

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54689 / November 2, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2507 / November 2, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12470

In the Matter of

HORST HANSEN,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Horst Hansen (“Hansen” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has agreed to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”) as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Respondent, 71 years old, is a German citizen and resides in Ahrenberg, Germany. In 1966 Respondent joined the German company OTTO (GmbH & Co.) KG (hereinafter “OTTO”). In 1974 he was appointed to OTTO’s Board of Directors and was promoted to the Chief Financial Officer of OTTO. OTTO acquired Spiegel, Inc. (“Spiegel”) in 1982 and Respondent was then appointed to Spiegel’s Board of Directors. Respondent became a member of Spiegel’s Audit

Committee in 1987 and from 2000 to 2003 Respondent was the Chair of Spiegel's three-member Audit Committee.

2. Section 13(a) of the Exchange Act requires publicly held companies to file certain information and documents with the Commission, in accordance with rules and regulations the Commission prescribes as necessary or appropriate to protect investors and insure fair dealing in securities. Pursuant to Section 13(a)(2) of the Exchange Act, and Rules 13a-1 and 13a-13 promulgated thereunder, documents that must be filed include annual and quarterly reports.

3. As a publicly held company whose securities traded on the Nasdaq, Spiegel was required to comply with Section 13(a) of the Exchange Act. In compliance with that section, Spiegel timely filed its required quarterly and annual reports with the SEC through the filing of its third quarter 2001 Form 10-Q quarterly report on November 13, 2001. Spiegel's 2001 Form 10-K annual report was due to be filed with the Commission on March 31, 2002.

4. In February 2002 Spiegel's independent auditor advised that it would have to consider including a "going concern" modification on its audit report of Spiegel's 2001 financial statements unless Spiegel obtained either new credit or waivers from its lending banks for all breaches of loan covenants through December 31, 2002.

5. Spiegel had not obtained either new credit facilities or waivers of all breaches of loan covenants through 2002 on the day its 2001 Form 10-K was to be filed with the Commission. Spiegel's management did not want to file its 2001 Form 10-K with a "going concern" modification. Thus, on March 31, 2002 Spiegel filed a Form 12b-25 which advised that its 2001 Form 10-K would be filed within 15 days. The Form 12b-25 stated that Spiegel was "not in a position to issue financial statements for its 2001 fiscal year pending resolution of" its lack of compliance with its loan covenants and its sale of FCNB. The Form did not mention the "going concern" modification of Spiegel's independent auditor.

6. Spiegel still had not obtained either new credit facilities or waivers of its breaches of loan covenants on April 15, 2002, when the 15 day period provided under the Form 12b-25 expired. Spiegel's American management recommended on that day that Spiegel not file at all rather than file with a "going concern" modification.

7. Spiegel's first quarter 2002 Form 10-Q was due to be filed with the Commission on May 15, 2002. Spiegel again did not file its required report but instead filed a Form 12b-25, which stated 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.

8. Spiegel's decision not to file its 2002 first quarter Form 10-Q kept material information from the public markets. Had Spiegel timely filed, it would have been required to disclose that on February 18, 2002 Spiegel reached its \$700 million borrowing capacity under its revolving credit facility and it had no other available letter of credit facilities.

9. On May 29, 2002 Spiegel's general counsel advised Respondent that Section 20(c) of the Exchange Act [15 U.S.C. § 78t(c)] prohibited directors and officers from hindering, delaying or obstructing the filing of a required report without just cause. On May 29, 2002 Spiegel's Chief Executive Officer ("CEO") wrote to Respondent, acknowledging that although not filing the 2001 Form 10-K violated federal securities laws, he preferred a delisting of Spiegel's stock rather than filing with a "going concern" modification. The CEO changed his mind the next day and recommended that Spiegel file the 2001 Form 10-K under any circumstances. The CEO, however, did not inform Respondent that he had changed his mind.

10. On May 31, 2002 Respondent, who had his own vote and the proxy of the second member of Spiegel's Audit Committee, met with the third member of the Audit Committee. Respondent and the other Audit Committee member telephoned Spiegel's American corporate counsel to ask what the consequences were if Spiegel still did not file its 2001 Form 10-K. Spiegel's outside counsel advised filing and told them Spiegel and its individual employees were running risks by the continued refusal to file. Despite this legal advice, Respondent and the other member of the Audit Committee voted shortly thereafter to recommend postponing Spiegel's 2001 Form 10-K and 2002 first quarter Form 10-Q until Spiegel's auditor provided an unqualified audit opinion.

11. Thereafter Spiegel's three-member Board Committee, which made all decisions for Spiegel between the semi-annual Board of Directors meetings, adopted the Audit Committee's recommendation not to file until an unqualified audit opinion was obtained. Respondent was not a member of Spiegel's Board Committee.

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

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

14. On March 7, 2003 the Commission filed a complaint against Spiegel, Inc. 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 and Rules 13a-1 and 13a-13 promulgated thereunder. On March 27, 2003, the Court entered an Amended Partial Final Judgment in which Spiegel, without admitting or denying the substantive allegations of the Commission's complaint, agreed to the Judgment including an Order that in part permanently enjoined it from violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder. Spiegel filed for bankruptcy on March 17, 2003 and on July 23, 2004 registration of its shares was revoked pursuant to Section 12(j) of the Exchange Act.

15. Respondent caused Spiegel to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder by recommending, as a Director of Spiegel and the

Chair of Spiegel's Audit Committee, that Spiegel withhold filing its required reports with the Commission until Spiegel obtained the opinion it desired from its outside auditor.

Undertakings

16. In connection with any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent has undertaken to be interviewed by Commission staff, either in Germany or by telephone, and to testify, either in Germany or by telephone, as requested by the staff upon reasonable notice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Hansen's Offer.

Accordingly, it is hereby ORDERED that Respondent cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

By the Commission.

Nancy M. Morris
Secretary