

Chairman of OTTO's Executive Board. When OTTO acquired Spiegel, Michael Otto also became the Chairman of Spiegel's Board of Directors. Michael Otto also was the head of Spiegel's three-member Board Committee which had the authority to make decisions for Spiegel between meetings of the full Board of Directors. Defendant Michael Crusemann also was a member of Spiegel's Board of Directors and one of three members of both Spiegel's Board Committee and its Audit Committee.

3. In October 1987 Spiegel stock began public trading on the Nasdaq. Spiegel's securities were divided into two classes: (a) 10% was publicly-held Class A shares that did not have any voting rights; and (b) 90% consisted of Class B stock owned by Spiegel Holdings, Inc. Defendant Michael Otto and his family owned approximately 99.9% of the stock of Spiegel Holdings, Inc.

4. As a publicly held company whose securities traded on the Nasdaq, the Securities and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78a et seq.] required Spiegel to file quarterly and annual reports with the Commission on Forms 10-Q and 10-K, respectively. Spiegel filed its required reports with the Commission on the dates they were due through its third quarter 2001 Form 10-Q, filed on November 13, 2001. Spiegel's 2001 Form 10-K was due to be filed with the Commission on March 31, 2002.

5. Spiegel's financial condition deteriorated significantly in 2000 and 2001. Defendants knew that Spiegel was required by federal securities laws to file quarterly and annual reports on Forms 10-Q and 10-K and that Spiegel

would have to publicly disclose information about its deteriorating financial condition in these Forms. Defendants subsequently approved recommendations not to file Spiegel's 2001 Form 10-K and later its 2002 Forms 10-Q.

6. The decisions not to file Spiegel's legally required reports with the Commission resulted in the withholding of material information about Spiegel's actual financial condition. When Spiegel, in an effort to stave off a lawsuit by the Commission, resumed complying with its legally mandated reporting requirements in February 2003 shareholders' equity had plunged while the company's debt had soared. Spiegel filed for Chapter 11 six weeks later.

7. On March 7, 2003 the Commission filed a complaint against Spiegel in the U.S. District Court for the Northern District of Illinois which in part alleged that Spiegel's failure to timely file its required reports violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13]. On March 27, 2003, the Court entered an Amended Partial Final Judgment in which Spiegel agreed to the Judgment including an Order that, among other things, permanently enjoined it from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

8. The Defendants' actions aided and abetted Spiegel's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

9. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

JURISDICTION

10. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

11. During all periods relevant in this Complaint, Spiegel's corporate headquarters were in Downers Grove, Illinois which is located in the Northern District of Illinois. In addition, the acts, practices and courses of business constituting the violations alleged herein have occurred within the jurisdiction for the United States District Court for the Northern District of Illinois and elsewhere. Venue is proper because acts, transactions, practices, and courses of business constituting the violations alleged in this Complaint occurred within the Northern District of Illinois.

12. The defendants, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of conduct alleged herein.

13. The defendants, directly and indirectly, have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business set forth in this complaint, and acts, practices and courses of business of similar purport and object.

DEFENDANTS

14. Defendant Michael Otto, age 63, is a German citizen residing in Hamburg, Germany. He was the Chairman of Spiegel's Board of Directors and the head of Spiegel's three-member Board Committee which had the authority to make decisions for Spiegel between the semi-annual meetings of the Board of Directors. Through a holding company, Michael Otto and his family effectively owned and controlled almost all of the voting shares of Spiegel's stock.

15. Michael Crusemann, age 60, is a German citizen residing in Hamburg, Germany. He was a member of Spiegel's Board of Directors, Board Committee and Audit Committee.

RELATED ENTITIES

16. **Spiegel, Inc.** was a Delaware corporation founded in 1865. OTTO (GmbH & Co.) KG acquired Spiegel in 1982. OTTO GmbH sold Spiegel to Spiegel Holdings, Inc. In 1987 Spiegel was registered as a public company with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)].

SPIEGEL'S DETERIORATING FINANCIAL CONDITION

17. Spiegel owned and operated three merchant retail subsidiaries that sold clothing, home furnishings and other consumer goods. Spiegel also owned

a special purpose bank, First Consumers National Bank (“FCNB”), which provided credit and related credit services to customers of the merchant subsidiaries. In 1998 Spiegel sought to increase the sales of its merchant subsidiaries by targeting “subprime” or less creditworthy consumers with offers of easy credit. These subprime customers responded in large numbers and Spiegel’s sales soared. Spiegel’s consolidated operating income increased 32.6% between 1999 and 2000.

