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Amtsgericht Köln HRB 59300

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

11 January 2012

Cancellation No.: 5064 C
Contested CTM: 1 224 831 "OSHO"
CTM Owner: Osho International Foundation
Applicant: Osho Lotus Commune e.V.

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We hereby reply to the CTM Owner's observations of 29 July 2011 in response to the application for invalidity.

The CTM Owner submitted a tremendous amount of paper. However, the CTM Owner's allegations and the allegations made in the witness statements submitted by the CTM Owner are partly untrue, partly misrepresentations, partly unsubstantiated and, most importantly, not supported by the exhibits submitted to support the allegations, thereby raising the question of the value and credibility of the witness statements. In addition, the majority of the CTM Owner's observations and exhibits are simply without any relevance for the question whether the contested trademark "OSHO" qualifies for registration. The CTM Owner raises many extraneous issues in an attempt to confuse and distract from the real issues.

The key questions of this invalidity proceeding are the questions

- whether the names of spiritual or religious leaders like Osho qualify, in general, for registration as a trademark and, if they did,
- whether the name of Osho in particular is descriptive for the services covered by the contested CTM, namely "*educational services; yoga instruction; religious services; meditation services*", given the fact that it stands for a vision, the idea that meditation is a lifestyle, a way of being (as oppose to an activity) that involves conscious awareness 24 hours a day, 7 days a week, and that

meditation techniques, like therapy techniques, and even bodywork techniques, are just to facilitate the real experience of meditation.

In the following we will first address the relevant legal aspects (Sec. I., pages 2 to 12). Thereafter, we will deal with the CTM Owner's allegations which turn out to be either without relevance or without substance, partly even untrue (Sec. II, pages 12 to 46).

I. The relevant legal questions

Before showing that most of the observations submitted by the CTM Owner are irrelevant or without substance, we will first concentrate on the only relevant questions, namely whether the name of Osho as a spiritual or religious leader qualifies for registration as a trademark,

- in general, or
- at least for "*educational services; yoga instruction; religious services; meditation services*".

1. Registrability of names in general

As regards the possibility of registering names, we refer to the observations in our submission of 23 December 2010, pages 20/21 to avoid repetition. Even though names, in general, may be registered as trademarks, this is true only if, according to the general rules of trademark registration, they are

- neither contrary to public order and morality,
- nor descriptive for the goods or services for which the trademark seeks protection.

For example, the CTM Owner's reference to the CTM "DISNEY" in relation to **Appendix 7** goes astray, as "DISNEY" is not descriptive of the goods covered by the trademark registration.

However, the key aspect in this case is the fact that the use of the name "Osho" as a trademark is contrary to public order and morality and descriptive of the goods or services for which the trademark has been registered.

2. Registrability of names of spiritual / religious leaders

"Osho" is *not just a name*; it is a descriptive term that describes meditation services that are based on individual interpretations of Osho's religious vision and teachings as well as related educational or religious services and yoga instructions. Its use as a trademark is contrary to public order and morality in that it is the name of person who is revered by thousands as a spiritual / religious leader.

The CTM Owner argues that OHIM registered names of other creators of meditations as trademarks, namely those mentioned in **Appendix 6**.

a. Contradiction to public order and morality

As already shown in detail on pages 23 to 27 of our submission of 23 December 2010, Osho is a spiritual master and "symbol" of a mysticism, a philosophical anthropology and concept regarding the phenomenological explorations of the "question of Being". As such he is revered by many people as a religious leader.

The CTM Owner alleges that Osho was neither a religious person nor a spiritual leader. This is simply untrue and the witness statement of Dr. John Andrews in **Exhibits JA 1** and **JA 2** as well as the witness statement of Mr. Michael Byrne relating to this allegation are without substance.

- First, even the CTM Owner himself qualifies Osho's teachings as religious, as can be taken from the entry of the CTM Owner in the Zurich trade register and from the copy of the Articles of Incorporation according to

Exhibit A 41 a) and b)

which read:

Trade register:

"Purpose

Employs its means worldwide for purposes and in particular for the distribution of the religious teachings and messages of Bhagwan Shree Rajneesh by Neo-Sannyas (according to the Articles of Incorporation a practice of religion further explained therein)."

