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Amtsgericht Köln HRB 59300

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

4 January 2013

**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 9 July 2012 in response to the application for invalidity.

Again, the CTM Owner submitted binders of useless paper. The CTM Owner's allegations and the allegations made in the so-called "witness statements" submitted by the CTM Owner are – again □ partly dishonest, 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. However, the vast majority of the CTM Owner's observations and allegations are simply without any relevance for the question: whether the contested trademark "OSHO" qualifies for registration. Again, the CTM Owner raises many extraneous issues in an attempt to confuse and distract from the real issues. Basically, the submission is insulting to the Cancellation Division of OHIM as the CTM Owner seems to believe that such a submission could impress trademark experts.

A lot of time could have been saved and useless reading been avoided had the CTM Owner limited its submission to relevant issues. The CTM Owner's submission mainly consists of two Annexes, the one of Mr. Toelkes (**Annex PT 1**) and the one of Mr. Steeg (**Annex KS 2**), falsely called "witness statements", which are actually some kind of pseudo legal opinions. The cheap polemic, the partly ridiculous views and the impertinent lashing out at the Applicant and individual persons show the desperation of the CTM Owner. The Annexes, however, suffer from a

fundamental deficiency, namely that they have been drawn up by persons who are obviously not qualified to give legal opinions in this proceeding. The permanent mix-up of copyright and trademarks, name and trademarks, the falsely taking of a mere designation for a branding, the reference to "intellectual property" without distinction between copyright and trademark, as well as the overflowing comments on irrelevant topics related to the wide variety of Osho-related organizations shows a lack of understanding of the relevant issues and a fatal degree of negligence. The persistent drawing of amateurish conclusions, where conclusions should rather be left to the OHIM, the repeated amateurish attempts to make legal arguments or even evaluations despite an obvious lack of knowledge of the fundamental principles of EU trademark law and the raising of unsupported allegations which do not follow from any rational line of thought make the Annexes worthless paper, partly mere third class pamphlets and an all in all impertinence, disqualifying them from being witness statements acc. to Art. 78 CTMR. They appear as not even intended to add value to the proceeding but as an attempt to let the relevant facts get lost in the process. For this reason they should be disregarded.

While the Annexes could be dismissed as laymen's play if deficiency and hostility had not been the play's storyboard, it is amazing that the CTM Owner's representative in this proceeding also allowed himself to be infected with useless polemic and the desire to hide the relevant issues by misrepresentations and imprecision.

We had already addresses the key questions of this invalidity proceeding in our submission of 11 January 2012, namely

- 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 opposed 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 7),
- thereafter deal with the CTM Owner's allegations which turn out to be either without relevance or without substance, partly even untrue (Sec. II, pages 7 to 17) and
- then show that the comments of the CTM to the witness statements submitted by the Applicant are without substance and relevance if not untrue (Sec. III, pages 18 to 30).

## I. The relevant legal questions

### 1. Registrability of names in general

As regards the possibility of registering names, we refer to the observations in our previous submissions to avoid repetition. Even though names, in general, may be registered as trademarks, the key aspect in this case is the fact that the use of the name "Osho" as a trademark is descriptive of the goods or services for which the trademark has been registered

and contrary to public order and morality. Therefore, the CTM Owner's comparison of the contested CTM with the trademark "APPLE" (submission, page 1) shows that the CTM Owner does not understand at all what the case is about.

Mr. Steeg's professed belief that the Applicant "claims that a *name* cannot perform the function of a trademark" (**Annex KS 2**, page 2) is either due to carelessness or an intentional misinterpretation. Actually, the Applicant only claims that a particular name, namely the name "Osho", cannot be registered as a trademark, and not because it is a name but, as said, because the name is descriptive of the goods or services for which the trademark has been registered and its registration contrary to public order and morality.

## **2. Registrability of names of spiritual/religious leaders**

On page 4 of its submission, the CTM Owner admits that "Osho" was a profound spiritual teacher and that his vision is what makes dissemination of his work necessary and successful.

