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Amtsgericht Köln HRB 59300

Our Ref 3636/10 MV-JB/(MH-RS) (please always quote)

23 December 2010

Applicant: **Osho Lotus Commune e.V.**
Community Trademark: **1 224 831 "OSHO" (word)**
CTM Proprietor: **Osho International Foundation**

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Referring to the Request for Declaration of Invalidity of 23 December 2010, on behalf of the Applicant we are setting out the statement of grounds below:

STATEMENT OF GROUNDS OF INVALIDITY

Community trade mark no. 1 224 831 "OSHO" (word) shall be declared invalid and be deleted from the register in accordance with Article 52(1) (a) CTMR since it has been registered contrary to the provisions of Article 7(1)(b),(c) and (f) CTMR.

In the following, a short introduction into the applicable grounds for invalidity, the goods and services concerned and the parties (para I.) is followed by the facts and legal arguments in detail (para II. and III.).

I. Introduction

1. Absolute grounds for invalidity

1.1 Descriptiveness resp. lacking distinctiveness of the contested Community trade mark

According to Article 7(1)(b), (c) CTMR, a sign shall not be registered as a trade mark if it is devoid of any distinctive character or if it consists exclusively of signs or indications which may serve,

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in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service.

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.

The meditations, therapies and teachings hearken back to the well-known Indian mystic, spiritual leader and founder of a new world-view / philosophy, called "OSHO", whose fame and prominence is based in particular on the creation of new kinds of meditations into which his visions have flown.

"Osho, born Chandra Mohan Jain (1931 –1990), calling himself Bhagwan Shree Rajneesh during the 1970s and 1980s and taking the name Osho in 1989, was an Indian mystic and spiritual teacher who garnered an international following. His syncretic teachings emphasize the importance of meditation, awareness, love, celebration, creativity and humor – qualities that he viewed as being suppressed by adherence to static belief systems, religious tradition and socialization. His teachings have had a notable impact on Western New Age thought.

Osho was a professor of philosophy and travelled throughout India in the 1960s as a public speaker. ... He began conducting guided meditations at the end of his talks. As a result, meditations camps and meditation centres began to emerge based upon his teachings. ... In 1970, he settled for a while in Mumbai, India, and took on the role of a spiritual teacher, changing his name to Bhagwan Shree Rajneesh in 1971. In 1974, he moved from Mumbai to Pune, India. An ashram [note: Indian term for a cloister-like meditation center] was established that attracted increasing numbers of Westerners and offered therapies to its Western audience. It is today known as the Osho International Meditation Resort. In late December 1988, he had said he no longer wished to be referred to as Bhagwan Shree Rajneesh, and in February 1989 took the name Osho Rajneesh, shortened to just Osho."

Insofar, we refer to the online encyclopedia "Wikipedia" (see the marking) attached as

Exhibit A 1.

The essence of the philosophy of Osho is described as follows:

"Osho taught that every human being is a potential Buddha, with the capacity for enlightenment. According to him, everyone is capable of experiencing unconditional love and of responding rather than reacting to life, but he suggested that a person's ego usually prevents them from enjoying this experience. The ego, in Osho's teaching, represents the social conditioning and constraints a person has accumulated since birth, creating false needs that are in conflict with the real self. The problem, he said, is how to bypass the ego so that man's innate being can flower; how to move from the periphery to the centre. ... He argued that individuals are continually repressing their genuine emotions, shutting themselves off from joyful experiences that arise naturally when embracing the present moment. ... The result, he said, is that people poison themselves with all manner of neuroses, jealousies and insecurities. ... Instead of suppressing, he

argued, people should trust and accept themselves unconditionally. This solution could not be intellectually understood, as the mind would only assimilate it as one more piece of information: instead, what was needed was meditation. According to Osho, meditation is not just a practice, but a state of awareness that can be maintained in every moment.", see the online encyclopedia "Wikipedia" already attached as **Exhibit A 1** (see the marking in the exhibit).

"Meditation is not a separate process. Meditation is simply the name for life lived with awareness. Meditation is not an hour-a-day affair where you sit for one hour and then it is over till tomorrow. No, if twenty-three hours are empty of meditation and only one hour is meditative, then it is certain that the twenty-three hours will defeat the single hour. Non-meditation will win, meditation will lose. If you are living twenty-three hours a day without awareness, and only one hour with awareness, then you will never attain to the state of buddhahood. How can this single hour triumph over the other twenty-three hours?

So understand well that meditation is not just one of life's innumerable activities. It is not just one link in the chain of man's endless doings. It is like the thread on which all the flowers of a garland have been strung. Meditation is a lifestyle, not an activity."

Osho, from "Nowhere to go but in"

He introduced his own "Active Meditation" techniques, characterised by alternating stages of physical activity and silence; see **Exhibit A 1** (see the marking in the exhibit), which *"belong to the best known new forms of active meditation, being developed for people from the West"*, see the extract "Meditation" (page 5) from the online encyclopedia "Wikipedia"

Exhibit A 2.

An overview over the meditations and therapies is published in the magazine "connection" of October/November 1999, a "special" volume" with the title "Oshos Erbe" (*English: "Osho's Heritage"*), see

Exhibit A 3.

As such "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 organizations inspired by him and his teachings, i.e. an indication of the content of the goods and services concerned – a fact that has lead to the cancellation of trademarks "OSHO" for this reason already in the past (see below paragraph II.1.1).

1.2 Contradiction of the contested Community trade mark to public policy or to accepted principles of morality

According to Article 7(1)(f) CTMR, a sign shall not be registered as a trade mark if it is contrary to public policy or to accepted principles of morality.

The relevant public will be offended at the legal monopolization of the name of a spiritual leader and founder of a new world-view / philosophy - like in the case of trade marks like "Budha" or "Dalailama" which have been cancelled for this reason (see below).

2. Goods and services concerned

Community trade mark no. 1 224 831 "OSHO" is registered for the following services:

Class 41: Educational services; yoga instruction.

Class 42: Religious services; meditation services.

3. The parties

3.1 The applicant: Osho Lotus Commune e.V.

The applicant, Osho Lotus Commune e.V., is an incorporated society ("eingetragener Verein" = "e.V."), registered in the register of societies of the Local Court of Cologne,

Exhibit A 4.

Its purpose is to realize, make available and represent the vision of the enlightened master Osho by performing courses like the meditations, celebrations and groups of spiritual growth and self-awareness and by the sale of recordings of lectures of Osho and their transcriptions in printed form or other publications with contain Osho and his vision.

3.2 The proprietor of the contested CTM: Osho International Foundation

The proprietor of the contested Community trade mark, Osho International Foundation, is a Swiss nonprofit corporation, incorporated in 1984 as Rajneesh Foundation Europe. It later changed its name to Neo-Sannyas International Foundation, and still later in 1990 to Osho International Foundation.

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, mediations 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).