Articles of Incorporation

"Art. 3

As a not-for-profit institution the trust pursues exclusively religious, charitable purposes serving the public good, ..."

(underlines added)

As Dr. Andrews states, Osho did not wish his ideas to be qualified as religion as he was a critic of institutionalized religion. However, *religiousness* is not *religion*.

"[Religiousness or] Religiosity deals more with how religious a person is, and less with how a person is religious (in practicing certain rituals, retelling certain myths, revering certain symbols, or accepting certain doctrines about deities and afterlife)".

(from: "Wikipedia")

Likewise, Dr. George Meredith (the former name of Dr. John Andrews), then personal physician to Osho points out in his book "The Choice is Ours - The beginning of a truly human history, inspired by the vision of the controversial enlightened mystic, Osho":

"Meditation is seen as the path to consciousness, and consciousness is the source of a religiousness which is everybody's birthright. ... It is time we appreciated that the original mystical experience of the great religious figures in history ... has subsequently been perverted to create organized political entities in the name of religion... Only with a single religiousness, which is total individual, with no churches, no temples, no power politics and no priests, can humanity be one", see

Exhibit A 42.

To put it in Osho's own words:

“Religion is dead. ... The word ”religion” comes from RELIGIO. ”Religio” has a beauty of its own, which is lost in ”religion.” Religio means an existential, an experiential phenomenon. The very word means coming to a point where you are one – one with yourself, one with existence. The religion which comes from the same root does not have that meaning. It, on the contrary, makes you split. Making you one is not its work; its work is to make you schizophrenic, to put you into a split state, to put you against your own body, to put you against your own sex, to put you against yourself; to divide you into parts, fragments, and create an inner conflict in you. All religious people are continuously fighting with themselves, ... Religion is dead, religio is born. ... Religio is like love: natural, simple. No law is involved in it; no society, no culture dominates it. ... Religio is a freedom. Religion is a slavery. Dropping God, dropping religion, I have restored your freedom. Now you can be yourself without any fear. ... Religio is not a going somewhere, but the dropping of all journeys and just being wherever you are, whatever you are.. Religio is not a way in or out. It is a stoppage, a total stoppage of all movement. And suddenly you are where you always wanted to be.” .”

(from: Osho, From Bondage to Freedom, Chapter 23), see

Exhibit A 43.

On the book cover of Osho’s own book “OM SHANTIH SHANTIH SHANTIH” Osho’s discourses contained in the book are described as “religious discourses”, see

Exhibit A 44.

- Second, no matter whether Osho’s teachings are called religious or spiritual or mystical: The key aspect is that he created a new spiritual world-view which inspired countless people to adopt his vision and regard him as their spiritual master. It does not matter whether he created a “movement” or not, or whether he saw himself as a leader or not: Personal names symbolizing an entire belief system, world-view or conviction must not be made the exclusive private property of one single (natural or legal) person for the reasons already pointed out on pages 23 to 27 of our submission of 23 December 2010. For this reasons the names of such persons are barred from registration as a trademark. Therefore, they form an absolute ground for refusal, at least in the territory of Germany. However, even if there are no or less precedents from other EU member states, it is likely that the same will apply in other member states of the EU which share the fundamentals of the culture and tradition of Germany. Besides, according to Article 7(2) CTMR a trademark shall not be registered grounds of non-registrability obtain in only part of the Community (e.g. only in Germany).
- Third, the allegation that Osho was not a spiritual leader and the respective reference of the CTM Owner to the witness statement of Mr. Byrne are not relevant. Mr. Byrne only alleges that Osho was concerned about being perceived as a religious leader. Independent from the question whether this is true, this would rather suggest that Osho actually was perceived as a religious or spiritual leader; otherwise there would not have

been any reason for such a concern. However, it is not relevant in this context whether Osho was perceived as a “leader” or a “master” or a “teacher”. Indeed, in the US proceeding Mr. Steeg expressively stated that Osho was “a mystic and spiritual teacher”, see Sec. 4 of

Exhibit A 45.