### **a. Contradiction to public order and morality**

As regards contradiction to public order and morality, the CTM Owner claims that the designation has been used for twenty years as a trademark without objection. However,

- it is not the use of the designation "OSHO" that is contested but its registration as a trademark,
- the contested trademark registration is not twenty years old but has been filed for registration only in the year 1999 and
- the fact that the registration has not been contested earlier does not influence the general question of whether the names of famous spiritual or religious leaders like Osho, whose names symbolize a religious vision, shall be monopolized in favor of a single person for the purpose of excluding others from the use of the name.

Insofar, the CTM Owner's claim is irrelevant and even more is its reference to the Beatles of Facebook. It is not the source of inspiration that disqualifies Osho's name from registration as a trademark but his life, fame and character as a spiritual/religious leader. Obviously, the CTM Owner did not understand the concept of the grounds for refusal of protection that applies insofar.

It further appears quite surprising that Mr. Toelkes (and – more understandably – the CTM Owner's representatives, who are not so deeply involved in this aspect of the matter) seems not to understand the difference between religion and religiousness, as can be taken from page 6 of his "witness statement" (**Annex PT 1**). The CTM Owner's own evidence claims it was a religion during one point in time. In **Annex 7** of the CTM Owner's first submission, Osho allegedly appoints Mrs. Sheela Silverman as his sole spokesperson possessing total "ecclesiastical and spiritual authority and control over my religion, Rajneeshism,...") It is irrelevant whether Osho's vision can be regarded as a religion, but Osho's vision is certainly religious. If the corporate documents of the CTM Owner indicated a religious purpose only for the purpose of obtaining tax exempt status, this sounds like a false statement over against the Swiss government to obtain tax benefits rather than an argument against the admitted religiousness of Osho's vision and teachings. (Mr. Toelkes seems to be confusing the US and Swiss entities, as well as the applicable laws.)

Further, the CTM Owner still does not understand that the name of a person who has created a meditation technique is something different from the name of a person who symbolizes a worldview in the context of which meditations play a role but which is not reduced to any mediation technique. Accordingly, the reference of the CTM Owner to trademarks consisting of the names of creators of meditation techniques (page 4 of the submission) does not address the crucial point.

The comment of Mr. Toelkes according to which "*History reports many periods where religious zealots have sought to use their beliefs to deny legal right*" (Annex PT 2, sec. 6) may indicate a claim that he is a learned historian, but this case rather requires an understanding of trademark law and the understanding that it is not zealotry but *respect* that requests certain persons' names not be monopolized for the mere commercial benefit of a single other person. This does not interpret spiritual belief or decide what religion is, as the CTM Owner suggests, but merely acknowledges the achievement and importance of the person whose name is concerned. It is the CTM Owner that wishes to monopolize references to a spiritual teacher and to prevent those with differing spiritual views from describing meditation-related activities as related to his teachings. The respect for the spiritual teacher that prevents his name from being used as a trademark has the effect of guaranteeing the freedom the CTM Owner claims to desire.

When the CTM Owner alleges (page 2, 3<sup>rd</sup> para) that commercial interest, not religious interest, are behind the request for cancellation of the contested CTM, it turns the case upside down. The Applicant's interest is the interest in an unobstructed use of a descriptive designation. The commercial interest is rather on the CTM Owner's side, as it is the CTM Owner who tries to monopolize Osho's name as a *property* and therefore for its own commercial interests. Insofar, the CTM Owner's allegation that it would be far more damaging to public order and morality if the contested CTM was free for general use (submission, page 4) is ridiculous. Qualifying freedom as damage is a strange understanding of morality but appears to correspond with the objective that the CTM Owner is trying to reach.

Also the CTM Owner's assertion that the Applicant claimed a designation that has become well-known as a part of the name of a meditation makes its registration invalid shows the CTM Owner lacks understanding of this case. Contrary to the repeated, but still incorrect, perception of the CTM Owner, Osho' name is not used like a *trademark* but as a mere reference to the person Osho, i.e. as a *name*, and Osho' name has become well-known only as a name but not as a trademark – a fundamental difference which the CTM Owner does not understand and has persistently refused to understand.

