

## **Made in China: German Trade Association Goes after Knockoff Knives**

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On September 11, 2012, the Chamber of Industry and Commerce Wuppertal-Solingen-Remscheid filed an action before the U.S. District Court for the Southern District of Florida against Martha Stewart, Martha Stewart Living Omnimedia, Inc., Emeril Lagasse, HSNi, LLC and SED International Holdings, Inc. for willful infringement, unfair competition, false advertising, and false designation of origin of the Chamber's SOLINGEN certification mark.

A certification mark is used by a third party to indicate that its goods or services originate from a specific geographic region and/or meet certain standards in relation to quality, materials, or manufacturing method. As set forth in the Chamber's complaint, the term SOLINGEN has been used as a certification mark since approximately 1853 to indicate that cutlery has been made in the Solingen, Germany region and meets "statutory quality standards relating to raw materials and methods of manufacture." These standards involve strict manufacturing conditions codified in German legislation, referred to as the "Solingen Decree." The Chamber owns a federal registration for the SOLINGEN certification mark, and has registered this mark with U.S. Customs.

According to the Chamber, the Defendants have sold, advertised, and distributed cutlery bearing the SOLINGEN certification mark that does not meet the certification requirements. Specifically, MSLO, which owns marks for Emeril Lagasse, has sold cutlery through the Home Shopping Network under the EMERIL mark with the designation "Solingen, Germany" on one side of the blade, and "China" on the other. Referring to consumer complaints about the misleading origin of the EMERIL cutlery, the Chamber alleges that the "Defendants are trading on the goodwill and reputation of [the] Chamber and the brand owners who properly display the Solingen Certification Mark" by creating the false impression that the EMERIL cutlery are genuine products made in Solingen, Germany in compliance with manufacturing standards. Moreover, because both Martha Stewart and Emeril Lagasse have endorsed cutlery bearing the SOLINGEN mark, and have referred to the significance of Solingen, Germany in the industry, the Chamber asserts that the Defendants knowingly, "willfully and maliciously" conducted their activities. The Chamber has asked for injunctive relief as well as damages.

While certification marks are not often litigated, this case highlights the fact that the origin or manufacturing standard of a product can play a significant factor in purchasing decisions. Consumers often rely on reviews, celebrity endorsements, or their own research before purchasing a product. The appearance of a certification mark on a product, therefore, can instantly convey to consumers a trusted level of quality, and affect their decision to purchase. The unauthorized use of a certification mark can not only result in consumer confusion, but also bring into question the trustworthiness of the certification itself.

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