18. Spiegel’s newly acquired sub-prime credit customers, however, often paid slowly, partially or not at all. The effects of selling to subprime customers began surfacing in 2000 when late payments and uncollectible accounts escalated. By December 2000 Spiegel’s accounts receivable were experiencing the highest delinquent, or non-payment, levels in at least six years. In late 2000 Spiegel’s Board of Directors appointed an OTTO GmbH employee to take over as Spiegel’s Chief Executive Officer (CEO) on July 1, 2001.

19. Spiegel’s deteriorating financial condition worsened throughout 2001. In 2001 the percentage of accounts written off as uncollectible soared from 11.2% of the total accounts receivable to 18%. Spiegel’s sales and revenues also dropped and its need for funding increased.

20. One of Spiegel’s principal sources of revenue was its securitization of its credit card receivables, attained by placing the receivables in trusts and selling series of interest-bearing notes backed by the assets in the trusts. In July 2001 Spiegel raised \$600 million in a public offering of notes backed by its credit

card receivables. In October and December 2001 Spiegel raised an additional \$512 million through a private offering of an additional note series. Even these huge new inflows of cash, however, were not sufficient to resolve Spiegel's financial problems. Spiegel began advising banks in October 2001 that it expected to violate covenants in its loan agreements by December 31, 2001.

21. On November 29, 2001 the Office of the Comptroller of the Currency ("OCC") began an intensive examination of FCNB and subsequently reduced FCNB's rating to the lowest level possible. In early January 2002 Moody's Investors Service downgraded the ratings of two of Spiegel's note series from "investment grade" to "non investment grade".

22. By December 31, 2001 Spiegel had breached four covenants in its on-balance sheet loan agreements. However, it had obtained waivers for only two of the breaches and those waivers were to expire on June 15, 2002. In addition, Spiegel had decided to sell FCNB at an estimated loss of \$379.8 million.

23. Spiegel's independent auditor advised that it would have to consider including a "going concern" modification in its audit report that would accompany Spiegel's financial statements in Spiegel's 2001 Form 10-K unless Spiegel obtained: (a) a written commitment to provide funding for a cash shortfall Spiegel projected would begin in March 2002; (b) a binding agreement to sell Spiegel's credit business; and (c) a waiver of breaches of Spiegel's financial covenants through December 31, 2002, new credit agreements, or a written

agreement from a source that was reliable and able to provide funding for debt requirements Spiegel incurred after June 15, 2002.

24. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] required Spiegel, as a public company, to file periodic reports with the Commission. Spiegel timely filed its required quarterly and annual reports with the SEC through the filing of its third quarter Form 10-Q on November 13, 2001. Spiegel's 2001 Form 10-K was due to be filed with the Commission on March 31, 2002.

25. On February 21, 2002 Spiegel issued a press release announcing an expected loss of \$398 million for 2001. The release did not disclose that Spiegel's auditor had advised it would have to consider including a "going concern" modification in its audit report on Spiegel's 2001 financial statements unless Spiegel resolved its underlying financial problems.

26. On the March 31, 2002 date its 2001 Form 10-K was due to be filed, Spiegel had not attained any of the conditions its auditor required to avoid including a "going concern" modification in its audit report. Spiegel therefore did not file its 2001 Form 10-K with the Commission but instead filed a Form 12b-25. The Form 12b-25 advised that Spiegel would file its 2001 Form 10-K within 15 days. The Form 12b-25 also stated that Spiegel was "not in a position to issue financial statements for its 2001 fiscal year pending resolution of" the fact that it was not "currently in compliance with its 2001 loan covenants and ha[d] reached a strategic decision to sell its credit card subsidiary". The Form did not mention the auditor's "going concern" opinion.

27. From March 31, 2002 to April 15, 2002 Spiegel sought to negotiate additional financing which would obviate the need to include a “going concern” modification on the auditor’s report of Spiegel’s 2001 financial statements. Spiegel’s lending banks, however, refused to provide it with new credit as of April 15, 2002, the date that the 15 day filing extension period sought by Spiegel’s Form 12b-25 expired.

