

Keltie

Office for Harmonization in the
Internal Market (Trade Marks and Designs)
Avenida de Europa, 4
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SPAIN

29 July 2011

Courier

Attention: Monica Gimenez Hernandez

Dear Sirs

**Community Trade Mark Registration No 1224831 OSHO in the name of Osho International Foundation
and Application for invalidation No 5064C by Osho Lotus Commune e.V.
Our Reference: S26653/RAC**

Further to OHIM's letter of 8 March 2011, we make the following submissions in response to the above Application for Invalidity filed by Osho Lotus Commune e.V. against Registration No 1224831 for the mark OSHO.

Initial Observations

In support of our submissions, we include a main Witness Statement by Klaus Steeg and Exhibits KS1 to KS 96 and supporting Witness Statements by Michael Byrne, Ursula Hoess, Klaus-Peter Creutzfeldt, Thomas Forsberg, Philip Toelkes, John Andrews and Ronald S Tanner. These Witness Statements and the evidence attached thereto prove that the Applicant's submissions are misleading and erroneous. Moreover, the evidence submitted by the Applicant consists in the most part of evidence of genuine use of the Registered Proprietor's own mark. It is submitted that the Application for Invalidation has been filed with malicious intent by the individual behind the Applicant company consistent with his ongoing attempts to destroy the work of the Registered Proprietor's foundation and to bring its copyright and the OSHO trade mark into disrepute.

The OSHO trade mark has been in use by the Registered Proprietor for over 21 years since 1989 and therefore, the application to cancel this CTM has incurred the Registered Proprietor in an enormous amount of time and expense in searching through the archives for evidence to prove that the mark is validly registered. The volume of the evidence filed by both parties gives the impression that this is a highly complex case. However, the fact is that the word OSHO is a valid trade mark for "meditation services and related goods and services". The fact that OSHO was the name of an Indian author and mystic does not render the mark invalid for "meditation services and related goods and services". The OSHO trade mark has always only ever been used by the Registered Proprietor or by a licensee or other person or organisation with the Registered Proprietor's consent.

The Applicant makes much of the fact that OSHO has religious connotations: it does not and OSHO is not the name of a religion or religious leader. However, even if it were the name of a religion, this does not prevent its registration as a trade mark.

Moreover, the Applicant's argument that the mark is offensive is wholly groundless and unjustified: Osho was not a religious person and cannot be compared as such. He publicly denounced religion, as is evident by the DVD at Exhibit JA 1 to Dr John Andrew's Witness Statement. It is clear beyond doubt from this video that

Osho was not to be considered a religion nor have an leadership function. Further, Osho himself encouraged the protection of trade marks and was fully aware of the commercial value of trade marks and intellectual property rights.

The Applicant has always been aware that OSHO is a trade mark of the Registered Proprietor and has publicly acknowledged the fact. Moreover, the Applicant has been associated with the Registered Proprietor for many years and its deliberate attempt to hide the fact of this association is misleading and deceptive. In particular, we refer to the fact that one individual, Robert Doetsch, the owner of the Applicant company, appears to be behind this application for invalidation. This is evidenced by the exhibit at **Exhibits KS 68** and **UH 1** which are copies of an email from Robert Doetsch to the licensed OSHO centres seeking their financial support for the funding of these proceedings.

CTM Registration No 1224831 is valid and rightfully registered in the name of the Registered Proprietor. Since it first adopted the OSHO trade mark in 1989 it has licensed, monitored and policed its OSHO trade mark globally to protect the goodwill and reputation enjoyed by the OSHO trade mark. The fact that OSHO was the name adopted in the last few months of his life by the mystic and author known for most of his life as Bhagwan Shree Rajneesh (hereinafter "Rajneesh") does not render the word OSHO as being incapable of functioning as a trade mark in relation to "meditation services and education relating to meditation".

Just as the names BIKRAM, FELDENKRAIS and IYENGAR are registered and used as trade marks to identify the source of yoga, meditation or spiritual education, OSHO is registered and used as a trade mark to identify the Registered Proprietor as the source of meditation services and education relating thereto. Further, OSHO is very definitely not a religion and this is verified throughout the evidence and specifically referred to by Michael Byrne in his witness statement. Moreover, the Applicant's argument that OSHO is not distinctive as a trade mark because it consists of a name is wholly wrong: some of the most famous trade marks in the world are personal names such as those discussed below.

Further, the Registered Proprietor is not aware of any third parties having taken offence to its use and registration of OSHO as a trade mark over the past 21 years and therefore the Applicant's claim that the mark is contrary to public morality is wholly unfounded and unsupported by any material evidence.

The Application for Invalidation is therefore unfounded and should be dismissed.

We also question the motive behind this application because the Applicant is a licensee of the Registered Proprietor on the one hand but appears determined to destroy the Registered Proprietor's business on the other hand. Further, whilst the Applicant claims that Osho cannot be protected as a trade mark because it goes against the wishes of Osho himself, its owner, Robert Doetsch has been shown to have close connections with an adversary of Osho, Uppaluri Gopala Krishnamurti ("UG Krishnamurti"). This is evidenced by the stills of a video from *FaceBook* attached at **Appendix 1** which features a photograph of Robert Doetsch and UG Krishnamurti. This further questions the motives of Robert Doetsch, through his company Osho Lotus Commune e.V., in filing this application for invalidation. We say that it proves his motives in filing this Application are malicious and unfounded and for this reason act as an abuse of the CTM system and, as such, we ask that the entire application is struck out.

Summary

Osho International Foundation was founded under the name Rajneesh Foundation Europe in 1984 and it is the administrative body set up during the lifetime of Osho to initially cover the European activities of Rajneesh Foundation International, a US public charity organisation which handled the commercial activities of Osho and owned the trade marks and copyright in Osho's work (see for example, paragraphs 11 – 13 of Klaus Steeg's statement). The Registered Proprietor has developed a network of hundreds of meditation and information centres using the OSHO trade mark in relation to meditation services on a global scale. As the owner of the copyright in all of Osho's works and additional rights of IP as music, art, images created by third parties and assigned to the foundation, it also translates and organises the global publication rights to all of his

works including his books and discourses and has developed a network of hundreds of publishing licenses throughout the world. The extent of the Registered Proprietor's works has resulted in the archiving and publication of all the works by Osho into a library which can be found on its website, and it has also set up a library of printed editions in India's National Parliament in New Delhi (refer to paragraph 6 and **Exhibit 2** of Klaus Steeg's statement). During most of Osho's public life, his meditation services and related printed and video publications were provided under the trade mark RAJNEESH. Osho was involved in making applications to register the RAJNEESH trade mark and all other trade marks used by the Registered Proprietor and its predecessors and associated organisations and licensees. Osho also signed, under his name Rajneesh, copyright and trade mark documents granting consent to the use of or transferring his trade marks (see for example paragraph 12 and Annexes at Table B of Klaus Steeg's statement). When he changed his name to OSHO in 1989, shortly before his death, he was actively involved in making sure that the meditation centres offering RAJNEESH branded activities and meditations re-branded all of these as OSHO (see for example paragraphs 17, 21 and 46 of Klaus Steeg's statement and **Exhibits KS 9 and KS 44**) and Michael Byrne's statement. It is therefore inconceivable that a) Osho did not approve of OSHO being used as a trade mark, b) that the mark is not a valid registration which legitimately belongs to the Registered Proprietor or that c) the registration of the trade mark OSHO will cause offence or will be against public policy or accepted principles of morality.

The Registered Proprietor runs a successful global network of licensees who operate meditation centres under the OSHO trade mark and provide OSHO-branded meditations and educational services relating to its meditations.

Significantly, the Applicant had never challenged the validity of the trade mark RAJNEESH in any territories, but for many years publicly acknowledged the RAJNEESH trade mark in their own activities. Moreover, the validity of the OSHO CTM and the Registered Proprietor's entitlement to own the trade mark registration for OSHO has never been challenged by any third parties other than the owner of the Applicant company or organisations set up by the owner of the Applicant company. Registration No 1224831 has been validly registered for more than 10 years and throughout the whole of that period, the Registered Proprietor has continued to manage the registration and actively police the market place with regard to any unauthorised use of its OSHO trade mark (please refer, for example to paragraphs 40 to 49 of Klaus Steeg's statement and **Exhibits KS 37-46** and K-P Creutzfeldt's statement).

However, the owner of the Applicant organisation, and a shareholder in other organisations related to the Applicant organisation, Mr Robert Doetsch, evidently has an intention to destroy the work and intellectual property rights of the Registered Proprietor. This is supported by paragraph 65 of Klaus Steeg's statement in which he explains the close relationship between Robert Doetsch and the organisation called 'Osho Friends Europe' and 'Osho World' also trading as 'Osho Friends International'. **Exhibits KS 66 and 67** show Doetsch's involvement with this organization. Osho Friends Europe was set up to attack the Registered Proprietor's OSHO trade mark and copyrights.

The link between Osho Friends International and Robert Doetsch (also known as "Ramateertha") is demonstrated by an extract from the "Latest news" page on the Osho Friends International website at www.oshofriendsinternational.com a copy of the page of which is submitted herewith at **Appendix 2**. In particular, we refer to the text under 2010 which reads "In December 2010 Osho Lotus Commune, Cologne, Germany filed a request in the Trademark Registry of EU in Alicante, for Declaration of Invalidity of OSHO trade mark that was registered by Osho International Foundation (OIF) Zurich. Swami Ramateertha of Osho UTA, Cologne share that from the very start of Osho's leaving the body in 1990, there was a meticulous strategy to establish control over the Osho Centers".

