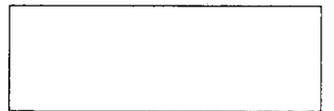
012 Crin - Schweif



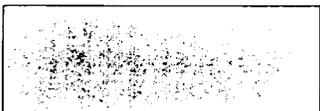
033 Laiton - Messing



014 Champagner - Champagner



086 Braise - Glut



034 Vigne - Rebe



036 Ecorce - Rinde



084 Vison - Nerz



065 Encre - Tinte



037 Tourbe - Torf



087 Chocolat - Schokolade



089 Orage - Gewitter



099 Noir - Schwarz

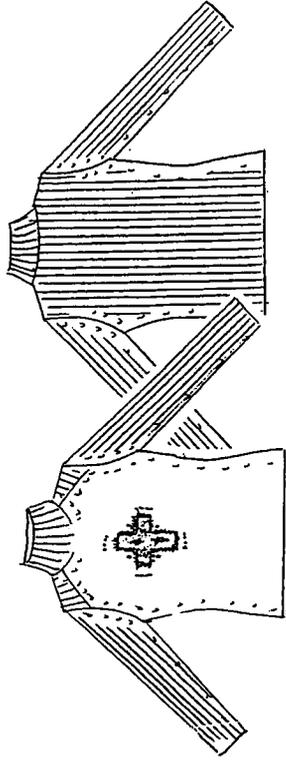
Artikel: **208025**

Prototyp: P.02.042 Koll.: 2

Farbkarte: **Nur im Original**
100 Merino Extra Fein

72,00 € Retail **179,00 €**

Erhältlich in den Farben:
M 267 Noir/braise



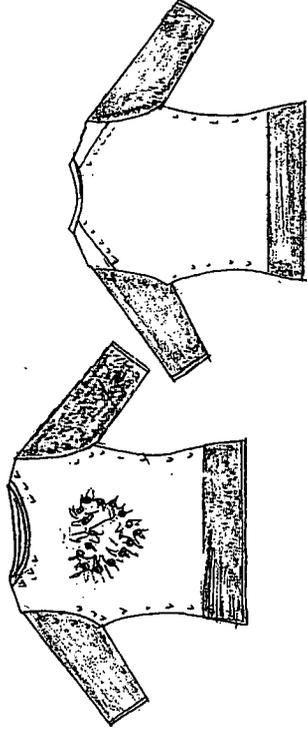
Artikel: **208125**

Prototyp: P.02.043 Koll.: 2

Farbkarte: **Nur im Original**
100 Merino Extra Fein

48,00 € Retail **119,00 €**

Erhältlich in den Farben:
M 288 Chocolat/noir



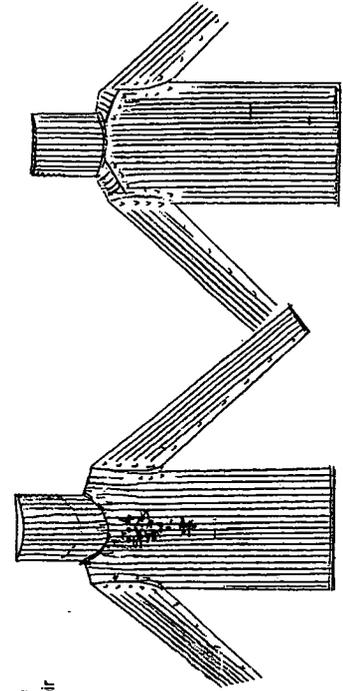
Artikel: **208225**

Prototyp: P.02.044 Koll.: 2

Farbkarte: **Farbkarte 102.**
100 Merino Extra Fein

60,00 € Retail **149,00 €**

Erhältlich in den Farben:
266 Braise/noir
280 Vison/orage
M 288 Chocolat/noir



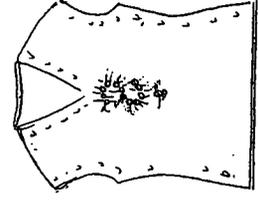
Artikel: **208325**

Prototyp: P.02.045 Koll.: 2

Farbkarte: **Farbkarte 101.**
100 Merino Extra Fein

48,00 € Retail **119,00 €**

Erhältlich in den Farben:
086 Braise
089 Orage
M 099 Noir



Artikel: **488526**

Prototyp: P.26.001 Koll.: 2

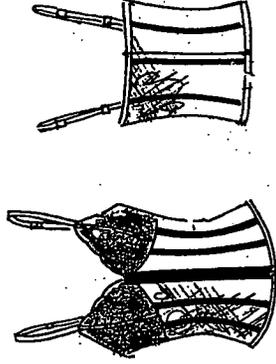
Farbkarte: Nur im Original

95 Viscose 5 Elasthan

30,00 € Retail **79,95 €**

Erhältlich in den Farben:

M 099 Noir



Artikel: **488626**

Prototyp: P.26.002 Koll.: 2

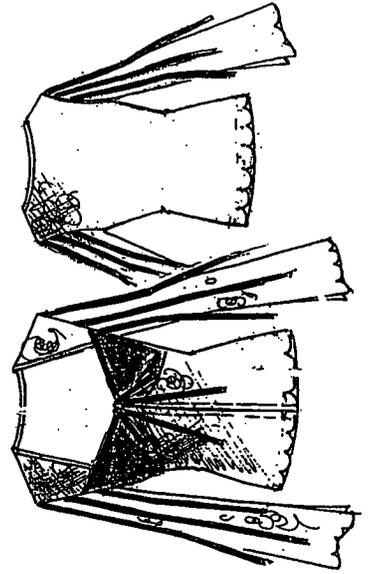
Farbkarte: Nur im Original

95 Viscose 5 Elasthan

44,00 € Retail **109,00 €**

Erhältlich in den Farben:

M 099 Noir



Artikel: **680125**

Prototyp: P.28.010 Koll.: 2

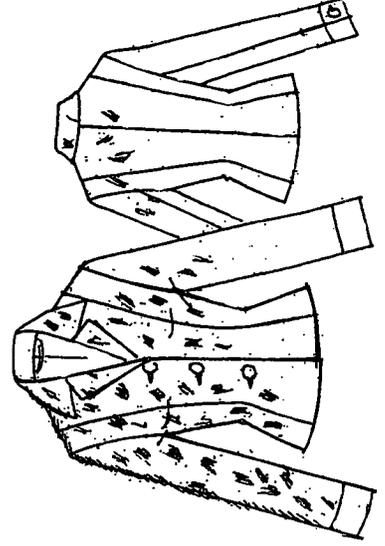
Farbkarte: Nur im Original

100 Kanin

280,00 € Retail **699,00 €**

Erhältlich in den Farben:

M 411 Perlièrevision/chocolat/noir



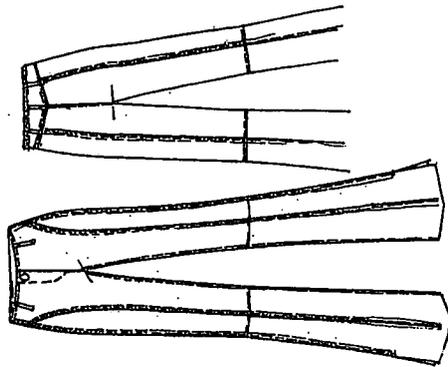
Artikel: **693325**

Prototyp: P.48.027 Koll.: 2

Farbkarte: Nur im Original
100 Lamm-Nappa

240,00 € Retail **599,00 €**

Erhältlich in den Farben:
M 292 Braise/chocolat



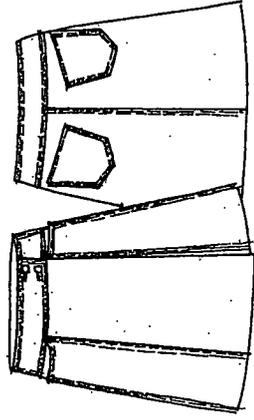
Artikel: **693425**

Prototyp: P.48.028 Koll.: 2

Farbkarte: Nur im Original
100 Kanin

172,00 € Retail **429,00 €**

Erhältlich in den Farben:
M 292 Braise/chocolat



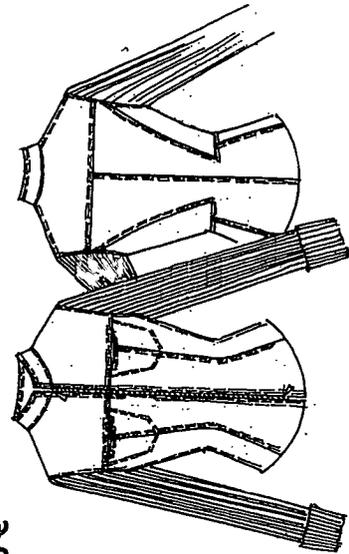
Artikel: **693525**

Prototyp: P.48.035 Koll.: 2

Farbkarte: Nur im Original
100 Lamm-Nappa

280,00 € Retail **699,00 €**

Erhältlich in den Farben:
M 292 Braise/chocolat



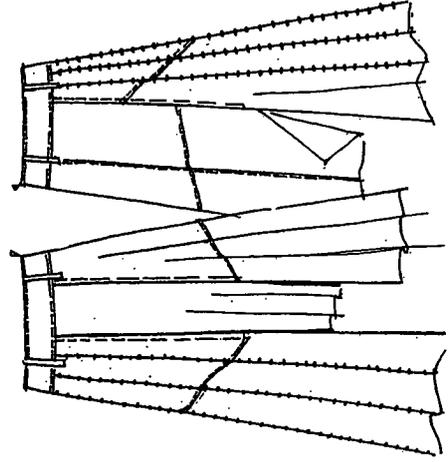
Artikel: **693626**

Prototyp: P.48.033 Koll.: 2

Farbkarte: Nur im Original
100 Lamm-Nappa

280,00 € Retail **699,00 €**

Erhältlich in den Farben:
M 099 Noir



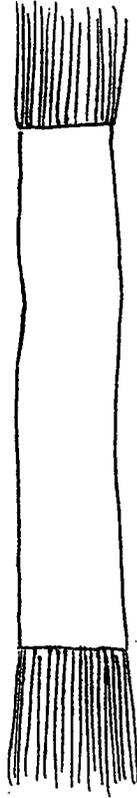
Artikel: **906526**

Prototyp: P.AL-1 Koll.: 2

Farbkarte: Nur im Original
100 Seide

38,00 € Retail **99,95 €**

Erhältlich in den Farben:
M 218 Creme/noir



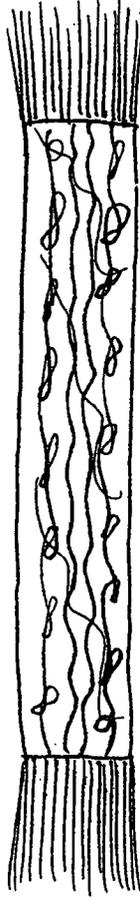
Artikel: **906626**

Prototyp: P.AL2 Koll.: 2

Farbkarte: Nur im Original
100 Seide

48,00 € Retail **119,00 €**

Erhältlich in den Farben:
M 199 Noir/noir



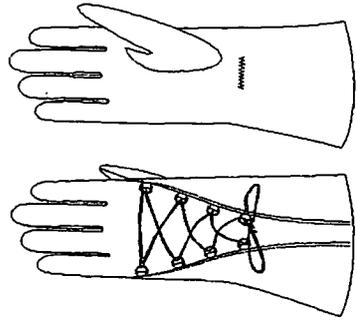
Artikel: **906725**

Prototyp: P.32.002 Koll.: 2

Farbkarte: Nur im Original
100 Kid-Verlours

28,00 € Retail **69,95 €**

Erhältlich in den Farben:
M 099 Noir



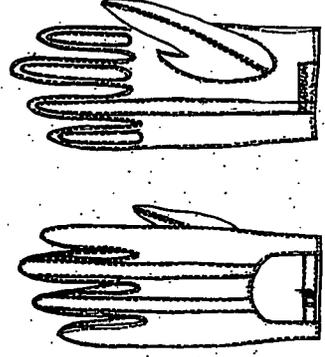
Artikel: **906825**

Prototyp: P.32.003 Koll.: 2

Farbkarte: Nur im Original
100 Kid-Verlours

16,00 € Retail **39,95 €**

Erhältlich in den Farben:
M 089 Orage



Artikel: **907326**

Prototyp: P.48.036 Koll.: 2

Farbkarte: Farbkarte 101.

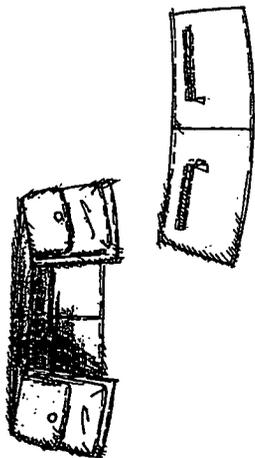
100 Cow Fur

132,00 € Retail **329,00 €**

Erhältlich in den Farben:

065 Encre

M 099 Noir



Artikel: **907424**

Prototyp: P.25.005 Koll.: 2

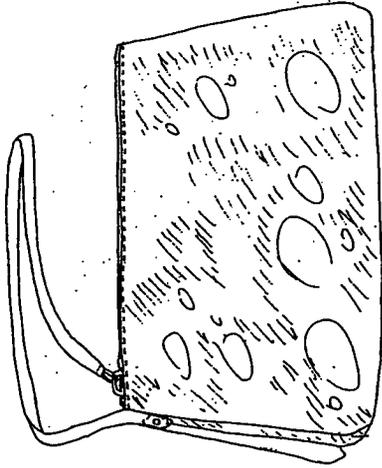
Farbkarte: Nur im Original

100 Cow Fur

34,00 € Retail **89,95 €**

Erhältlich in den Farben:

M 089 Orange



Artikel: **907524**

Prototyp: P.25.009 Koll.: 2

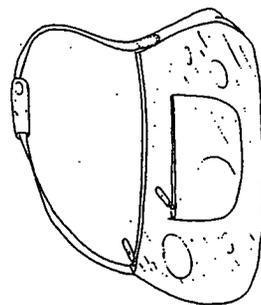
Farbkarte: Nur im Original

100 Cow Fur

60,00 € Retail **149,00 €**

Erhältlich in den Farben:

M 089 Orange



Artikel: **907624**

Prototyp: P.25.012-A Koll.: 2

Farbkarte: Org.

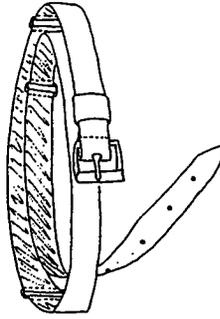
100 Leder

24,00 € Retail **59,95 €**

Erhältlich in den Farben:

089 Orange

M 099 Noir



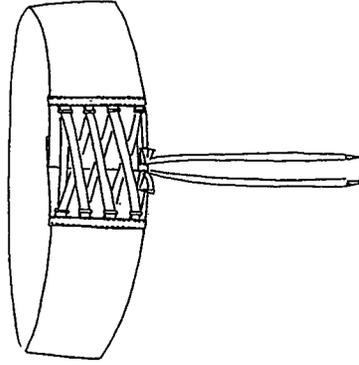
Artikel: **907725**

Prototyp: P.25.010 Koll.: 2

Farbkarte: Nur im Original
100 Leder

20,00 € Retail **49,95 €**

Erhältlich in den Farben:
M 099 Noir



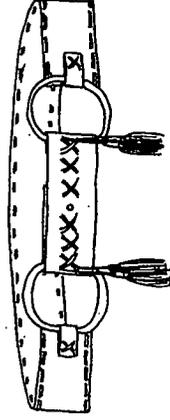
Artikel: **907826**

Prototyp: P.25.013 Koll.: 2

Farbkarte: Nur im Original
100 Polyester

16,00 € Retail **39,95 €**

Erhältlich in den Farben:
M 099 Noir



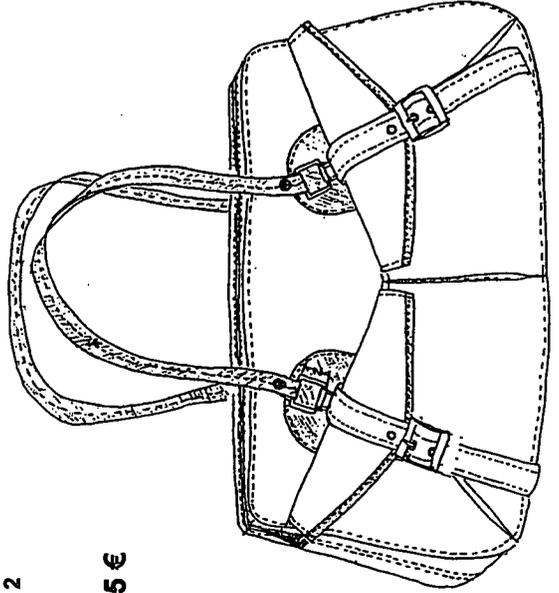
Artikel: **907925**

Prototyp: P.36.003 Koll.: 2

Farbkarte: Nur im Original
100 Polyamid

36,00 € Retail **89,95 €**

Erhältlich in den Farben:
M 099 Noir



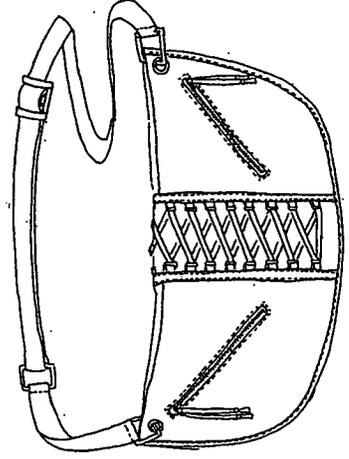
Artikel: **908025**

Prototyp: P.36.005 Koll.: 2

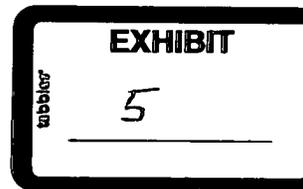
Farbkarte: Nur im Original
100 Polyamid

40,00 € Retail **99,95 €**

Erhältlich in den Farben:
099 Noir



KAPALUA[®]



LOOK BOOK
autumn/winter 2000/01













		artical-number	colour
16	pullover	1189105	lilac
	pants	355005	sharpwhite
	bag	951506	lilac
	cap	1182706	blossom
17	pullover	1188805	blossom
	pants	355005	sharpwhite
	bag	951506	lilac
	shoes	956106	mais
18	dress	1181506	gletscher
	stulpen	1181706	gletscher
	bag	951706	gletscher
	shoes	956106	sorbet
19	jacket	1181306	gletscher
	skirt	1181606	gletscher
	bag	951706	gletscher
20	pullover	1153606	artic
	stulpen	1167906	artic
21	pullover	1161406	gletscher
	skirt	353807	olive
	bag	951706	gletscher
	shoes	956106	pink sorbet
22	pullover	1161206	gletscher
	skirt	1168905	olive
	shoes	956106	pink sorbet
23	jacket	1161306	gletscher
	skirt	1180907	olive
	bag	951706	gletscher
	shoes	956106	pink sorbet
24	top	1168006	artic
	bandeaux	1167806	artic
	pants	1168705	camel
	stulpen	1167906	artic
25	top	1152306	camel/arctic
	cape	1152506	camel/arctic
	rock	1152406	camel/Arctic

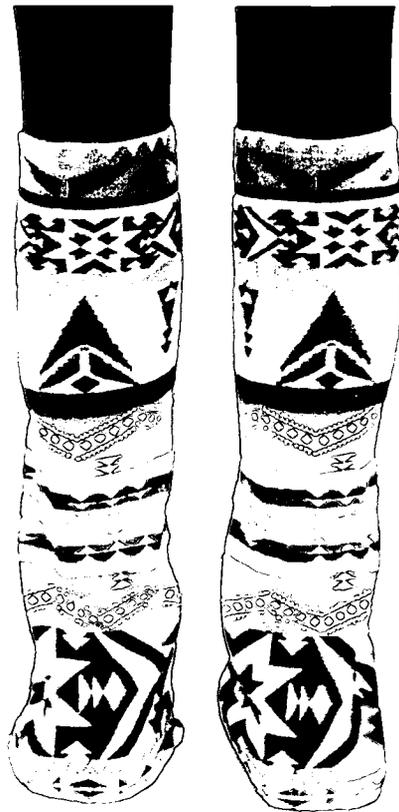
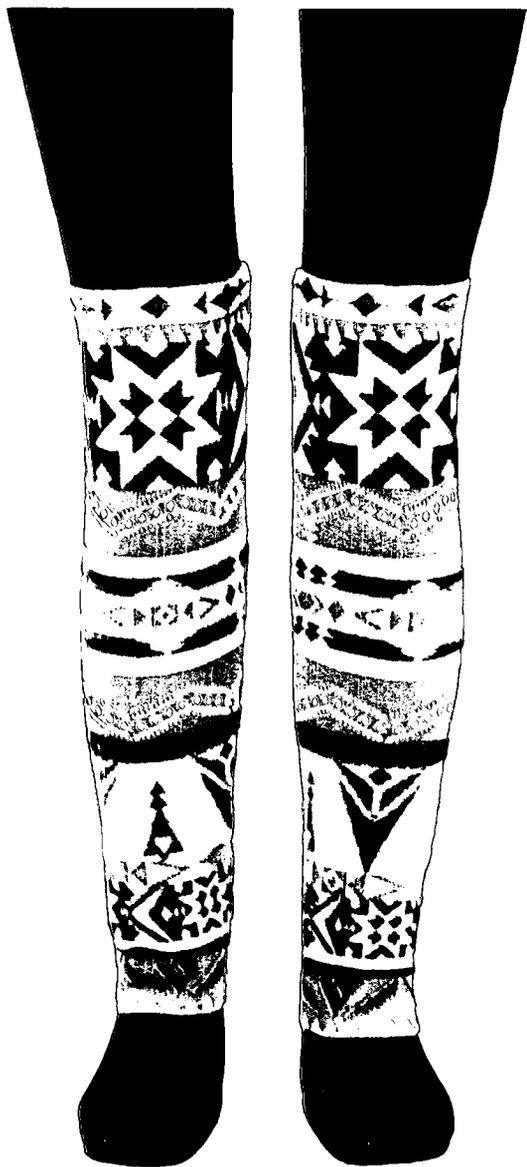
4/20 2006/07

Accessories

KAPALUA®

luxus in simplicity

EXHIBIT
6



Art. Nr.: 948077
FX3464
100% Merino Extrafine
Lt: 01.06.06 - 31.07.06
FBK 004, 045, 099
Preis 24€



Art. Nr: 953177
WH3452/1
60% Cotton, 30% Nylon, 10% Angora 7gg+Lycra
Lt: 01.06.06 - 31.07.06
FBK 100 011, 033, 044, 045, 051, 052, 065, 081, 099
Preis 20€



Art. Nr: 953277
WH3452/3
90% Merino Extra Fine, 10% Angora
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 20€



Art. Nr: 953377
WH3452/2
90% Merino Extra Fine, 10% Angora
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 20€



Art. Nr: 953677
WH3410
45% Wool, 40% Viscose,
10% Nylon, 5% Cashmere
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 18€



Art. Nr: 953777
WH3409
45% Wool, 40% Viscose,
10% Nylon, 5% Cashmere
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 18€



Art. Nr: 953877
WH3408
45% Wool, 40% Viscose,
10% Nylon, 5% Cashmere
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 18€



Art. Nr: 953977
WH3466
60% Cotton, 30% Polyamide, 10% Angora
Lt: 01.06.06 - 31.07.06
only as original 099
Preis 18€



Art. Nr: 954077
WH3457
50% Viscose, 25% Nylon, 25% Cotton
Lt: 01.06.06 - 31.07.06
FBK 100 010, 011, 099
Preis 20€



Art. Nr: 954177
WH3455
60% Cotton, 30% Nylon, 10% Angora
Lt: 01.06.06 - 31.07.06
FBK 100 011, 033, 044, 045, 051, 052, 065, 081, 099
Preis 20€