28. On April 15, 2002, Spiegel’s CEO recommended that Spiegel not file its 2001 Form 10-K at all rather than file with a going concern opinion. Defendants Crusemann and Otto approved this recommendation although they knew at the time that Spiegel was required by federal securities law to file this Form with the Commission.

29. On April 17, 2002 the NASD notified Spiegel that it intended to delist Spiegel’s stock from the Nasdaq because the 2001 Form 10-K had not been filed. At Spiegel’s request the NASD agreed to postpone delisting pending a hearing scheduled for May 17, 2002.

30. On May 13, 2002 Spiegel’s Audit Committee including Defendant Crusemann met with members of Spiegel’s corporate management and its outside auditors to “consider the filing status” of the 2001 10-K. The Audit Committee including Defendant Crusemann voted to meet again in three days to discuss the issue.

31. On May 15, 2002 Spiegel’s Vice President of Financial Controls and Audit sent an interoffice memorandum to Defendant Crusemann and others

entitled "Pros/Cons to Filing the Form 10-K". The "Cons" included the fact that not filing "[i]ncreases the chances of an SEC enforcement action. Officers are personally liable and have a fiduciary responsibility to file the financial statements based upon the securities laws." Attached to the memorandum was a copy of Section 20 of the Exchange Act, *Liability of controlling persons and persons who aid and abet violations*, [15 U.S.C. § 78t], citing Section 20(c) of the Exchange Act [15 U.S.C. § 78t(c)]. The attachment stated that "It shall be unlawful for any director or officer of...any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information."

32. Defendant Crusemann and the other members of the Audit Committee did meet on May 16, 2002 and again discussed whether or not to file Spiegel's 2001 Form 10-K. The Committee determined not to file Spiegel's Form 10-K until after Spiegel's May 17, 2002 hearing with Nasdaq.

33. Spiegel's first quarter 2002 Form 10-Q was due to be filed with the Commission on May 15, 2002. Knowing that the federal securities laws required Spiegel to file the Form 10-Q, Defendants Crusemann and Otto authorized Spiegel not to file this Form. Instead Spiegel again filed a Form 12b-25, stating only that it was not in a position to file its Form 10-Q pending resolution of its debt covenant violations and acquisition of new credit facilities. The Form 12b-

25 did not mention the “going concern” opinion of Spiegel’s independent auditor.

34. If Spiegel had filed its 2002 first quarter Form 10-Q, it would have disclosed that on February 18, 2002 Spiegel reached its \$700 million borrowing capacity under its revolving credit facility and that it had no other available letter of credit facilities. Spiegel also would have been required to disclose that, because of its difficulties in paying vendors, it entered into a March 2002 Agreement whereby a related OTTO party agreed to initially pay certain vendors for merchandise shipped to Spiegel.

35. On May 17, 2002 Defendant Crusemann and other members of Spiegel’s management attended the NASD hearing. At this hearing, the NASD advised Spiegel that it was unacceptable not to file because the filing would contain a “going concern” modification. Spiegel’s representatives asserted that Spiegel had not filed its 2001 Form 10-K because Spiegel’s management believed that Spiegel would obtain new financing and that a going concern opinion would misrepresent Spiegel’s financial condition. Spiegel’s CFO represented to the NASD commissioners that Spiegel would file its 2001 Form 10-K within five business days, even if it contained a “going concern” opinion.

36. Spiegel’s outside corporate counsel had previously recommended that Spiegel timely file its 2001 Form 10-K. The defendants knew that this was the recommendation of Spiegel’s counsel.

37. Despite the representation to the NASD, Spiegel still had not filed its 2001 Form 10-K as of May 31, 2002 because it had not obtained new credit facilities that would have allowed it to avoid the “going concern” opinion of its independent auditor. On May 31, 2002 defendant Crusemann and one other Spiegel Director, acting as a quorum for Spiegel’s Audit Committee, telephoned Spiegel’s outside corporate counsel to ask what the consequences were if Spiegel still did not file its Form 10-K. Spiegel’s outside counsel advised filing and told them Spiegel and its individual employees were running large risks by the continued refusal to file. Despite this advice, defendant Crusemann and the other Audit Committee member nonetheless voted to recommend postponing the filing of Spiegel’s 2001 Form 10-K and 2002 first quarter Form 10-Q until the loan restructuring was in place and Spiegel received an unqualified audit opinion.

