Message

Dear Sirs

Please see our attached correspondence sent by ecomms and fax. The PDF's have been sent directly to ensure the best quality.

Kind regards

Keltie LLP

Attachments
Office for Harmonization in the Internal Market (Trade Marks and Designs)
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BY MYPAGE AND FACSIMILE ONLY +34 96 513 1344
(46 pages total)

7 June 2012

Attention: Monica Gimenez Hernandez

Dear Sirs

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

We make the following submissions in response to the third submissions of the Applicant for invalidity, Osho Lotus Commune e.V. dated 4 January 2013 and 10 January 2013.

Introduction and Summary

Prior to making these submissions, we respectfully point out that no new claims have been made on behalf of the Registered Proprietor. Any new items of evidence in the form of exhibits have been provided in order to respond to the Applicant’s most recent submissions or relate to arguments made in our previous submissions. As such, we will provide the Examiner with what we would hope to be the Registered Proprietor’s ("OIF’s") final submissions in this round of proceedings. We
trust that these submissions will bring an end to the evidence rounds for both parties.

As we have pointed out previously in both our first and second set of submissions, **OIF has incurred significant cost and time in defending its rightfully registered trade mark rights and the Applicant’s malicious attack and continuous denial of factual evidential material, cannot be allowed to continue.** OIF has been forced for too long to rebut and respond to inaccurate, misleading and unsupported allegations which appear, to date, to be submitted by the Applicant without consequence. As we have evidenced in our summary of OIF’s history with factual and legally binding material, both before and after Osho’s death, Osho’s name was being used as a brand name for the products and works created under that brand, with his permission. The trade mark OSHO was registered by OIF, not for the purposes of claiming a monopoly as the Applicant would have the Board believe, but for the purposes of acquiring formal protection for a trade mark that it had used and in which it had acquired a substantial reputation as a brand name for many years. A trade mark was sought in order to protect and sustain the works under OIF’s ownership in order to guarantee the quality and origin of the products created and branded as OSHO products. At the time of registration the mark was considered distinctive by multiple trade mark offices around the world and still performs the function of a trade mark today.

**The proceedings are having a serious detrimental effect on the Registered Proprietor's business** and we ask that the baseless invalidation, evidenced by the substantial and overwhelmingly disproportionate amount of evidence in favour of the Registered Proprietor is dismissed as soon as possible so that our client can continue with its business unhindered by a small group attack on a worldwide and reputable brand.

The most recent submissions of the Applicant simply repeat the irrelevant and unsupported arguments previously provided by the Applicant throughout these proceedings. **The Applicant understands the need for any allegations to be supported by submissions as it incorrectly states that part of our submissions are not supported by evidence but does not provide any**
evidence or logical reasoning as to why this is the case. In its submissions, the Applicant’s comments follow the pattern of fancifully worded arguments based on false assertions and misleading untruths without any substance or supporting evidence. Because it is unable to provide a valid response to the voluminous amounts of evidential material submitted by the Registered Proprietor, it thoughtlessly denies the validity of such submissions in complete disregard of the factual and legally binding evidence before the Board. It is quite easy for anyone to simply deny the existence of fact, but the Applicant has failed on all occasions to provide any evidence to the contrary.

Throughout these proceedings, the Applicant has denied all existence of OIF and its function as the source of all intellectual property rights including copyrights and trade marks. This is despite its knowledge and proven involvement with OIF as the source of all Osho’s works (Please see Annex 8 of Klaus Steeg’s witness statement as included in our submissions of 29 July 2011 and page 4 of our submission dated 29 July 2011 which discusses the evidence included in Klaus Steeg’s witness statement at paragraphs 55 to 64 and 67. We also refer the Examiner to Exhibits KS 40, 47 and KS 52 to KS 65 of our submissions dated 29 July 2011 which provide factual documentary evidence of the Applicant’s acceptance of the trade mark and the OIF). The Applicant has attempted to play down the role of the OIF in order to mislead the Board into thinking that no source of the works has ever existed when this is clearly not the case (Please see the second supplemental witness statement of Mr. Philip Toelkes attached at Annex PT3 and the previous submissions of 29 July 2011 and 9 July 2012 discussing the history of the OIF.)

As further proof of the Applicant’s denial of fact, we point the Board to the Applicant’s submissions on page 8 where the Applicant boldly states that during our outline of the history of OIF there was never a trade mark for RAJNEESH or OSHO for meditation services. These statements are nothing more than a fancifully worded story that the Applicant would have the Board believe without any supporting material and with a total disregard for factual evidence. To highlight the extent of the Applicant’s inconsiderate denial of facts, we remind the Examiner that we had previously provided the Applicant with records of both RAJNEESH and OSHO trade marks. We specifically refer the Examiner to KS6 of our submissions of 29 July
2011 which are trade mark records of the mark RAJNEESH, a selection of which date back to the 70’s and 80’s. We also refer the Board to Exhibits KS64 and KS65 which show use of the mark, with the registered trade mark symbol and with a clear notice under license, by the Applicant, advertising meditation services. At the time of these adverts the OSHO trade mark was registered in Switzerland and expanded to Europe as explained in our submissions of 9 July 2012 at page 3.

The most recent submissions have also been supported by unprofessional, irrelevant and personal comments on the part of the Applicant’s representatives that have no relevance to the issues of this case. Whilst we note the comments made in the Applicant’s submissions, we will follow case law before OHIM on this point and dismiss the comments as irrelevant, unsupported submissions. We trust that the Board will take the same approach.

Therefore, whilst we do not feel a response to these most recent submissions is necessary, we will provide the Examiner with our comments based on the seriousness of the allegations made therein. The Registered Proprietor does not feel it is necessary to comment on the unrelated and unfounded allegations of fraud, tax avoidance and claims that the copyright of associated works under the OSHO brand are disputed asserted by the Applicant without any evidence. To remove any doubt OIF, Switzerland is not tax exempt and there is no dispute over the ownership of the copyrighted works. All copyrights are owned by OIF. As we have previously evidenced, it was in fact the Applicant’s director, Robert Doetsch who signed the assignment of copyright in 1985 when he held the position of director for the Registered Proprietor (Please see Annex 8 of Klaus Steeg’s witness statement as included in our submissions of 29 July 2011). These comments have been made by the Applicant with the intention of prejudicing the Registered Proprietor.

The Applicant also attacks the validity of the assignment documents helpfully provided to outline the history of OIF and to show that the mark has always been used and recognised as a trade mark. We remind the Board that these documents were included in response to the Applicant’s own claims that OIF had no right to use the mark OSHO and had no affiliation with the creator of the products offered under the mark OSHO. The Applicant initially claimed that “hundreds of centres” were
using the mark freely only to be countered by evidence of licenses for all instances of use claimed, disproving the Applicant’s claim entirely. The Applicant’s attack follows the strategy taken against the license evidence, namely, that where the Applicant is unable to provide any evidence to the contrary, it will simply deny that the factual documents are valid. It does not provide facts to disprove the documents, but submits unsupported allegations against documents, which it has no competence to challenge, in order to prejudice OIF and the witnesses in our submission. Whilst a response to the unsupported and wild claims questioning the validity of the assignment documents in our submissions is unnecessary, we refer the Examiner to the second supplemental witness statement of Mr. Philip Toelkes attached at Annex PT3, confirming the validity of all documents attacked by the Applicant and confirming the history of OIF. The second supplemental statement also confirms without doubt the Applicant’s intentions to prejudice the Registered Proprietor. We point out that Mr. Toelkes is a US Attorney at Law, and was previously Osho’s personal attorney as well as the attorney for several foundations involved in the history of the copyright and trademarks discussed here. He is therefore particularly well suited and qualified to comment on the validity of the documents.