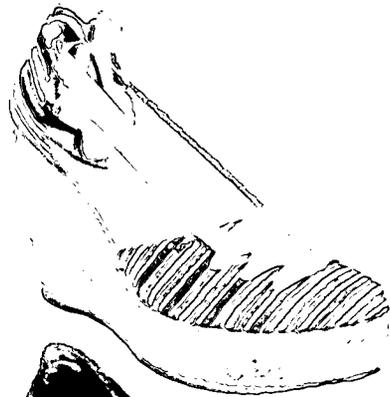
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driven by knits

ACCESSORIES

SPRING/ SUMMER 2006

EXHIBIT
7



Art.Nr.: 924865
SH001D.1
linen, rubber, straw
Lt: 01.11.05-31.01.06
only as original 442
Größen 36-42
Preis 28€



Art.Nr.: 924965
SH001E.1
linen, rubber, straw
Lt: 01.11.05-31.01.06
only as original 499
Größen 36-42
Preis 28€



Art.Nr.: 924765
SH001C.1
linen, rubber, straw
Lt: 01.11.05-31.01.06
only as original 484
Größen 36-42
Preis 28€



Art.Nr.: 924665
SH001B.1
linen, rubber, straw
Lt: 01.11.05-31.01.06
only as original 437
Größen 36-42
Preis 28€



Art.Nr.: 924565
SH001
linen, rubber, straw
Lt: 01.11.05-31.01.06
810, 836, 841, 854, 859, 864, 885, 899
Größen 36-42
Preis 28€

KAPALUA®

FALL / WINTER 2003

EXHIBIT

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8



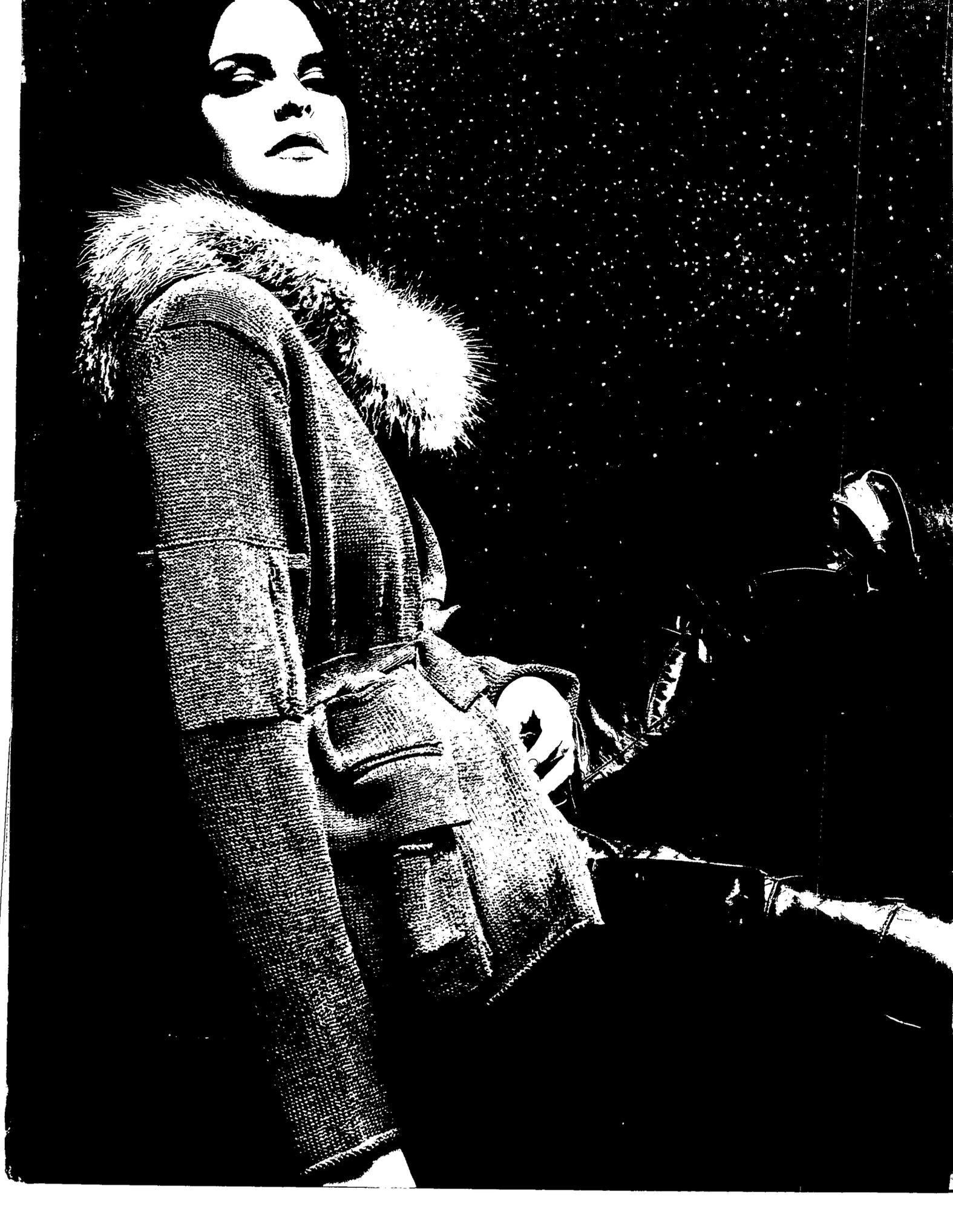
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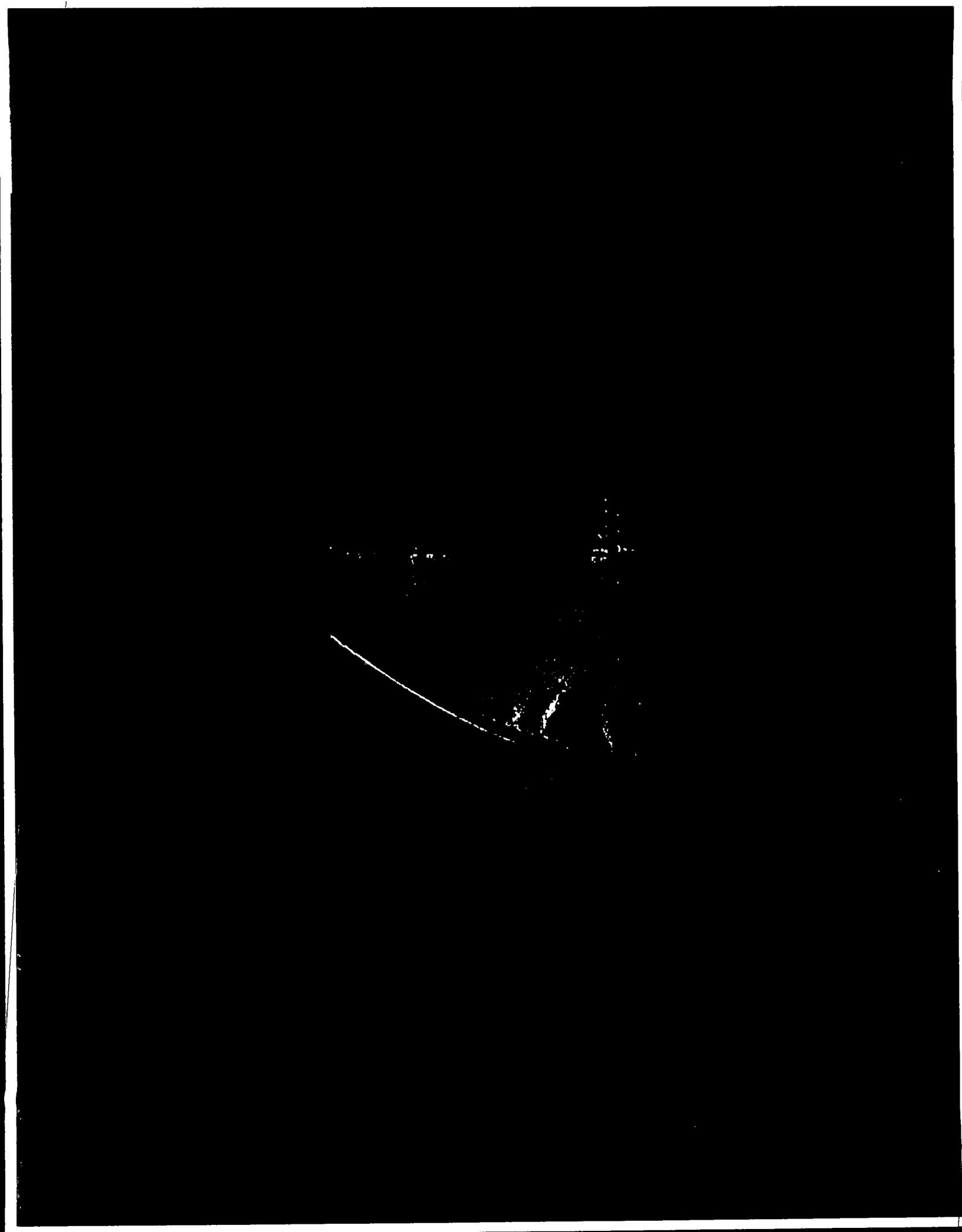