Finally, it is telling that the CTM Owner is unable to deal with the decision of the German Patent Court and flees into claiming the autonomy of the Community trademark system over against the German trademark law. This is always the last resort if one has no arguments on the merits of the aspect concerned. However, the German Patent Court reflects the perception of the contested trademark registration in a substantial part of the EU. This perception, moreover, is relevant as a trademark that does not qualify for registration for absolute grounds in part of the EU does not qualify for registration as a CTM, Art. 7 (2) CTMR.

**b. Descriptiveness / Lack of distinctiveness**

The CTM Owner "arguments" with respect to the descriptive nature of Osho' name in the context of meditation/yoga/religious/educative services do not make any sense:

- The CTM Owner argues that “OSHO” is not descriptive for the meditations as the public would be able to *perform* the meditations by following the instructions even if they were not indicated as “OSHO” meditations. This is nonsensical. Of course, only instructions are needed to perform a meditation. However, the name of a meditation does not serve the purpose of allowing people to perform the meditation but informs them about the kind of meditation so that they know what kind of meditation they are going to perform – or not – if they decided to choose another kind of meditation. For the public, the meditation *service* is offered by and originates from the individual meditation center, meditation leader, group leader, and so on. The name of the meditation only informs them what kind of meditation the center or practitioner offers.
- The CTM Owner further argues that a meditation can also be *recognized* by its description in the instructions. This is likewise nonsensical. The purpose of “Osho” being part of the name of a meditation is to inform the public about the kind of meditation it is. Who wants to read a meditation instruction to get an idea what kind of meditation it is? Insofar, the CTM Owner expressively admits (page 6 of the submission) that the instructions recognize Osho (and not the CTM Owner!) as the source of the meditation. This is, however, not a “source” in the meaning of a particular business which offers the meditation but of a particular creator whose vision and idea is incorporated in the meditation, i.e. the source as indication of a quality. Insofar, the name of the meditation is comparable to calling Vipassana meditation or Zen meditation Buddhist meditations, since they were inspired by the teachings of Gautama Buddha and were developed and are practiced within the wide-spread and varied tradition of Buddhism (which may or may not be a “religion” or “religions”, but is certainly religious).
- In this context, the CTM Owner refers to an overview of the meditations offered by the Osho Uta Institute (**Annex MED**) which do not use Osho as part of the meditation name. Indeed, a generic term like “dynamic meditation” or “evening meditation” may not in itself be perceived by the public as referring to Osho. However, the public takes from the institute’s name that many of the offered meditations are Osho’s meditations. Anyway, the Osho Uta Institute offers some meditations without referring to Osho because they are not meditations that can be referred to Osho (see page 35 our submission of 11 January 2012). The CTM Owner further argues that the CTM Owner is the only source of the literature by Osho describing how to do the meditation, and that this is because the CTM Owner is the – purported – copyright owner of Osho’s words (submission page 8, 1<sup>st</sup> para). This is against logic – let alone the fact that the ownership of the CTM Owner in the copyright is disputed. Nobody needs to own the copyright in Osho’s words to describe how to do an Osho meditation. Anyway, it is irrelevant, as this case is not about the possible source of *literature*.
- The CTM Owner further argues that “*the name OSHO has no meaning in relation to meditation services other than the meditation services and products emanating from the Proprietor*” (page 3, 2<sup>nd</sup> para). This is ridiculous, particularly since the CTM Owner itself uses Osho’s name to refer to the content of meditations and teachings.

It does therefore not come as a surprise, but is very important, that the CTM Owner does not submit any evidence according to which the relevant public actually perceives Osho’s name as a

trademark. The CTM Owner is simply not able to do so. Instead, the Applicant has shown that Osho's name is always used as a reference to the person Osho and as a description of meditation techniques, as for example shown in the book "Meditation" of 1999, of Klaus Engel, an extract of which is attached as

## Exhibit A 64

in which the term "Osho-Meditationen" (= Osho meditations) is used in a clearly generic way along with other generic terms like "Zen", "Tibetanische Meditation" (= Tibetan mediation), "Christliche Kontemplation" (= Christian contemplation), "Yoga Meditation", "Transzendente Meditation" (= transcendental meditation) and "Qi Gong".