Despite our previous comments (with reference to T–122/99 Procter & Gamble v OHIM and T-331/99 GIROFORM at page 9 of our submissions dated 29 July 2011 and page 5 of our submissions of 9 July 2012), the Applicant has for the third time relied heavily upon the invalidation case before the US Patent and Trade Marks Office. These comments are entirely irrelevant and have been misinterpreted, have been presented in an entirely misleading way, have been taken out of context and show a complete lack of understanding of EU law on the part of the Applicant. It is clear that the Applicant is relying so heavily on these irrelevant submissions as it does not have access to any other supporting evidence of value to meet the requirements of a successful invalidation action. Of the 10 exhibits provided, 6 relate to the US proceedings. This equates to approximately 107 pages of the Applicants 138 pages of evidence. We have also previously stated that the US proceedings were based on different legal and factual grounds and arguments, and did not rely on the same evidence relied upon by OIF in the current proceedings. Significantly, the US decision was not appealed due to financial constraints. If the decision had been appealed, we believe that OIF would have had strong grounds for succeeding in an appeal based on blatant flaws and unsupported
submissions. As it is not OHIM practise to give any weight to national decisions from outside its jurisdiction, the Applicant knew these submissions to be entirely irrelevant which were offered to solely prejudice the Registered Proprietor, discredit the valid and helpful witness statements submitted in these proceedings and mislead the Board reviewing the invalidation action. We ask the OHM to disregard Exhibits A 66, 67, 68, 69, 70 and 71. We also note that translations have not been provided for Exhibits A 64 and A73 within the time limit set by the office under Rule 38(2) CTMIR. In accordance with R 826/2010-4, ‘MANUFACTURE PRIM 1949 (FIG.MARK)’, para. 25, these documents should be deemed not to have been received by the Office should not be taken into account under Rule 98(2) CTMIR. The remaining exhibits, namely Exhibit A 65 and A 72 should also be disregarded as they are wholly irrelevant or show use of the mark as a trade mark.

Response to Applicant

Despite the Applicant’s claims that the mark is generic and is used by hundreds of individuals, the Applicant has not provided the OHIM with any evidence which proves beyond doubt that the mark OSHO is descriptive, nor has it provided any evidence that the term is used by “hundreds of centres” in a generic form. The Applicant has not provided any evidence to counter OIF’s evidence obtained from its vast record of archived documents, which establishes that use of the mark by the “hundreds of centres” is in fact consensual use (We have evidenced this on multiple occasions throughout the proceedings and point the Examiner to the first witness statement of Klaus Steeg in our submissions of 29 July 2011, specifically at paragraph 79 where we have shown that every single instance of claimed generic use is use by a licensee of OIF). If the Applicant’s claims had any truth to them, the Applicant would have access to hundreds if not thousands of examples of free, generic use that it could offer as evidence, yet it fails to provide one significant example of such use. Furthermore, it would have a clear and globally recognised definition for the word ‘Osho’ being used in its descriptive context, without any association or contact to OIF. However, it does not and provides only a loose, confusing and contradictory “meaning” for the word Osho that only the Applicant can interpret. The Applicant is the only entity that refers to the definition of an ‘Osho Vision’.
The Applicant’s submissions that the mark is contrary to public morality and offensive to the public are also severely flawed and unsupported. If the claims were to be true the Applicant would also have access to a wealth of supporters whose 'religious' beliefs had been offended. We point out that as of today’s date, the Registered Proprietors Facebook page www.facebook.com/OSHO.international has 945,000 friends/likes; The Spanish language Facebook site www.facebook.com/OSHOespanol has 55,000 friends/likes; the Twitter page www.twitter.com/OSHO has 80,000+ followers, its YouTube Channel www.YouTube.com/OSHOinternational has 133,000 subscribers, with its content having over 29,000,000 million views. The OSHO International Meditation Resort Facebook site www.facebook.com/OSHO.international.meditation.resort has 111,000 friends/likes.

If the Applicant’s allegations were true, these social media streams would be riddled with negative commentary from users who believe OSHO to be a religion, and who would have taken offence to its use as a trade mark or users that share the same views of the Applicant and who would want to express their opinion. However, there are no such complaints. None. The Applicant, which has been a European OSHO Centre, did not provide a single letter or customer email expressing moral outrage about the OSHO trademark. It is also worthy of note that not one witness relied upon by the Applicant referred to OSHO as a religion but chose to describe themselves as ‘Therapists’. (*Please see the Applicants attachments at Exhibit 49, 54a-w, 55, 58 and 59 and the response submitted in the second witness statement of Klaus Steeg included in our submissions of 9 July 2012*).

**Claims of Generic and Descriptive Use**

Throughout its submissions, the Applicant has attempted to show that the term ‘OSHO Meditations’ is a generic term for meditations ‘inspired’ by the work of OSHO but it has not provided any reliable evidence to support this submission. We must point out that no other form of meditation traditions, such as ‘Transcendental Meditations’, ‘Buddhist Meditations’, ‘Zen Meditations’, ‘Mindfulness Meditations’, ‘Hindu Meditations’ or ‘Christian Meditations’ use the word OSHO or need to use
word OSHO as a generic reference. With reference to page 9, 17 and 18 of our submissions dated 29 July 2011 and the witness statement of Klaus Steeg as included in our submissions of July 2011 at pages 18, 19 and 20, it is clear that OSHO is the brand name used in relation to the dissemination of meditations of certain characteristics and specific structures devised by the Proprietor or under license from the Proprietor. The trade mark is only used on products designed by Osho himself or by OIF as a means of identifying the source of those products. (We refer the Examiner to page 9, 17, 18 and 19 of our submissions dated 29 July 2011 and the witness statement of Klaus Steeg included in those submissions at page 18, 19 and 20 which discuss exhibits KS 25, 27, 29, 30 and 32. I also refer to the Applicant’s own evidence at exhibits A28 to A30 which show use of OSHO branded meditations).

In addition to the unsupported allegations that the mark OSHO is generic, the Applicant also claims that the mark can be descriptive for meditation services. However, they do not provide any independent examples of this descriptive use other than the use by a licensee of OIF. With reference to our earlier submissions and evidence as referenced in the paragraph above, the descriptive element and name of the meditations is clear to see, for example ‘ACTIVE MEDITATION’, ‘DYNAMIC MEDITATION’, ‘KUNDALINI MEDITATION’. These meditations are totally different from each other and cannot be described in one word. The trade mark OSHO is then applied to the meditations as the brand name and source origin of the meditations just as RAJNEESH was applied to the meditations before the change of name (We refer the Examiner to page 15 of our submissions dated 29 July 2011 and page 5 of our submissions dated 9 July 2012). The referenced evidence above clearly shows that OSHO is not descriptive of the services for which it is registered and cannot describe each and every of the many meditations, products or services featuring the brand name.

We have also shown that the Applicant’s own submissions are inconsistent and contradictory. With reference to page 17 and 18 of our submissions dated 29 July 2011, (Specifically Appendix 10 which includes an archived version of the Applicant’s associated website www.oshouta.de) the Applicant had previously used
the mark OSHO as a branding reference in respect of the meditations provided. However, the Applicant then changed its website and offered the descriptive meditations, namely, ‘ACTIVE MEDITATIONS’, ‘KUNDALINI MEDITATIONS’ and ‘DYNAMIC MEDITATIONS’ without the OSHO branding (Please see Appendix 10 as mentioned above and page 6 of our submissions dated 9 July 2012 at page 6 with reference to Annexes UTA and MED). These examples clearly show that even the Applicant itself does not use the mark OSHO in a generic or descriptive sense, hence its inability to provide any evidence of such descriptive use.