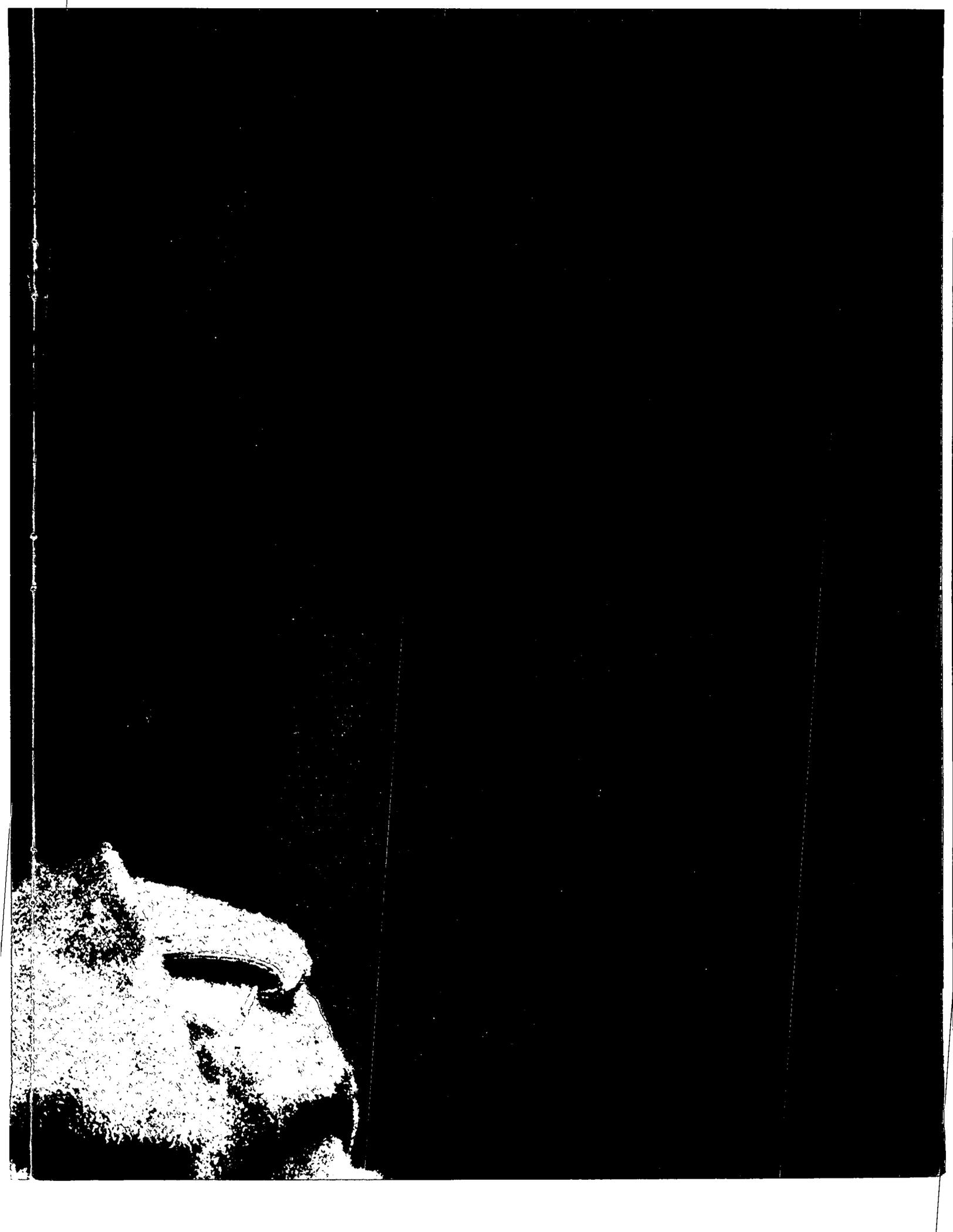












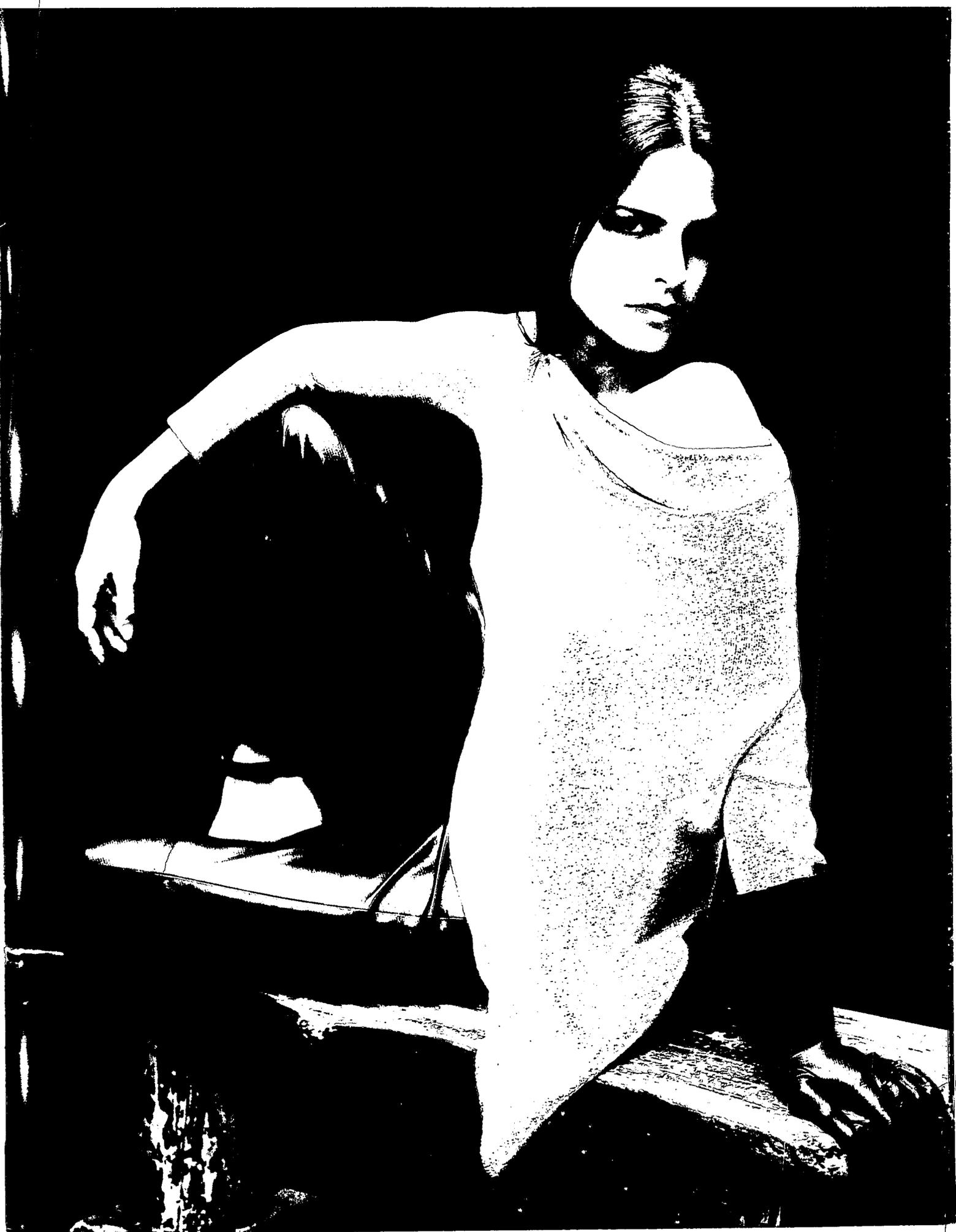


















In Kooperation mit:
In cooperation with:

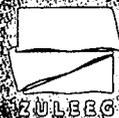
GRIGNASCO
GROUP

achille pinto

EMMIETEX

IM Lanificio
ITALMODE S.p.A.