The crucial point is that he was a phenomenon, a historical person who, as we have said, has created a new spiritual world-view which inspired countless people to adopt his vision and regard him as their spiritual master.

The fact that OHIM has registered names of other creators of meditations as trademarks does not support the contested CTM registration. The CTMs referred to by the CTM Owner in **Appendix 5 and 6**, namely CTMs No. 2,738,524 “BIKRAM YOGA”, No. 685,966 “PARAMAHANA YOGANANDA”, No. 2,558,104 “SATYANANDA YOGA”, No. 2,708,675 “IYENGAR”, No. 3,652,005 “SHRI MATAJI NIRMALA DEVI”, No. 922,558 “SATHYA SAI BABA” and No. 7,541,386 “MUKTANANDA” are not relevant in this context:

- First, and different from Osho, they refer to names which are unknown to the European public and which are therefore not at all identified as a person’s name. They rather appear as fanciful, coined words. Against this, the CTM Owner itself admitted, for example by way of reference to Sec. 83 of the witness Statement of Mr. Steeg and to Sec. 11 of the witness statement of Mr. Toelkes, that Osho is “*one of the most well-known names within the spirit, mind and body sector*” and “*one of the most powerful spiritual voices of the 20th century*”, and directly that he is a “*well-known and well-documented author and mystic*” (Keltie’s submission of 29 July 2011, p. 6 4th para 4).
- Second, these people, to the extent they are known at all, are primarily known for the creation of specific meditation techniques. For Osho, meditation is a state of being, a level of consciousness. Many techniques, a few created by Osho, many not created by him, can be used. Osho did create a few meditation techniques, but like Buddha, Osho is associated with a worldview, with a way of life, with a diverse community that has interpreted his teachings and vision in a variety of ways. Against this, the people subject to the mentioned CTMs – independent from their lacking prominence – are no symbols of a world-view.
- Third, if the names subject to the aforementioned CTMs were comparable to the name “Osho”, the consequence would not be that also the name “Osho” qualified for registration but instead that also the aforementioned CTMs were vulnerable to cancellation.

b. Descriptiveness / Lack of distinctiveness

(1) “Osho” as a descriptive indication

To be barred from registration as a trademark, it is only required that the word

“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” (underline added)

as Art. 7 (1) (c) CTMR points out. It is the mere suitability to describe the goods or services concerned that disqualifies the word.

It is not necessary that Osho's name has become part of common language, as Keltie wrongly allege in their submission of 29 July 2011 (page 17, 2nd para); the case of a term having become part of common language is the case of Art. 7 (1) (d) CTMR, not of Art. 7 (1) (b) or (c) CMTR.

“Osho” not only may be, but *is*, a key word to describe the character of certain meditation services as implementing or interpreting the vision and teaching of the mystic Osho:

- First, it stands for the idea that meditation is a lifestyle, not an activity. Meditation, according to Osho's teachings, is a way of life. It involves conscious awareness 24 hours a day, 7 days a week. It is a way of being. Meditation techniques, like therapy techniques, and even bodywork techniques, are just to facilitate the real experience of meditation.
- Second, it involves and insofar also stands for meditation techniques of a kind that were unknown before, in particular active meditations, because in most people's mind, meditation means no action, just stillness;

(see in more details page 2/3 of our submission of 23 December 2010 and the section “Teachings” of **Exhibit A 1**).

- Third, the meditation techniques created by the historical person Osho are in the public domain, where they have been freely used for 30 years, and equally available for use by all the competitors in the marketplace who are doing business related to the category of goods and services connected to the work of the historical person Osho. People around Osho have used his meditation techniques, traditional techniques (Zen and the 112 techniques of the Hindu Vigyan Bhairav Tantra), other modern techniques, and techniques people inspired by Osho have created (e.g. Chakra and the “guided meditations” and “other meditations” according to **Appendix 13**).
- Fourth, because meditation techniques are only stepping stones, meditation services include various meditation activities, therapies, sessions, bodywork, trainings, etc. The trainers and therapists spiritually connected to Osho create these services based on their interpretations and personal understandings of Osho's vision and teachings. They are the commercial source of the meditation services.
- Fifth, since yoga and meditation services are closely connected, “OSHO” is likewise descriptive for yoga instructions as well as educational services like meditation training. Further, since Osho also taught about “religio” and religiousness his name is or can be also understood as describing religious services.