Quite simply, the Applicant has not been able to provide uncontroverted evidence of any of the above points as such evidential material does not exist. Instead it has attempted to focus its arguments on self-created and exaggerated evidence knowing that it has no third party use to hand. We have referred to this previously in our submissions of 9 July 2012 (page 7). In the most recent submissions at Exhibit A 64 (which we submit should be discredited as a translation has not been provided), the Applicant has provided an extract of what is claimed to be an example of descriptive use of the mark OSHO. However, this relates to one chapter in a book titled “Meditation: History, Research, Theory” by Klaus Engel. The book includes only one paragraph titled “Osho’s Meditationen” (Osho’s Meditations) by Swami Ramateertha which is applicant’s director Robert Doetsch. However, this is dressed up to appear as though it represents how the relevant public perceive the mark. The Applicant states that we, as the Registered Proprietor, have not provided any evidence to show how the relevant public perceive the mark. We remind the Applicant that it is they who are bringing the invalidation proceedings. And they have not provided any evidence of the perception of the public other than to provide examples of licensed and authorised use of the OSHO mark. No public survey of the relevant public has been undertaken or provided. It is surprising that no evidence whatsoever of the perception of the relevant public has not been provided by the Applicant, particularly given its claims that “hundreds” of centres were using the mark freely and that many members of the public have been offended by the Registered Proprietor’s use of the mark.
As an example of the fancifully worded and wholly misleading statements of the Applicant, we refer to page 4 of their submissions in respect of the decision of the German Patent Court. As we have already discussed (please refer to page 10 of our first submissions dated 29 July 2011 and page 5 of our submissions dated 9 July 2012) this case has no bearing on the case at hand as the mark applied for in that case was “EU TIMES”. However, the Applicant relies on this case heavily in its attempt to mislead the Board suggesting that the case reflects a perception of the contested mark in a substantial part of the EU as opposed to being an incorrect passing reference made by the Judge in that case. The Applicant attempts to convince the Board that it was the “OSHO TIMES” mark that did not qualify for registration in Germany through its incorrect and deceptive submissions that;

“...the case is relevant as a trademark that does not qualify for registration for absolute grounds in part of the EU does not qualify for registration as a CTM.”

**The case does not relate to the mark “OSHO TIMES” or OSHO, it does not relate to meditation services, it does not issue a decision or even discuss the registrability of the mark “OSHO TIMES” in Germany and without doubt the case does not provide a perception of the mark OSHO in Germany.** The lengths to which the Applicant has gone in its attempts to deceive the Board through an exaggeration of irrelevant comments whilst obstructing and distorting relevant facts defies belief. This example provides a true picture of the Applicant’s intentions to the Board.

In its submissions, the Applicant’s wholly unsupported allegations go as far as being based on hypothetical statements which are presented in inverted commas to give the impression of relevance. The Applicant states on Page 16 of its submissions that:

“In some way there was some kind of an atmospheric of... I don't know what... which was creating a general feeling that there must be ... something ....something that could be understood as a trademark.... somehow.”
Such submissions are unsupported and have no relevance in legal proceedings. The Applicant even fails to grasp the fact that the registration of a mark in block capitals provides protection for any stylised font used by authorised and licensed centres as it claims at Page 17 of its submissions that:

“the different appearance of Osho’s name in advertising and on the websites of the various meditation centers and therapist does not show a consistent way of use of Osho’s name and therefore suggests that the use is not under a central control but decided upon only by the individual meditation center or therapist.”

It provides no evidence of the inconsistent use alleged. The Applicant only chooses to submit that all ‘controlled use’ of a trade mark must be in a uniform manner citing “McDonald’s” restaurants as an example. Controlled use of a validly registered trade mark results from the policing and monitoring of a trade mark as applied to the goods and services for which it is registered whilst ensuring that use falls within guidelines specified by the owner of that trade mark to guarantee quality and origin. The Applicant’s recommendations that a trade mark can be protected without the need for a registration under the laws of Unfair Competition Law are irrelevant. The Applicant appears to ignore the fundamental principle of why a trade mark is registered, namely, to identify and guarantee the source of origin of goods or services, in this instance, for specifically designed and branded products under the trade mark OSHO. OIF has submitted a substantial amount of evidence to prove the fact that the mark is, without doubt, used as a trade mark and we do not feel further comment is necessary on this point (we refer to the Examiner to the first witness statement of Klaus Steeg at paragraph 30, as included in our submissions of 29 July 2011. We also refer the Examiner to our submissions of 9 July 2012 at pages 5 and 6).

We must point out to the Board that the only entity questioning the validity of the trade mark OSHO or taking religious offence is the Applicant. OIF has continued to operate without any issues over the use of the mark OSHO by all of its other
licensed centres and without any religious complaints. In fact, there have been no ‘religious view’ complaints in the entire history of both the RAJNEESH and OSHO trade marks. It is no coincidence that despite the global popularity, recognition and reputation of the brand OSHO through OIF’s controlled and consistent use of the mark, the only action against the validity of the trade mark has been brought by a small group of closely-linked and aggrieved individuals, once affiliated to the Registered Proprietor (see the second witness statement of Klaus Steeg included in our submissions of 9 July 2012 in response to the Applicant’s witness statements at Exhibit 49, 54a-w, 55, 58 and 59 which proves beyond doubt that all witnesses used by the Applicant are all either licensees, former licensees or associated with the Applicant) who have previously publicised their intentions to attack OIF’s intellectual property rights and have campaigned to bring the organisation down for its own commercial advantage absent any religious interests whatsoever (Please see our submissions of 9 July 2012 at page 2 and page 3 of our submissions of 29 July 2011.). The Examiner will recall that Osho Friends Europe e.V. (a registered association in Germany), an entity linked to the Applicant as shown at Exhibit KS 66 a and 67, was set up purely to attack the trade marks and copyright of the Registered Proprietor to bring the copyrights and trade marks of OIF into the public domain. The Applicant has previously attempted to gain supporters to its cause but has failed to do so. Attempts to gather supporters from within the meditation and education sector, through existing licensed users and the German and EU public at large have all failed as is evident by the sheer lack of any evidence from independent third parties and the absence of evidence attesting to the public perception of the mark. Only the very small group of closely linked disgruntled individuals, the majority of who were also previously affiliated with the Registered Proprietor have been convinced to join the legal attack started by Osho Lotus e.V. By no means does this insignificant group represent a portion of the relevant public in any country. We cannot stress enough the fact that the Applicant itself is using the mark in a commercial context, offering no ‘religious’ activities, it does not provide membership to members of the public and is nothing more than an association functioning as a holding entity for shares of commercial companies (Please see the witness statement of Klaus Steeg as included in the submissions of 29 July 2011 at pages 26 and 27 and the
evidence at exhibits KS 48 and 49). This is quite the contrary to its arguments that OSHO is a religion. We further point out to the Board that the Applicant has not denied that the attack is a malicious one or provided any evidence to show that the witness are not related parties.

We submit that the intentions of the Applicant are now clear beyond doubt and at its third attempt; the Applicant has not been able to provide the required evidence for a successful invalidation action under Article 7(1)(b), (c) and Article 7(1)(f) CTMR. The invalidation action is nothing more than a confusing and muddled action, lacking in consistency or any thoughtful research. Accordingly, the application for invalidation must fail. As we have submitted previously, it would create an untenable and dangerous precedent should the registration be declared invalid without any clear evidence of invalidity, particularly given the reputation and well-known status of the OSHO trade mark.

“Spiritual” arguments and names of “spiritual” leaders

We refer the OHIM back to our first and second sets of submissions and evidence in relation to this argument and add the following. (Please see our previous submissions on the point of Article 7(1)(f) at page 19 of our submissions dated 29 July 2011 and page 4 of our submissions dated 9 July 2012).