Against this, the CTM Owner tries to detract from the relevant questions by submitting large amounts of irrelevant papers in an attempt to lull the reader of the submission into an irrelevancy-induced stupor. It is an old strategy that he who is not able to defend himself tries to escape into the fog.

Actually, the concern which the CTM Owner raises is that *"uncontrolled use of the 'mark' [would be] leading over time to completely unassociated ideas (or 'inspired works') being labeled OSHO products"* (submission page 7 last para), and the target at which the CTM Owner aims is *"simply protecting the integrity of the original meditations techniques and teachings and vision of Osho"* (submission page 8 4<sup>th</sup> para). However, to meet this concern it does not require a trademark!

- To the extent that the CTM Owner wishes to use trademark law, or any law, to control the religious interpretation of Osho's spiritual teaching by attempting to control the use of his name, this is not possible at all. We live in a free and pluralistic society where we tolerate and respect diversity of religious opinion. Catholics and Lutherans do not always agree on the meaning of the New Testament. Theravada and Zen Buddhist do not always agree on meditation practices, but we respect each other, and EU law reflects that respect. We do not allow anyone to use civil laws to create religious control over their competitors or allow the names of religious leaders to be monopolized as trademarks or regarded as property in a way offensive to that leader's associates.
- To the extent that the CTM Owner wishes to ensure that the products labeled "Osho" do actually not contain anything unassociated with Osho, this is a matter of correct labeling, not a matter of the source of origin. What the CTM Owner expresses to be concerned about is not confusion (about the commercial origin) or passing-off but deception/misleading information (about the content of the offered product). The concerns of the CTM Owner is fully met by the law against unfair competition (labeling law, advertising law), but it is not a matter of trademark law!
- To give an example, the German Act against Unfair Competition provides for the following:

**"Section 3  
Prohibition of unfair commercial practices**

*(1) Unfair commercial practices shall be illegal if they are suited to tangible impairment of the interests of competitors, consumers or other market participants.*

...

**Section 5**  
**Misleading commercial practices**

*(1) Unfairness shall have occurred where a person uses a misleading commercial practice. A commercial practice shall be deemed to be misleading if it contains untruthful information or other information suited to deception regarding the following circumstances:*

1. *the essential characteristics of the goods or services, such as availability, nature, execution, benefits, risks, composition, accessories, method or date of manufacture, delivery or provision, fitness for purpose, uses, quantity, specification, after-sale customer assistance, complaint handling, geographical or commercial origin, the results to be expected from their use, or the results or material features of tests carried out on the goods or services;*
2. ...

(underline added)

**Exhibit A 65.**

Corresponding or similar law exists in all EU Member States.

If the term "Osho meditations" is used only for meditation techniques based on Osho's teachings and vision, then the CTM Owner's concern is met. This can be ensured on the basis of statutory provision or similar laws like abovementioned, but does not require a trademark. If there is no trademark, there is nothing for others to pass off as the CTM Owner's, so then again the CTM Owner's concern is sufficiently met. Contrary to the CTM Owner's assertions (submission page 11 2<sup>nd</sup> para), the Applicant does not intend to "hijack" the contested CTM. The reverse is true; the Applicant does not want get the CTM instead of the CTM Owner but tries to ensure that Osho's name is free for general use as a description of meditation/yoga/religious/educative services based upon Osho's teachings and vision and, of course, in the legal framework for which the law against unfair competition provides.

Accordingly, the allegation that the guidelines according to **Exhibit A 48** are a sufficient trademark policy as they refer to comments from Osho that his name should not be used for activities which do not reflect his vision (as opposed to: do not originate from a particular commercial entity!) (submission page 9 4<sup>th</sup> para) shows once more that the CTM Owner does not understand that this concern does not address a trademark issue but an unfair competition issue and refers to a name, not a trademark. Therefore, the guidelines are by no means a trademark policy. The guidelines are – if relevant at all - about someone's idea of proper conduct, not about property!

**II. The CTM Owner's allegations**

As in the first round of submissions, the CTM Owner's allegations are partly untrue, partly unsubstantiated, not supported by the exhibits submitted to support the allegations, and without any relevance for the question whether the contested trademark "OSHO" qualifies for registration.