Ten years after Osho had taken the name "Osho", the proprietor of the contested CTM tried to usurp Osho's name also across the European Union by registering it inter alia as the contested Community trade mark no. 1 224 831 "OSHO" (for reasons of procedural efficiency the two Community trade marks no. 1 008 481 "OSHO" and No. 5 568 481 "OSHO" will be contested later in subsequent proceedings). It was obvious that at that time, the name of Osho had broadly been used as a reference to his vision, teachings, mediations and lifework and goods and services inspired by him and his teachings in general, and that the latter goods and services had been produced independently by hundreds of individuals and meditation centers.

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 mediations, 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.

II. Absolute grounds for invalidity today

1 Lacking distinctiveness and descriptive character of the contested Community trade mark "OSHO"

"OSHO" is the personal name of a well-known Indian mystic, spiritual leader and founder of a new world-view / philosophy whose fame and prominence is based among others on the creation of new kinds of meditations into which his visions have flown and, as such, a reference to the person himself. For this reason, his lifework as well as his vision, teachings and meditations making the word "OSHO" an indication of the content of the categories of goods or services concerned, various trade marks "OSHO" have already been cancelled in the United States of America for descriptiveness resp. genericness (below 1.1).

The situation is the same in the European Union, in particular in Germany as a relevant part of the EU in the meaning of Article 7(2) CMTR, as there the public perception of "OSHO" is the same as in the USA. This does not conflict with the fact that the meditations and visions which are contained in, implemented or referred to by the good and services concerned, or which may have inspired the good and services concerned, are the lifework of one particular person (below 1.2).

1.1 Invalidation of the US trade marks "OSHO"(or containing "OSHO")

In December, 2000, Osho Friends International (OFI), an association founded to resist the efforts of the proprietor of the contested CTM to control and monopolize the vision and name of Osho, filed a petition to cancel the US trade marks

- **No. 1,815,840 "Osho"**
(for education books and printed teaching materials in the field of religion and philosophy),
- **No. 2,174,607 "Osho"**
(for providing religion, philosophy and science information via a global computer network),
- **No. 2,180,173 "Osho"**
(for pre-recorded audio and video tapes in the fields of education, religion, philosophy and science) and
- **No. 2,322,901 "Osho Rebalancing"**
(for books and printed materials for education purposes in the field of religion and philosophy).

OFI also opposed the following applications for registration on the ground of mere descriptiveness, namely

- **No. 75683097 "OSHO"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),
- **No. 75834601 "OSHO ACTIVE MEDITATIONS"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),
- **No. 76060676 "OSHO KUNDALINI MEDITATION"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),
- **No. 76158893 "OSHO TIMES"**
(for "on-line periodical relating to the spiritual and mystical teachings of the mystic Osho"),
- **No. 76158894 "OSHO MEDITATION RESORT"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),
- **No. 76158895 "OSHO MULTIVERSITY"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),
- **No. 76159553 "OSHO TRANSFORMATION TAROT"**
(for "instructional books and playing cards for the game of Tarot; entertainment services, namely, providing an on-line computer game"),
- **No. 76159554 "OSHO ZEN TAROT"**
(for "instructional books and playing cards for the game of Tarot; entertainment services, namely, providing an on-line computer game") and
- **No. 76210213 "OSHO NADABRAHMA MEDITATION"**
(for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho"),

Upon a hearing on 30 October, 2008, the United States Patent and Trademark Office rendered the following decision:

"DECISION:

Plaintiff's petition to cancel is hereby granted on the ground of genericness as to Registration Nos. 1815840; 2180173; and 2174607.

Plaintiff's petition is further granted on the ground of mere descriptiveness as to Registration No. 2322901. Accordingly, these registrations will be cancelled in due course.

Plaintiff's oppositions to the registration of application Serial Nos. 75834601; 76159554; 76159553; 76060676; 75683097; 76210213; 76158894; 76158895; and 76158893 are sustained on the ground of mere descriptiveness. "

see

Exhibit A 5

and the extract from the Trademark Electronic Search System (TESS) database of the US Patent and Trademark Office listing all trade marks containing the word "OSHO" as "dead",

Exhibit A 6.

In its decision, the United States Patent and Trademark Office came to the following conclusions (emphasis added):

"There is no evidence of record that the individual known as Osho ever used Osho as a trademark. Indeed the parties [note: one of the two parties being the proprietor of the CTM No. 5 568 481 "OSHO" contested in this proceeding] agree that Osho never owned or used Osho as a mark." (see Exhibit A 5, page 14/15);

"In addition, plaintiff has made of record a published statement in which Osho indicated that he neither authorized nor expected a single entity to serve as a source for his teachings and ideas." (see Exhibit A 5, page 15);

"Plaintiff has made of record further evidence of Osho's intention that his followers spread his teachings, first utilizing his name Rajneesh and later Osho when he adopted such name." (see Exhibit A 5, page 16);

"The record in this case supports a finding that Osho himself neither claimed nor used OSO as a trademark. The record further supports a finding that Osho gave permission to his followers to individually open centers utilizing his name to spread his teachings throughout the world ... Finally, the record supports a finding that Osho never withdrew his permission for such centers to refer to themselves using his name ... Such usage ... illustrates that Osho did not recognize or use OSO as a trademark but rather indicate that he used and authorized others to use his name as a generic term for his teachings and meditations rather than as a trademark to identify a single source for goods or services related to such teachings and meditations. As a result, this weighs in favor of genericness" (see Exhibit A 5, page 17/18);

"This use of OSHO in reference works is generic because it identifies OSHO as a religious and meditative movement and not as a trademark. ... Plaintiff has made of record examples of use of OSHO in various printed publications. ... This evidence demonstrates use of OSHO in the media as a generic term for a religious and meditative movement and not as a trademark." (see Exhibit A 5, page 21/23/24);

"Defendant [note: the proprietor of the CTM No. 5 568 481 "OSHO" contested in this proceeding] itself uses OSHO as a generic term at least for meditative techniques as well as those related to spirituality and religion." (see Exhibit A 5, page 32);

"More commonly, however, the term OSHO appears as an adjective, directly naming the most important or central aspect or purpose of defendant's goods and services, that is, that they are based upon the religious and meditative teachings of the mystic Osho. As such, this term is generic and should be freely available for use by competitors." (see Exhibit A 5, page 34);

"In this case, because the term OSHO is generic for a services of religious and meditative teachings, it is necessarily generic for goods and services offered in connection therewith." (see Exhibit A 5, page 35);

"In this case, the above evidence of record supports a finding that OSHO merely describes, without conjecture or speculation, a significant characteristic or feature of defendant's goods and services, namely, that they involve or are based upon the meditative techniques as well as the meditative and religious movement arising from the teachings of the mystic Osho." (see Exhibit A 5, page 38).

1.2 Corresponding situation in the EU, in particular in Germany

The situation described for the US trade marks, namely the character of "OSHO" as lacking distinctiveness and being descriptive, is the same in the EU, in particular in Germany, as the public perception of "OSHO" is the same as in the USA.