Whilst the Applicant continues to draw references with ancient religious leaders or figures such as Buddha or Dakini founded over 2500 years ago, it fails to acknowledge the fact that such examples cannot be compared to the term OSHO, a word created as a name and then brand name in 1989. As discussed in our previous submissions, the term OSHO is the name of a 20th Century contemporary author, living at the time of use of his name and personally instructed use of his name as a trade mark. The terms used by the Applicant are recognised and universal terms that feature in a religion recognised and followed by over a billion followers. Quite simply, and as we have evidenced, OSHO is not a religion and does not stand for a religious view, nor was Osho himself a religious leader (please see page 13 of our submissions dated 29 July 2011). In any event, the question before OHIM is not to establish whether OSHO is a religion, but whether the mark
OSHO should be invalidated on the basis that it has offended a portion of the public or that it is contrary to public policy. As we have shown above, the Applicant itself has failed to provide any evidence that the mark is offensive or contrary to public policy despite the mark’s global reputation and presence on many social media platforms where the opportunity for such discussion is prevalent. The mark has been in use as a trade mark for over twenty one years and has been previously been acknowledged by Applicant in multiple licensing agreements for multiple classes and services, as we have mentioned, there has been not a single reported instance of offence being caused by the use of this mark. Neither the Applicant nor any individual of the public has ever objected to the registration of OSHO in the relevant ‘publication period’ allowing public input or objection to any of the various trade mark registrations for the mark OSHO covering multiple classes of goods and services. On this basis, and in addition to the Applicant’s contradictory use of the mark in a commercial context, (please see paragraphs 4 to 51 of Klaus Steeg’s witness statement as contained in the submissions of 29 July 2011. We also refer the Examiner to our previous submissions on the point of Article 7(1)(f) at page 19 of our submissions dated 29 July 2011 and page 4 of our submissions dated 9 July 2012) it is clear beyond doubt that there are no grounds for finding that registration of the mark is contrary to public order or morality.

Licensed use

As the Applicant has failed to provide evidence of any instances of third party use not associated with the Registered Proprietor other than through licensed users, it has continued with its desperate and unsupported submissions that an agreement between the rightful registered trade mark owner and a third party is somehow invalid and that the ‘license system is without relevance in these proceedings’. It does so with full knowledge that it was once a licensee and recognised the trade mark as a valid trade mark only just before the action for invalidation. As we have evidenced and discussed in our submissions on several occasions, the Applicant itself, and its multiple corporate entities, have acknowledged the OSHO mark, have sought consent and have agreed terms to use the mark, all without any complaint. We also submit that Applicant has not disproven any item of evidence included on this matter. (We refer the Examiner to page 4 of our submission dated 29 July 2011...
which discusses the evidence included in Klaus Steeg’s witness statement at paragraphs 55 to 64 and 67. We also refer the Examiner to Exhibits KS 40, 47 and KS 52 to KS 65 of our submissions dated 29 July 2011 which provide factual documentary evidence of the Applicant’s acceptance of the trade mark under various Letters of Understanding, Trade Mark and Copyright Agreements and use of the Trade Mark Notice by the Applicant in the “OSHO TIMES” publications. This submission is without any substance and has been adequately addressed and evidenced in our previous sets of submissions proving without doubt that the invalidation is without any founded grounds (we refer the Examiner to the second witness statement of Philip Toelkes in our submissions dated 9 July 2012).

However, we would point out that the evidence of authorised use on the basis of agreements and licenses far outweighs the alleged unauthorised use claimed by the Applicant but not evidenced. We remind the Board that it was, in fact, the Applicant that initiated our response and evidence on the issue of authorised and licensed use, where it attempted to claim authorised use as use by “hundreds of different centres” in its first set of submissions (as answered in the witness statement of Klaus Steeg in our submissions of 29 July 2011, specifically at paragraph 79). However, the Applicant now submits that the licensed use is without relevance in an attempt to break free of the evidence it once denied existed, namely licensed use by the Applicant and many other third parties (see page 8 of our second submissions dated 9 July 2012 and the witness statement of Klaus Steeg submitted with those submissions, in particular the response to the Applicant’s evidence at Exhibit 49, 54a-w, 55, 58 and 59). We have shown beyond all doubt that the proprietor has policed and managed the use of the OSHO mark since as early as 1989, where it was the only licensing source of all intellectual property related to Osho, including, as we have submitted from 1989 onwards in brand name OSHO and the trade mark OSHO since 1991. We also remind the Board that OIF was the source of all names for OSHO meditation centre’s via its arm, Osho Global Connections. This was the case when the trade mark was RAJNEESH and continued to be the case when the brand changed to OSHO (we refer the Examiner to pages 13 and 20 of our submissions dated 29 July 2011 and to the witness statement of Klaus Steeg as included in our submissions dated 29 July 2011, at page 12 and KS 9, KS 14 and KS 15.)

Accordingly, we submit that no evidence has been submitted to show that the OSHO mark is used without authorisation. As such, the mark is not generic and should be deemed validly registered.
Conclusion

Not one clear and indisputable example of descriptive use has been proved by the Applicant. This establishes that OSHO is used legitimately by other third parties and any alleged instances of such use have all been shown to be licensed and authorised use by OIF or have been disproved by the Registered Proprietor. This is despite the fact that the OSHO mark enjoys a prominent position on leading social media platforms that would be the first point of call for disgruntled users of the mark or users that may be offended by the mark’s use as a trade mark. Therefore, the Applicant’s arguments and allegations are inconsistent with the current use of the mark by OIF, the perception of the mark and its global recognition by consumers. Instead, the Applicant has launched an unsupported attack on the validity of factual and legally binding licenses and documents provided by OIF in response to its own submissions. It does so in the knowledge that it is unable to justify or support the grounds for invalidation and so aims to prejudice the rightful owner of a validly registered trade mark and its witnesses.

We have made it clear to the Examiner that this invalidation is nothing more than a malicious and methodical attack by a small group of individuals linked to the Applicant, in an attempt to destroy the reputation and identity of the rightful owner of the OSHO trade mark. Whilst the Applicant has continued its attack with fancifully worded submissions, OIF has entirely refuted each allegation made against it. The evidence and submissions in favour of the Registered Proprietor far outweigh the groundless and unsupported claims of the Applicant.

As is now established beyond doubt, the mark OSHO has been used as a trade mark by OIF for many years, and was considered a trade mark at the time of its filing by multiple, competent authorities around the world. Since that time the mark has been used in a controlled manner by the Registered Proprietor who has taken care to protect its rights and provide guidelines when
authorising others to use the mark, including the Applicant. For over two decades it has remained a validly registered trade mark without any challenge. OIF is globally recognised and respected as the source of OSHO products in relation to meditation services and education relating to meditation and this was acknowledged by the Applicant itself. What is at stake here is the guarantee to consumers that OSHO branded products are genuine OSHO products and techniques. As we have demonstrated, all authorised third party use and use by licensees is within the within the guidelines provided by OIF (We refer to the witness statements of Klaus Steeg as provided in our submissions of 29 July 2011 and 9 July 2012). Only the Applicant possesses a different view on the use of the OSHO mark, a view that matches its commercial ambitions. Should the trade mark be removed, the trade mark will no longer act as a guarantee of origin for genuine OSHO products. Accordingly, consumers will no longer be able to trust that OSHO products are genuine products emanating from OIF. Such free use will remove the mark from the products it was intended and created for and the well-established and recognised products under the OSHO brand will be lost and unrecoverable. The many consumers currently using the OSHO branded products and the Registered Proprietor will be the ones to suffer if the mark were to be declared invalid as the genuine products will merge together with products based on ‘inspiration’ and not factual design. This fact is well known to the Applicant for invalidity. The subsequent damage that would be incurred on the part of the Registered Proprietor would be profound and irreversible.

Despite the Applicant’s failed attempts to mislead the Board, without evidence of descriptive or generic use that normally lends itself to invalidity proceedings and without evidence of an offence of public morality, the mark must remain a validly registered trade mark. Certainly, a well-known mark cannot be declared invalid simply because one entity incorrectly and unfoundedly describes the creator of the works as a religious figure. Furthermore, those rights cannot be taken away based on wholly unsupported allegations of invalid use by one small, self-interested and closely-linked group of individuals.
Accordingly, we urge the Examiner to follow the supported submissions in this case, and not the unsupported and unnecessary comments of a disgruntled, once affiliated circle of individuals, shown to be linked to the Applicant. We submit that the Application for Invalidity must fail under Article 7(1)(b), (c) and (f) CTMR, and we ask that a full award of costs be made in favour of the Registered Proprietor.