The link between Robert Doetsch and the applicant is evidenced by Appendix 2 hereto and by **Exhibits KS 68 and UH 1**, as well as **Exhibit KS 2** which bears a photograph of Robert Doetsch. We also include at Appendix 2, an extract from the 2000 website of www.oshouta.de which we have obtained from www.web.archive.org. This extract confirms that Osho Uta, in addition to Osho's Place and Osho Verlag all

belong to Osho Lotus Commune e.V. – “an association in which the individual businesses joined together”. Robert Doetsch has a longstanding connection with the Registered Proprietor and was for a period a director of the Registered Proprietor (see paragraphs 4.iv. and 61 of Klaus Steeg's statement and **Exhibit KS 1**). In 1999 he signed a Letter of Understanding on behalf of his company trading under the name OSHO UTA, effectively re-confirming in writing an existing license from 1989 taking a license to use OSHO in relation to meditation services (see **Exhibit KS 40**).

Significantly, Mr Doetsch was instrumental in the enforcement of the Registered Proprietor's trade mark rights against a trade mark infringement relating to the unauthorised use of OSHO in relation to meditation services in Germany. In this respect we refer to the witness statement by Klaus-Peter Creutzfeldt, also a former director of the Registered Proprietor.

Furthermore, the Applicant itself – through its subsidiary companies - has acknowledged the name change project from RAJNEESH to OSHO and trade mark rights vested in the mark OSHO and has even signed trade mark license agreements in relation to the use of OSHO and has taken other actions which prove beyond doubt that the Applicant recognises the word OSHO as a trade mark of the Registered Proprietor in relation to meditation services and related goods and services. For example, we refer to paragraphs 55 to 64 and 67 of Klaus Steeg's statement, and **Exhibits KS 47 and KS 52 through KS 65** and to the witness statement of Klaus-Peter Creutzfeldt. In fact, the Applicant was providing and still is providing meditation services under the OSHO trade mark under a royalty-free license agreement. (See paragraphs 4 and 51 of Klaus Steeg's statement.)

All of the evidence furnished in our client's Witness Statements prove beyond doubt that the Registered Proprietor is the legitimate owner of the OSHO trade mark for meditation and related services and that the Registration is valid. Moreover, the evidence demonstrates the substantial investment made by the Registered Proprietor in the protection of its OSHO trade mark to ensure that the rights in the OSHO name are not diluted or used in any unauthorised manner, through the granting of licenses to use OSHO and through the monitoring of third party use.

The Registered Proprietor has always used the mark in a trade mark manner, filing registrations, granting licenses, controlling and policing the marketplace for unauthorised use in relation to meditation services and dealing with any instances of unauthorised use outside of the scope of the intended guidelines for use. It has applied, and continues to apply trade mark statements on all promotional material and insists on its licensees making reference to the fact that the OSHO mark is a mark of the Registered Proprietor. Since the mark was first used in 1989, all licensees have recognised and acknowledged the fact that OSHO is a trade mark of the Registered Proprietor in relation to meditation services.

Response to Applicant

Article 7(1)(b), (c) CTMR

Klaus Steeg has demonstrated in his Witness Statement that the word OSHO is a trade mark and always has been a trade mark of the Registered Proprietor. OSHO identifies the source of a certain type of meditation which was devised or authorised by Osho and its use in relation to meditation services is licensed through a network of OSHO branded meditation and information centres. The controlling source of the meditation services is the Registered Proprietor. OSHO functions as a trade mark because it guarantees a quality and origin of the meditation services and related educational services. It is capable of distinguishing the Registered Proprietor's meditation services from those of other undertakings. For example, a visitor to a meditation centre looking for an OSHO meditation, will be expecting that meditation to be of a certain quality and standard. Provided the meditation is labelled with OSHO he or she can be certain that the meditation will contain the characters and qualities he or she is looking for. In the same way, a person will assume that meditation services under the name PARAMAHANSA YOGANANDA or yoga services under the name BIKRAM will guarantee origin and authenticity. (See below for reference to PARAMHANSA YOGANANDRA and BIKRAM YOGA).

The Applicant has attempted to argue that *"The contested trade mark 'OSHO' describes the character of certain meditations, therapies and teachings and related services derived from a particular philosophy or world-view"*. This is not correct. There is no particular world-view or philosophy behind the meditations which were designed by Osho. Whether or not the OSHO-branded meditations were devised by Osho, the word OSHO is distinctive of meditation services. OSHO no more describes a meditation service than BIKRAM describes yoga. The fact that the meditation services and education relating to meditation emanated from Osho, does not render the mark OSHO non-distinctive or descriptive. Moreover, Osho was fully aware of the importance of protecting the brand name. From the 1970's until 1989, Osho's same meditations and related services were identified under the RAJNEESH trade marks. The Applicant was licensed to use the RAJNEESH trade mark in relation to meditation services and never disputed the validity of the RAJNEESH mark despite the fact that RAJNEESH was the name of a living person who was an author and mystic and the creator of meditations. **Exhibit KS 3** of Klaus Steeg's witness statement shows use by the Applicant of RAJNEESH DYNAMIC MEDITATION and RAJNEESH KUNDALINI MEDITATION and a statement that the *"Trade mark RAJNEESH is a trade mark of Rajneesh Foundation International"*. As demonstrated in Klaus Steeg's evidence, the names of Osho's meditations such as Dynamic Meditation, Kundalini Meditation, Nadabrahma Meditation, etc were already known for many years whilst branded with RAJNEESH. When the meditations were re-branded with OSHO, it was only the trade mark that changed: the meditations themselves were still described as Dynamic Meditation, Kundalini Meditation, Nadabrahma Meditation, etc. thus emphasising the fact that RAJNEESH and OSHO are the brand names identifying the source of these meditation products. It is only through the massive investment made by the Registered Proprietor in the re-branding programme and the continued development of the OSHO brand through its website, trade mark licenses, publishing licences, promotional and advertising activities by the Registered Proprietor, following Rajneesh's change of name to Osho in 1989, that the OSHO trade mark has become the well-known mark it is today.

At the time the CTM Registration for OSHO was filed on 30 June 1999, the word OSHO was inherently distinctive and still possesses a high level of distinctiveness in relation to meditation and educational services related to meditation.

The Applicant provides a brief background summary of the life of Osho and claims that the name OSHO describes the character of certain meditations derived from his philosophy. As such the Applicant claims that the mark is non-distinctive and includes a reference to **Exhibit A 1**, a reference taken from *Wikipedia*. Whilst this Exhibit outlines the history of Osho and the meditation techniques, the use of the name Osho throughout the article is particularly misleading. For example, the article states 'in 1951, aged nineteen, Osho began his studies at Hitkarini College in Jabalpur' and the article further discusses the introduction of various meditation techniques in the 1970's and the development of his philosophy. However, because Rajneesh did not change his name to Osho until 1989 the *Wikipedia* text creates the impression that Rajneesh was known as Osho all his life which is false. In fact, even after he had changed his name to Osho he was referred to by the media as Rajneesh and, moreover, when the media reported his death in January 1990, it largely referred to Rajneesh. This is evidenced by the copies of front covers of magazines dated January, February, April and March 1989 and by copies of magazines and press reports dated January and February 1990 from around the world at **Appendix 3** hereto. We have not provided translations of the German and Italian texts because the purpose is to illustrate the wide-scale reference to Rajneesh within the article headlines. In any case, the fact that OSHO was the name of a person does not render the mark descriptive or non-distinctive of meditation services and educational services related thereto and it is common for the creators of meditations, yoga and the like to use their names as the trade mark to identify the source of their meditation and yoga services. We submit that no weight can be given to a *Wikipedia* definition given that the editing and entry of definitions on *Wikipedia* is unregulated and can be made by anybody. For example, at **Appendix 4** we attach a copy of a page from *Wikipedia* which provides help to 'anyone' that wishes to edit any unprotected page. The current *Wikipedia* entry, as submitted by the Applicant, is in many parts incorrect and misleading.

The Applicant includes at **Exhibit A 2**, a copy of a page from *Wikipedia* relating to Meditation which shows on page 4, an entry relating to Active Meditation and on page 5 there is a brief reference to Rajneesh. Again, we

submit that pages from *Wikipedia* is not reliable evidence and we ask that this is dismissed. In any case, the *Wikipedia* entry adds nothing to the Applicant's arguments. All this does is further prove the fact that it is active meditation that is the descriptive term and that the words RAJNEESH or OSHO within the terms RAJNEESH active meditation or OSHO active meditation are the trade marks and source identifiers.

The Applicant submits at Exhibit A 3, a selection of pages from a magazine called "Connection" dated October/November 1999. This special edition of the magazine carries the title 'Osho's Erbe' or 'Osho's Heritage'. The extract which the Applicant has submitted consists of a list of meditations, referred to as the dynamic meditation, the Mandala meditation, Nataraj meditation, Kundalini meditation, etc. The other extract translated into English lists meditation therapies created by Osho, namely, Born Again, No-Mind and Mystic Rose. The Applicant states that the mark OSHO is a reference to the person himself as well as his vision, teachings and meditations and the many goods and services created by people and organisations inspired by him. It is not understood what the purpose of this statement is. The term OSHO has always been used as a brand name in relation to meditations and education relating to meditations: the word OSHO has no function other than a trade mark in relation to these services.

The Applicant further claims that the mark OSHO will not be perceived as a distinctive sign of one company but will be seen as a descriptive reference to Osho's works and philosophy and they submit therefore that the mark is contrary to Article 7(1)(b) and Article 7(1)(c). In response to this claim, there is no doubt that the mark OSHO functions as a trade mark in relation to meditation services and related goods and services because it identifies the source of those goods and services, namely, the Registered Proprietor. Furthermore, the validity of this registration has been monitored and controlled by the Registered Proprietor as is demonstrated at paragraphs 17-22, 24, 30, 33, 36, 38, 40, 41, 43, 45, 46 and 58 in Klaus Steeg's statement and the mark has been in use for over 21 years in relation to meditation services and related goods and services through a network of licensees.

