

EXHIBIT B



Industrie- und Handelskammer
Wuppertal-Solingen-Remscheid

Protection of the Brand

Solingen

*Guideline against Trademark Piracy
and Misuse of the Famous Name*

What do you think of when you read or hear the name "Solingen"? Probably knives, cutlery or scissors. What you may not be aware of, however, is that Solingen is the name of a town in Germany and that this town is the centre of the German cutlery and scissor-making industry. Cutlery, and indeed, blades of all kinds have been manufactured in Solingen for eight centuries. While the original products were mainly swords and daggers, today's products range from cutlery and kitchen knives, scissors and razor blades through to industrial knives and cutters. Cutlery and scissors made in Solingen are of a particularly high quality. Thanks to high-grade materials, a ready supply of skilled, qualified workers and excellent craftsmanship, these products are renowned and appreciated the world over.

The name "Solingen" is, therefore, a description of the geographical origin of the product. Geographical origins are protected all over the world by the provisions laid down in fair-competition and trademark legislation. As a result, the use of such a name is only permitted in conjunction with a product originating from that region.

Despite this protective legislation, the name of "Solingen" is often misappropriated. This misuse usually takes the form of cheap-quality products manufactured elsewhere being offered for sale worldwide under the famous name of Solingen. Such fake products can be manufactured at a fraction of the cost that German manufacturers would be faced with. The consequences are manifold:

- deception and confusion among customers,
- the business activities of the legitimate manufacturers and dealers of the original goods are undermined,
- since the quality of the fakes is usually extremely poor, the name of Solingen is wrongly associated with low-standard workmanship.

Regulations of the protection

As a name, "Solingen" can look back over a very long traditional history. The starting point to be a geographical indication was in 1571, when the reigning *Duke Wilhelm von Berg* gave the order to label every blade made in Solingen with the Latin words "ME FECIT SOLINGEN" (= "Me made Solingen").

The first documented fakes appeared as far back as the 19th century. Since that time, there have been constant efforts to protect the name. In Germany, the name has been protected by law since 1938. Today, protection for the name is provided by general trademark legislation and a specific law called the "Decree for the Protection of the Name Solingen" (Solingen Decree).

The Solingen Decree makes the use of the name Solingen on cutlery dependent on defined geographical and quality characteristics. In addition, the products to which it applies are also defined.

Cutlery marked with "Solingen" must, under this legislation, meet stringent conditions. They must,

- during all the key manufacturing stages have been processed and finished within the industrial boundaries of Solingen (which, for these purposes, includes not just Solingen but also the neighbouring town of Haan)
- and, in terms of their raw materials and manufacture, be suitable for the purpose for which products of that type are made. This means that even cutlery which is manufactured within Solingen's town boundary is not entitled to bear the name Solingen if it does not conform to the required quality standards.

According to the Solingen Decree, the implements to which the restrictions apply are, apart from scissors, cutlery, knives and blades, other table implements such as cake slices and nutcrackers, even if they in themselves have nothing directly to do with "cutting". Furthermore, razors, hair-trimmers, other personal hygiene instruments and knives used as weapons are all covered by the law.

The Solingen Decree does not, however provide concrete guidelines as to the definition of the "key manufacturing stages" or the parameters defining the required quality standards. These questions have, in practice, been left up to the local manufacturers to decide. As a result, the Chamber of Commerce and Industry for the Wuppertal-Solingen-Remscheid area drew up a list in 1997 of the "Minimum requirements for use of the name Solingen" in conjunction with all the fields of industry affected and these are now recognised and applied by the corresponding manufacturers in Solingen's cutlery industry.

Anyone selling cutlery which is not, in fact, from Solingen, must not create the impression among possible customers that it was made in Solingen. It is forbidden, in particular:

- to mark the goods with "Solingen",
- to apply stickers or labels bearing the name,
- to refer to Solingen on the packaging,
- to include certificates implying the goods were manufactured in Solingen,
- to refer to the name Solingen in brochures or catalogues,
- to refer to Solingen as the origin of the goods in advertising.

If a number of products are brought together in a set (e. g. a case of cutlery or a manicure wallet) but only some of them are from Solingen, the supplier must avoid creating the impression that the entire set was manufactured in Solingen. This false impression can easily be created if the reference to the name Solingen is not unequivocally assigned to that specific article.

The phrase "designed in Solingen" is also forbidden for products not manufactured in Solingen. The reason is that the consumer is likely to be distracted by the name "Solingen" to such an extent that she or he is unaware of the word "designed" or does not even register it.

International protection of the name

The Solingen Decree and German trademark legislation are only valid in Germany. Abroad, the use of the name "Solingen" is not specifically regulated but is covered as a geographical origin by generally applicable fair-competition legislation and trademark regulations.

In a number of international agreements, many countries have mutually undertaken to provide particularly effective protection of geographical names:

- the Paris Convention for the Protection of Industrial Property of March 20, 1883 which Germany joined in 1903;
- the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods of April 14, 1891. Germany signed up to this agreement in 1925;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of April, 15 1994
- and a number of other bilateral agreements.