Yours faithfully

Keltie LLP
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.

Annex PT3
Second Supplemental Witness Statement

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

1. All the statements made herein 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 90 Baywood Village Rd. #51, Sequim, Washington, USA 93882.

2. Scope of statement. This statement responds to questions raised by Lotus in its brief of January 4, 2013, and mischaracterizations of the documents of rights transfer and US copyright, contract and intellectual property. It will not restate the facts set forth in my earlier statements.

3. Qualifications. My first statement set forth generally my background and relevant experience. That material will not be repeated here. My qualifications to address the legal effect of the documents of rights transfers from Osho, as well as the subsequent transfer documents, under US contract and copyright law are set forth below in para. 5.

4. Introduction and Summary. Toelkes' statements factual. Lotus' intemperate characterizations of OIF's statements, including my own, wherein the use of such adjectives moved me to carefully review my earlier statements. I find nothing in the way of unsupported ad hominem attacks, as is unfortunately the case in the Lotus' brief. I find factual statements and some legal characterizations, to which Lotus has not offered controverting evidence, offering instead factually unsupported characterizations.

5. Toelkes' credentials re legal effect of documents of rights transfer. Lotus is correct in asserting that I have presented no bona fides as an expert in trademark registrations. I had no such experience or credentials in the early 1980s, at the time of the creation of the documents of rights transfers about which I opined, and I have little more now. But I had then a good deal of experience in drafting, working with, and litigating the kinds of documents in question: contracts, powers of attorney, assignments and licenses. In fact, it was the majority of my work in my legal practice.

6. Until mid 1981, I was a partner at Manatt Phelps in Los Angeles, then the fastest growing law firm in the United States, now one of the most respected firms in California and the United States. [http://www.manatt.com/AboutUs.aspx] I was a litigation partner with emphasis on financial institutions and entertainment companies, and prosecuted litigation in a wide range of areas, but primarily concerning contracts, real estate, and intellectual property, including copyright and trademark infringement and misappropriation of name and likeness, the first and last of which bear directly on my experience and competence in the areas in question as discussed below. I litigated several copyright infringement cases in federal district court, including the Lear case,
discussed below. As to trademark, I litigated one trademark infringement case in federal
district court in Los Angeles. I was a research assistant for two years to Professor J.
Thomas McCarthy on the first edition of his trademark treatise, *McCarthy on Trademarks
and Unfair Competition* (published by Thomson-Reuters-West) researching a variety of
issues relating to US trademark law. (A link describing Prof. McCarthy and his work is
http://www.mofo.com/J-McCarthy/) I litigated appropriation of name and likeness cases
for several years on behalf of an actor named Shaun Cassidy and a singer named Linda
Ronstadt against Universal Studios and the Mars candy company, respectively, as well
as several other such cases. After leaving Manatt Phelps, I served as Osho’s personal
attorney and as the attorney for Rajneesh Foundation International for a number of years
as is described in my initial statement in this proceeding.

7. **Limited relevance of documents of rights transfer**. Those qualifications are relevant here
only in light of Lotus’ legal characterizations and conclusions concerning the document
of rights transfer: 1) the 1982 Assignment and Amendment to Power of Attorney
(“Assignment/Amendment”) (Exhibit PT2 to my initial statement. A copy is made Exhibit
1 hereto for ready reference.), and; 2) the 1983 Assignment from the agent under the
Assignment/Amendment to Rajneesh Foundation International (“RFI”) (Exhibit PT3 to my
initial statement. A copy is made Exhibit 2 hereto for ready reference.) While the US
law of trademark has no relevance to the decision before this body, the documents of
rights transfer, addressed at length at pp. 12-18 of the current Lotus brief, are of some,
albeit limited, relevance to the issues to be decided in this proceeding. They are
relevant to Osho’s intent, efforts at the time to give effect to that intent in the legal
documents created at the time, and the time transferred thereunder. While I would not
presume to brief the law on EU trademark, I am well qualified to address the controlling
US law of contracts and copyright as it relates the documents in question, in contrast to
Lotus’ apparent and understandable lack of experience with or understanding of the US
law of contracts and copyright. In any event, in my experience, we do not expect courts
or administrative bodies to take our word for the state of the law. Because of this courts
unfamiliarity with the body of US copyright and contract law, I will briefly set out the
relevant authority.

8. **Legal effect and authentication of documents of rights transfer**. Lotus questions both our
earlier legal discussion of the 1982 Assignment/Amendment and the 1983 Assignment
as well as the authentication thereof. (See pp. 12-18 of Lotus brief of 4 January 2013.) I
analyze the issues concerning the intent and validity of the documents under controlling
US authority in the paragraphs immediately following. Lotus’ questions re
authentication are puzzling in light of the lack of a formal authentication requirement in
this proceeding, as that has been reported to me, and Lotus’ total failure to offer
evidence authenticating any document offered by it, precious few as actual supporting
documents are. On review of my earlier statement, I note that I did provide
authentication though not that required by a court of law in the U.S., because of the lack
of formal evidentiary requirements in this proceeding. More complete authentication is
provided in the paragraphs below where the documents are specifically discussed. I
trust this will satisfy Lotus’ legal devotion to OIF authentication, though Lotus’
commitment to authentication does not extend to the documents upon which it relies.

9. **Lotus brief on legal effect of rights transfer documents**. The Applicant’s core legal
analysis/criticism of the documents of transfer may be found at pages 11 and 12 of their
brief, as follows: “The ‘legal documents establishing Osho’s intent to exclusively grant
the exclusive use of his name as a trademark to entities which give effect to Osho’s
intention’ ...do not exist.” “The alleged assignment of ‘all copyrights, trade names, trademarks and any other property’ by Osho in 1982 ...is irrelevant as it does not contain any assignment of IP rights. The ‘assignment’ language in this document relates to the purported ‘transfer’ of powers of attorney and is merely part of the alleged amendment to an earlier power of attorney. Intellectual property rights are mentioned only in the grant of powers. In addition, this document could concern only rights which already existed in 1982... It is amazing that a person who alleges to have practiced as an attorney for over 40 years does not know a Power of Attorney from an Assignment and does not know that one cannot assign a right that does not exist....”

10. In sum, Lotus states that there is no valid assignment, that there was no grant of IP rights, that no rights to future work can be validly transferred, and that I am an incompetent liar to say so. We will review the facts and law to assess the correctness of Lotus’ statements.

11. Primary relevance here is intent, not legal effect. While I will show that the US law is conclusive in establishing the legal effectiveness of the documents in question, please recall that the primary purpose in offering the documents was to show Osho’s intention and that of the assignees with respect to the right to disseminate Osho’s words and meditations and to use Osho’s name in commerce in that work. I will present the law to be applied to the analysis, and then consider the documents in light of the applicable law. But first I will address Osho’s intent and that of the agent/assignee and subsequent rights owners.

12. Osho’s intent was to grant exclusive control over the use of his name to OIF’s predecessors in interest. The 1982 Assignment/Amendment states specifically that it grants a power of attorney and is also an assignment of all the property addressed therein: “I execute this document to more completely state my intention to maintain my separation from worldly activities and divestiture of all worldly possessions. My grant of power and authority to Ma Anand Sheela includes not only the power to act for me, but also the transfer and assignment of all such power and authority...” The document further states that the grant of authority and assignment specifically includes: “14. my name, likeness, writings, copyrights, trademarks, trademarks, and any other property...to which I am now legally entitled or shall become entitled in the future as if such things were her own....”

13. Osho was aware of the transfer of rights to OIF and the work OIF done by OIF related thereto and never acted to withdraw or modify his clear and total disposition of those rights. In my legal work for OIF from 1986 to Osho’s death in 1990, I was personally present and participated in conversations with Osho wherein it was clearly communicated and understood that the work which had been performed in the United States was now being performed by OIF, initially under its earlier name. Osho understood that leaving the United States in November of 1985 resulted in such changes, and he approved same. While Osho was involved in detailed discussion of the legal reasons for the structural changes, or the details of the corporate structures, he did understand that the structures were created and used to implement and control the dissemination of his work and the related use of his name and likeness.