To the extent that witness statements of Mr. Steeg and Mr. Toelkes include conclusions on legal aspects, the conclusions show the witnesses' lack of understanding of the relevant law, thereby disclosing that the "witnesses" arrogate to be able to assess the legal situation of this matter notwithstanding their lacking qualification to do so.

It does not, therefore, come as a surprise that Mr. Steeg and Mr. Toelkes are subject to various misunderstandings which become obvious by simple reading the Exhibits. Over and over again they

- purport that there is some kind of a "trademark history" dating back to a time where there was not even any trademark for meditation services with respect to Osho's names (be it "Osho", be it "Rajneesh");
- mistake center names for trademarks, obviously not knowing the difference or trying to disguise the lack of *relevant* IP rights. However, the fact that a meditation center uses "OSHO" in its name does not make "OSHO" a trademark. Most business names are made up of terms that would qualify as descriptive designations under trademark law. The thresholds of distinctiveness differ insofar. This is why the meditation center usually have another component which allows the public to distinguish one center from another, e.g. "UTA", "MIASTO", "KETAN", "TAO", "RISK", etc. or differ by other descriptive designation which go along with "OSHO" and identifies the business activity, e.g. "Natural Childbirth" "Healing Institute of Living and Dying", "Mystery School", etc.;
- mistake author names for trademarks (submission page 10 4<sup>th</sup> para), obviously not knowing the difference or trying to disguise the lack of *relevant* IP rights. Even if the name of an author may be registered as trademark its use on a book to identify the author by his/her name is not a use of/as a trademark but merely a use of/as a name.
- mistake works for services and thereby mistake copyright for a trademark right where they refer to IP rights in works rather than in the designation of services, thereby trying to disguise the lack of *relevant* IP rights; the statement that copyright and trademarks were addressed "*to demonstrate the CTM Owner and Osho were aware of the existence of IP Rights*" (submission page 8 3<sup>rd</sup> para) is a helpless excuse as this does not mean anything. Knowing that there may be *some kind of IP right* involved when it comes to books, music or videos does not say anything about the nature of Osho's name. The trademark-related information on the website (referred to in submission page 8 3<sup>rd</sup> para) has only been uploaded in the recent past; now that the CTM is contested, the CTM Owner tries to construe "evidence" that had not existed before.
- mistake the use of "Osho" in connection with magazines (which is not subject to this proceeding) for the use of "Osho" for meditations;
- believe that there can be licenses in *personal* names of individuals where this is excluded for legal reasons, thereby trying to disguise the lack of *relevant* IP rights;
- claim that the activities of the meditation centers and of the therapists whose witness statements had been submitted as **Exhibit A 54 a)-w)** were doing business under a license from the CTM Owner. However, in many cases these licenses – if existing at all – refer to the copyright in certain works, but not to a trademark "OSHO". Aside therefrom, Mr. Steeg and Mr. Toelkes are unable to provide any license agreement with respect to a



trademark "OSHO". Instead, they try to talk their way out of this obvious dilemma by claiming the so-called "Letters of Understanding", which various meditation centers seem to have signed, constitute a license agreement. We have already explained in detail (pages 38 41 of our submission of 11 January 2012) why the "Letters of Understanding" do not qualify for trademark licenses (lacking a trademark to be licensed, addressing center names rather than service marks, use of Osho' name in a descriptive way), and it shows that Mr. Steeg and Mr. Toelkes obviously do not have an understanding even of the fundamental principles of trademark licensing;

- mistakenly believe that a possible involvement in itself of the therapists or other persons according to **Exhibits 54 a)-w)** in the activities of certain "entities" (centers, institutes, universities, foundations), has influence on the perception of the relevant public of the name "Osho";
- mistakenly assume that knowledge of an alleged "the Foundation" or even knowledge of some management of IP rights has any effect on the way the relevant public perceives the name "Osho".