ONES
dal 1872



ZULEEG

fratelli Pinella

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Besuchen Sie auch das
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SPRING / SUMMER 2004

EXHIBIT

9

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KAPALUA Kollektion Frühjahr/Sommer 2004

Einladung

Auch für diese Saison war Chris. Tan mit ihrem Team auf der Suche nach neuen und richtungsweisenden Trends für die KAPALUA Kollektion – und sie ist fründig geworden! Das Ergebnis: eine spannende und abwechslungsreiche Trendkollektion Frühjahr/Sommer 2004. Originelle Details und aufregende Materialien erwarten Sie bei KAPALUA.

Natürlich können wir Ihnen in unserem Trendkatalog nur eine kleine Auswahl unserer Kollektion vorstellen. Deshalb laden wir Sie herzlich ein, sich die gesamte Vielfalt der Kollektion persönlich anzuschauen.

EARLY STRICK: 20.07.–22.07.2003

CPD: 03.08.–05.08.2003

Während der gesamten Orderzeit stehen Ihnen unsere Area-Manager zur Verfügung. Die Adresse des für Sie zuständigen Gebietes entnehmen Sie bitte der Rückseite.

Ein weiteres Highlight der Saison Frühjahr/Sommer 2004 ist unser Showroom in Düsseldorf. Nach einer langen Umbauphase glänzt er in neuem Licht. Die KAPALUA Philosophie perfekt widerspiegelnd präsentiert er sich ganz nach dem Motto „luxus in simplicity“. Wir würden uns sehr freuen, wenn Sie uns in unserem neu gestalteten Showroom besuchen.

KAPALUA Showroom Düsseldorf, Fashion House 2, Raum C 212, Danziger Straße 111, D-40468 Düsseldorf, Fon +49-211-431892, Fax +49-211-4704021

Das KAPALUA Team freut sich auf eine erfolgreiche Saison mit Ihnen.

KAPALUA spring/summer 2004 collection

Invitation

As in previous years, Chris. Tan and her team went out in search of new and pioneering trends for this season's KAPALUA collection – and they came back with bags of inspiration! The result is an exciting and diverse collection for spring/summer 2004. Get ready for original details and fascinating materials from KAPALUA.

Our trend catalogue can obviously only include a small selection of the complete collection. But not to worry, you are warmly invited to inspect the entire collection in person.

EARLY STRICK: 20.07.–22.07.2003

CPD: 03.08.–05.08.2003

Our area managers are on hand to help you for the duration of the showing date. Please consult the address details overleaf for the contact in your area.

Another highlight of the spring/summer 2004 season is our showroom in Düsseldorf. After lengthy restructuring, it now radiates a completely new charm. The whole feel of the place provides a perfect reflection of the KAPALUA philosophy – luxury in simplicity. We'd be delighted to see you there.

KAPALUA Showroom Düsseldorf, Fashion House 2, Room C 212, Danziger Strasse 111, 40468 Düsseldorf, Germany, Tel. +49-211-431892, Fax +49-211-4704021

The KAPALUA team looks forward to enjoying a successful season with you.

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GmbH
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KAPALUA Kollektion Frühjahr/Sommer 2004

Modern, trendy, innovativ und schlüssig präsentiert sich die neue Frühjahr/Sommer Kollektion 2004 von KAPALUA mit der unverwechselbaren Handschrift für Details und Raffinesse. Die Kombinationsfähigkeit tritt mehr denn je in den Vordergrund und Innovation, die selbstverständlich ohne große Erklärungen für sich selbst spricht, überzeugt in der Vielfalt der verschiedenen Trendinterpretationen.

KAPALUA wird mit erweitertem Kollektionsrhythmus und interessantem Preis-Leistungs-Verhältnis in die neue Orderrunde starten. Die Lieferzeiten November, Dezember und Januar werden erstmals in drei unterschiedlichen Programmen gleichzeitig präsentiert. Die Schlüssigkeit und Kombinationsfähigkeit der Programme unterstützt den gezielten Aufbau der Order und legt den Grundstein für die spätere, schnellere LUG. Alle Programme sind gezielt abverkaufsorientiert konzipiert und unterstreichen die Erkennbarkeit von Trends und Themen. Dadurch wird ein Gesamtüberblick über die wichtigsten Auslieferungsmonate ermöglicht.

KOLLEKTION I

Orderzeit vom 1. Juli bis 1. August 2003

JADE	Lieferzeit: November 2003
PRETTY WOMAN	Lieferzeit: Dezember 2003
RELAX	Lieferzeit: Januar 2004

Das übergeordnete Thema der nächsten Saison sind die 60er-Jahre der Italienischen und Französischen Riviera, präsentiert mit japanischen Einflüssen im Programm JADE, feminin-elegant im Programm PRETTY WOMAN sowie sportiv nesting-orientiert im Programm RELAX.

KAPALUA spring/summer 2004 collection

With that unmistakable flair for details and finesse, the new spring/summer 2004 collection from KAPALUA displays a highly modern, trendy, innovative and coherent character. More emphasis than ever has been placed on combinability. Another major attraction in the rich variety of different fashion interpretations is innovation – a factor that speaks for itself without any lengthy explanation.

KAPALUA will enter the new ordering session with an enhanced collection timetable and exceptional value for money. For the first time, three different ranges for the November, December and January delivery periods will be presented simultaneously. The coherence and combinability of the ranges have been designed to boost ordering, while forming the basis for quicker stock turnover later on. All the ranges are distinctly sales-oriented, picking up on various trends and themes. This allows for a comprehensive overview of the most important delivery months.

COLLECTION I

Order period from 1 July to 1 August 2003

JADE	Delivery period: November 2003
PRETTY WOMAN	Delivery period: December 2003
RELAX	Delivery period: January 2004

The overlying theme of next season is the 1960s Italian and French Riviera, presented with Japanese influences in the JADE range, elegantly feminine in the PRETTY WOMAN range, and with sporty homewear in the RELAX range.

Kollektion I

15 ausgesuchte Trend- und Basicfarben bieten eine große Vielfalt der Kombinationsmöglichkeiten in Abgrenzung und zur Individualität der jeweiligen Sortimentszusammenstellung.

JADE

Liefertermin: November 2003

Fernöstliche Einflüsse, interpretiert mit japanischen Geisha-Drucken und Schriftzeichen. Acht Farben variieren von Jade- und Patina-Grün-Nuancen bis zu Brombeer- und Sorbet-Pink-Tönen in Kombination mit Sharp White und Japan-Schwarz. Die Silhouette ist feminin-schmal und sportiv trendy-oversized. Die Innovation konzentriert sich auf neue Garne und somit auf die Verbesserung von Trageeigenschaft und Schnittführung der Modelle, die die Option auf die neue Silhouettenveränderung mit einfließen lässt.

Das Wechselspiel zwischen „Ich will meine Figur zeigen“ und „Ich demonstriere die neue schmale Hosensilhouette mit dem Oversize-Pulli“ lässt sich geschickt nebeneinander vereinbaren.

PRETTY WOMAN

Liefertermin: Dezember 2003

Die Frau entdeckt neben einer Welle der Sportivität eine neue feminine Eleganz und will kokettieren mit schmalen 7/8-Hosen und kleinen bedruckten Pullis oder neuen leichten Oversize-Tops aus Strick oder Shirt.

Die junge Eleganz im 60er-Jahre-Look, interpretiert in bezaubernden Punkten- und Streifenthemen. Kontrastreiche italienische Farbkombinationen vom warmen Pink über Raffia-Gelb und Toffifee bis hin zu Nougattönen.