14. Intent of subsequent assignor similarly clear. The 1983 Assignment by the agent appointed under the Assignment/Amendment is clear. It refers to the 1981 power of attorney and the 1982 Assignment/Amendment as the source of authority. It also refers
to the assignment of rights to the agent. It then states: "I hereby grant, transfer and assign to Rajneesh Foundation International (OIF’s predecessor in interest) absolutely any and all right, title and interest of any description which is or may remain vested as of this date in Bhagwan Shree Rajneesh, or which may be or become vested in the future with respect to His name, likeness, utterances, writings, copyrights, trademarks and/or tradenames..." The grant is broad and unqualified and applies to present and future works.

15. In drafting the documents of transfer, the broadest possible transfer possible was requested by Osho and given effect in the documents so drafted. In drafting the documents, we were following Osho’s stated instructions, which were stated by Osho in my presence, to draft the broadest and most complete transfer of present and future rights that was possible. That is what we did, and the 1982 Assignment/Amendment reflects that effort to comply with the stated wishes of the client, Osho. In including "trademark" as well as "name and likeness" in the documents, we were drafting as broadly as possible, even though Osho personally was not using his name as a trademark. He was, however, giving permission to use his name as a trademark, by giving permission to use his name and likeness to the foundation which does all trading of his assigned IP Rights and work. (See legal discussion below in paragraphs 16 through 23.)

16. A US federal court accepted the 1983 Assignment as valid and admissible evidence, and, in reliance thereon, granted Rajneesh Foundation International, OIF’s predecessor in interest, a partial summary judgment ruling that Rajneesh Foundation International was the owner of all the registered copyrights. The case, Lear v. Rajneesh Foundation International, was earlier discussed in my initial statement. The court stated as a basis for its decision: “Rajneesh (Foundation International) is the assignee of a properly recorded instrument giving it all rights, title, and interest in and to the copyrighted works of the Bhagwan.” The court was referring to Exhibit 2 hereto, PT3 to initial statement, which was submitted as evidence by me in the case. (The partial summary judgment was entered prior to the partial summary judgment offered as Exhibit PT4 to my initial statement in this proceeding. A true copy of the partial summary judgment of October 1, 1984, is made Exhibit 3 hereto. It was obtained from the US federal court archive. I can also personally authenticate the document as having been received by me by mail as attorney for Rajneesh Foundation International in the case shortly after the date thereof and reviewed by me at that time.) Thus it is established that the parties considered the documents to be valid and binding, as did a U.S. federal court.

17. US law to be applied to interpretation of rights transfer documents. The 1982 Assignment/Amendment was executed by a resident of Oregon, U.S. granting power and transferring ownership to a resident of Oregon, U.S. as stated in the document. The 1983 Assignment was made by an Oregon resident to a US corporation then based in Oregon. Both documents were prepared by attorneys in Oregon to address and comply with Oregon and US law. Under choice of law principles, US law must be applied to determine the legal effectiveness of the documents.

18. Facts and law require application of US law. The contacts and underlying interests discussed support the application of US law in evaluating the documents discussed. In contrast, Applicant has no contacts with or interest in the documents, nor does this body have any policy interest in applying the law of the EU to documents created in the US by

19. Certainly an Oregon court would apply Oregon law. “The contract was made in Oregon, and must be construed and enforced according to our laws.” *Washington Nat. Bldg., Loan & Inv. Ass'n v. Stanley*, 38 Or. 319, 341, 63 P. 489 (1901)

20. Under US copyright law and Oregon contract law, future works are assignable. The law of copyright in the US is clear that under both copyright and contract law, rights to future works may be assigned. *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, 1290-93 (11th Cir. 2011) is an appellate copyright case addressing the assignability of future copyrights under both US law and the law of India, which is relevant here because the only other country with significant contact to Osho personally is India. In *Saregama*, the Court stated: “We assume without deciding that Indian law governs the assignment issue, since Indian copyright law of assignment is strikingly similar to U.S. copyright law. We would reach the same result under either Indian or American law. Under the ICA (Indian Copyright Act of 1957), the assignment of copyright ownership is described in these terms: “The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof: Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.”

21. US and Oregon case authority support the broad right to assign. As noted by the court in *Saregama*, US copyright law is to the same effect as India law. The relevant US statute requires an assignment of copyright to be in "writing and signed by the owner of the rights conveyed or such owner's duly authorized agent." *17 U.S.C.A. 204 (a).* As to the language of assignment, no particular form of assignment is required, and an assignment of copyright will be given effect where the intention is clear, especially where the terms "assignment" and "copyright" are used. *Radio Television Espanola S. A. v. New World entertainment Ltd.* (9th Cir. 1990) 183 F.3d 922, 926-927. Oregon case authority is consistent with federal law. As stated in *Levins v. Stark*, 57 Or. 189, 191, 110 P. 980, 981 (1910): “Any declaration, either in writing or by word of mouth, that a transfer is intended, will be effectual, providing it amounts to an appropriation to the assignee. In equity the rule is that anything showing an intention to assign on the one side, and from which an assent to receive may be inferred on the other, will operate as an assignment if sustained by a sufficient consideration. The form of words used in making the agreement is not alone to receive attention, but all the circumstances of the transaction are to be considered.”

22. The 1982 Assignment/Amendment is effective to support subsequent 1983 Assignment. Under Oregon law, a power of attorney creates an agency and the acts of the agent will be enforced when within the scope of authority granted in the power. A power of attorney creates a form of agency, and is interpreted according to the law of agency and of contract. *Scott v. Hall* (1945) 163 P.2d 517. While powers of attorney are strictly construed, "the intention of the donor of the power is the great principle that governs." *Capps v. Mine Serv.* (1944) 175 Or Reports 248, 252-3; *Ying Lai Ho v. Presbyterian Church* (1992) 116 Or App 115. The broad and clear language of the power of attorney and amendment fully support the subsequent assignment.
23. The 1982 Assignment/Amendment is also effective as an assignment under the authority set forth. The document uses the words "assignment" and "copyright" as well as "name and likeness" and "trademark" and uses broad language of transfer. It is therefore effective to transfer any and all rights described.

24. Osho’s Last Will & Testament negates Lotus’ contentions re invalidity of documents of transfer. Though Lotus’ claims against the validity of the documents of transfer are shown to be against the applicable law and without foundation, the vulnerability of any of the documents of transfer would not defeat Osho’s clearly stated intention to transfer any and all property interests to the persons and entities he entrusted with his work. Osho left a Last Will & Testament, which was created to address the possibility that any of the earlier transfers would not be effective to divest him of all property interests, as had been his stated intention.

25. A true copy of Osho’s Last Will & Testament, ("Osho’s Will") executed on October 15, 1989, shortly before his death, a copy of which is provided herewith as Exhibit 4, clearly stated again his intention to transfer any and all property rights or interests he had to OIF. His will devises “all right, title and interest on any nature in anything and all property including but not limited to all ownership, publishing or related rights, to all my work…in any form…” The breadth of the bequest is clearly sufficient to transfer any and all rights to use of his name and likeness, as well as all of his work.

26. Authentication of Will. I drafted the Will, and witnessed Osho’s execution thereof, in the presence of the signing witnesses, as can be seen on the face of the document. The copy provided is a true and correct copy of the Will, and the signatures thereon were made by the persons so identified and were made on the date indicated on the document. Osho asked questions about the legal effect of the document prior to his execution thereof, and was unquestionably mentally alert and in full possession of his faculties at the time of execution.

