

**Community Trade Mark Registration
No 1224831 OSHO in Classes 41 & 42
In the name of Osho International
Foundation ("OIF") and
Application for Invalidity No 5063
thereto by Osho Lotus Commune e.V.
("Applicant")**

Witness Statement

I, Philip Toelkes, also known as Prem Niren, hereby declare that:

1. All the statements made are true and from my personal knowledge and recollection. Where I have made statements from another source, I have identified that source and believe the facts to be true. I am competent to make this witness statement. My address is 166 Santa Clara Avenue, Oakland, CA 94610, USA.

2. I am an attorney at law, licensed to practice in the State Courts of California since 1972, and am also admitted for many years to the United States District Courts for the Northern, Eastern and Central Districts of California, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States. I am currently in private practice in Oakland, California. I was formerly a partner at Drexler & Toelkes in Oakland, California and at Manatt, Phelps & Phillips in Los Angeles California.

3. From 1982 through 1990, I was personal attorney for Osho, formerly known as Bhagwan Shree Rajneesh (hereinafter "Osho"), representing him, and entities which were then involved in the publication and dissemination of his words and images, in various media, in the United States. From 1987 until 1994, I continued to be involved in legal work involving publishing and related contracts on behalf of Osho International Foundation (OIF), working with publishers from around the world. I personally drafted and negotiated numerous publishing and licensing contracts during that timeframe. During that time I was well aware of the publishing work and the various centers around the world. In 1987, Osho executed a broad power of attorney giving me broad powers to act for him in the United States. A copy of that power of attorney is provided herewith as Exhibit PT1.

4. From 1982 through 1986, I had many meetings with Osho relating to a variety of legal matters, including matters involving his rights related to copyright, trademark, publishing contracts, and infringement of those rights. In general, Osho did not, to my experience, have substantial involvement in the day to day business operation of any of the entities dealing with his words, images and rights. He relied upon the people and foundations to whom he had given responsibility to carry out those responsibilities on a day to day basis. In my experience, however, Osho was keenly interested and attentive to the major issues relating to those words, images, and rights. Whenever there was a significant decision to be made or course of action to be undertaken, I would bring that issue to him for his guidance. I would attempt to clearly and concisely present the alternative courses of action and the likely results. He would listen attentively, often ask a few questions, and then give guidance as to what alternative course of action should be taken.

5. He was clearly most interested in issues relating to his words and images, and their publication. In my experience, he was often looking many years into the future, and how present decisions would best support the broadest dissemination of his work and vision in that future. He was clearly intent on reaching the largest number of people possible with his vision.

6. In any matter involving the publication of his works, Osho was intent on maintaining control over such publication to ensure that his words were presented without change or interpretation. He required that no publication of his words, or use of his image, be undertaken without permission and appropriate contract, in order to ensure the integrity of the work.

7. On several occasions over the years of my representation of Osho, I discussed legal issues and documents with Osho related to his ownership of copyrights and trademark rights. I obtained his clear instructions about how to proceed in connection with those rights. I then prepared documents involving Osho's copyright and trademark rights. Osho gave several assignments of rights to his works, including assignment of copyrights and trademark, including the one discussed above, so that individuals and entities, including myself, could prosecute or defend his rights without his being involved on a day to day basis. But the existence of those assignments did not in any way affect his level of interest in the dissemination of his words and works. He was not generally interested in details or day-to-day matters, but gave energy and attention to any matter that affected the use and dissemination of his work. He was always interested and involved in decisions on major matters affecting his words and work.

8. In 1982, I participated in the preparation of a document entitled "Assignment and Amendment of Power of Attorney", which document was executed on May 1, 1982, as is provided herewith as Exhibit PT2. Under that document Osho clearly made an assignment of all rights to his image, name and words, specifically including all rights to copyrights and trademarks, to Ma Anand Sheela, who was then responsible for acting on his behalf on these matters as President of Rajneesh Foundation International. In 1983, I participated in the preparation of a similar document under which Ma Anand Sheela made broad assignments of copyright and other intellectual property rights including trademarks dated May 10, 1983, to Rajneesh Foundation International, a copy of which document is provided herewith as Exhibit PT3. As was his custom, Osho gave broad rights to the people he entrusted with his work, but continued to give guidance on major issues related to those rights as such issues arose.