Die Qualitäten sind edel und leicht in 100 % Seide mit Elasthan, grobe Leinenstruktur und zarte, bedruckte Seide in femininen Röcken, Hosen und Kleidern. Changierender Taft, plattierter Feinstrick, Bast- und Flechtoptiken sowie neue Optiken in 100 % Baumwolle durch eine spezielle Enzymwaschung. Ausschnitte sind drapiert und haben gewistete Details mit neuen Verschlüssen und Strukturen.

RELAX

Liefertermin: Januar 2004

Wellness und Nesting bestimmen dieses Januar-Programm, konzipiert für die Zeit nach den Feiertagen. Sportive Silhouetten mit Reißverschlüssen und Ripsbändern, Color-Blocking als frisches Element neben Mesh-Optiken, bestickte Ringelshirts und Jeans in 7/8-Länge. Metallisch bedrucktes Leder und Shirts in Silber auf Weiß zu Tunnelzughosen und Strickblousons. Bedruckte Seide mit sportiven Elementen im citytauglichen Wellnesslook. Eine im Courrège-Stil gehaltene Schwarz-Weiß-Gruppe unterstreicht die klare Linie innerhalb der gesamten Kollektion im 60er-Jahre-Look.

Die Farben sind kühl von Neon-Limone über Wasserblau bis hin zu frischem Mint in Kombination mit klarem Weiß und Schwarz.

Collection I

The 15 selected trend and basic colours provide a large number of combination options for creating a unique and individual product range.

JADE

Delivery date: November 2003

Far Eastern influences interpreted with Japanese geisha prints and characters. Eight colours varying from jade and patina green nuances to blackberry and sorbet pink shades in combination with sharp white and Japanese black. The silhouettes are close-fit feminine and baggy casual. Innovation is concentrated on new yarns with their improvements in wearing properties and the cut of the designs. These improvements were crucial in making the new silhouette changes a viable option.

The perennial conflict between "I want to show off my figure" and "I'm opting for the tight-trousers-with-baggy-pullover look" can now be solved in style.

PRETTY WOMAN

Delivery date: December 2003

Alongside a fresh interest in sports, women are discovering a new feminine elegance. Now is the time to be daring with close-fitting 7/8 trousers and small printed pullovers or light baggy tops in knitwear or T-shirt material.

Young elegance with a distinct 1960s touch, interpreted with enchanting dot and stripe themes. Boldly contrasting Italian colour combinations from warm pink and raffia yellow to toffee and nougat shades.

The qualities are light and exquisite in 100% silk with elastane, coarse linen structure and delicately printed silk in feminine skirts, trousers and dresses. Shot taffeta, plated fine knitwear, raffia and braid effects, plus new styles in 100% cotton using a special enzyme wash. Necklines are draped. Twisted details with new fasteners and structures.

RELAX

Delivery date: January 2004

Wellness and nesting are the defining themes in the January range, designed for the months after the festive season. Sporty outlines with zip fasteners and rep ribbon, colour blocking as a fresh new element alongside mesh styles, embroidered striped T-shirts and 7/8 length jeans. Metallic printed leather and T-shirts in silver on white for drawstring trousers and knitted blousons. Printed silk with sporty elements in a businesslike wellness look. A black and white ensemble in Courrège style underlines the distinct 1960s direction of the entire collection.

The colours are cool, from neon lime and aqua blue to fresh mint in combinations with clear black and white.

Kollektion II

Orderzeit vom 2. August bis 12. September 2003

Die zweite Kollektion wird ab der CPD im August präsentiert und stellt die Sommerauslieferung für die Lieferzeit Februar und März dar. Es werden zwei hochwertige Fashion-Themen mit insgesamt acht neuen Trendfarben und zwei Basicfarben gezeigt.

TROPICAL
CANDY

Lieferzeit: Februar 2004
Lieferzeit: März 2004

TROPICAL

Liefertermin: Februar 2004

Tropische Farbenspiele in sommerlichen Drucken und Garnen in Feinstrick und leichten, groben Maschen in Kombination mit Tüll und farbigen Bändern.

Sommerliche feminine große Ausschnitte auf Batik-Strick mit Drapierungen und Perlen-Stickereien.

Wickel- und Knotenblusen sowie Pullis zu „chaneligen“ Jacken und Trägerkleidern unterstreichen den farbenfrohen Look mit hohem Lustfaktor.

Die Farben sind Sharp White in Kombination mit Neon-Limone, Caipirinha-Grün und softem Mint bis Papaya-Orange. Hier fühlt jeder: Die Mode lebt.

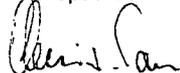
CANDY

Liefertermin: März 2004

Sehr ausgeprägte 60er-Jahre-Intarsien und -Drucke machen dieses Programm zum „Must have“-Märzthema. Der Winter ist endgültig aus den Geschäften verbannt und Einzug hält eine neue, junge Mode, interpretiert auf die Ansprüche der modebegeisterten Frau, die die gepflegte Qualität in Kombination mit einem edlen neuen Look sucht. Innovative großzügige Halsausschnitte mit neuen Ripsbandschleifen-Details zu 3/4-Hosen und Shiftröcken.

Wickelstyles, Bubikragen, kastige kurze Jacken zu graphischen Mustern in Strick und Konfektion. Ausgeprägte Stepplinien auf Strick und neue Streifenkombinationen mit einer dominanten Kontrastfarbe unterstreichen auch hier die O- und A-Form zu tragbaren Miniröcken und schlanken Hosen. Die Farben gehen von einem kräftigen Türkis über Neon-Orange in Kombination mit einem edlen Sand bis hin zu Schwarz und Weiß.

Viel Spaß beim Ordern wünscht Ihnen



Chris. Tan

Hamburg, im Juni 2003

Collection II

Order period from 2 August to 12 September 2003

The second collection will be presented starting at the CPD in August, representing the summer delivery for the February and March delivery period.

Two high-quality fashion themes will be shown with a total of eight new trend colours and two basic colours.

TROPICAL
CANDY

Delivery period: February 2004
Delivery period: March 2004

TROPICAL

Delivery date: February 2004

Tropical colour mixes in summery prints, fine and loose knitted yarns in combination with tulle and brightly coloured ribbons.

For a summery feminine look, generous necklines on batik knitwear with draping and pearl embroidery.

Wraparound and knotted blouses and pullovers combined with "Chanelesque" jackets and pinafore dresses emphasise the brightly coloured look with a major fun factor.

The colours are sharp white in combination with a selection from neon lime, caipirinha green and soft mint through to papaya orange. Making it abundantly clear to everyone that fashion is alive and kicking.

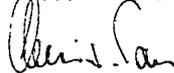
CANDY

Delivery date: March 2004

Highly stylised 1960s inlays and prints make this range a "must have" March theme. Winter has finally been banished from the shops, clearing the way for fresh young ideas designed for the fashion-conscious woman who is looking for refined quality combined with an exclusive new appearance. Innovative, generously proportioned necklines with new rep ribbon loop details with 3/4-length trousers and shift skirts.

Wraparound styles, Peter Pan collars, short untailed jackets to go with graphic patterns in knitwear and garments. Raised stitching lines on knitwear and new stripe combinations with a dominant contrast colour underline the O and A shapes with wearable miniskirts and close-fitting trousers. The colours include a powerful turquoise and a neon orange in combination with an exquisite sand, as well as black and white.