27. Lotus’ statement, quoted above, is thus shown to be incorrect legally and incomprehensible as argument. The 1982 Assignment/Amendment granted authority and assigned rights to present and future copyrights, name and likeness, trademarks and all other property rights. The 1983 assignment further assigned said rights as authorized. The language of the documents is clear and the law fully supports the actions taken.

28. While Osho did not use his name as a trademark, he was acting to protect and control that use by others in executing the 1982 Assignment/Amendment including the assignment and authority to use of his name and likeness. And, as stated earlier, Osho was clear with OIF about how he wanted the name used and presented, which as trademark owner, they did. The attorneys included the right in amendment/assignment in light of US law on the subject. Lotus repeats again and again that Osho never used his name as a trademark. True, but not probative to show he did not transfer the right to use his name as a trademark in the Assignment/Amendment.

29. Appropriation of name and likeness is a statutory and common law tort in the US, akin to trademark. Under that body of law, permission must be obtained to use the name of a person in connection with the sale of a product or service. “Personality rights are generally considered to consist of two types of rights: the right of publicity, or to keep one’s image and likeness from being commercially exploited without permission.
or contractual compensation, which is similar to the use of a trademark; and the right to privacy, or the right to be left alone and not have one's personality represented publicly without permission. In common law jurisdictions, publicity rights fall into the realm of the tort of passing off. United States jurisprudence has substantially extended this right.” Wikipedia article on publicity rights. https://en.wikipedia.org/wiki/Personality_rights. Many states have passed statutes to prevent such appropriation. Cal.Civ.Code § 3344 provides that: “Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof.” “A common law cause of action for appropriation of name or likeness may be pleaded by alleging (1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. (See Prosser, Law of Torts (4th ed. 1971) § 117, pp. 804–807; Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 606, p. 2244.)” Eastwood v. Superior Court, 149 Cal. App. 3d 409, 417, 198 Cal. Rptr. 342, 347 (Ct. App. 1983)

30. Lotus categorically states: “...there was never a trademark "Rajneesh", and no trademark "OSHO" before 1999.” Lotus brief, p. 11. This statement is categorically false — shown for example by existing TM registrations of 'Rajneesh' already in 1978 in Germany (Exhibit No. 36). I stated in my initial statement: “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.” That was and is my understanding. And my understanding, then and now, is that in the US a trademark may be established by use even without registration. While the earlier US proceeding is irrelevant to the determination of this body, it is relevant that an unregistered trademark could exist in the US. The names were used to identify the source of Osho’s work and were clearly a brand for products and services. It is an uncomfortable admission that my understanding of US law in this respect may have delayed the registrations in the EU and around the world.

The statements made herein are from my personal knowledge and I know all of the statements to be true.

Philip Toelkes  
Date: June 4, 2013
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
thereof by Osho Lotus Commune e.V.

Exhibit 1
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, by the seal of the National Archives and Records Administration, that the attached reproduction(s) is a correct copy of documents in his custody.

Michael J. Kretch, Jr.
Director, Federal Records Center
National Archives and Records Administration
23123 Cajalco Road
Perris, CA 92570-7298

NA FORM 13040 (10-86)
KNOW ALL PERSONS BY THESE PRESENTS

THAT I, BHAGWAN SHREE RAJNEESH, presently residing at Rancho Rajneesh also known as Rajneeshpuram, near Antelope, in the County of Wasco, Oregon do hereby amend and supplement that certain Power of Attorney, composed of 3 pages and notarization, executed by me November, 19th 1981. Except as amended or supplemented hereby, that said Power of Attorney shall remain in full force and effect.

I execute this document to more completely state my intention to maintain my separation from worldly activities and divestiture of all worldly possessions. My grant of power and authority to Ma Anand Sheela includes not only the power to act for me, but also the transfer and assignment of all such power and authority from me to Ma Anand Sheela. I withdrew from worldly matters long ago. By the execution of the aforesaid Power of Attorney and this amendment I have intended and do intend to formally divest myself of any right or power to act with respect to worldly matters, activities or events. Thus, where the aforesaid Power of Attorney speaks of the "grant" of power, it is amended to include the "transfer" of all of such powers and authority, generally and specifically.

In addition, the aforesaid Power of Attorney is supplemented by inclusion of the following material on page 3 following paragraph 10:
ll. To act with respect to my name, likeness, writings, copyrights, trademarks, tradenames, and any other property, and any possessions, rights or other tangible or intangible things or choses in action to which I am now legally entitled or shall become entitled in the future as if such things were her own – that is, to permit, prevent, control, transfer, license, sell, give away or otherwise keep or dispose of any such right or property.

IN WITNESS WHEREOF I have hereunder set my hand this 1st day of May, in the year one thousand, nine hundred and eighty two.

BHAGWAN SHREE RAJNEESH

On this 1st day of May, A.D. 1982, before me personally appeared BHAGWAN SHREE RAJNEESH to me known to be the person described in and who executed the foregoing instrument composed of two pages and entitled Assignment and Amendment of Power of Attorney and acknowledged that he executed the same as his free act and deed.

Notary Public for the State of Oregon

My commission expires Nov 8, 1983
Community Trade Mark Registration
No 1224831 OSZO 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.

Exhibit 2
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

In all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, in the seal of the National Archives and Records Administration, that the attached reproduction(s) is an exact and correct copy of documents in his custody.

SIGNATURE

NAME
Michael J. Kretch, Jr.

DATE
14 MAR 2008

TITLE
Director, Federal Records Center

NAME AND ADDRESS OF DEPOSITORY
National Archives and Records Administration
23123 Cajasco Road
Perris, CA 92570-7298

THE RAJNEESH LEGAL SERVICES CORPORATION
P.O. Box 20, Rajneeshpuram, OR 97741
(503) 459-3300
ASSIGNMENT

I, Ma Anand Sheela, have been given powers of attorney by and from Bhagwan Shree Rajneesh, dated July 1, 1981 and November 19, 1981. An Assignment and Amendment of the Powers of Attorney was executed by Bhagwan Shree Rajneesh on May 1, 1982. These documents grant and transfer to me an extremely broad power to act respecting any property rights of Bhagwan Shree Rajneesh, as is set forth at length in the Powers of Attorney and Assignment and Amendment thereto. I hereby warrant and undertake that the powers granted to me by the said documents are herein unrevoked.

Acting for and on behalf of Bhagwan Shree Rajneesh pursuant to the aforementioned Powers of Attorney and Assignment and Amendment thereto, I hereby grant, transfer, and assign to Rajneesh Foundation International absolutely any and all right, title and interest of any description which is or may remain vested as of this date in Bhagwan Shree Rajneesh, or which may be or become vested in the future with respect to His name, likeness, utterances, writings, copyrights, trademarks and/or trade names and all real and personal property rights whatsoever and wheressoever. I hereby ratify and confirm all, if any, previous grants, transfers and assignments or purposed grants, transfers and assignments thereof and all previous acts and things, including acts of ownership and control, done or purported to have been done by Rajneesh Foundation International thereover.
or therein and heretofore in the name of the said Rajneesh Foundation, and for the purpose of any personal use and to the extent not inconsistent with the use of the name, likeness, utterances, writings, copyrights, trademarks and/or trade names and all real and personal property right whatsoever and wheresoever is vested in any person other than Rajneesh Foundation International, except in accordance with any license which may have been granted by Rajneesh Foundation International.

Dated: May 10, 1983.

[Signature]

Ma'am and Sheela

1983. Subscribed and sworn to before me this 10th day of May, 1983.

[Signature]

Notary Public for Oregon
My Commission Expires: Dec 17, 1982
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<th>Date: 07/06/2013</th>
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<td>Office for Harmonization in the Internal Market</td>
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**Exhibit 3**

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<td>Application for Invalidity No 5063 thereto by Osho Lotus Commune e.V.</td>
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Certificate of Recordation

This is to certify that the attached document was recorded in the Copyright Office on the date and in the place shown below.

This certificate is issued under the seal of the United States Copyright Office.

DATE OF RECORDATION

14Feb07

VOLUME DOC. NO.