1.2.1 Court decision

The perception of "OSHO" is clearly expressed by the German Federal Patent Court, in its decision of 30 May 2007 (docket no. 29 W (pat) 85/05) on the lacking distinctiveness of the magazine title "EU Times", in which the court expressively referred inter alia to the "Osho Times" as one of the commonly known "Times" journals to argue that magazine titles consisting of the term "Times" and a descriptive term do not qualify for trade mark protection:

"The term "Times" has become a common designation for a magazine and is perceived by the public as a general indication of a superior magazine or journal. As a print medium or "online" in the internet (...) there are not only the "Munich Times", the "St. Petersburg Times" or the "New York Times" which, by the geographical indication and combination with "Times" refer to their place of publication or which deal with the topics around the geographically indicated area. There are also the "IT-times",..., the "Osho Times" ("Osho Times", monthly magazine about Osho, his meditations ...) etc. which provide the

readers with information relevant to the respective topic which they are named after."
[note: emphasis added], see p. 5 of

Exhibit A 7.

This shows in a very clear way, that the German Federal Patent Court qualifies the word "OSHO" as a term that describes a topic.

This perception is supported by the headline of the Osho Times International reading "*dedicated to Osho and his vision*", see as an example from the year 1992

Exhibit A 8.

1.2.2 A name of a single person but not of a single source of goods and services

The goods and services related to Osho's vision, teachings and meditations are sold and performed by the many meditation centers and individuals operated by people connected to Osho. Osho's supporters transcribed and recorded his discourses and shared them with others during Osho's lifetime. They opened meditation centers and camps in different parts of the world (with approx. 300 meditation and information centers in 45 countries already in 2000, and in 66 countries to date), in particular throughout the entire EU, offering several of his meditation techniques, and created and offer their variations of music, cultural and celebratory events, education and therapeutic course, workshops and retreats based upon Osho's ideas.

With respect to the European Union, a current overview taken from the internet website of the proprietor of the contested CTM lists Osho centers in virtually all countries of the European Union, see

Exhibit A 9.

The people associated to Osho and his work present themselves as a worldwide loosely connected "community" with a common bond through their love of Osho, however with neither a head nor leader, a hierarchy of priests nor a dogmatic theology. Most of Osho's supporters practice their religiosity on their own in loose connection with a meditation center or even without any connection to a center.

"Since the end of the commune era and the dissolution of the ashram structure, the neo sannyas movement is organized in a local way. The "institutes" and "centres" which have emanated from the communes are no longer anything more but a local network of former members of the ashram, who have kept in touch by their joint work as spiritual therapist, in a restaurant linked to the centre or in the administration of the centre.... It seems that only the therapists and meditation leaders have a particular position. From the interviews follows that they enjoy particular esteem as they are regarded as competent experts in their field of activity since they can support and accompany others on their spiritual way.", see pages 216/217 of Joachim Süß, "Zur Erleuchtung unterwegs" (in English: "On the Way to Enlightenment"), 1994, (dissertation, accepted by the University of Marburg, faculty of protestant theology, for the achievement of a doctorate), p. 216/217, see

Exhibit A 10,

Some of these supporters and their centers have offered and continue to offer publications, recordings, and newsletters relating to their activities and Osho's ideas. They have been presenting in their own ways his contributions and teaching so as to reach a variety of people in a variety of cultural situations. Such centers have also begun operating internet websites relating to the same subjects; for example see

- www.oshouta.de,
- www.oshomanjusha.de,
- www.oshostadt.de,
- www.oshofreiburg.de,
- www.oshomahabodhi-meditation.de,
- www.parimal.de,
- www.oshophotos.com.

The centers operate independently and separately from one another, both in a legal and in an economic sense, without coordination by any single source of hierarchy, as even the proprietor of the contested CTM points out, see **Exhibit A 9**. None of them is affiliated with the proprietor of the contested CTM. There is no controlling instance which would influence the offerings and standards or the use of the name "OSHO". Each center itself, mostly organized as an association or therapy institution, and the many individuals producing goods and services related to Osho's teaching and vision are responsible for their offerings and perform them to their own discretion. Osho neither controlled nor created 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.

"Also for the spiritual authority of Osho, no successor was appointed. ... Anyway, after their experience with the time of the commune, the sannyasin would no longer permit any authority exceeding its tasks.", see pages 230 (marking) of **Exhibit A 10**.

In the work around Osho there has never been only one source for goods and services since people began to open centers in the late 1960s or early 1970s. Osho was a source of discourses, *i.e. of content*, that were turned into products and services such as books, tapes and videos, and later CDs and DVDs through the additional work of many people. The centers and individuals were all sources of goods and services, such as meditation sessions and classes, groups, therapies, bodywork techniques, other individual sessions, celebration events, meditations events, music events, art and other cultural events, and products such as magazines, newspapers, books, photographs, and so on. The centers and individuals all use the designation "Osho" to indicate that the aforementioned meditations, therapies, bodywork techniques, events and products refer to, reflect or are inspired by the vision and teachings of Osho. Insofar, the centers have always been free in the use of the name "Osho". It is therefore the many individual centers and individuals, each single one in itself which are the business source and the commercial origin of the various meditations, therapies, courses etc.

The only thing Osho did upon adoption of his name in 1989, was that he asked the centers to use "Osho" in their name so people would recognize them as meditation centers based upon his teachings and ideas,

Exhibit A 11,

thereby making absolutely clear that Osho himself wanted his name to be a description of the content of the services and products offered by the centers.

For all the aforesaid we refer to **Exhibit A 1.**

Insofar, the situation can be compared to the various Buddha centers, for example the

- Buddhist Center Reutlingen/Germany,
- Rainbow Cave Buddhist Center in Wolfstein/Germany,
- Buddhist Center Berlin/Germany,
- Buddha-Center, Limburg/Germany,
- She Drup Ling Buddhist Center Graz/Austria,
- Buddha Bedura Meditation Center, Milan/Italy,

see

Exhibit A 12.

Nobody would ever believe that the meditations offered by these centers have a common commercial origin only because they use the name "Buddha" to indicate their spiritual basis. This is quite obvious as nobody would interpret "Buddha" as a trade mark for meditations or other spiritual services or for goods and services related thereto. So it does not come by surprise that trade mark applications for the names "Buddha" (already in 1995) and "Siddharta Gautama Buddha" have been rejected by the German Patent and Trademark Office as not qualifying for registration, see

Exhibit A 13,

Likewise, nobody would ever interpret the name component "Konfuzius" of the "Konfuzius Kindergarten" (*English: "Confucius Kindergarten"*)

Exhibit A 14,

as a trademark for the nursery services offered, indicating that the nursery is controlled by a particular single source of commercial origin, but merely as a nursery that feels inspired by and dedicated to the teachings of Konfuzius. So it does not come by surprise that "Konfuzius" has been rejected by the German Patent and Trademark Office as not qualifying for registration, see

Exhibit A 15.