Osho taught about meditation and religiousness. Since the 1970s people connected to Osho have been creating meditation services in the marketplace based on their interpretations and personal understandings of the vision and teachings of Osho. Since 1989 they have done so using the name “Osho” to describe their meditation services. These services have never had a single commercial origin. Now there is Osho meditation, therapy, art, music, bodywork, and lifestyle, available from many sources.

The essence of Osho's vision, philosophy and teaching is "encoded" in the word "Osho". It stands for and equals a far-ranging vision and teaching from which the meditation services and spiritual therapies are derived. To describe that a meditation service, yoga instruction or spiritual therapy, and the educational service performed thereby, reflects or is inspired by this vision and philosophy, a meditation service is called an "Osho meditation", a therapy an "Osho therapy". If Osho's name was dropped from the name of the meditation or therapy, the public could no longer recognize the particular character of the meditation. It would need a lengthy explanation of the particular character of the meditation which is summarized in the one word "Osho".

Such a word, therefore, has to be kept free for general use:

"By prohibiting the registration as Community trade marks of such signs and indications, Article 7(1)(c) of Regulation No 40/94 pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks."

(ECJ, C-191/01-P, note 31 – "DOUBLEMINT"; C-108 and 109 /07, note 25 – "CHIEMSEE" in relation to the identical provisions of Article 3(1)(c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks)

Therefore, Osho is comparable to Buddha. The historical person Buddha taught about meditation and consciousness. Buddhists have broken up into many groups: Theravada, Mahayana, Vajrayana, Zen, to name a few. Buddha taught some meditation techniques and about meditation as a way of life. Others inspired by him have created a wide range of meditation techniques, other techniques, chants, sutras, and so on. There are Buddhist forms of therapy, lifestyle, art, music, tea ceremonies, etc., created by many different people in a variety of cultures. Buddhist goods and services constitute a category in the marketplace that no one can control or dominate. No one expects all Buddhist products to have a single commercial source. To the public, "Buddha" means an historical person, a great range of teachings, and a wide range of goods and services produced by people inspired by Buddha the person and his teachings. "Buddha" does not have a distinctive meaning as a trademark for meditation services, the teachings of Buddha, etc. No one could become the commercial source of every good or service in the market related to Buddha by registering "Buddha" as a trademark. No one could control how others interpret the teachings of Buddha in creating their own goods and services by registering such a mark. It does, therefore, not come as a surprise that the German Patent Court held that "BUDDHA" cannot be registered as a trademark in Germany (see **Exhibit A 35**).

The fact that OHIM has registered names of creators of meditation techniques and approaches to yoga as trademarks does not support the contested CTM registration. The CTMs referred to by the CTM Owner in **Appendix 5 and 6**, namely CTMs No. 2,738,524 "BIKRAM YOGA", No. 685,966 "PARAMAHANA YOGANANDA", No. 2,558,104 "SATYANANDA YOGA", No. 2,708,675 "IYENGAR", No. 3,652,005 "SHRI MATAJI NIRMALA DEVI", No. 922,558 "SATHYA SAI BABA" and No. 7,541,386 "MUKTANANDA" are not relevant also in this context (aside from the context of public order and morality as mentioned above):

- First, and different from Osho, they refer – as mentioned - to names which are unknown to the European public and which are therefore not at all identified as a person’s name. They rather appear as fanciful, coined words.
- Second, and different from Osho, these persons – with the only exception of PARAMAHANA YOGANANDA - are still living or were still living at the time when the respective CTM has been filed for registration. Therefore, one could assume that the services covered by the CTM were performed by the person or under his/her control; the person whose name corresponds to the trademark could still be the source of origin. Whereas Osho never owned a trademark, as the CTM Owner admitted, in fact, insisted.
- Third, if the names subject to the aforementioned CTMs were comparable to the name “Osho”, the consequence would not be that also the name “Osho” qualified for registration but that instead also the aforementioned CTMs were vulnerable to cancellation for descriptiveness. For this reason, it is general practice of OHIM and case law of the ECJ that the registration of one trademark cannot be taken as an argument that another trademark – which is even more a totally different trademark! – must qualify for registration, too.