The fact that Osho is the name adopted by the person formally known as Rajneesh who was a well-known and well-documented author and mystic does not render the word OSHO devoid of distinctive character. It is submitted that the use of an individual's name as a trade mark is common practice and Article 4 of the CTMR provides for personal names to be registered as trade marks. We attach hereto at **Appendix 5** details of the CTM Registration for BIKRAM YOGA in relation to "yoga services", and registered in the name of Bikram Chaudhury. This demonstrates that a name can be registered as a trade mark for yoga services. Further, the BIKRAM YOGA mark is part of a licensed network through franchisees. As is evident from the official website of BIKRAM YOGA – www.bikramyoga.com, anybody that wants to teach BIKRAM YOGA must attend a teaching training programme before qualifying as a Bikram teacher and it is also possible to apply for a franchise. Some pages printed off from this website are included in Appendix 5.

At **Appendix 6** we attach details of further marks which have been found to be registrable by the OHIM and which support our arguments that the mark OSHO is a valid trade mark registration, that it is distinctive and not descriptive of meditation services and related goods and education related thereto. The fact that these marks consist of the names of the founders of the respective services, does not make them descriptive or non-distinctive of the services provided under the registrations.

- CTM No 685966 for PARAMAHANSA YOGANANDA in the name of SELF-REALIZATION FELLOWSHIP CHURCH covering *inter alia* 'services consisting of providing religious, meditation and related activities'

A copy of the home page and biography page of the website of Self-Realization Fellowship Church are also included at Appendix 6. Paramahansa Yogananda was a spiritual philosopher who lived in modern times and died in 1952. He developed certain meditations and his work is now promoted by Self-Realization Fellowship who also own the trade mark PARAMAHANSA YOGANANDA.

- CTM No 2558104 for SATYANANDA YOGA in the name of IYFM Ltd covering *inter alia* 'educational services; cultural activities; seminars; workshops; demonstrations; classes, workshops and conferences; online films, video and other recorded media.'

This yoga practice originates from its creator, Satyananda Saraswati, a yoga master and philosopher recognised in both India and the west. He is best known for founding the International Yoga Fellowship Movement and the Bihar School of Yoga.

- CTM No 2708675 for IYENGAR in the name of B.K.S. (Bellur Krishnamachar Sunderaraja) Iyengar Ramamani Iyengar Memorial Yoga Institute covering *inter alia* 'educational, training and instructional services, tuition services, research and development services, publishing services; film, video and audio production; library services; arranging and conducting of conferences, seminars, symposia, workshops, exhibitions, educational visits, competitions; provision of conference, training and exhibition facilities, all of the foregoing relating to Iyengar yoga.'

Bellur Krishnamachar Sundararaja Iyengar also practiced and taught yoga techniques and spiritual practices in Pune, India.

- CTM No 1407618 for SWAMI SANANDA in the name of Angel Alberto Rincon Maggiolo covering *inter alia* 'educational services; training; entertainment; sporting and cultural activities'.

Sananda was an instructor and spiritual teacher who travelled the world discussing topics such as the Age of Aquarius.

- United Kingdom Trade Mark No 1563759 for FELDENKRAIS METHOD in the name of Feldenkrais Guild UK covering *inter alia* 'Educational services, all relating to teaching awareness of and improvement in the strength and flexibility of the skeleton and muscles'.

The Feldenkrais Method is a unique practice based on focus and movement to relief tension and muscular pain, assist with easier breathing, greater relaxation and increased vitality. The practice was named after its founder Moshe Feldenkrais and the trade mark is now the property of Feldenkrais Guild UK. A copy of the "about the guild" page from www.feldenkrais.co.uk is included in Appendix 6.

- CTM No 8246464 MAHARISHI in the name of Maharishi Foundation covering *inter alia* 'Educational; provision of training; entertainment; cultural activities; personal and social services rendered by others to meet the needs of individuals'.

This registration relates to Maharishi Mahesh Yogi who created a type of meditation known as Transcendental Meditation. A copy of the homepage of the Maharishi Mahesh Foundation is attached at Appendix 6.

- CTM No 3652005 SHRI MATAJI NIRMALA DEVI for *inter alia* the class headings in Classes 41, 44 and 45 in the name of Nirmala Srivastava.

This trade mark is the name of the founder of Sahaja Yoga. The home page from the official website of this trade mark registration is included at Appendix 6. As in the case of OSHO, the website explains that the trade mark owner has established Sahaja Yoga centres in over 75 countries.

- CTM Registration No 922558 SATHYA SAI BABA for *inter alia* 'audio cassettes, printed matter; education; training' in the name of Sathya Sai Koordinations-Komitee Schweiz

Sathya Sai Baba is the name of an Indian philosopher who was alive until recently. A copy of the home page of the website of the International Sai together with the page setting out the trade mark statements is included at Appendix 6.

- CTM Registration No 7541386 MUKTANANDA for inter alia 'videos, photographs, printed matter, educational services relating to spiritual development' in the name of SYDA Foundation.

Muktananda, who lived from 1908 to 1982, was the founder of a form of yoga called Siddha Yoga and an author of many books. He also established over six hundred meditation centres and ashrams around the world. A page from the official website of the SYDA Foundation at www.siddhayoga.org is attached from containing a trade mark notice on the bottom of the page.

- CTM Registration No 7541741 SIDDHA MEDITATION for inter alia 'videos, photographs, printed matter, education services relating to spiritual development' in the name of SYDA Foundation

- CTM Registration No 7541345 SIDDHA YOGA for inter alia 'videos, photographs, printed matter, education services relating to spiritual development' in the name of SYDA Foundation

SIDDHA is the name of the technique of meditation and yoga developed by Muktananda.

- CTM Registration No 8198731 KUNDALINI YOGA as taught by Yogi Bhajan for inter alia 'cds, books, yoga and meditation training' in the name of Kundalini Research Institute

Yogi Bhajan is the name of a teacher of the kundalini technique meditation. A copy of the link from the official website of Kundalini Research Institute to the home page of www.yogibhajan.org is attached providing details of Yogi Bhajan.

On Page 4 of its submissions, the Applicant claims *"Soon after Osho's death in 1990 attempts were made to monopolize the legacy of Osho: his art, his unique signatures and even the meditation techniques were applied for trade marks in USA and other countries, while Osho's name was used by people connected to him to refer to his vision, teachings, meditations and lifework and their work that had been inspired by him and his teachings in general ever since Osho had taken his name in 1989. This attempt failed when the US trade marks were cancelled respectively rejected for genericness / descriptiveness as shown below (Para ii.1.1.)"* . It is clear from Klaus Steeg's statement that this is a blatant distortion of facts because Osho's signature, art and meditation techniques were already owned by the Registered Proprietor with Osho's knowledge. For example, Osho's signature is subject of International Registration No 57776 dated 23 October 1991 (see **Exhibit KS 12**). Moreover, as demonstrated by Klaus Steeg, the Applicant, recognised and acknowledged the Registered Proprietor as the owner of copyright in Osho's signature and in the OSHO trade mark. For example, we refer to the material at **Exhibit KS 68**.

Also on page 4/5 the Applicant says: *"Nevertheless, by monopolizing the name of Osho being the founder of a new world-view/philosophy, the proprietor of the contested CTM is trying to get control over the content of the meditations, therapies and teachings as well as the underlying world-view, vision and philosophy, allowing it to purport in its own discretion what may be referred to as the right interpretation of Osho's vision and teachings. Registering "OSHO" was simply about the attempt of a small group of would-be leaders to put themselves in the place of Osho and to get control over people connected to and inspired by Osho and their independent work by monopolizing the key descriptor that puts into one word an entire mysticism. Osho himself never purported to do this during his lifetime"*. The Applicant has not provided any proof as to what Osho's intentions were regarding his name whereas the Registered Proprietor has proved through the witness statements by Klaus Steeg, Michael Byrne, John Andrews and Philip Toelkes that Osho's intention was for the Registered Proprietor to own and control the trade marks and meditation techniques. The registration of the CTM subject of these proceedings was in accordance with the Registered Proprietor's right as the owner of

the OSHO trade mark and in accordance with Osho's intention for a foundation to own and control all intellectual property rights. The Registered Proprietor is entitled to own the monopoly in the OSHO name.

Klaus Steeg has provided clear proof that it was Osho himself who requested meditation centres be set up under his name (see for example, paragraphs 13, and 5.iii. and Annex 1 of Klaus Steeg's witness statement). Further, Osho requested that the centres providing genuine RAJNEESH meditations be called Rajneesh Meditation Centres. When he changed his name, he personally approved the name of OSHO Meditation Centre or OSHO Information Centre of those wishing to provide OSHO branded meditations. The Annexes to Table B referred to in paragraph 12 of Klaus Steeg's statement consist of legal documents relating to trade marks, copyright and other IP matters which Osho signed himself demonstrating his knowledge, awareness and consent to the use and ownership of the trade marks by the Registered Proprietor. Osho clearly intended that his name, firstly RAJNEESH and then OSHO and all of his other trade marks and copyright, be managed and controlled by one party, that party ultimately being the Registered Proprietor.

We submit that it is significant that none of the evidence submitted by the Applicant indicates that any personnel from the Applicant organisation had a close personal involvement with Osho himself at the time when Osho arranged the re-branding of his work. On the other hand, Michael Byrne has stated that he was appointed by Osho as the Chairman of the Inner Circle and of the Osho International Presidium. Robert Doetsch, owner of the Applicant organisation, was a member of the Board of the Registered Proprietor but was asked to resign by Osho several years before Osho adopted the name Osho (see **Exhibit MB 1**). Thus the allegation that *"a small group of would-be leaders put themselves in control of Osho..."* is true to the extent that Osho himself appointed a small group of people from within the Registered Proprietor's foundation to ensure correct use of the trade mark OSHO and that the meditations provided under the OSHO mark were provided in accordance with the original techniques. However, it is not true that they put *themselves* in control.

On page 5 of its submissions, the Applicant, makes reference to the fact that OSHO is a "spiritual leader". Specifically, it says that *"OSHO" is the personal name of a well-known Indian mystic, spiritual leader and founder of a new world-view...* . Osho was not a spiritual leader and it was never his intention to be a spiritual leader. As evidence of this, we refer to the witness statement of Michael Byrne.