Instead, they

- raise lots of unsupported allegations,
- obviously do not realize that much of the submitted "evidence" and exhibits are not supporting the allegations or do not even address the topic,
- seem to believe that they can make a non-existing fact happen by constantly purporting its existence (calling "OSHO" a "brand" does not make it a "brand" where the key question is whether it is a "brand" at all; calling a piece of paper a "license" in a way that assume the existing of a license does not make it a license", if the existence of a license is controversial),

and seek salvation in cheap polemic, defamation, willful misinterpretation and attempts to cover the poor quality of their statements by partly imprecise, partly nebulous and partly false allegations.

More in detail along the key "arguments" of the CTM Owner:

- 1. The CTM Owner tries to build up a "trademark history" around Osho's name purporting a continuance in branding that does not exist**

The CTM Owner alleges that

- the names "Rajneesh " and "Osho" were registered and used as a trademark from the early years of Osho's work in the 1970 (Mr. Toelkes statement **Annex PT 2**).
- the CTM Owner has used the mark "OSHO" in Europe since 1989 (submission, page 3, 5<sup>th</sup> para)
- there is a chain of title of the trademark OSHO from the 1980s (submission, page 7, 4<sup>th</sup> para),
- valid trademark assignments covering the entire history of "the Foundation" (submission, page 7, last para) and

- the rights resulting from the use (!) of the OSHO trademark all accrue back to the CTM Owner (submission, page 7, last para).

These allegations are untrue, not supported by the exhibits filed and, in any event, irrelevant to the legal issues in the case.

A double key misunderstanding is discovered on page 29 of **Exhibit KS 2**, where Mr. Steeg says:

*“Following the name change the legal structure remained the same and the mark became a valid trade mark”.*

- First, the CTM Owner and Mr. Steeg obviously do not understand that the use of a name is something different than the use of a trademark, even something different than the use of a name as a trademark.
- Second, the CTM Owner and Mr. Steeg seem to believe that the use of a name may somehow create protection of the name as a trademark. However, use of a name – even if used as a trademark – does not establish trademark protection. Even the use of a sign that is undisputedly a trademark does not establish protection of it! To believe that *mere use* establishes protection is a fundamental error. Perhaps this may be possible under US law Mr. Steeg may have been told so by US lawyers, but the trademark law of Europe differs substantially from that of the USA in this respect. Mr. Steeg may have been advised by the wrong people. However, it makes most of his lengthy statement and the mingling of name and trademark irrelevant – and its reading a tiring imposition.

A fundamental misunderstanding of the law is discovered on page 3 Sec. 10 of **Annex PT 1**, where Mr. Toelkes says:

*“When you have 1 or 5 copyrighted titles, you are an author. When you have the rights to over 300 copyrighted titles, .... , and you offer that copyrighted material to the public ... then you are a business enterprise, and using the name of the source of all the work is the natural trademark for that business”*

- First, offering copyrighted material to the public is a publishing service. When doing so “the source of all the work” is the publisher. However, still the name of the author is something different than the trademark under which the work is published. In most cases and also in the case of Osho’s works (!), the trademark for the publishing services differs from the author’s name. To say that the author’s name is the “natural trademark” of the publishing business is simply and obviously untrue as this is hardly ever the case – as everybody knows who has ever bought some books.
- Second, even if author’s name and publisher’s trademark would correspond (e.g. in the case of self-published works), the use of the name on the cover page of a book or CD etc. is only a use of the author’s name as the author’s name and only understood in this way. Otherwise, if the name was interpreted as the publisher’s trademark, the work would not indicate the author’s name and the consumer would who had written the book or made the music etc. – a bizarre idea.

Having in mind these misunderstandings following from lacking knowledge and understanding of the relevant law it is not surprising that the submissions of the CTM Owner are irrelevant and without substance.

**a. Lacking relevance**

The purported “trademark history” – even if it existed, which it does not – is without any relevance as it would not add any evidence regarding whether Osho’s name qualifies for trademark registration.

**b. Lacking substance**

However, and in the first place, there is no “trademark history”! The allegations of the CTM Owner regarding the “trademark history” of Osho’s name are amateurish conclusions of persons who purport to express legal statements without the necessary knowledge, allegations which are therefore without substance and not supported by the submitted documents as there is no such trademark and no such history.