Happy ordering from



Chris. Tan

Hamburg, June 2003











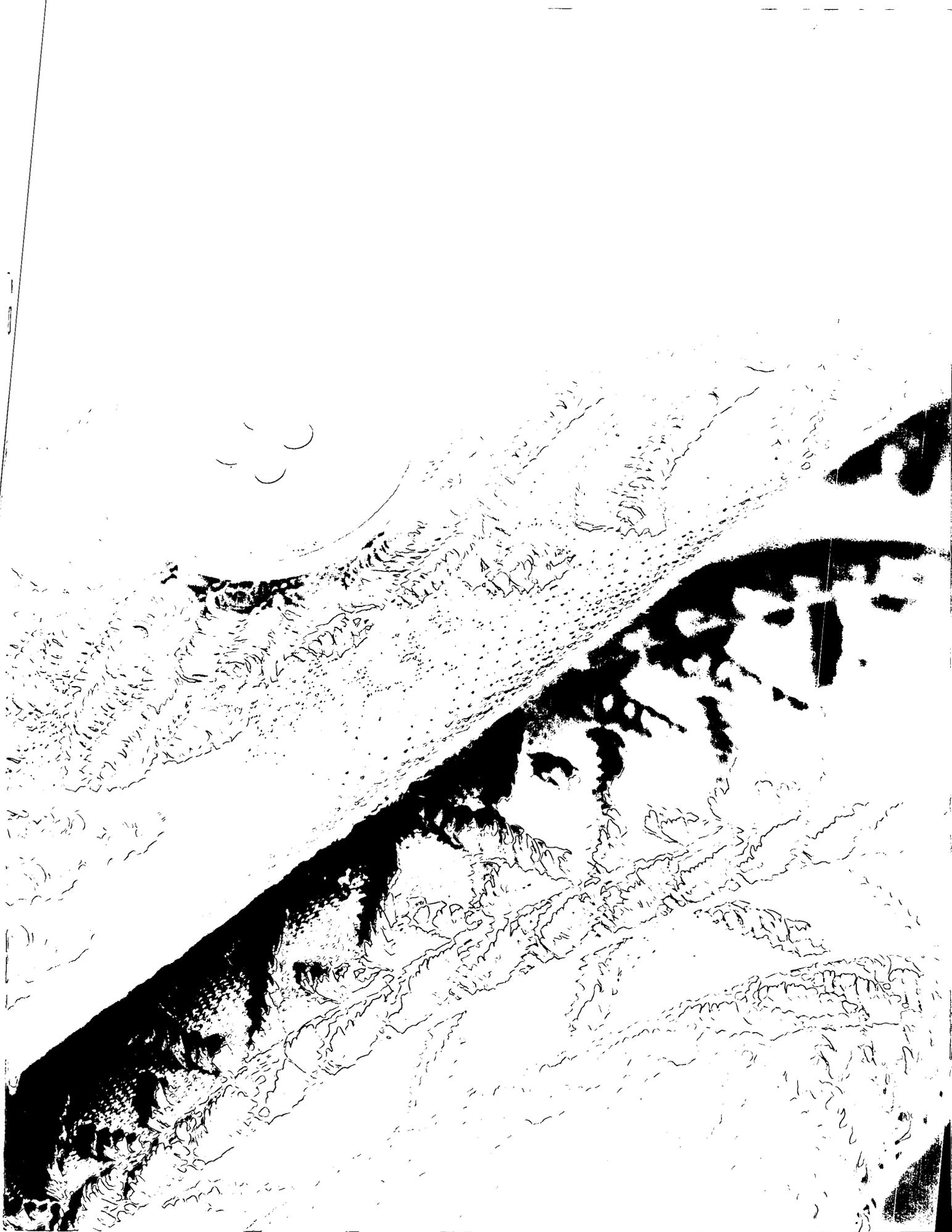


















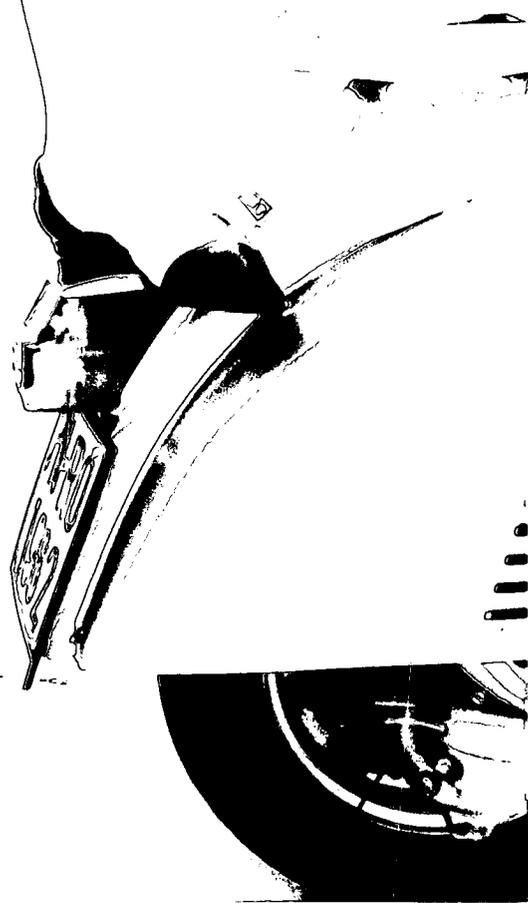












luxus in simplicity

In Kooperation mit:
In cooperation with:



Supralan

The word "Supralan" is written in a classic, elegant cursive script.

TNK

The letters "TNK" are written in a bold, blocky, sans-serif font.

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KAPALUA®

luxus in simplicity

SPRING / SUMMER 2004

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IN THE
UNITED STATES PATENT & TRADEMARK OFFICE

REGISTRANT: Style & Spirit, GmbH)
DOCKET NO: 052294-9005)
REG. NO.: 2,115,124) ATTENTION:
ISSUE DATE: November 25, 1997) **Post Registration**
MARK: KAPALUA) Dana D. Austin
) Trademark Specialist

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

[x] AUTHORIZATION TO PAY AND PETITION FOR THE ACCEPTANCE OF ANY NECESSARY FEES. If any charges or fees must be paid in connection with the following Communication (including but not limited to the payment of issue fees), they may be paid out of our Deposit Account No. 50-1965. If this payment also requires a Petition, please construe this authorization to pay as the necessary Petition which is required to accompany the payment. This authorization shall remain in effect throughout the pendency of this application, and shall apply to all papers filed therein which require the payment of a fee.

RESPONSE TO OFFICE ACTION

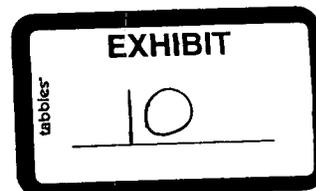
This is in response to the Office Action dated November 29, 2005.

The Section 8 Affidavit was not accepted because the response explaining the valid transfer of legal title was not properly verified. Attached is a copy of the signed Verification Of Chain Of Title signed by Nicolaus Reusch, Managing Director of Style & Spirit GmbH, attesting to the statement of facts explaining the transfer of title.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

Carolyn Hothersall
(Typed or Printed Name of Person Signing Certificate)
Carolyn Hothersall
(Signature)
5/26/06
(Date)



Therefore, registrant requests that the Section 8 Affidavit be accepted and the registration be maintained.

Dated: 5/26/06

By: Joe Schmidt

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Attorneys for Applicant

IN THE
UNITED STATES PATENT & TRADEMARK OFFICE

REGISTRANT:	Style & Spirit, GmbH)
DOCKET NO:	052294-9005)
REG. NO.:	2,115,124) ATTENTION:
ISSUE DATE:	November 25, 1997) Post Registration
MARK:	KAPALUA) Dana D. Austin
) Paralegal Specialist

VERIFICATION OF CHAIN OF TITLE

On August 8, 2001, U.S. Reg. No. 2,115,124 for the mark KAPALUA was assigned, including the goodwill symbolized by said mark, from Interfashion Ltd B.V.I. to Chris Tan Vermoegensverwaltungsgesellschaft mbH, a German limited liability company.

On September 14, 2001, U.S. Reg. No. 2,115,124 for the mark KAPALUA was assigned, including the goodwill symbolized by said mark, from Chris Tan Vermoegensverwaltungsgesellschaft mbH to Kapalua, GmbH, a German limited liability company.

On October 30, 2002, U.S. Reg. No. 2,115,124 for the mark KAPALUA was assigned, including the goodwill symbolized by said mark, from Kapalua GmbH to Nelly GmbH, a German limited liability company.

On April 14, 2003, Nelly GmbH changed its name to Kapalua GmbH Luxus in Simplicity.

On November 4, 2003, U.S. Reg. No. 2,115,124 for the mark KAPALUA was assigned, including the goodwill symbolized by said mark, from Kapalua GmbH Luxus in Simplicity assigned to the renewal applicant Style & Spirit GmbH.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.



Style & Spirit GmbH

Name: NICOLAUS BEUSCH
Title: Managing Director