The Applicant puts a great deal of emphasis on the invalidation cases before the US Patent and Trademarks Office and relies on the decision in these USA proceedings to support its claim that OSHO is generic (Exhibits A5 and A6). It is OHIM practise not to give any weight to national decisions especially those outside the jurisdiction. (*T-122/99 Procter & Gamble v OHIM* and *T-331/99 GIROFORM*) and so we assume that the Applicant's comments, claims and allegations relating to the USA case will be dismissed by OHIM. To give any weight to that case would set a dangerous precedent because OHIM does not have access to all the evidence and arguments filed. That USA case was based on different grounds and arguments and did not rely on the same evidence relied upon by the Registered Proprietor in the current proceedings. Significantly, the USA decision was not appealed due to financial constraints, although Keltie has reviewed the decision and believes the Registered Proprietor would have had strong grounds for succeeding in an appeal, because the decision contains blatant flaws when compared to the proven facts of the case as demonstrated by the Registered Proprietor's evidence.

Moreover, the extracts taken from the USA cases and provided by the Applicant in support of the current CTM proceedings paint a false picture of the historical and real facts. For example, the Applicant has quoted several extracts from the US decision in which the word OSHO has been held generic. However, the reasons behind this finding are wrong, not least because they refer to Osho being a religious movement. Further, the Applicant itself has publicly acknowledged for years that OSHO is a trade mark of the Registered Proprietor by using the TM and ® symbols and trade mark statements on its literature to the fact that *"OSHO is a trade mark of Osho International Foundation"*. For example, we refer to **Exhibits KS 11, KS 20, KS 52, KS 56, KS 62, KS 64 and KS 65**. Further, "generic" means the common name for something: OSHO is not the common name for meditation.

Further, the Applicant is arguing on the one hand that OSHO is descriptive and generic of meditation services, but on the other hand, the current 2011 Meditation Program of Osho Uta offers meditations under the descriptions of Dynamic Meditation, Kundalini Meditation, etc without the reference use of the OSHO trade mark. Accordingly, it is accepting the fact that it is not necessary to use OSHO to describe the meditations it offers. On page 20, the Applicant contradicts itself when it says *"On the other side, "Osho" does usually not appear as the name of a meditation, i.e. as the trade mark of the meditation services. Instead the meditations have their own different names, see Exhibit A 3"*. It further contradicts its position on page 13 where it says *"Osho's active meditation techniques, in particular the Dynamic Meditation and the Kundalini Meditation, have become known far beyond his supporters; they are practised in many of the workshops led by other people than Osho's supporters and sometimes even in schools and universities and have become models for many providers of the spiritual and esoteric market. Osho's name has become a category name for many kinds of therapies and meditations; see Exhibit A 17 and – from the website of the proprietor of the contested CTM"*.

The Applicant submits that the perception of the mark OSHO in Germany is expressed by the decision of the General Federal Patent Court, in its decision of 30 May 2007. It is difficult to see how this case has any bearing on these proceedings because that case relates to the distinctiveness of the mark EU TIMES in relation to magazines. It did not examine the distinctiveness of the mark OSHO TIMES based on evidence of use and distinctiveness but was simply referred to as 'one of the commonly known 'times' magazines'. Further, that case did not concern "meditation services" and so cannot be used as a precedent. This German decision cannot be relied upon to any extent whatsoever to show the mark OSHO TIMES is not distinctive in Germany. The judge's comments in that case were not made as a result of analysing the evidence and use of OSHO TIMES and was not based on evidence, history and facts relating to the mark OSHO TIMES and nor could it have been without the input of the Registered Proprietor by submission of evidence in that case. The Applicant's claim that a reference to the trade mark OSHO TIMES in a case relating to the mark EU Times is not reliable evidence that the word OSHO is non-distinctive and descriptive of meditation services in Germany. The case on which the Applicant relies related to the distinctiveness of the trade mark EU Times. The reference to this German decision is therefore irrelevant and Exhibits A 7 and A 8 should therefore be dismissed by OHIM in so far as it does not support the Applicant's claims, although the reference by the Applicant to the headline of the Osho Times shows use of OSHO in the stylised type face the Registered Proprietor (see, for example, **Exhibits KS 18** bearing the OSHO mark). Moreover, the evidence submitted by the Applicant at Exhibit A 8 consisting of copies of covers for OSHO Times is evidence of use of the trade mark by the Registered Proprietor through a licensee which happens to be Osho Verlag, one of the Applicant's companies (see paragraphs 69 and 70 of Klaus Steeg's statement).

In the decision of the General Court in Case T-106/00 *Streamserve* at paragraph 47 it was expressly stated:

"As regards the national decisions referred to by the applicant, it must be borne in mind that, as is clear from the case-law, the Community trade mark regime is an autonomous system with its own set of objectives and rules peculiar to it; it is self-sufficient and applies independently of any national system (Case T-32/00 *Messe München v OHIM* (electronica) [2000] ECR II-3289, paragraph 47)." [Emphasis added]

Thus, the reference to the *European Times* case should be dismissed.

The material at Exhibit A 8 does nothing whatsoever to support the perception that Osho is generic and non-distinctive in relation to meditation services in Germany but serves only to demonstrate the use of the trade mark in relation to a magazine. The fact that the magazine is dedicated to "Osho and his vision" does not render the mark non-distinctive, generic or descriptive of meditation services and we fail to see what relevance Exhibit A 8 bears on the validity of the CTM.

Given the evidence submitted by the Registered Proprietor's witnesses, we submit that the claims made by the Applicant at paragraph at 1.2.2 on page 9 of its submissions are extraordinary. We say they are a wilful deception and attempt to mislead OHIM into believing that the OSHO trade mark is in use by third parties

other than the Registered Proprietor. Specifically, the Applicant claims that goods and services related to Osho's vision, teachings and meditations are sold and performed by many meditation centres and individuals operated by *people connected to Osho*, and that they include an estimation of approximately 300 meditation and information centres in 45 countries, with particular reference to the EU. In its attempt to prove this, the Applicant shows at Exhibit A9 a list taken from the Registered Proprietor's own website which consists entirely of licensees of the Registered Proprietor who are using OSHO in relation to meditation services and educational services relating to meditation under license from the Registered Proprietor! This is verified by Klaus Steeg at paragraph 71 of his statement. We also refer to the letters, emails and licenses at *inter alia* **Exhibits KS 9, 10, 31, 42, 45 and to Exhibits KS 74 – 96**.

It is further claimed by the Applicant that it is Osho's supporters that transcribed and recorded his discourses and shared them with others during Osho's lifetime. However, it is a fact that it is the Registered Proprietor that transcribed and recorded all of Osho's discourses – with Osho's consent – as part of Osho's request that all his intellectual property rights be protected and commercialised through the Foundation. This is supported by Klaus Steeg in paragraph 26 of his statement. We also refer to the article at **Exhibit KS 2** confirming the well-publicised fact that the Registered Proprietor is the owner of all the copyright in Osho's works and to the decision in the *Pat Lear* case (see **Exhibit PT4**, paragraph 10 of Philip Toelkes' statement) in which the judge ruled that the Registered Proprietor (Rajneesh Foundation International at the time) was the owner of all the published work of Osho and the work has never been in the public domain.

The Applicant also claims, in the first paragraph of 1.2.2 that *"the meditation centres and camps"* – that is, the Registered Proprietor's licensees – *created and offer their variations of music, cultural and celebratory events, education and therapeutic course, workshops and retreats based upon Osho's ideas*". This is not true because any OSHO-branded products such as meditation, education relating to meditation, literature relating to meditation and music for the OSHO-branded meditation are the Registered Proprietor's goods. However, the Applicant is misleadingly representing that these centres are offering OSHO-branded goods and services which do not relate to the proprietor.

The reason that we submit the Applicant's statements and claims in paragraph 1.2.2 are a deliberate attempt to mislead and deceive is because it is clear from the witness statements by Klaus Steeg, and Michael Byrne that the Applicant is very well aware that the OSHO trade mark is used under a network of licensees. This is supported by the fact that Robert Doetsch, the Applicant's owner, signed trade mark license agreements in relation to the use of OSHO (see **Exhibit KS 56**) and that Robert Doetsch was on the Board of the Registered Proprietor (see, e.g., **Exhibit KS 55**). Further, as a licensee itself of the Registered Proprietor, the Applicant cannot deny that it was aware of the network of licensees using the OSHO. We also refer to Ursula Hoess' witness statement in which she explains that she makes regular contact with the network of licensees to update them on issues. For example, we refer to paragraphs 10 – 15 of her statement describing the activities undertaken in keeping centres informed of issues and ensuring that the centres meeting the requirements set out in the Registered Proprietor's guidelines.

Further, the Applicant is well aware of the fact that the Registered Proprietor is the owner of the copyright in all of Osho's discourses and books and this is supported by the fact that Robert Doetsch, the Applicant's director, signed the assignment of copyright to the Registered Proprietor dated 23 November 1985, in his previous function as director of Proprietor (see Annex 8 of Klaus Steeg's statement).

In the same paragraph, the Applicant refers to "people connected with Osho", but has not explained who it is referring to. Nobody is connected with Osho because he is no longer living.

The Applicant includes at Exhibit A10 an extract from a dissertation accepted by the University of Marburg. However, this is a dissertation essay and Klaus Steeg confirms in his statement (paragraph 75) that this dissertation features a collection of interviews from individuals associated with the Applicant and Robert Doetsch. Thus, we submit that these present subjective views that are unsupported by evidence. An author's opinions about a well-known person does not prevent the name of that person from functioning as a trade

mark. Moreover, the author of this dissertation, contacted the Registered Proprietor for permission to use copyright of the Registered Proprietor as evidenced by **Exhibit KS 72**. This is an example which proves that the public perception is that the Registered Proprietor owns the IP rights in the name OSHO and the works of Osho.