First, and as regards the *trademarks*:

- In its submissions the CTM Owner refers to a Swiss trademark “OSHO” of 1991, an IR mark “OSHO” of 1991 based thereon, one CTM “OSHO” of 1998 (in class 9 and 16), two CTMs “OSHO” of 1999 (one being a withdrawn application, the other being the contested CTM) and one CTM “OSHO” of 2006 (page 3, 6<sup>th</sup> para) as well as to one trademark “Rajneesh” of 1979 (in class 9 and 16) (**Exhibit KS 97b**) (not filed by the CTM Owner). This shows that in relation to “meditation services, religious services, yoga teaching and education” there was never a trademark “Rajneesh”, and no trademark “OSHO” before 1999.
- The *“abiding intent to protect the integrity of his [= Osho’s] work”* which Mr. Toelkes refer to (**Annex PT 1**, page 3 sec. 12) for the significance of copyright and trademark assignments is irrelevant as it does not establish any trademark.
- The *“legal documents establishing Osho’s intent to exclusively grant the exclusive use of his name as a trademark to entities which give effect to Osho’s intention”* addressed by the CTM Owner’s in Sec. 5 of the submission do not exist. All respective documents submitted by the CTM Owner insofar do obviously not show such a content.
- The allegation that the Applicant already acknowledged that Osho’s former name “Rajneesh” was a trademark, used it as such and signed a license agreement are not supported by the submitted documents and untrue and therefore without substance.

Second, and as regards a *history*:

- We had already pointed out in details (our submission of 11 January 2012, page 14/15) that – aside from the fact that they have not been authenticated – the various documents submitted by the CTM Owner which the CTM Owner would like to have treated as “Deeds of Assignments” (**Annexes 1 to 11** of the first submission of the CTM Owner) do not add any substance to the matter and, in particular, do not support the allegation that Osho’s name (including his former name “Rajneesh”) has been seen as a trademark.

They do not contain any assignment of IP rights under EU law (**Annexes 1 to 5a and 7 to 11**) or any relevant assignment (**Annex 6**).

- The alleged assignment of "all copyrights, trade names, trademarks and any other property" by Osho in 1982 according to **Annex 5A** (addressed in **Annex PT 1**, page 4 sec. 12) is irrelevant as it does not contain any assignment of IP rights. The "assignment" language in this document relates to the purported "transfer" of powers of attorney and is merely part of the alleged amendment to an earlier power of attorney. Intellectual property rights are mentioned only in the grant of powers. In addition, this document could concern only rights which already existed in 1982 – and there was no trademark "Rajneesh" for meditation/yoga/religious/educational services in the EU at that time and, therefore, nothing of relevance to this case to be assigned. It is amazing that a person who alleges to have practiced as an attorney for over 40 years does not know a Power of Attorney from an Assignment and does not know that one cannot assign a right that does not exist. This is, in reality, a desperate argument on Mr. Toelkes' part to find some way to reach the conclusion that *"at the time of Osho's death in January 1990, all of Osho's intellectual property (copyright and trademarks) had been assigned to and were owned by what is today known as Osho International Foundation."* The real reason Mr. Toelkes makes the absurd argument about a 1982 "assignment" is that in its last argument (submission of 11 January 2012, page 14) the Applicant pointed out that **Annex 6** only involved rights Rajneesh Foundation International owned in 1982. This is Mr. Toelkes' way to try and pretend that Osho had transferred trademark rights in 1982 that were then transferred to an entity called Rajneesh Foundation Europe (see below). This level of manipulation and dishonesty permeates his entire "testimony". This attempt at misdirection is particularly useless, since if such an assignment had been made, it would have been made to Ms. Sheila Silverman (the recipient of the Power of Attorney according to **Annex 5a**), and there is no evidence that she ever transferred her *personal* rights to anyone else, certainly not to the CTM Owner. Therefore, this link is broken, like every other link in the CTM Owners so-called chain of title.