1.2.3 Public perception of Osho

Osho is generally considered one of the most controversial spiritual leaders to have emerged from India in the twentieth century. Hundreds of books are credited to Osho, expressing his views on all facets of human existence. Virtually all of them are renderings of his taped discourses. His books are available in dozens of different languages and have even entered best-seller lists and have been published in Germany by well-known publishing houses like Goldmann and Heyne, see **Exhibit A 1** and

Exhibit A 16.

Osho's entire works have been placed in the library of India's National Parliament in New Delhi, see **Exhibit A 1** and Michael Bergunder, "Westliche Formen des Hinduismus in Deutschland" (in English: "Western forms of Hinduism in Germany"), 2006, p. 95:

"Not only has the Library of Congress in New Delhi included all of his publications into its inventory and thereby acknowledged him expressively as representative of the religious heritage of the sub continent. The techniques of dynamic meditation developed by him are even practices in many workshops and psychosomatic hospitals as a matter of course."

Exhibit A 17.

According even to the proprietor of the contested Community trade mark,

"the Osho archive is the largest recorded collection of talks from a contemporary mystic. The Sunday Times, in the UK has described Osho as one of the "makers of the Twentieth Century" - and the archive comprises seven thousand hours of audio and video recordings, published as 350 separate book titles.

In addition there are several hundred unique pieces of Osho Art, meditation techniques each with their own music, and a further archive of music created by musicians inspired by Osho's vision."

Insofar we refer to the website of the proprietor of the contested Community trade mark, see

Exhibit A 18.

As regards the music, we refer to

Exhibit A 19.

The complete recorded work of Osho is available via the internet, see

Exhibit A 20.

Osho's qualities as a thinker and speaker have widely been discussed and commented. Insofar, several respective quotes can be found in the online encyclopedia "Wikipedia", e.g.:

- According to the Indian sociologist **Uday Mehta**, his appeal to his Western disciples was based on his social experiments, which established a philosophical connection between the Eastern guru tradition and the Western growth movement.
- **Khushwant Singh**, eminent author, historian and former editor of the *Hindustan Times*, has described him as "the most original thinker that India has produced: the most erudite, the most clearheaded and the most innovative".
- The German philosopher **Peter Sloterdijk** has called Osho a "Wittgenstein of religions", ranking him as one of the greatest figures of the 20th century.
- The American poet and Rumi translator **Coleman Barks** likened reading Osho's discourses to the "taste of fresh springwater."
- The American author **Tom Robbins**, while stressing that he was not a disciple, expressed his conviction, based on reading Osho's books, that he was the 20th century's greatest spiritual teacher, and probably also one of the most maligned figures in history, given the amount of vicious propaganda and slanted reports published about him.
- **Hugh B. Urban**, Assistant Professor of Religion and Comparative Studies at Ohio State University, noted that Osho appeared to fit with Max Weber's classical image of the charismatic figure, being held to possess "an extraordinary supernatural power or 'grace', which was essentially irrational and affective".... In 2005, Urban observed that Osho had undergone a "remarkable apotheosis" after his return to India, and especially in the years since his death, going on to describe him as a powerful illustration of what F. Max Müller, over a century ago, called "that world-wide circle through which, like an electric current, Oriental thought could run to the West and Western thought return to the East."
- In questioning how the total corpus of Osho's work might be summarised, **Bob Mullan**, a sociologist from the University of East Anglia, ... he also acknowledged that Osho's range and imagination were second to none,

Insofar, we refer to the extract from the online encyclopedia "Wikipedia" already attached as **Exhibit A 1**.

Osho's active meditation techniques, in particular the Dynamic Meditation and the Kundalini Meditation, have become known far beyond his supporters; they are practiced 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 -

Exhibit A 21.

The meditations like the underlying vision and teachings of Osho are described and discussed in various dictionaries and books, for example in Germany

in dictionaries such as

- Christoph Auffarth, „Metzler-Lexikon Religion“ (in English: „Metzler Dictionary Religion“), Vol. 2, 1999, p. 630-632 (see the marking in the exhibit):

“OSHO movement

1. *The Osho movement is a new religious movement, named after the last name of its founder, who became known under the name Bhagwan Shree Rajneesh....*
2. ...
3. *In his speeches, Osho took recourse to different traditions: ...The modern human, alienated from its original nature, can liberate itself from its constricting ego and come to state of enlightenment of the all-one-being. For this, different groups of therapies and methods of meditations are offered...”*

- Harald Baer / Hans Gasper / Joachim Müller / Johannes Sinabell, “Lexikon religiöser Gruppen, Szenen und Weltanschauungen“ (in English: „Dictionary of Religious Groups, Scenes and Convictions/Philosophies“), 1990/2005, p. 938-941 (see the marking in the exhibit):

“Osho

History...

Teaching

The combination of Eastern mystic and spirituality with Western psychology is characteristic for Rajneesh ...

New Development

*...
The number of participants in the courses, satsangs and meditations is still high, being approx. 10,000 per year in the UTA Centre in Cologne, according to its own information. The focus of the courses is: 1. Therapy (body work and offerings with methods of human psychology), 2. Meditations, 3. Satsang (videos of lectures, which had been held by Rajneesh in Pune and Oregon)."*

- John Bowker, „Das Oxford-Lexikon der Weltreligionen“ (German translation of „The Oxford Dictionary of World Religions“), 1999, p. 815-816 (see the marking in the exhibit):

“Rajneesh, Bhagwan Shree

Founder of a movement based on an Indian body of thoughts ... He settled in Poona, where he was called Osho. After his death, his supporters continued to offer courses based on his teachings. ... The exercises ... are composed of elements of the tantra yoga, meditations that are derived from Gurdjieff, as well as rituals like the energy darshan."

- Rüdiger Hauth, “Kompaktlexikon Religionen“ (in English: “Consolidated Dictionary on Religions“), 1998, p. 59 (see the marking in the exhibit):

“Bhagwan Shree Rajneesh:

Founder and guru of the neo-sannyas movement ... By his teachings (a combination of pieces of wisdom from the Far East and Western therapies) he attracted many “seeking people” from the West. ... he took the name “Osho” (Master)...."

- Hans-Otto Wiebus, "Lexikon Jugendkulte" (in English: "Dictionary Youth Cults"), 1995, p. 152-156 (see the marking in the exhibit):

"Osho / Rajneeshism / Bhagwan / Sannyasin

... The teaching of Osho Rajneesh is difficult to describe. ... Rajneesh conveyed to his disciples, that the human beings are subject to the law of karma and the wheel of new birth (reincarnation). He tried to liberate the humans from their constraints by the means of meditation. ... The combination of Eastern spirituality with Western psycho analysis and the different forms of therapy, with dance, music, alternative curing methods etc. gave the mostly young visitors from the West the feeling to follow a global persuasion. ...