The Applicant has referred to the fact that the text of this exhibit contains the author's opinion that no successor was appointed to Osho. However, this has no bearing on the trade mark issue. As Klaus Steeg has demonstrated throughout his evidence, the Registered Proprietor is clearly the rightful and entitled successor to the trade mark rights and all other IP rights associated with Osho. At paragraph 9 of his witness statement, Michael Byrne explains that Osho wanted the Registered Proprietor to ensure through its Foundation that Osho's meditations always remained true to his guidance.

The seven websites listed on page 10 of the Applicant's submissions relate to businesses which are **all** current or past licensees of the Registered Proprietor (see paragraph 79 of Klaus Steeg's statement). Thus, the Applicant's evidence only goes to strengthen the proof that it is only the licensees of the Registered Proprietor that are using the mark in relation to meditation services. The Applicant claims that each of these centres operate independently and separately from one another. It is not unusual for a trade mark licensee to be legally unrelated to the other licensees of the same mark or to the owner of the trade mark right. For example, we can look at any number of different business that operate license arrangements. In such a case, the licensee or permitted users are not related to each other nor have any legal association with the proprietor of the trade mark subject of the licensed use, but the trade mark indicates a common origin – the proprietor. For example, we can look at the case of BIKRAM YOGA. It is evident from the official website at www.bikramyoga.com that anybody may apply for permission to trade under the BIKRAM YOGA trade mark indicating that those permitted users are unrelated to the other permitted users in the network or to the proprietor of the BIKRAM trade mark. We refer to the copies of pages from the 'Franchise Process' page attached at Appendix 5.

The DISNEY trade mark is another example, out of the thousands of examples available where a trade mark consisting of a name is licensed out to permitted users all of whom are unrelated entities to the owner of the mark. The mark DISNEY is registered as a CTM shown here at **Appendix 7**. Further, the owners of the DISNEY trade marks license out use of the mark on their products and it is evidence from the copy of the page from www.disneyconsumerproducts.com that the licensees are not the same legal entity as the proprietor. The examples of BIKRAM and DISNEY are no different to that of OSHO in which case each of the Registered Proprietor's licensees is part of a single network the source of which is the Registered Proprietor. The evidence submitted by Klaus Steeg proves that there is a 'controlling' instance, namely the strategy implemented by the Registered Proprietor to license, monitor, police and manage its trade marks and intellectual property rights. Further, the Applicant claims that *"Osho did not create a hierarchy to control or supervise these centers and individuals or to control the use of his name. This remained unchanged after the death of Osho"*. In response of this we refer to the Annexes to Table B (paragraph 12 of Klaus Steeg's statement) which clearly establish the fact that Osho requested a foundation to be set up with the purpose of administering and owning all intellectual property rights arising from Osho's work. Michael Byrne has confirmed in his statement that other entities like the Inner Circle and the Osho International Presidium were put in place by Osho as administrative bodies for the Work.

The Applicant's claim that centres operate *"without coordination by any single source of hierarchy..."* and that *"there is no controlling instance which would influence the offerings and standards or the use of the name OSHO"* has been wholly disproved by Klaus Steeg's evidence. It is clear beyond doubt that the Registered Proprietor operates an extensive network of licensees who use the OSHO trade mark in accordance with guidelines from the Registered Proprietor and, moreover, that the Registered Proprietor through its arm called Osho Global Connections, monitors the use by licensees and by any unauthorised parties (see **Exhibit KS 14**).

The claim that *"In the work around Osho there has never been only one source for goods and servicesOsho was a source of discourses..that were turned into products and services such as books, tapes and videos...through the additional work of many people...."* is again another attempt by the Applicant to deceive and mislead the OHIM. It has provided not one iota of evidence to back up this claim whereas Klaus Steeg has demonstrated by documentary evidence that the Registered Proprietor is the source of all the OSHO-branded goods and services. Moreover, the reference to Osho's work being turned into goods and services through the additional work of many people, is a reference to the volunteers mentioned by Klaus Steeg at paragraph 29. We refer to Philip Toelke's statement and in particular to the Pat Lear case in which the judge ruled that the Registered Proprietor was the owner of all the published work of Osho. (**Exhibit PT4**) and that the copyright in Osho's copyright works is not in the public domain. This material is relevant because copyright is an international right and not a territorial right as are trade marks.

Given Klaus Steeg's submissions and evidence, it is difficult to comprehend how the Applicant would know that *'The only thing Osho did upon adoption of his name in 1989, was that he asked the centres to use Osho in their name so people would recognise them as meditation centres based upon his teachings and ideas'* (page 11 of the Applicant's submissions). The Applicant was not part of the Registered Proprietor in 1989 and had no access to its records or files and thus could not know what Osho did and did not do at any time. In any case, the evidence at Exhibit A 11 is proof that Osho was fully aware of the importance of trade marks and the fact that their purpose was to identify the source of the meditation services provided at the centres. We draw the OHIM's attention to paragraph 21 of Klaus Steeg's evidence in which he explains that the Applicant's reference to the Exhibit A 11 document is out of context and misleading and demonstrates that Osho gave power to register trade marks to his legal secretary, and signed legal documents relating to trade marks (see paragraph 12, Table B of Klaus Steeg's statement). We also refer to the letters at **Exhibit KS 40** which further demonstrate Osho's intention with regard to the re-branding. For example, we refer to the letter dated 16 September 1989 from Ma Prem Hasya, Rajneesh's international secretary, to a meditation centre in Germany confirming that following Rajneesh's instructions, the centre is to be re-named "Osho Paki Meditation Center". This letter also refers to meditation center guidelines. The letter dated 2 October 1989 to a Meditation Center in the USA says *"We're unifying center names, using Osho in front of them as He really wants the word "Osho" to be known"*. The letter dated 26 December 1989 to a meditation centre in Japan says *"Osho received your request to open an Osho Meditation Center and He sends His blessings"*. This letter also provides a name for the centre – Osho Meditation Center - and encloses guidelines for Osho Meditation Centers and it also requests a copy of the program of the new centre to ensure that practices comply with the intended guidelines. These letters show beyond doubt that whilst Osho was alive he instructed the name change and wanted the mark to be seen as a brand. It also confirms that the methods must be conducted within set guidelines of the Registered Proprietor and not based on methods 'inspired' by Osho's works as the Applicant suggests in their submissions. It is inconceivable that Osho did not intend the re-branding to OSHO of the entire Rajneesh organisation or that he did not intend OSHO to be an indicator of source of origin and guarantee of quality of the meditation services. The word had no meaning in relation to meditation services and educational services related thereto and was highly distinctive at the time of adoption and at the time the trade mark applications were made in the EU in 1990 and 1991 and in 1999 when the Registration subject of these proceedings were filed. Robert Doetsch, the owner of the Applicant company, himself signed in his capacity as a director of the Registered Proprietor a copyright assignment from RFI to the Registered Proprietor in 1985 (see Annex 8), thus fully acknowledging that copyrights in all of Osho's works are owned by the Registered Proprietor. Accordingly, the Applicant's insinuations that it had no knowledge of the Registered Proprietor's ownership of the copyright and IP rights is an attempt to wilfully mislead the OHIM in this proceedings.

The fact that Osho's intention was for OSHO to be used as a trade mark to identify meditation services, is supported by e.g. the evidence at **Exhibit KS 7** which includes images showing use of RAJNEESH in relation to meditation centres, restaurants, hotels, airlines, newspapers, universities and discos, and demonstrates the fact that that Osho was undoubtedly aware of the use of his name as a trade mark and that he encouraged the commercial exploitation of his name as a trade mark. Thus, given that the use of OSHO replaced RAJNEESH as the name for all of the commercial activities associated with Rajneesh, it is difficult to conceive

as to why his intention would not also have been for OSHO to be exploited and commercialised as a trade mark, or indeed, what function the word OSHO had other than a trade mark.

On page 11, the Applicant makes an attempt to rely on the comparison of OSHO with BUDDHA and the Buddhist centres that are active in the EU. However, the terms Buddha or Buddhist bear no relevance to this Application. Buddhism is a religion dating back to around 560 BC whereas Osho is not a religion but the name adopted by a recently living person for the last few months of his life. Since it was first adopted in 1989, OSHO has always been used as a trade mark by the Registered Proprietor directly and through its extensive network of licensees. OSHO distinguishes the Registered Proprietor's meditation services from those of other undertakings. The distinctiveness of BUDDHA for "spiritual services" cannot therefore be compared to OSHO for "meditation services". The material at Exhibit A 12 should therefore be dismissed.

There is also an attempt to rely on the case involving the trade mark KONFUZIUS which was rejected by the German Patent and Trademark Office in relation to nursery services. Again, no comparisons can be made between Konfuzius and Osho. Given that Rajneesh was alive until 1990 and used the name OSHO for only the last few months of his life and given that he authorised and acknowledged that his name was to be used as a trade mark, there can be no comparison made between an ancient Chinese philosopher who lived thousands of years ago on the one hand, with meditation services branded with the trade mark OSHO on the other hand. We submit that the case for OSHO is more akin to the examples provided of BIKRAM YOGA or PARAMAHANSA YOGANANDA, etc. (see Appendixes 5 and 6 referred to above).

Thus, Exhibits A12-A15 do not support the Applicants arguments in any way and we ask that the material in these Exhibits is dismissed.

At paragraph 1.2.3, the Applicant again refers to the public perception of Osho. However, the Applicant has submitted no reliable evidence proving what the public's perception of the word OSHO is whilst the Registered Proprietor has demonstrated that OSHO is recognised as its trade mark.

At Exhibit A 16, the Applicant includes an extract from the website www.iloveindia.com. This extract outlines the background history of Bhagwan Shree Rajneesh. As with the *Wikipedia* link, the heading 'Establishment of Osho Foundation' is incorrectly used to refer to the formation of the JJK / Rajneesh Foundation in 1969, twenty years before Rajneesh changed his name to Osho.