3549 31

Marybeth Peters
Register of Copyrights and Associate Librarian for Copyright Services
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

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TRUDY VALE

NAME
Michael J. Kretch, Jr.

DATE
JAN 31 2007

TITLE
ACTING Director, Federal Records Center

NAME AND ADDRESS OF DEPOSITORY

National Archives and Records Administration
23123 Cajalco Road
Perris, CA 92570-7298

NA FORM 13040 (10-88)
The Court, having considered the papers filed by both parties, and the matter having been submitted for the Court's decision without oral argument, it is hereby

ORDERED THAT summary judgment is granted for the plaintiff on the issue of the validity of copyright to those 15 works (identified below) that underlie the booklet, "Sex," for which plaintiff has submitted a copy of the certificate of copyright registration; and summary judgment is denied as to plaintiff's claim that defendant's activities constituted a breach...
of her publishing agreement with plaintiff or an infringement of

copyright.

Plaintiff has moved this Court for partial summary
judgment against defendant on the following three issues:

(1) That plaintiff is the registered owner of valid
U.S. copyrights in all of the published works that underlie the
booklet of selected quotations entitled, "Sex."

(2) That defendant's license to print, sell, and
distribute the booklets, "Sex," "Love," and "Prayer," was
terminated by her registration of copyright in the booklet,
"Love," her alleged failure to give accounts for the publication
of the booklet, "Sex," and her alleged abrogation of plaintiff's
right to supervision and control.

(3) That the same alleged actions of defendant
constituted an infringement of plaintiff's copyrights.

The Issue of the Validity of Copyright

The premise of plaintiff's infringement claim is that it
has valid copyrights to all the works from which defendant drew
the Bhagwan Shree Rajneesh's quotations.

The undisputed facts are as follows:

Rajneesh is the assignee of a properly recorded
instrument giving it all rights, title, and interest in and to the
copyrighted works of the Bhagwan. Each of the quotations compiled
in "Sex" has its source in one of some 35 prior works by the
Bhagwan, according to defendant's own answer to an interrogatory
propounded by plaintiff. As of October, 1982, plaintiff had
effected copyright registration in 15 of those works, while
applications for registration were pending as to the remaining
20.

Further, according to the affidavit of one Ma Deva
Niseema, who has worked for the publications department of the
plaintiff, the quotations at issue could not have fallen into the
public domain in light of plaintiff's practice of exercising the
strictest control over the copyrights to the Bhagwan's utterances.
This practice has included prohibiting tape recorders and
supervising admission at the Bhagwan's morning discourses in
India; insisting on appropriate copyright acknowledgments whenever
his quotations were used by the media; and of course including
copyright notice whenever his talks were published.

Although defendant denies that plaintiff has a valid
copyright to the works underlying "Sex," it has presented to this
court no evidence to support its position. Defendant contends
that plaintiff bears and has failed to meet the burden of proof of
showing that the quotations were original and "came into existence
in a manner that was copyrightable," i.e., the Court presumes,
that they had not been previously dedicated to the public.

Further, defendant complains that plaintiff has not excerpted in
its moving papers the writings that were allegedly infringed.
Finally, defendant also points out that it has sought to take the
Bhagwan's deposition on the very issue of originality.

Defendant has failed to raise any genuine issue of
material fact as to the validity of plaintiff's copyright in the
works in question, and it appears to the Court that plaintiff is entitled to summary judgment on the matter as to any of the 35 underlying works supported by a certificate of copyright registration. The applicable legal standards are clear: A certificate of copyright registration is prima facie evidence of copyright validity, 17 U.S.C. § 410(c), assuming as is the case here that the claimant has provided the necessary evidence of its claim of title from the original registrant. Contrary to defendant's apparent belief, once the certificate has been proffered the burden shifts to the party attacking the copyright to offer evidence -- and not mere denials -- against its validity. See M. Nimmer, The Law of Copyright, § 12.11(A), at pp. 12-77 to 12-78. This defendant has completely failed to do. Moreover, according to defendant's own handwritten inserts on a photocopy of the booklet, "Sex," each page's contents can be attributed to a prior book by the Bhagwan, and this written admission amply substitutes for any listing by the plaintiff of the writings allegedly infringed. Finally, the Court notes that at the hearing on the motion to reconsider the denial of a protective order concerning the Bhagwan's deposition, counsel for defendant expressly waived any right to depose the Bhagwan before summary judgment could be fairly considered. Thus this Court need not entertain allegations about the need for the Bhagwan himself to describe the circumstances of his morning discourses or evening "darshan" during which the relevant quotations evidently spewed forth.

Plaintiff has thus far submitted copies of 15
certificates of copyright registration for the following works:

- BE REALISTIC: PLAN FOR A MIRACLE
- BELIEVING THE IMPOSSIBLE BEFORE BREAKFAST
- THE BOOK OF THE SECRETS, Volume 5
- FAR BEYOND THE STARS
- GOD IS NOT FOR SALE
- THE NO BOOK: NO BUDDHA, NO TEACHING, NO DISCIPLINE
- ONLY LOSERS CAN WIN IN THIS GAME
- SECRET OF SECRETS, Volume 1
- THE SHADOW OF THE WHIP
- SUFIS: THE PEOPLE OF THE PATH, Volume 1
- THE TANTRA VISION, Volume 2
- TAO: THE PATHLESS PATH, Volume 2
- THIS IS IT!
- THIS VERY BODY OF BUDDHA
- THE WHITE LOTUS

It is, therefore, entitled to summary judgment as to the validity of the copyrights in those works. If within the next 15 days plaintiff should provide this Court with copies of certificates for the remaining 20 volumes, then it is within the ambit of this order that plaintiff shall have summary judgment as to the validity of copyright to those volumes as well.
B. The Issues of Breach of License and Copyright Infringement

The Court, having extensively reviewed the parties' affidavits and exhibits on the issue of breach of the licensing agreement and copyright infringement, finds that there remain many genuine issues of material fact. Accordingly, plaintiff's motion for partial summary judgment as to those issues is DENIED.

RICHARD A. GADBOIS, JR.
United States District Judge

Dated: 01 Oct 1994
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
thereof by Osho Lotus Commune e.V.

Exhibit 4
LAST WILL & TESTAMENT
of Osho

RECTUAL. In 1975, 1978 and 1981, I executed assignments concerning my work. Also in 1981, I executed a broad power of attorney with the stated intention to divest myself of all worldly property, and also an amendment in 1987, with the result that all such property is now owned by Neo Sannyas International Foundation, a Swiss charitable entity. To be completely certain that all such property interests are so divested, I make this Last Will and Testament.

LAST WILL & TESTAMENT. Being of sound mind, and acting of my free will, I make this Last Will and Testament.

I, Osho, birth name Chandra Mohan Jain, formerly known as Bhagwan Shree Rajneesh, hereby devise and bequest any and all right, title or interest of any nature in any and all property of any nature and in any form, owned by me, now or in the future, including but not limited to, all ownership, publishing or related rights, to all my work, published to date or in the future, in any form, to Neo Sannyas International Foundation.

If for any reason that entity cannot or does not accept this bequest then the alternate beneficiary shall be a non-profit charitable entity dedicated to the dissemination of my work, such entity to be designated by my executor.

EXECUTOR. I name as my executor Sw. Anand Jayesh, aka Michael O’Byrne.

Executed this 15th day of October, 1980, at Poona, India.
LAST WILL & TESTAMENT
of Osho
(page 2.)

I agree to serve as Executor.

___________
Sw. Anand Jayesh

___________
saka Michael O’Byrne

Executed on October 15, 1980, at Poona, India.

ATTESTATION.No, the undersigned have witnessed the signatures of Osho and Sw. Anand Jayesh and each other, to this document on October 15, 1980.

___________
Sw. Amrite

___________
saka John Andrews

___________
Sw. Prem Xiron

___________
saka Philip Toelkes