In Germany, there are several centres of the organization .. There is a series of book stores, restaurants, macrobiotic shops, therapy centers etc. in the environment of the former sannyasin, however, without showing an organisational cohesion."

Exhibit A 22,

- the online encyclopedia Wikipedia, www.wikipedia.com (Exhibit A 1),

in books such as

- Oswald Eggenberger, "Die Kirchen, Sondergruppen und religiösen Vereinigungen" (in English: "The churches, special groups and religious associations") , 1994, p. 267-269, (see the marking in the exhibit):

„Osho Rajneesh movement

For some of them [note: the people connected to Osho] the essence of Rajneesh's teaching is meditation, meditation not as a practice but as a state."

- Joachim Süß, „Zur Erleuchtung unterwegs" (in English: "On the Way to Enlightenment"), 1994, (dissertation, accepted by the University of Marburg, faculty of protestant theology, for the achievement of a doctorate), back page of the book (Exhibit A 10) (see the marking in the exhibit)

"The phenomenon of the new religions concern/occupies the public more and more. Insofar, the neo sannyas movement is important, whose eccentric founder Bhagwan Shree Rajneesh has his share in the forming of the usual image of sects. Does our image match the reality ? Emanating from interview and talks with sannyasin as well as observations in various spiritual centres, the author is describing the self-concept and the particularity of this community. A contribution to the understanding of new religiousness from the perspective of history of religion."

- Joachim Süß, „Bhagwans Erbe – Die Osho Bewegung heute" (in English: "Bhagwan's Heritage – the Osho movement today"), 1996, of which the table of contents reads (see the marking in the exhibit):

"Preface

Poona – Oregon and back: The history of the Osho movement

The early years

The commune experiment

The consolidation

Familiar with god: the guru

Rajneesh's life

The legend of the founder

The enlightened

The pioneer of awakening

The master as physician

Rajneesh as speaker

Rajneesh as mystic

Rajneesh as agent provocateur

The empty seat: forms of Osho adoration

The rituals of the master's appearances

A new redeemer ?

Be yourself: Basics of the philosophie of the guru

The significance of the teaching

Image of god and understanding of the world

The role of the intellect

The vision of the liberated life

With body and soul: The path of the sannyasin

The "new" sannyas

Being religious means to accept life

Devotion or self determination ?

- Nils Grübel / Stefan Rademacher, „Religion in Berlin – ein Handbuch“ (*in English: "Religion in Berlin – a handbook"*), 2003, p. 410-412, (see the marking in the exhibit):

"Osho movement

...

His teachings can be described as a liaison of Eastern religion and Western forms of therapy. Osho combined all religious and philosophic traditions known to him (Tantra, Yoga, Upanishads, Buddhistic Mahayana literature, Zen master, Lao Tse, Sufi tradition, old Greek philosophy, gospels etc.) ... The human being are alienated from their own real being; to get it back the ego and the critical thinking have to be overcome. ..Meditation is important on this way. Osho is said to be the creator of many meditation techniques (e.g. "AUM meditation", "neo-vipassana" or "mystic rose meditation"), the "dynamic meditation" being the best known ... by which one should try to find back to the original state of being. The intellect ... shall be switched off, by being extremely active in the first three phases so that the activity simply stands still in the fourth phase and the intellect is put out of action."

- Heide-Marie Cammans, „Sekten – Die neuen Heilsbringer ? Ein Handbuch“ (*in English: "Sects – The new bearers of salvation ? A handbook"*), 1998, p. 160-161, giving an overview over the life of Osho

- Jörg Andreas Elten, „Karma und Karriere“ (*in English: "Karma and Career"*), 1992, describing his time in the ashram in Pune, Osho's teachings and how it influenced his life,
- Michael Lohmann, „Das Jahr, in dem ich nur spazieren ging – Diagnose Krebs: Ein Überlebensbericht“ (*in English: "The year I only walked – diagnosis cancer: a report on survival"*), 1998, p. 145-147, describing how the author found his way to Osho (see the marking in the exhibit):

"And some time, a fellow student gave me a book of Osho ..." (p 145)

"The next day I am visiting Osho's Place... and ask from the book in which Osho talks about Jesus. ... I start reading..." (p 149)

"I learn that Osho developed more than hundred meditations ..." (p. 152)

"Osho is a Zen master who plays with the media" (p. 176)

Exhibit A 23,

in some of the most popular German magazines such as

- "Stern", "Im Bann des Gurus" (*in English: "Spellbound by the guru"*), No. 34/1998,
- "Der Spiegel", "Nur der Finger" (*in English: "Only the finger"*), No. 40/1996, p. 168-167
- "taz", "Osho als Nietzsche-Interpret" (*in English: "Osho as interpreter of Nietzsche"*), Juli 1994, p. 18

and in

- the German public broadcasting system "ARD", also called "Das Erste" (*in English: "the First"*), program of 20 October 2003,
- the German public broadcasting system "NDR" in its "N3" program of 21 March 1993,

Exhibit A 24.

In Germany, Osho and what is often referred to as his "movement" had become particular public awareness as it had been discussed very controversially and called a "sect". It had become subject to statements of the German government one of which became subject to litigation in 1990 proceeding through the instances up to the German Federal Constitutional Court ("*Bundesverfassungsgericht*") in 2002, see

Exhibit A 25.

It does therefore not come by surprise that even the proprietor of the challenged Community trade mark admits on its own website that

"Osho has reached every corner of the world, and has garnered international media coverage over the years", see

Exhibit A 26.

All this shows that "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.

1.2.4 Descriptive use of "OSHO"

Accordingly, the name "Osho" is generally used to describe the content of goods and services dealing with Osho's vision, teachings and meditations, in particular the services of the contested CTM. Enclosed are examples of advertisements promoting a multitude of diverse events, services and businesses, all using "Osho" to describe the topic or spiritual basis of the event, service or business,