The Applicant also states that '*Hundreds of books are credited to Osho, expressing his views on all facets of human existence*'. Again, this is a further attempt to mislead the OHIM: it is clear from Klaus Steeg's evidence that these books are published under license from the Registered Proprietor (see **Exhibits KS 33 and KS 63**). All copyright in Osho's works, including his books, belong to the Registered Proprietor, as established in the Annexes to Klaus Steeg's statement and by Philip Toelkes' witness statement.

In response to the Applicant's submissions at Exhibits A 16, A 17, A 18, A 19 and A 20, it is not denied that Osho was the author of hundreds of books and many archives containing recorded collections of talks, art, meditation techniques and music. However, it is evident from Klaus Steeg's Statement that Osho transferred all intellectual property rights to the Registered Proprietor including all of the copyright in his works. Also musicians, artists, photographers and other people working for and supporting the foundation have assigned their IP to the foundation. In support of this, we refer to the assignment dated 18 August 1986 to the Registered Proprietor which document assigns all IP rights. It is the Registered Proprietor that has managed the publishing business of all of Osho's works and the foundation's work including books, CDs, DVD, images, Art. This has involved setting up publishing licenses on a global scale and organising the translations of all of Osho's works in multiple media formats into dozens of languages (see **Exhibits KS 25, KS 25, KS 62 and KS 69**). We refer to the copyright assignment documents at the Annexes to Table B of Klaus Steeg's statement which prove the Registered Proprietor's ownership of the copyright in all of these works.

It is noted that the evidence at Exhibit A20 consists of copies of pages from the Osho Times dated August 2006. The second page of this exhibit is a copy of the 'Content's page of the publication and it clearly contains a statement to the effect that OSHO is a trade mark of Osho International Foundation, used under license. This is evidence of use of OSHO by the Registered Proprietor.

It is unclear for what purpose the Applicant refers on page 12 of the Applicant's submissions to the fact that Osho's entire works have been placed in the library of India's National Parliament in New Delhi. However, it was the Registered Proprietor itself that provided the complete set of works to the Library and this demonstrates that the Registered Proprietor is recognised by the National Parliament of New Delhi as being the owner of the copyright in these works. We refer to paragraph 76 of Klaus Steeg's statement.

The quotes relating to Osho listed on pages 12 and 13 of the Applicant's submissions are reference works to Osho but do not render OSHO incapable of being a trade mark and bear no relevance to the validity of the CTM. For example, it is not an infringement to write a book about e.g. Rolls Royce motor cars, but it would be an infringement to sell cars under this mark. Nor is it, e.g. an infringement to write about or to partake in a Bikram yoga class but it would be an offence to trade under the name Bikram Yoga in relation to the teaching of yoga without the authorisation from the owner of the BIKRAM YOGA trade mark. Likewise, it is accepted that books and articles can be freely published about Osho, but use of OSHO for the "provision of meditation services" can only be perceived as use of OSHO as a trade mark.

The Applicant claims that Osho's active meditation techniques, in particular the Dynamic Meditation and the Kundalini Meditation are known beyond his supporters and that OSHO has become a 'category' name. It is not clear what the Applicant means by 'category' but it is submitted that it is the names of the meditations themselves that have become known as and are descriptive of meditations services whereas OSHO is the element which identifies the source and guarantees quality i.e. functions as a trade mark, e.g. OSHO Dynamic Meditation. Exhibit A21 consists of a page from the Registered Proprietor's website and is further proof that it uses OSHO in a trade mark manner to distinguish its meditation services from those of other parties. Osho 'categorised' or described these meditations as 'active meditations' – so the category is 'active meditations', the name of the meditation is "dynamic meditation" and OSHO is the brand.

The list of dictionary definitions and references to books and magazines that contain the term OSHO at Exhibits A 22, A 23, A24 do not render the OSHO name incapable of being registered as a trade mark in relation to meditation services and education relating thereto. OSHO is not the name of a religion and Osho was not a religious leader but in any case, even if it was the case that Osho is perceived as a religion, this fact does not bar a name from being a trade mark and so the dictionary definitions are irrelevant. At **Appendix 8** we attach print outs from the British National Corpus and the Oxford English Corpus and the UK Web Corpus. These corpora are used by Dictionary makers in preparing their volumes. It can be noted that the word Osho does not appear on the British National Corpus or the Oxford English Corpus and that the Web Corpus revealed hits which mainly referred to the Registered Proprietor's www.osho.com website, its YouTube Channel or its Facebook page. The relevant remaining results referred to the works available under the mark OSHO, such as links to www.amazon.co.uk, that is, works owned by the Registered Proprietor through copyright.

Having reviewed the extracts from the dictionaries of religion at Exhibit A 22, we note that many of the definitions are incorrect. i) The *Metzler-Lexikon Religion* refers to "The Osho movement as a new religious movement". It is evident from the material submitted by Klaus Steeg that OSHO is not the name of a religion; ii) the *Lexikon religiöser Gruppen, Szenen und Weltanschauungen* refers to the courses run by Osho Uta but there is no mention at the time that Osho UTA were using OSHO as a trade mark for their meditation courses; iii) *Das Oxford-Lexikon der Weltreligion* provides a definition for Rajneesh, Bhagwan Shree, but the extract from this definition provided by the Applicant is misleading because it says that "He settled in Poona where he was called Osho" which is not correct; iv) the extract from *Kompaktlexikon Religionen* provides a definition for Bhagwan Shree Rajneesh referring to the fact that he took the name "Osho" but the entire context of the text is not provided; v) the definition in the extract from *Lexikon Jugendkulte* says that "In Germany, there are

several centres of the organisation...There is a series of books stores, restaurants, macrobiotic shops, therapy centres, etc in the environment of the former sannyasin, however, without showing an organisational cohesion": reference to the 'several centres in Germany' almost certainly relates to the licensees of the Registered Proprietor.

The reference to a name or a word in a dictionary does not render marks incapable of being trade marks. There are hundreds of thousands of trade marks which consist of dictionary words but are yet perfectly capable of functioning as a trade mark. It is significant, however that the Applicant has not submitted evidence of OSHO appearing as a definition in any mainstream dictionaries, but only dictionaries for cults or the so-called new religions movements. The examples provided by the Applicant therefore, does not demonstrate the perception of the average German consumer.

In any case, whilst OSHO is **not** the name of a religion or a religious leader and nor does it have any religious connotations, it is submitted that names of religions and their founders are registered as trade marks, function as trade marks, are subject of CTM registrations and appear in dictionaries. Some examples of such marks are Scientology and Mormon and attached hereto at **Appendix 9** are printouts from the OHIM database showing details of registrations for these two marks, together with copies of the home pages and trade mark/copyright notice pages from the official websites of the proprietors of the marks, and printouts from www.oxforddictionaries.com showing that each of these marks appears as a dictionary definition. The founder of the Scientology religion is L. Ron Hubbard and his name is also subject of a CTM Registration, details of which are included at Appendix 9. We also refer to the CTM Registration No 7119233 for HARE KRISHNA which is registered for inter alia 'religious services' in the name of International Society for Krishna Consciousness Limited. Hare Krishna is a religious sect and is defined in the Oxford Dictionary. It is also submitted that, despite the Applicant's arguments, the words JESUS and BUDDHA are subject of several CTM registrations.

Names of famous people also appear in dictionaries but also function as trade marks and are subject of registered trade marks, and we make further reference to this below.

At Exhibit A25, the Applicant includes a decision from the Federal Court of Germany relating to a complaint against statements made against what they refer to as the movement of Rajneesh Chandra Mohan. This case does not discuss the use of the mark OSHO or refer to the term Osho as being a meditation or educational service relating to meditation and so we submit this decision has no relevance to the trade mark proceedings.

The Applicant refers to the Registered Proprietor's own website at Exhibit A26 which contains the text: '*Osho has reached every corner of the world, and has garnered international media coverage over the years*'. It further submits that this shows that the mark OSHO is understood as a keyword to put into one word and symbolize the content of the lifework, teachings, vision and meditations of the founder of a new philosophy and world view. It is difficult to understand what point the Applicant is attempting to prove with its Exhibit A 26. As proven by Klaus Steeg, the Registered Proprietor received Osho's full consent to use the mark OSHO as a trade mark and has policed and managed the use of the mark through its licensees.

On pages 18, 19 and 20 (Exhibits A27 to 30), the Applicant has listed a number of events, services and businesses operating under the OSHO trade mark. However, Klaus Steeg has confirmed that every single one of these references relate to the use of OSHO as a trade mark by the Registered Proprietor or by a current or past licensee of the registered proprietor, or by the Applicant or one of its associated organisations. Thus, contrary to the Applicant's claim that this shows the use of third parties using OSHO, the Applicant's evidence at Exhibits A27 to 30 demonstrates use of OSHO by the Registered Proprietor and further proves that OSHO is only perceived as a trade mark of the Registered Proprietor. See paragraph 79 of Klaus Steeg's statement and **Exhibit KS 74 through Exhibit KS 96**.

Not only does all of the material at Exhibit A27 prove use of the Registered Proprietor's registered mark, but it appears that some of the material is not a true copy of what it purports to be. Specifically, we refer to the cover page of the Osho Times International (English version) dated 16 March 1995 and to the fact that the inside page attached to this cover is from the German version and advertises Osho Meditation Camp dated 16-18 January 1998.