9. In one case for copyright infringement, which I filed and prosecuted in the United States District Court in Los Angeles, in about 1982 through 1984, Osho directly participated, despite his normal lack of direct involvement in legal matters, in order to stop unauthorized publication of his words and infringement of the copyrights in his works. In *Lear v. Rajneesh Foundation International*, Pat Lear, had sought and obtained permission to use a collection of quotations from Osho in a small book, comprised entirely of such quotations. Ms. Lear failed to comply with the limitations of the agreement. I was lead counsel for Rajneesh Foundation International in the litigation. Osho specifically approved the filing of the action. He was unwilling to tolerate unauthorized use of his work.

10. The judge on that case, the Hon. Richard Gadbois, then one of the most respected judges on a distinguished federal trial court bench, evaluated the assignment from Osho to Rajneesh Foundation International, and other relevant evidence, and ruled that Rajneesh Foundation International was the owner of all the published work of Osho. A copy of the ruling on summary judgment in that case, is provided herewith as Exhibit PT4. It is worth noting that the standard on summary judgment is that the party seeking "summary" judgment, must establish their position "as a matter of law", and negate the existence of a "material issue of fact." This means that the evidence offered in support of the motion must be clear and convincing and that there must be no competent evidence in opposition. That standard was found to be satisfied when the motion was granted.

11. It is well known that Osho was one of the most powerful spiritual voices of the 20th century. Some people think that because of that, he could not or would not have any part in decisions on

legal matters. That is an incorrect assumption. It puzzles me when people who have experienced his spiritual teaching speculate that he was naïve or incapable of addressing legal or business matters. Why would he be powerfully insightful in the most difficult of subject matters, but incapable in straight-forward practical matters? The qualities of penetrating insight and eloquence which he brought to matters of deep spirituality, he also brought to matters of law and business; those qualities reflected who he was and were brought to bear on whatever came before him. In my experience, he brought those qualities to whatever was the object of his attention. Because he was intent on supporting the dissemination of his vision, and protecting the integrity of its communication, he brought that attention and interest to legal matters relating to the use of his name, image and words whenever it was necessary or appropriate to address those issues.


12. In practical matters, he was totally practical. In matters affecting his work, he was always available and interested anytime I had any question on which direction to take in a matter involving his words and work. He wanted to know the key facts, and would weigh those facts without distraction, then suggest a course of action. His rationale for the suggestion was always solid, and often would involve considerations not readily apparent to me, but which made total sense. He was interested in the law and legal matters because it was an arena where focussed and persuasive argument could be presented. Sometimes he would offer creative arguments, which I would use to good effect. I always thought he would have been a great lawyer, if he didn't have better things to do with his time.

13. His primary focus in dealing with the dissemination and publication of his work was the protection of his vision and his legacy of profound spiritual synthesis. He was clear in his instructions that all aspects of his image, works and name were to be carefully protected from misstatement and dilution. He was clear that his work would be needed and offered to many future generations, and therefore had to be protected from misuse. His vision was on the present moment, but extended for millennia. He intended and directed that the work be protected so that it could be transmitted clearly and accurately long after his time in the body was over.

14. I have been asked to read a document entitled Witness Statement of Klaus Steeg and evaluate it for accuracy insofar as I have personal knowledge of facts set forth therein.

15. I can verify many of Mr. Steeg's statements to my personal knowledge. The names OSHO and RAJNEESH were always understood to be trademarks during the period of my representation, and were consistently so used in the ongoing publication and dissemination of Osho's works during the time of my representation. The table of assignments and users of the names OSHO and RAJNEESH as trademarks is accurate. I personally saw the relevant documents and was personally aware of the uses during the period of my representation.

16. I believe all the statements made herein to be true



Philip Toelkes

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