events such as

- "Osho Photo Project", Cologne/Germany, advertised in the Osho Times International of 1 February 1992,
- "Osho Dance Meditation Training", advertised in the Osho Times International of 16 April 1992,
- "Osho Full Moon camp", England, 9 to 17 July 1992, advertised in the Osho Times International of 1 May 1992,
- "Osho's Delight III", Netherlands, 10 July to 10 August 1992, advertised in the Osho Times International of 1 July 1992,
- "Third Osho Sufi Gathering in Italy", Tuscany/Italy, 18 to 31 July 1993,
- "Osho Management Training", March 1994,
- "Third international Osho Festival Cologne", Cologne/Germany on 10-12 June 1994,
- "Osho Conference in Delphi", reported in the Osho Times International of 16 March 1995,
- "Osho Meditation Camp", in Wildberg Schönbronn/Germany, 16 to 18 June 1998,
- "Osho Ocean Party", 28 December 1997 to 4 January 1998,
- "Osho Festival, Freiburg/Germany, 21-24 May 1998,
- "Osho födelsedagsfestival", Stockholm/Sweden, 11 to 13 December 1998,
- "Osho Enlightenment Day, Stockholm/Sweden, 21 March 1999,
- "European Osho Festival", Cologne/Germany, 11-13 June 1999,
- "OLE – Osho Love Explosion", summer festival in Miasto, 28 July to 5 September 1999,
- "Osho Celebration 2005", Umbria/Italy, 29 July / 24 August 2005,
- "Osho Festival 2006", Cologne/Germany, 25 to 28 May 2006,
- "Osho Meditations-Wochenende" (in English: Osho meditation weekend), Odenwald/Germany, 22 to 25 June 2006,
- "Festial Osho Soleluna", Umbria/Italy, 2 to 25 August,
- "Osho Celebrations", including "Osho's Birthday, Celebration "Never born, Never died", Osho's Enlightenment, Gurupurnima, 11 December 2010 to 11 December 2011,
- "Osho Never Born Never Died Celebration", Cologne/Germany, 19. January 2011,
- "Osho Enlightenment Celebration", Cologne/Germany, 21 March 2011,
- "Osho Fullmoon Celebration", Cologne/Germany, 15 July 2011,

Exhibit A 27,

services such as

- "Osho Psychic Massage Training" with the trainers Svagito and Sagarpriya, 24 July to 7 August 1999,
- "Osho Tibetan Pulsing Yoga" with trainer Shantam Dheeraj, 1998 (date illegible but year following from another advertisement of 1998 on same page),
- "Osho Co-Dependency" with the trainers Krishnananda and Amana, 1998 (year following from another advertisement of 1998 on same page),
- "Osho Humaniversity" meditation camp,
- "Osho Therapist Training", with trainers Rafia, Ramateertha, Turiya and Vasumati, 1998/1999,
- "Osho Hara Awareness Massage" with trainer Anando, 24 October to 2 November 1997 and 29 October to 7 November 1999,
- "Osho Aum Meditation Leader Certification Training", with trainer Anand Veeresh, advertised in the Osho Times International of 1 February 1990,
- "Osho Conscious Living" with various trainers, 8 to 13 July 1999,
- "Osho Body Wisdom", meditations held by Anita Ganz & Team, 4 to 31 July 1999 (year following another advertisement of 1999 on same page),
- "Osho Karate Do", with trainer Purnesh, advertised in the program of July to December 1991 of OSHO UTA Institut,
- Grafik Design Training "*dedicated to Osho and his Vision*", with trainer Satyamurti, 23 April to 22 June 1990,
- "The Osho Inner Child co-Dependency Training" with trainers Krishnananda & Amana, 1998 / 1999,
- "Osho Divine Healing", with trainer Sidika, 31 Juli 1999,
- "Osho Pulsation Training", with trainer Deena Aneesha, 18 to 22 May 2005,
- "Osho Co-Dependency" with the trainers Krishnananda and Amana, 17 to 22 June 2005, 16 to 21 September 2005,
- "Osho Diamond Breath", with various trainers, June to August 2005,
- "Osho Risk Therapist Training", with trainers Sagarpriya, Subhuti, Anjee, Satmarga & Osho Risk Team resp. with trainer Sagarpriya, June/July 2008,
- "Osho Diamond Breath", with various trainers, June to September 2009,

- Exhibit A 28,

and businesses such as

- "Osho Wellenreiter Reiseagentur" (travel agency),
- "Osho Ayu Lee Restaurant", Cologne/Germany,
- "Osho's Place" (restaurant), Cologne/Germany,
- "Osho Discothek" (discotheque), Hannover/Germany,
- "Osho's Delight" (book and music club), Cologne/Germany,
- "Osho Verlag" (editing house), Cologne/Germany,
- "Osho Bookshop", Cologne/Germany,
- "Osho Eiscafé" (ice cream café), Cologne/Germany,

- "Osho Kiosk", Cologne/Germany,
- "Osho Galleria", Cologne/Germany,
- The overview "Leben und Osho im Buddhafeld Dresden" (*in English: "Life and Osho in the Buddhafeld Dresden"*),

Exhibit A 29,

The goods and services related to vision, teachings and meditations of Osho or inspired by Osho are advertised for in journals and magazine particularly addressing readers interested in meditation, spirituality and self-discovery; as regards Germany we refer insofar for example to advertisements in the magazines / journals

- "Frankfurter Ring",
- "KGS Körper Geist Seele" (= "body spirit soul"),
- "Wegweiser" (= "sign post"),
- "connection",
- "Balance",
- "Osho Times", see

- **Exhibit A 30.**

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, see **Exhibit A 3**.

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.

1.2.5 Limited qualification of personal names for registration as trade marks in general

According to Article 7(1)(b) and (c) CTMR, a trade mark shall not be registered if it is devoid of any distinctive character or if it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service.

According to pertinent jurisdiction of the General Court and the Court of Justice, the descriptiveness and the distinctive character of a mark must be assessed in relation to the goods or services in respect of which registration is applied for and in relation to the perception of the relevant consumers. Since the provision concerned draws no distinction between different categories of trade mark, the criteria for assessment of the distinctive character of trade marks constituted by a personal name are the same as those applicable to the other categories of trade mark. In particular, stricter general criteria of assessment (e.g. number of persons with the same name, 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 relevant trade) cannot be applied to such trademarks (see ECJ, case C-404/02 NICHOLS, para. 23-26).

Considering the above, 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.

In particular in the case of persons representing a particular thinking, style or lifework, the relevant consumer usually associate not only the person per se with the name but also his/her thinking, style or lifework which is the basis for the person's reputation. In such a case, the personal name can have a descriptive meaning with respect to goods/services reflecting, containing or referring to that thinking, style or lifework:

- (i) Regarding goods which are protectable under copyright law (works), the personal name is usually the name of the author/creator or the work title. Because of the close connection between the author/creator and the work, the use of the author's/creator's name does not only serve as an indication of the author/creator as a person but also as an indication of the work. Therefore, the name of the author/creator is usually associated with and used as an indication of the respective style of art work or content of book/music/etc (e.g. "looks like Dali; sounds like Mozart"). In such a case, the name is not distinctive in terms of trade mark law and therefore does not qualify for trade mark protection.
- (ii) If the personal name is used in connection with goods or services of a third party, the name can describe the content or nature of the product or service. In particular, biographies, books, films etc. about the life or lifework of persons or services based on a method developed by a person nor a vision or lifework of a person often bear the name of this person as a title, thereby making an indication to the character of the goods or services and therefore, describing it. In this case, the name "tells something" about the nature or topic of the good or service. In such a case, the name is not distinctive in terms of trademark law and therefore does not qualify for trademark protection.
- (iii) Furthermore, the names of well-known persons are often used on merchandising products and souvenirs. Buying such goods, the purchaser can show that he likes or admires this person, his or her lifework or achievements. In connection with such goods, which are used as a means of advertising for the benefit of the respective person, the public does not perceive the name as an indication of origin. In such a case, the name is not distinctive in terms of trade mark law and therefore, does not qualify for trade mark protection.
- (iv) Finally, the name of a person may become the synonym for a technical development such as the name "Wankel" of the respectively designated motor. Also in such a case, the name is not distinctive in terms of trade mark law and therefore does not qualify for trade mark protection.