In order for the mark to have become descriptive, the Registered Proprietor must have allowed it to become part of common language. As evidenced by Klaus Steeg (for example see, inter alia **Exhibits KS 14, KS 15, KS 31, KS 36, KS 41, KS 42, KS 43, KS 45 and KS 46**, and the statements by Ursula Hoess and Klaus-Peter Creutzfeldt), the Registered Proprietor polices the use of the mark OSHO intensively and has not allowed the mark to become common language. Furthermore, the Registered Proprietor is approached regularly by parties seeking consent to use OSHO as a trade mark in relation to meditation services demonstrating the perception and recognition as a trade mark of the Registered Proprietor. (See **Exhibit KS 14**)

On page 20, the Applicant states that *"On the other side, "Osho" does usually not appear as the name of a meditation i.e. as the trade mark of the meditation service. Instead, the meditations have their own, different names"*. This statement is nonsensical: the so-called 'different names' are the descriptive element of the meditation whereas the word OSHO appears before the description of the meditation product and is the element which identifies the source of that meditation. Indeed it shows that the use of OSHO can be interpreted only as a trade mark in so far as it relates to meditation products including teachings and instruction of meditations. The Applicant's claim that *"This shows that the use of "OSHO" is so diverse that it can be interpreted only in a way that it refers to a dedication to respectively an inspiration by Osho and his vision"* is not correct. The trade mark is in use on a diverse scale by the Registered Proprietor's licensees, but this use can be interpreted only as a trade mark in so far as it is used in relation to "meditation services" and related goods and services. The Applicant itself has proved this point by offering meditations without the use of the OSHO trade mark. To demonstrate this, we submit at **Appendix 10** a screenshot from www.oshouta.de (printed on 14 June 2011) showing the programme of meditations offered by Osho Uta for June 2011. This programme clearly lists a number of meditations which are not referred to as OSHO meditations including, for example No-Mind Meditation, Mandala Meditation, Nadabrahma Meditation and Kristall-Klang-Meditation, Devavani Meditation, Live Zen, Vipassana, Einfac So-Sein, Kristall-Klang Meditation (Non-OSHO) etc. However, on pages 2 and 3 of the exhibit, under 1 Okt – 31 Okt (1 October – 31 October), the programme lists an OSHO No-Mind Meditation. Thus, the Applicant has proven itself that its claim that OSHO is a generic name and is necessary in order to refer to meditations is ridiculous and makes no sense. We also include at Appendix 10 extracts from the pages of www.web.archive.org from the 2000 and 2001 websites of www.oshouta.de. These clearly show that the Applicant, through Osho UTA, was using OSHO as a brand in respect of the OSHO Mystic Rose Meditation, OSHO No-Mind and OSHO Born-Again meditations but that the Applicant is offering many other meditations which are not referred to as OSHO and thus it has proved itself that there is no need to use OSHO to describe its meditations.

Further, the Applicant's website at www.meditationandmore.de, lists meditations which are **not** OSHO-branded meditations, namely, Geführte Meditationen ("Guided Meditations") under the names, for example, Yes, Chakra Loop Meditation, Body of Wellbeing, Forgiveness, Healing the Body, Living Your Vision and Coming Alive / Inner Space; and Andere Meditationen ("Other Meditations") under the names, for example, Heart-Chakra Meditation and Powershaking Meditation. A copy of these pages are also attached at Appendix 10.

This supports our argument that OSHO is the brand name used in conjunction with the description of the type of meditation being offered.

We have not provided an English translation of the screenshots and extracts at Appendix 10 because we rely only upon this material in so far as it shows reference to meditations without the OSHO, which are themselves in English.

At paragraph 1.2.5, the Applicant attempts to rely on the *ECJ case C-404/02 NICHOLS, para 23-26* to show that OSHO does not meet the criteria provided for under Articles 7(1)(b) and (c). This case is not relevant as a precedent in this case because the word OSHO has no meaning to the average consumer and is not a common surname. It is a name coined by Osho and derives from the use of the term 'oceanic' experience by William James. The derivation of the OSHO name is well publicised through various media and as an example, we attach at **Appendix 11**, copies of extracts from websites on which the explanation of the origin of the OSHO. This indicates that the public connect OSHO with the idea of the ocean. We further dispute the Applicant's argument that the number of undertakings providing products or services of the type covered by the application or the prevalence or otherwise of the use of surnames in the trade is relevant. The undertakings trading under the name OSHO in relation to meditation services are licensees of the Registered Proprietor or are otherwise using OSHO with authorisation. Further, OSHO was adopted only in the last few months of his life and he was until then known as RAJNEESH throughout his life. OSHO in relation to meditation services and related goods and services, cannot be non-distinctive of the creator of those meditation services. The name of the creator is a badge of origin. The OSHO name has remained as a trade mark and has not become the generic name of e.g. meditations but is used in conjunction with the generic name i.e. "meditation". In this respect we refer to the Registered Proprietor's 'Meditation' page on its website attached to **Exhibits KS 18** which demonstrates use of OSHO as a trade mark in relation to meditation services e.g. OSHO Dynamic Meditation, OSHO Kundalini Meditation, OSHO Whirling Meditation, etc.

Personal names are the oldest type of trade marks and often the only types of trade marks used in ancient times to identify the source of a trader's goods. In addition to the examples of Bikram Yoga, etc, given above, some of the most famous global brands are personal names. For example, lifestyle brands such as Patanjali (founder of yoga), L.Ron Hubbard (philosophical services), Anthony Robbins (life coaching), Matt Roberts (personal training); famous authors such as J K Rowling (of Harry Potter fame); personalities such as Oprah; fashion designers such as Christian Dior and Yves St Laurent; motorcar designers such as Henry J Ford (FORD), Ferrari and Bugatti and Disney (entertainment/merchandise). The list of famous trade marks consisting of personal names is endless and OSHO is no less a brand than any of these marks. At **Appendix 12**, we attach printouts from the online dictionary website, www.dictionary.com showing definitions for Patanjali, L. Ron Hubbard, J K Rowling, Christian Dior, Yves Saint Laurent, Ferrari and Bugatti as well as details of CTM registrations for these marks.

For the reasons explained above, the claims by the Applicant that OSHO is a mere indication of the personal name of Osho is not correct nor is the claim that *"even though personal names are abstractly capable of being a trade mark in the meaning of Article 4 CTMR, their registration as a trade mark is often refused due to their descriptiveness with respect to the covered goods and services"*. It is well established that personal names are capable of functioning as trade marks and, indeed, there are thousands of trade mark registrations consisting entirely of personal names.

The mark was adopted and used in relation to meditation services and related educational services and goods and was and has always been an indicator of meditations originating from the Registered Proprietor and available from the Registered Proprietor or its licensees.

The Applicant claims that *"There is no word apart from OSHO which serves to inform the public that a particular meditation or therapy or related service is one that has been made in accordance with or is inspired by the teachings an vision of Osho. Accordingly, it is not possible to indicate the key character of the services without using the word "OSHO"*. As submitted above, the Applicant's own activities contradicts this statement because whilst OSHO Uta no longer uses the OSHO trade mark in relation to its Dynamic Meditations and Kundalini Meditations, it was using OSHO for these meditations in the past but it does still use OSHO for some of the meditation therapies such as OSHO No-Mind Meditation and OSHO Born-Again Meditation. For example, we refer to which shows the inconsistency in its use of OSHO. For example, we refer to **Exhibits KS 30 and 65**.

It is inconceivable that OSHO will be seen as anything other than a trade mark in relation to meditation services and education relating to meditation. If a party wishes to claim that self-created meditation is inspired by Osho, it would be misleading to call it an OSHO meditation because this would lead the public to believe it was an authorised OSHO meditation when it clearly was not. It is precisely to prevent unauthorised use as claimed here by the Applicant, that Osho wanted his name and work protected and selected the Registered Proprietor to do so. There is no reason for a party practising in the area of meditation instruction to use OSHO as a reference to its meditation unless it was offering a genuine OSHO meditation in which case it could apply for a license to use the mark. It cannot offer an OSHO meditation without knowing the technique and offering it in accordance with the requested guidelines. If it wishes to offer a meditation inspired by the technique of the OSHO branded meditations, then it must use a different trade mark to distinguish it from the OSHO branded meditations of the Registered Proprietor. In other words, it has no legitimate right to the use of OSHO as the name of a meditation, just as nobody has the right to identify their yoga as a BIKRAM YOGA or their meditation as a PARAMAHANSA YOGANANDA meditation without the appropriate authorisation from the rightful owners. At the same time, any self-created meditation can be offered by third parties without any need to use the mark OSHO – which shows that the word OSHO is not generic. The fact is, registration of OSHO as a trade mark for meditation services and education relating to meditation does not prevent third parties legitimately offering their own meditation services, whether or not they are based on the idea or concept of a genuine OSHO branded meditation. Registration of OSHO does not hinder that party's ability to offer their meditation.

OSHO is not a generic name for 'meditation' but it identifies a meditation, the technique of which is approved by the Registered Proprietor. The Applicant claims that such signs need to be kept free for general use as there is a general interest in the free use of such signs which describe characteristics of the goods or service. However, if OSHO is not protected as a trade mark, the public will not be protected against third parties using OSHO as a reference to their meditation which is not in accordance with the guidelines of the Registered Proprietor and which does not comply with the techniques of a genuine branded OSHO meditation. Further, the claim by the Applicant that OSHO is generic is confusing given that it has, itself proved that it is using OSHO as a trade mark and not as a descriptor. Moreover, one of the Applicant's other companies, Meditation & More GmbH, clearly distinguish between 'OSHO – branded meditations' and 'other meditations'. By way of explanation, we attach at **Appendix 13**, extracts from pages from the website at www.meditationandmore.de with English translations where appropriate. Pages 3 – 5 of the pages at this Appendix show the offer for sale of OSHO-branded CDs and DVDs. Pages 7-8 and 10 show the offer for sale of CDs and DVDs relating to meditation but are not provided under the OSHO brand.

The perception of relevant consumers is demonstrated by Klaus Steeg's evidence in the form of the letters of undertaking and licenses from licensees as well as the approaches to the Registered Proprietor for consent to use OSHO. This is proof that the relevant consumers within the mind, body and spirit industry recognise and accept OSHO as a trade mark of the Registered Proprietor and not as a descriptor. The licensees use statements to the effect that OSHO is a trade mark of the Registered Proprietor in their literature and this is further proof of acknowledgement of the acceptance of the fact that OSHO is a trade mark (see for example **Exhibits KS 32, KS 38, KS 40, KS 52 and KS 64**).