“In that regard, it is necessary to point out, first of all, that decisions concerning registration of a sign as a Community trade mark ... are not a matter of discretion. Accordingly, the legality of the decisions of Boards of Appeal must be assessed solely on the basis of that regulation, as interpreted by the Community judicature, and not on the basis of a previous decision-making practice of those boards (...). In addition, the distinctiveness of a mark must be assessed, first, in relation to the goods or services in respect of which registration has been applied for and, second, in relation to the perception of them by the relevant public.

It follows that the identity or similarity of the trade mark applied for in relation to another Community trade mark is irrelevant where, as in this case, elements of fact or of law which have been put forward in support of the application for that other mark are not put forward by the appellant for the purpose of showing the distinctive character of the trade mark applied for.”

(ECJ, C-37/03 P, notes 47-49 – “BioID”)

“The Court has already decided that the competent authority has to rule on a Community trade mark application only on the basis of the Community regulation and not on the basis of its previous decision-making practice.”

(ECJ, C-39/08 P, note 13 – “Bild digital”)

The same applies to the

- German trademark No. 1 133 124 “FELDENKRAIS”,
- German trademark no. 1 000 811 “RAJNEESH” (and US and Australian trademarks “RAJNEESH”) according to **Exhibit KS 6** and
- the further “OSHO” trademarks according to **Exhibit KS 12/13**.

They are also not relevant and could be vulnerable to cancellation for descriptiveness.

Finally, the CTMs referred to by the CTM Owner in **Appendix 6, 9 and 14**, namely CTMs

- No. 7,541,741 “SIDDHA MEDITATION”,
 - No. 7,541,345 “SIDDHA YOGA”,
 - No. 8,198,731 “KUNDALINI YOGA as taught by Yogi Bhajan”,
 - No. 235,317 “SCIENTOLOGY”,
 - No. 4,306,701 “MORMON”
 - No. 2,501,245 “THE CHURCH OF JESUS CHRIST OF THE LATTER-DAY SAINTS” and
- are not relevant in this context as they do not consist of personal names:

- “Siddha” in Sanskrit means “one who is accomplished” and refers to perfected masters who, according to Hindu belief, have transcended the ego, have subdued their minds to be subservient to their awareness, and have transformed their bodies into a different kind of body (see the respective explanation of the “Wikipedia” online encyclopedia).
- “Kundalini” is described as a sleeping, dormant potential force in the human organism (see the respective explanation of the “Wikipedia” online encyclopedia). The name “Yogi Bahajan” within the trademark is a descriptive component due to its incorporation in the trademark with the words “as taught by”.
- “Scientology”, “Mormon” and “The Church of Jesus Christ of Latter-Day Saints” are not persons’ names.
- As regards CTM No. 178,475 “L. RON HUBBARD”, it is questionable whether he as a person was commonly known among the relevant public even if his Scientology Church was known. If he was, a trademark consisting of his name would not be legitimate.

(2) Lacking appearance in “regular/mainstream” dictionaries

The fact that the name “Osho” may not appear in certain “regular/mainstream” dictionaries (at least not on BNC, Oxford or UK Web according to **Appendix 8**) – which is, by the way, untrue as Osho is subject to an extensive report, for example, in the internet encyclopedia “Wikipedia” – does not make Osho’s name qualify as a trademark. It is permanent practice of OHIM supported by the case law of the ECJ that the descriptive character of a word does not even depend on any actual use of the word, let alone that it can be found in any dictionaries, let alone “regular/mainstream” dictionaries:

“In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned.”

(ECJ, C-191/01-P, note 32 – “DOUBLEMINT”; C-494/08 p, note 52 – “PRANAHAUS”)

(3) Public recognition

The CTM Owner's allegation that the public recognizes "OSHO" as a trademark is incorrect. "OSHO" is recognized merely as a person's name, not as a trademark. Insofar, we refer to the observation in our submission of 23 December 2010, p. 12-20).