Therefore, a name of a person can be registered as a trade mark only for goods and services for which it does not have such a descriptive meaning, i.e. if it does not fall under one of the aforementioned categories.

1.2.6 No qualification of the name "OSHO" for registration as a trademark

In the case at hand, "OSHO" is a mere indication of the personal name of Osho as well as a reference to his vision, teachings and meditations and the goods and services of third parties inspired by him and his work (as outlined above) and, thus, not appropriate to designate the origin of a product from a certain entity.

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 and vision of Osho. Accordingly, it is not possible to indicate the key character of the services without using the word "OSHO".

More in detail:

(I) Descriptiveness

According to Article 7(1)(c) CTMR, a trademark shall not be registered if it consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service.

Article 7(1) (c) CTMR pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the categories of goods or services in respect of which registration is applied for may be freely used by all. Article 7(1) (c) CTMR, therefore, prevents such signs and indications from being monopolized in favor of one single undertaking by way of a trade mark registration. Such signs need to be kept free for general use as there is a general interest in a free use of such signs which describe characteristics of the goods or service. (ECJ, C-108/97, note. 25-26 - *CHIEMSEE*).

There is a respective public interest according to Art. 7(1)(c) GMV with respect to the sign "OSHO" in relation to the following services:

Class 41: Educational services; yoga instruction.

Class 43: Religious services; meditation services.

According to pertinent jurisdiction of the General Court and the Court of Justice, the question whether a trade mark is descriptive or distinctive must be assessed in relation to the goods or services in respect of which registration is applied for and in relation to the perception of the relevant consumers.

The above mentioned services covered by the contested CTM are aimed at a particular class of persons, namely persons interested in meditation and yoga and in services connected with meditation and yoga.

The above mentioned services of classes 41 and 42 "*educational services; yoga instruction; religious services; meditation services*" directly refer to the teachings, speeches and meditations of Osho. In this context, the name "Osho" will be perceived referring to the content and the particularities of the teachings, instructions, speeches and meditations, namely as being based on or inspired by Osho's vision, teachings, speeches

and meditations. Centers and individuals have developed their own ways of teaching, not created but inspired by Osho. Again, this applies in particular before the background that the designation may be and actually is used by people not connected to any of the meditation centers but that even the meditation centers themselves operate independently and separately from one another, both in a legal and in an economical sense, without coordination by any single source of hierarchy and without any controlling instance, which would influence the offerings and standards.

(ii) Lack of distinctiveness

According to Article 7(1)(b) CTMR, a trademark shall not be registered if it is devoid of any distinctive character, i.e., if it is not appropriate to differentiate goods or services of one company from those of another.

Due to its above mentioned descriptive character, "OSHO" is also devoid of any distinctiveness with respect to *"educational services; yoga instruction; religious services; meditation services"*. "OSHO" is a mere indication of the person to whose teachings and vision the services hearken back and on whose teachings and vision they are based on or inspired by, respectively a mere description of the content/topic of the services. Therefore, the relevant public will not perceive the term "OSHO" as a distinctive sign designating services of a certain company or association.

While "Osho" is used as a name, it is at the same time a title in Zen Buddhism meaning "teacher" or "monk", see

Exhibit A 31;

as such it is not distinctive, like the word "Bhagwan" as an Indian term for a blessed, grand, adorable person which is used in Hinduism as title of a religious teacher, see

Exhibit A 32,

and the registration of which as a trade mark has therefore been rejected by the German Patent and Trade Mark Office as non-distinctive and necessary to be kept free, see

Exhibit A 33.

2 Contradiction of the contested Community trade mark "OSHO" to public policy or to accepted principles of morality

According to Article 7(1)(f) CTMR, a sign shall not be registered as a trademark if it is contrary to public policy or to accepted principles of morality. A trade mark is contrary to public policy inter alia if it is capable of injuring the feelings of a relevant part of the public because it appears to be religiously or spiritually offensive or objectionable.

The name "Osho" as the name of a mystic who founded and led a new spiritualism, and who has gained public recognition in this function, must not be monopolized for commercial purposes and thereby made one single persons property. A name symbolizing a entire belief, world-view or conviction must not be made the *exclusive* private property of one single (natural or legal) person.

This corresponds to national court decisions in comparable cases in the EU, in particular in Germany.

2.1 Court decisions in Germany

According to established practice of the German Federal Patent Court, the relevant public will be offended at the legal monopolization of the name of religious leaders. As the Court points out in its decision of 25 June 2002 rejecting the registration of a trade mark "Dalailama" (docket no. 24 W (pat) 140/01)

"This applies not only for believing Lamaists - who are certainly a minority in Germany - ... but likewise for a relevant number of the catholic and protestant Christians who mainly live in Germany, as well as for the supports of other religious communities and for undenominational fellow citizens. In spite of the general tendency of loosening religious commitments, tolerating and respecting foreign beliefs and convictions is a self-evident imperative and fundamental requirement of peaceful life in a pluralistic society and part of its fundamental ethic values. ...

As the offensiveness follows already from the – commercial – use of the designation as a trade mark in general, its being contrary to public morality has to be confirmed independently from the question whether the trade mark is regarded as offensive in relation to certain goods and services claimed or whether the products are neutral." (emphasis added),

see p. 6/7 of the decision attached as

Exhibit A 34.

In view of the role of the Dalai-Lama for the Tibetan people in particular under religious terms, the Court held that "Dalailama" was not capable of being registered as a trade mark for all goods and services claimed by the trade mark being a whole variety of goods and services including e.g. the class headings of class 16.

Referring to its "Dalailama" decision, the German Federal Patent Court likewise rejected a trade mark application for "Budha" (docket no. 28 W (pat) 66/06, decision of 17 January 2007) because of the role of Buddha as common designation for the founder of the Buddhism.

"Due to the important role which Buddha as a common designation for the founder of the Buddhism had not only for its history but also for the current Buddhistic cult and the daily practice of the Buddhists, it has to be taken that the commercialization of the word "Budha" by granting a trade mark as an exclusive right in commerce would contradict to the religious and ethical values of a relevant part of the German public, and regarded as offensive. This does not only apply for the practicing Buddhists in Germany but likewise for a relevant number of Germans with other religious or ethical convictions."

see p. 5 of the decision attached as

Exhibit A 35.

The Court emphasized that this is independent from the fact that there are commercial names such as of restaurants and trademarks that contain the word "Buddha".