On page 23, the Applicant claims that centres and individuals have developed their own ways of teaching meditations not created by Osho but inspired by him. This is a substantial distortion of fact. The original meditations created by OSHO are provided by licensed meditation centres. However, meditations which are 'inspired' by Osho but are not genuine OSHO meditations cannot be offered under the brand OSHO. Klaus Steeg and Klaus-Peter Creutzfeldt have shown that if the Registered Proprietor becomes aware of such use, this is prevented, or otherwise, the Registered Proprietor works with that centre to ensure that the meditations offered are genuine OSHO meditations. The registration of OSHO for meditation services does not prevent third parties creating similar meditations to those provided under the OSHO brand, but if they do so, they cannot use the OSHO trade mark as this would be highly misleading. If the Registered Proprietor becomes aware of any unauthorised use of OSHO it takes action to prevent such use, as has been demonstrated by

Klaus Steeg; and the Applicant's evidence at Exhibits A31-A33 does not prove that OSHO is non-distinctive for meditation services or education related to meditation.

The evidence of Klaus Steeg clearly proves that the Registered Proprietor is the single source which coordinates and controls the use of OSHO by the meditation centres and so the Applicant's claim on page 23 that the OSHO mark is used for meditation services by different third parties that have no relation to the Registered Proprietor is blatantly not true. In this respect we refer to our comments above.

The term OSHO is highly distinctive of meditation services and instructional services relating thereto. The mark was found to be inherently distinctive by OHIM on registration and remains distinctive. OSHO has no meaning within the Community of the EU but is a name coined by Osho. Whilst we note that Osho is a title in Zen Buddhism meaning teacher or monk, there is no evidence that this fact is commonly known in the EU. The fact that the term BHAGWAN was rejected by the German Trade Mark Registry on the basis of its meaning within Hinduism cannot be given any weight because the OHIM is an autonomous legal system which is not reliant on national law and precedent and in any case the German mark did not claim "meditation services". Further, Bhagwan is a common used word for "God" in India and therefore this mark has a strong religious connotation which is not the case with OSHO.

Article 7(1)(f) CTMR

The Applicant claims that OSHO cannot be monopolized for commercial purposes and made one person's property and that the public will be offended by legal monopolization of the name of a spiritual leader. None of the Applicant's evidence supports this claim and there is not one shred of evidence of any parties being offended by the registration of OSHO. On the contrary, Osho encouraged, consented to, authorised and requested that his name (formerly Rajneesh) be exploited and commercialised as an intellectual property. This is evidenced by inter alia the Annexes to Table B referred to at paragraph 12 of Klaus Steeg's statement and verified by Michael Byrne and Philip Toelkes.

In order to succeed under Article 7(1)(f), the Applicant must show that registration of the mark OSHO is "contrary to public policy or to accepted principles of morality". Public policy is the body of all legal rules that are necessary for a functioning of a democratic society and a state of law. Accepted principles of morality are those that are absolutely necessary for the proper functioning of a society. Article 7(1)(f) CTMR is thus not concerned with bad taste or the protection of feelings of individuals. In order to fall foul of Article 7(1)(f) CTMR, a trade mark must be directly against the basic norms of the society. The rationale of Article 7(1)(f) CTMR is to preclude trade marks from registration where the grant of a monopoly would undermine the state of law.

Thus, signs which severely offend the religious sensitivities of a substantial group of the population could be against public policy if they risk causing public disorder (*R 495/2005-G, SCREW YOU, paragraph 20*). In this case, the mark OSHO does not relate to any religion (refer to the witness statements of Michael Byrne and Dr Andrews). Thus, there are no religious sensitivities to consider. The mark OSHO is not offensive, disgusting or potentially capable of causing outrage. It is OHIM'S duty to exercise a degree of moral judgment in assessing the suitability of signs to be granted trade mark protection, and making a correct assessment entails balancing the right of traders to freely employ words and images in the signs they wish to register as trade marks against the right of the public not to be confronted with disturbing, abusive, insulting or threatening trade marks. The OHIM must apply the standards of a reasonable person with normal levels of sensitivity and tolerance and the OHIM should not refuse to register a trade mark which is only likely to offend a small minority of citizens. Thus, in applying Article 7(1)(f) to the case of OSHO, there is clearly no basis for finding that the mark falls foul of the provisions of this article.

The Applicant claims that it must follow that the principles for finding a mark is offensive on religious grounds must also apply to cases in which the mark is *"not the name of a religion but a form of spirituality, mysticism, philosophical anthropology or concept regarding the phenomenological explorations of the question of being and in cases in which the supporters are not acknowledged as a church and even if the supporters do not*

form the leading conviction of the society but in which the founder and leader has gained some public recognition". We submit that to apply the same principles to this case as for religious connotations is far-fetched and wrong as the name of an author and mystic used in relation to meditation services, cannot by any stretch of the imagination be held to be offensive to a reasonable person. Klaus Steeg's evidence shows that the Applicant and its companies have been using the OSHO brand name since 1989 without offence.

Further, the word OSHO has been functioning as a trade mark since the day Osho adopted the name. There is no question of a reasonable person being offended by the use of OSHO in relation to meditation services and education relating to meditation services. Potential licensees approach the Registered Proprietor for consent to use of the name and to take a license to use the name. Such licensees who wish to brand their meditations with OSHO must provide meditations under the brand set guidelines and without variations. Thus, the relevant sector of the public is not offended and the Applicant has not provided a shred of evidence that anybody has been offended by the Registered Proprietor's ownership and registration of OSHO.

With regard to the Applicant's reliance on court decisions in Germany we again refer to the *Streamserve* case and submit that OHIM should not give any weight to these national decisions. In any case, they have no relevance to the present proceedings. 'BUDDHA', 'DALAI LAMA', 'PONTIFEX', 'MESSIAH' and 'CORAN' are terms relating to religions which date back centuries or thousands of years and they possess heavy religious connotation. Such terms cannot be compared with the word OSHO which is used as the name of meditations and meditation instruction devised by a mystic and author who began his teachings in the 1970s and for virtually all of his life was known as RAJNEESH. A further significant distinguishing factor between these German precedents is the fact that OSHO was - from the moment the word was adopted by Rajneesh as his new name - commercialised and put to use as a trade mark and has been a commercial property exploited through trade mark registrations, trade mark licenses and publishing licenses ever since. These religious terms cannot be compared with the name of an Indian mystic.

In any case, despite the Applicant's submissions, the words JESUS and BUDDHA are subject of many CTM registrations. For example, we refer to CTM Registration No 2501245 for THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS for inter alia 'printed matter, educational and training' and CTM Registration No 689374 for JESUS for 'clothing', as well as to the long list of CTM Registrations which consist of or contain the word BUDDHA. Even the word GOD has been accepted for registration as a CTM under Nos 9888711 for 'clothing, personal or spiritual mentoring' and registered under No 2264141 for inter alia 'video recordings, photographs, education, communication services'. Details of all of these marks are attached at **Appendix 14**.

At Paragraph 2.2 the Applicant relies on a decision on the National Arbitration Forum in the USA regarding the domain name www.oshoworld.com. As we have submitted, it is not within OHIM practice to give any weight to national decisions outside the jurisdiction. As with the earlier USA case, it would be a dangerous precedent to set to accept the decision in this domain name case as a basis for invalidating the Registration subject of these EU proceedings. The decision in this domain name dispute case is over ten years old. The extract from the decision submitted by the Applicant on page 26 of its submissions is contrary to the evidence submitted by Klaus Steeg and Michael Byrne. For example, the Registered Proprietor's evidence clearly demonstrates that Rajneesh did intend for one party to control the trade marks with a view to serving as a source indication. The reference to 500 centres is in fact a reference to the Registered Proprietor's licensees. In any case, this is a decision relating to a domain name dispute and not to a trade mark dispute.

For the above reasons, we submit that the application on the grounds of Article 7(1)(f) must fail. On the contrary, it would be offensive and against public policy and morality to place the OSHO trade mark into the public domain because this will result in unscrupulous parties attempting to take advantage of the well-known brand name for their financial gain. For example, if the Registration is cancelled, a third party could start up a meditation centre offering OSHO branded meditations which were harmful to the user of the service, or otherwise lacking the quality of a genuine OSHO meditation offered under controlled licensed use.

Conclusion

The Applicant has attempted to mislead OHIM into believing that it had no association with the Registered Proprietor and no knowledge of the Registered Proprietor's trade mark rights. It has further attempted to mislead the OHIM into believing that OSHO is the name of a religion or of a religious leader, when this could not be further from the truth given Osho's renouncement of religion.

It has been established that, Bhagwan Shree Rajneesh was not against business, media, press offices, foundations or Intellectual Property protection as suggested by the Applicant. This is evident by the fact that there exists written proof of a foundation, legal secretary, a personal lawyer and an international secretary to assist Rajneesh in his branding projects. The fact that his talks were recorded on both audio and video emphasise the fact that in 1989 during the name change exercise, he was preparing for the media age. He began his own publishing operations and was involved in re-branding exercises, he encouraged the international licensing of his works and authorised action to be taken against those using any works without consent.

The name OSHO is and has always been a trade mark in relation to meditation services and education relating to meditation and related goods and services. As soon as Rajneesh changed his name in 1989, actions were taken with the full authorisation, control and acknowledgement of Osho to re-brand the meditation services and instruction relating thereto, as well as all of the publishing and video works. The OSHO mark was never just a name: it was always a trade mark and has always been treated as a trade mark by the Registered Proprietor and recognised as such by its extensive network of licensees.

Accordingly, we submit that the Application for Invalidity fails under Article 7(1)(b), (c) and (f) CTMR and we ask that a full award of costs is made in favour of the Registered Proprietor.

Yours faithfully



Keltie