The CTM Owner itself admits and states that Osho is

- "India's greatest bookman" with 450 titles, more than 2,000 translations into forty non-Indian languages and published in European countries like Germany, Italy and the UK (see **Exhibit KS 2**) and
- "one of the most well-known names within the spirit, mind and body sector" (Sec. 83 of the witness statement of Mr. Steeg),
- "one of the most powerful spiritual voices of the 20th century", and that this fact is well-known (Sec. 11 of the witness statement of Mr. Toelkes),
- "well-known and well-documented author and mystic" (Keltie's submission of 29 July 2011, p. 6 4th para 4).

On the book cover of Osho's book "OM SHANTIH SHANTIH SHANTIH" Osho's discourses contained in the book are described by Nigel D. W. Armistead, Ph.D., (author of the book *Reconstructing Social Psychiatry*) as showing "an insight into the working of the human mind far deeper than most professionals that I have met in my career", see **Exhibit A 44**.

As already pointed out, the contested CTM was not filed until 1998, and there had been no other trademark "OSHO" for "*educational services; yoga instruction; religious services; meditation services*" before. The users of Osho's name, on the other hand, started using it from the time when he changed his name to Osho, i.e. from 1989 onwards. This means that all the various providers of meditation services had already used Osho's name to describe their services for almost ten years before the CTM Owner registered the contested trademark and thereby claimed an "ownership" in Osho's personal name for meditation services. For ten years, the users – of whom the CTM Owner alleges that they are the CTM Owner's "licensees", see below II.5. - could not even be licensees of the CTM Owner with respect to meditation services, as there had been nothing to license. Accordingly, there was no use of "OSHO" as a trademark as there was no trademark, and there were no trademark references such as the ® or ™ symbol, as there was no trademark registration to refer to. Accordingly, there could not be a perception by the relevant public that Osho's name was a trademark, i.e. the designation of a single commercial origin for the meditation services offered by the meditation centers, trainers and other users of Osho's name. Further, there was never a single source or a single commercial origin for meditation services related to the vision and teachings of Osho – and this has never changed. The fact that the CTM Owner managed to get "OSHO" registered as a trademark cannot change this. Registering "OSHO" cannot make the CTM Owner the source or commercial origin of its competitors' goods and services.

Even *after* the contested CTM was registered, the many witness statements attached in **Exhibit A 54 a) – w)** - see below II.5. b) (1) in more detail - show that not all users of Osho's name are even apparent "licensees" of the CTM Owner. Instead, they have continued to use Osho's name

as a *description* of the meditation and therapy services they are providing. Many users never signed any purported “licenses”.

This is supported by the way in which Osho’s name is used as part of center names and names of meditation techniques and other meditation services. The advertising submitted as **Exhibits A 28 to 30** show how heterogeneous and non-uniform in terms of script, size and placing the word “OSHO” is used. The public is used to finding a trademark consistently used in a uniform way. Whatever product or services one may think of, the trademark on the label or advertising material always looks the same during a specific period of time. After years, a trademark may be modernized, but thereafter it is again used only in one uniform way to make sure that it is recognized by the customers. A totally non-uniform and heterogeneous use of a word will therefore indicate that it is not a trademark, but that multiple users use it as they wish.

The CTM Owner’s allegation that the public connects “OSHO” with the idea of the ocean is ridiculous. It is already questionable that the statements submitted as **Appendix 11** are correct. At any rate, it is more than far-fetched to believe that the public will think of “the idea of the ocean” if they hear Osho’s name, instead of thinking of the historical person known as Osho. In any event, there is no way to know what the “*idea of the ocean*” would be, since an ocean neither has nor is based on an idea. Instead, “Osho” is a term derived from ancient Japanese used to address a master, “O” meaning “with great respect, love and gratitude” / “harmony” and “SHO” meaning “multidimensional expansion of consciousness” / “existence showering from all directions”, see the copy of the book cover of Osho’s book “OM SHANTIH SHANTIH SHANTIH” already enclosed as **Exhibit A 44**.