Even designations which refer to a leader who is not the founder of a religion and which refer to such a leader only in an indirect way are held objectionable and possibly offensive if commercialized by way of granting an exclusive right in it by way of an official act (as is a trade mark registration). On this basis the German Federal Patent Court rejected a trade mark application for "**Pontifex**" as a reference to the pope as leader of the Roman-Catholic church (docket no. 30 W (pat) 12/02, decision of 17 February 2003), holding that

"in particular in the case of names and titles of the heads of big churches the possibility is obvious that its commercial use and in particular the granting of an official exclusive right will offend the religious feeling of the public concerned."

see p. 6 of the decision attached as

Exhibit A 36.

Furthermore, other central religious terms have been qualified as offensive and therefore contrary to public morality. Already in 1993 (docket no. 27 W (pat) 85/92, decision of 2 November 1993), the German Federal Patent Court rejected a trade mark application for "**MESSIAS**" for class 25 goods arguing:

"For a particularly relevant part of the population, also as far as it is not connected to a church in a strict sense, it is in any case a major tastelessness/tactlessness if faced with the word "Messias", which, in Christian linguistic usage, is a synonym for god (in the Jewish usage for a prophet sent by god), as a trade mark confirmed by an official act in connection with every day products such as clothing, footwear and headgear."

see the decision attached as

Exhibit A 37.

Already in 1986 (docket no. 25 W (pat) 394/84, decision of 16 January 1986), the German Federal Patent Court rejected a trade mark application for "**CORAN**" for cardiac pharmaceuticals arguing:

"After the limited version of the list of goods there are no goods for which the designation applied for is offensive in a particular way, since cardiac pharmaceuticals are neutral in this context. However, the use of a generally known central term of the Islam for the purpose of identifying goods or for advertising is generally capable of causing a scandal not only among resident Muslims but also among Christians and supporters of other religious communities. Insofar, as the applicant correctly states, it is not the perception of particularly sensitive people that is relevant but of people with normal religious feelings. Toleration of and respect over against foreign religions is a self-evident imperative and fundamental requirement of peaceful life in a pluralistic society. Also many people without a strong ideological or religious engagement respect the convictions of their religious fellow citizens. The Senate is therefore convinced that a relevant part of the business circles concerned would regard the purely commercial use of a religious

term in the field of pharmaceuticals as offensive, and would not understand if an intellectual property right in the word "CORAN" was officially granted in favor of a commercial enterprise for use in commerce."

see p. 42/43 of the decision attached as

Exhibit A 38.

In 2009, also the name "JESUS CHRISTUS" has been rejected by the German Patent and Trade Mark Office for the reason of an offence of religious feelings, see

Exhibit A 39.

2.2 Decisions of the National Arbitration Forum

This is supported in particular with respect to the name "Osho" by a decision of the National Arbitration Forum, Minneapolis/USA, (dealing with internet related conflicts) regarding the domain name "www.oshoworld.com". In 2000, the proprietor of the contested CTM initiated a lawsuit in the National Arbitration Forum against Osho Dhyan Mandir for using the term "Osho" on their website. The claim was based on the registered trademark "OSHO" (which at that time had not yet been cancelled) and transfer of the domain name "www.oshoworld.com" was requested. The National Arbitration Forum decided in favor of Osho Dhyan Mandir to retain the domain name "www.oshoworld.com". The Arbitrator observed:

"As this Arbitrator imagines Osho himself might observe, one cannot possess trademark rights in a name/mark of such universal significance which cannot and clearly does not serve as a source indicator or distinguishing moniker for Complainant or Complaint's goods or services.

The overwhelming evidence indicates that it refers to Osho, his teachings and his spiritual movement. Respondent has produced credible evidence, not disputed by Complainant, that almost 500 meditation centers around the world, not affiliated with Complainant, operate utilizing the "Osho" name. ...

To grant Complainant's request for relief would be to permit virtual monopolization on the internet by Complainant of any domain name which includes the name of a great spiritual teacher and leader. While making no judgment on the relative merits or validity of the world's religions or spiritual movements or any leader thereof, this Arbitrator finds that permitting this would be as improper as doing the same with Christianity, Judaism, Islam, Zoroastrianism, Hinduism, Buddhism, Taoism, Confucianism, Shintoism or any of the several hundred of the world's other religions and/or spiritual movements."

see p. 4/5 of the decision attached as

Exhibit A 40.

2.3 Offensive character of the contested CTM "OSHO"

The principles on which the aforementioned decisions are based are likewise applicable with respect to the name "OSHO". If

- (i) the reason for rejecting trade marks in such cases like "Budha", "Dalailama", "Jesus Christus", "Pontifex", "Messias" or "Coran" – notwithstanding a general tendency to loosen religious commitments and relationships - is that tolerating and respecting of beliefs and convictions in general and of different or even foreign beliefs and convictions in particular is regarded as a self-evident imperative and fundamental requirement of peaceful life in a pluralistic society, and
- (ii) this is even more important if the group sharing the conviction concerned is a minority within the overall society, and
- (iii) this tolerance and respect includes that names symbolizing the respective conviction, in particular the names of the founders of religious movements, are not monopolized for commercial purposes and benefits,

then it follows that this also applies in cases in which

- the conviction is not a religion in a strict sense 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 in a strict and formal sense, and even
- if the supporters do not form the "leading" conviction of the society, but in which the conviction and its founder and leader has gained some public recognition.

Therefore, also the name "Osho" as the name of a mystic who founded and led a new spiritualism, and who has gained public recognition in this function, must not be monopolized for commercial purposes and thereby made one single persons property. A name symbolizing an entire belief, world-view or conviction must not be made the *exclusive* private property of one single (natural or legal) person.

2.4 Good and services concerned

The ground for refusal of Article 7(1)(f) CTMR covers all goods and services of the contested CTM.


III. Absolute grounds for invalidity at the time of the application/registration

The absolute grounds for refusal existed already at the time when the contested Community trade mark no. 1 224 831 "OSHO" had been applied for resp. had been registered, i.e. on 30 June 1999 and 29 September 2000. Already at that time, the sign "OSHO" had to be considered as a merely descriptive indication referring to OSHO himself, his lifework and teaching methods, and goods and services inspired by him and his teachings and, therefore, being devoid of any distinctive character.

Insofar we refer to the **Exhibits A 3, 8, 10, 11, 13, 22, 23, 24, 27, 28, 29, 31, 37 and 38** which all date back to the time before 29 September 2000 most of them even before 30 June 1999.

IV. Conclusion

As shown above, Community trade mark no. 1 224 831 "OSHO" (word) had been registered contrary to the provisions of Article 7(1)(b),(c) and (f) CTMR. Therefore, Community trade mark no. 1 224 831 "OSHO" (word) shall be declared invalid and be deleted from the register in accordance with the provisions of Articles 52(1)(a), 7(1)(b),(c) and (f) CTMR for all goods and services.



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Encl.: Exhibits A 1 to A 40