38. Defendants Crusemann and Otto formed a quorum for Spiegel’s three-member Board Committee, which had the authority to make decisions for Spiegel between the semi-annual Board of Directors meetings. On May 31, 2002 Defendants adopted the Audit Committee’s recommendation not to file until new financing was in place and an unqualified audit opinion was obtained. Defendants understood that the federal securities law required Spiegel to timely file the Forms at issue.

39. Thereafter, when its quarterly 2002 Forms 10-Q were due, Spiegel simply filed Forms 12b-25 reiterating only that it was not in a position to file, pending resolution of its need for financing.

40. On June 3, 2002, the first business day following the Board Committee's resolution, the NASD delisted Spiegel's stock because of its failure to file its 2001 Form 10-K. Spiegel issued a press release that advised of the delisting. The release quoted Spiegel's CFO as saying he believed Spiegel would receive an unqualified audit opinion once it obtained new credit facilities. On June 4, 2002 Spiegel's Vice President of Corporate and Investor Relations was quoted in a Chicago Tribune newspaper interview as saying that if Spiegel did not reach an agreement with its banks, the company's auditors "would have to express doubt about the company's ability to continue as a going concern" and that Spiegel felt it would be detrimental to file the 2001 10-K without a "clean opinion" from the auditor. Neither publication disclosed that Spiegel's highest level of management had resolved not to file the 2001 Form 10-K and 2002 first quarter Form 10-Q until it obtained new financing and the audit opinion it wanted. The publications also did not disclose any specific information about Spiegel's finances.

41. On August 14, 2002 and November 13, 2002 Spiegel filed additional Forms 12b-25 advising respectively that it was not in a position to file its second and third quarter 2002 Forms 10-Q pending resolution of its debt covenant violations and acquisition of new credit facilities.

42. If Spiegel had timely filed its second quarter 2002 Form 10-Q, it would have been required to disclose that its total debt had increased to \$1.301 billion. If Spiegel had timely filed its third quarter 2002 Form 10-Q it would have been required to disclose that it had borrowed \$145 million from OTTO in senior unsecured loans. It also would have disclosed that Spiegel had been required to increase its collateral because a rating agency otherwise planned to downgrade its note series, leading to rapid amortization in Spiegel's asset-backed trusts that provided the security for Spiegel's note series. In addition, the 2002 Forms 10-Q would have indicated the continuing deterioration of Spiegel's asset-backed trusts.

43. Spiegel filed its 2001 Form 10-K on February 4, 2003, only after SEC staff advised that they intended to recommend that the Commission take enforcement action against Spiegel.

44. The Form 10-K, filed over fifteen months after Spiegel's prior public filing, disclosed that shareholders' equity had decreased from \$792 million to \$215 million, total assets had shrunk from \$2.7 billion to \$1.9 billion and total debt increased from \$795 million to \$1 billion.

45. On February 26, 2003 Spiegel filed its first, second and third quarter 2002 Forms 10-Q with the Commission.

46. Spiegel filed for Chapter 11 on March 17, 2003.

COUNT I

Aiding and Abetting Violations of Section 13(a) of the Exchange Act

[15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13

[17 C.F.R. §§ 240.13a-1 and 240.13a-13]

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference as if set forth fully.

48. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] thereunder require issuers of registered securities to file with the Commission timely and accurate annual and quarterly reports.

49. On March 27, 2003, the U.S. District Court for the Northern District of Illinois entered an Amended Partial Final Judgment in the Commission's injunctive action against Spiegel, Inc. The Judgment included, among other things, an Order that permanently enjoined Spiegel, Inc. from violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

50. Defendants Otto and Crusemann directly and indirectly, aided and abetted Spiegel's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Judgment:

I.

Finding that each of the Defendants Crusemann and Otto committed the violations alleged above;

II.

Permanently enjoining, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the order of permanent injunction by personal service or otherwise, and each of them, from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

III.

Ordering each of the defendants to pay a civil monetary penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered.

Respectfully submitted,

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