(4) Qualification by the German Patent and Trademark Office

Due to the descriptive character of the word “Osho” for meditation services, it is possible to use the term “Osho meditations” to describe services of a trademark registration. As can be taken from

Exhibit A 46,

the German Patent and Trademark Office accepted this term as a proper description of services for the registration of the trademark “Anand Sagar” – without any objection. If “Osho” had to be qualified as a trademark, the term “Osho meditations” could not have been used within the specification of services of a trademark application; the application would have been rejected. However, the German PTO did not reject but registered the trademark “Anand Sagar” for the service “Osho meditations”.

This corresponds to the decision of the German Federal Patent Court already submitted as **Exhibit A 7**, which shows that in Germany Osho’s name is perceived as description. The fact that this statement has been made in the context of a trademark “EU TIMES” does not invalidate the content of the court’s statement.

3. Bad faith of the CTM Owner

Finally, the CTM Owner admits its real strategy when claiming that it needs the CTM to guarantee that all “OSHO” meditations are in accordance with the guidelines. This means nothing but the clear intention to subordinate the meditation centers, therapists, teachers, trainers and other users of Osho’s name to the surveillance, control and will of the CTM Owner.

However, the meditation techniques are in the public domain and the CTM Owner's cannot claim to be the commercial source for them or for the various ways its competitors in the marketplace choose to teach or to use them. The CTM Owner is trying to dominate and control a very lucrative segment of the mind, body, spirit part of the marketplace. They claim to be concerned about techniques that they do not own or control, while their true purpose is twofold: to control the religious interpretations of their competitors, who are providing goods and services related to Osho's vision and teachings in the marketplace according to their own understandings of Osho; and by demanding their competitors sign licenses based on their registration of "OSHO" and using those "licenses" to falsely claim to be the sole commercial origin of their competitors' goods and services.

After many years without a trademark registration "Osho" for the services of the contested CTM, of unobjected descriptive use of Osho's name by its users, the CTM Owner tried to usurp Osho's name in an attempt to retroactively pose as a commercial source and control and restrict the use of the name by the meditation centers, trainers and other users of Osho's name. The CTM Owner is even claiming that it tries to subject the meditation centers to a certain kind of use of Osho's name. The attempts have even been intensified after the "OSHO" trademarks were cancelled in the USA.

Thereby, and in fundamental contradiction to what Osho taught, the CTM Owner is trying to create dogma and a religion that does not exist and which was expressively unwanted, rather than allowing the people related to Osho to continue to live his vision. Trademarks are not intended to be used to create a religious hierarchy or to control religious interpretations of the teachings of religious leaders. The trademark enforcement process is not intended to mediate religious disputes. That is one of the many reasons why the name of a religious teacher that is used descriptively in the marketplace cannot be a legitimate trademark.

Ironically, while the CTM Owner seeks to deprive the people related to Osho of their right to religious freedom by attempting to unilaterally declare that Osho and his teachings are not religious, they actually present a case for the formation of a religion, not the legitimacy of a trademark. Just as they confuse copyrights and trademarks, they confuse religious hierarchy or authority with trademarks.

No one can exercise religious control – determine the "correct" or "pure" interpretation of religious teachings – simply by registering the name of the religious leader and teacher as a trademark and threatening to sue anyone who disagrees with them.

The CTM Owner claims that simply by registering Osho's name as a trademark it can dictate to others how to interpret Osho's vision and teachings or deprive them of the right to use their religious leader/teacher's name to describe their work. That is not the purpose of a trademark.

4. Summary

The contested trademark "Osho" is descriptive, the name of a person who created and inspired a whole new world-view and spirituality, and the name of a historical person revered by many people as a religious leader. As such Osho's name does not qualify for registration as a trademark for "*educational services; yoga instruction; religious services; meditation services*". Furthermore, the contested CTM had been filed in bad faith as an attempt to subordinate the meditation centers, therapists, teachers, trainers and other users of Osho's name to the

surveillance, control and will of the CTM Owner. Also under this aspect, Osho's name does not qualify for registration as a trademark for "*educational services; yoga instruction; religious services; meditation services*".