Although most countries are member of at least one of the mentioned agreements, they often have no specific legislation in favour of geographical indications. As a rule they only have regulations against unfair competition. To consolidate the legal position of the brand "Solingen" the Chamber of Industry and Commerce Wuppertal-Solingen-Remscheid has registered trademark, collective and certification marks in more than 40 countries of the world, e.g. in the European Union, USA, China, Russia and Canada.

The regulations attached to the collective marks include the same preconditions that the German law requires. Cutting products labelled with "Solingen" have to be produced in every essential step of manufacturing within the area of Solingen and conform to the defined standard of quality.

The consequences of the misuse of geographical origin

Criminal law consequences

Any person marking products with an incorrect geographical origin ("Solingen", "Germany" etc.) or importing or selling such incorrectly marked products in Germany is liable to a fine and even a custodial sentence of several years. Similarly, anyone exploiting an incorrect origin designation with the aim of taking advantage of the name or of damaging it is also liable to criminal prosecution. If the Court decides that the use was unlawful, it may also rule that the offending marks be removed from the products or that the products be destroyed.

In such cases, the criminal offence of deception may also have been committed. The victim will in all probability have assumed she or he was purchasing a quality product from Solingen or Germany. As a result, she or he was prepared to pay a price which bears no relation to the quality of the product actually received.

Confiscation by Customs

If fake goods are imported, exported or transported through the country in transit, the Customs authorities in most countries are entitled to confiscate them if there has clearly been a breach of the law. If a routine inspection provides grounds for suspicion, the Customs Officers may retain the suspect goods for closer inspection. If the suspicion proves to be founded, Customs may pass a confiscation order and rule that the offending markings be removed; this might entail the grinding-off of an incorrect origin designation or the destruction of wrongly printed packaging. If the offender does not comply or if such measures are not practicable, Customs may retain the goods completely.

Written warnings by competitors or Chambers of Commerce

The State's prosecutors and public affairs offices are also empowered to take action under criminal and administrative law. Apart from these measures, competitors, fair-trading and consumer associations and Chambers of Commerce can all take civil action against incorrect use of the name Solingen irrespective of question as to whether individual guilt can be demonstrated or not. A seller of fake products can, for example, be legally required not to become involved in such misuse in the future. The victim can also insist that the illegal situation be remedied. This might involve replacement of packaging bearing the name Solingen illegally, the application of a label or the removal of the incorrect marking or even the destruction of the offending goods. The offender can also be required to pay damages if the improper action has led to someone suffering personal damage or injury.

There are similar regulations and laws in other countries. The infringement of regulations on indications of geographical origin is usually both a criminal offence and contrary to competition legislation. There are also legal regulations on confiscation and destruction of fake goods in nearly every country.

A guide to fakes

A layperson cannot, as a rule, see whether the knife she or he is holding and which bears the name "Solingen" has, indeed, been manufactured in Solingen. There are, however, a number of typical characteristics which can indicate grounds for suspecting the product is a fake. If they are present, the matter should be investigated.

Is the source of the products trustworthy?

- Ensure your suppliers are reliable.
- A trustworthy dealer will, as a rule, provide the opportunity to make inquiries about the manufacturer and the brand and will generally keep a stock of brochures or catalogues.
- Make your own enquiries about the manufacturers and brands used for Solingen cutlery. Fakes are often marketed under imaginary names which are not registered or listed.
- Remember: Fake products are often imported from the Far East but genuine products from Solingen can only come from Germany.

How are the goods marked?

Solingen brand-name manufacturers will generally mark their products with the brand name, company name and details of the material, which enables you to trace them back to the manufacturer.

What is the packaging and advertising like?

Read the packaging, advertising and documentation attentively: sometimes there is a reference to the real origin apart from "Solingen" and usually in small type.

What impression does the quality of the goods make?

Genuine Solingen cutlery is of a high quality standard due to the stringent requirements of German regulations. It pays to inspect the goods for obvious faults. You are entitled to be suspicious

- if the overall impression of the product and its packaging is generally one of poor quality;
- if cutting edges are not really sharp;
- if knives or other cutlery parts are bent or can easily be bent.

Do you notice anything else?

- Be wary of generous discounts on high purchase prices.
- Have a close look at the typeface: The name "Solingen" is often used with different spelling in such a way that it is hardly noticeable. The name "Silingen" has, for example, been used.
- The phrase "designed in Solingen" is a fairly clear sign that the goods are definitely not manufactured in Solingen.

Furthermore, the respected name of "Solingen" is also exploited for other kitchen products. There are pots and pans on the market that create the impression that they have been manufactured in Solingen. However, for many years, there have been no manufacturers of pots and pans in Solingen. In such cases, there is no direct infringement of the Solingen Decree because this only protects cutlery and scissors. Despite this, it does constitute deception of the customer and amounts to an offence under trademark and fair-trading legislation and in criminal law.

More information

You find more information about the subject on the web-site of the Chamber of Commerce under the following internet-address:

http://www.wuppertal.ihk24.de/produktmarken/recht_und_fair_play/schutz_solingen/index.jsp

- Regulation for the protection of the name Solingen
- Minimum requirements for the Solingen qualification
- Regulations for the Use of the Collective Mark "Solingen"

Contact

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