In fact, this argument is absurd in another regard. Like Rajneesh Foundation International, Osho had never registered any trademarks for any name in Europe, so he had no trademark rights relevant to this case to assign in 1982-83 and there is no evidence Osho ever used his name as a trademark in the USA. This means that even if all of the CTM Owner's alleged "assignments" were authenticated, it would not help them. At most, Osho's right to control his name for commercial purposes (not trademark rights) could have been transferred to Rajneesh Foundation International in the USA, and never transferred to anyone else. Even if **Annex 6** was an assignment to the CTM Owner, as the CTM Owner pretends, this document only purports to transfer trademark rights, and Osho had none. Perhaps the most important point is that the CTM Owner knows this perfectly well, and this misrepresentation of a chain of title in Osho's trademarks is not innocent or accidental. In the US proceedings on trademarks Mr. Steeg testified:

*"Question: Did the person known as Bhagwan Shree Rajneesh or Osho as he later became known, ever sign any trademark application for the mark Rajneesh?"*

*Steeg: Not to my knowledge. The applications were signed and owned by the foundations I just mentioned before."*

and

*Question: During Osho's lifetime did Osho the man ever use the term – ever use the mark Osho to label any goods or services?*

...

*Mr. Steeg: No, Osho never used any mark on – I mean he never released any products or services himself.*

*Question: During Osho's lifetime did Osho the man use the mark Osho to exploit or commercialize his work in any way?*

*Mr. Steeg: No never. All the commercial exploitation of the works were done by the Foundation, not by Osho personally."*

Insofar, we attach as

**Exhibit A 66**

cover pages and the relevant pages (pages 43, 87 and 88) of the deposition of Mr. Steeg of 25 January 2007 in the opposition and cancellation proceeding before the US Patent and Trademark Office "Osho Friends International vs. Osho International Foundation" regarding the US trademarks "Osho" (resp. containing "Osho"), as can be found on the USPTO website at

<http://ttabvue.uspto.gov/ttabvue/v?qt=adv&procstatus=Terminated&pno=91121040&propno=&qs=&propnameop=&propname=&pop=&pn=&pop2=&pn2=&cop=&cn=> (no. 94).

All of the CTM Owner's discussions of Osho's wishes; all of its claims about a trademark history, assignments, and legal document; all of Mr. Byrne and Mr. Toelkes' posturing and claims of special relationships to Osho, were intentional attempts to shift focus from the real issues of this case. The CTM Owner has always known that Osho never owned trademarks relevant to this case and that his purported transfers of trademarks rights in his names or view about trademark rights are completely irrelevant to the legal issues in this case. In the US trademark proceeding the CTM Owner made this very clear:

*"Indeed, no other interpretation of OIF's answer to Interrogatory No. 4 makes sense because Osho never owned, or professed to own, any OSHO marks, and therefore Osho never could have legally conveyed any rights in the OSHO marks to OIF or anyone else."*

Insofar, we attach as

**Exhibit A 67**

"Osho International Foundation's Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment" of 30 July 2004 in the opposition and cancellation proceeding before the US Patent and Trademark Office "Osho Friends International vs. Osho International Foundation" regarding the US trademarks "Osho" (resp. containing

“Osho”) as can be found on the USPTO website under the above mentioned URL address. The cited statement can be found on page 3, third paragraph.

- The CTM Owner also alleges an assignment according to **Annex 6**, which is related to the trademark “Rajneesh”. This assignment was allegedly made in 1982 between Rajneesh Foundation International, USA, and a foundation named Rajneesh Foundation Europe, with a courtesy address in Zurich. The CTM Owner claims this was an assignment to itself, even though Rajneesh Foundation Europe, Zurich, (now the CTM Owner) did not even exist at that time. At that time only Rajneesh Foundation Europe, Vaduz, Liechtenstein, existed, and that is the only entity that could have obtained trademark rights – if any were transferred. However the only “Rajneesh” trademark existing at that time in the EU (German trademark “Rajneesh” in class 9 and 16, **Exhibit KS 97b**) was owned by Rajneesh Foundation, Pune, India, not by Rajneesh Foundation International, USA, and could therefore not be assigned by Rajneesh Foundation International, USA. The CTM Owner’s own evidence (**Exhibit KS 6**) demonstrates that RFI had not registered any trademark for Rajneesh in the US in 1982, and any possible common law trademarks which Rajneesh Foundation International, USA, may have owned at that time *in the USA* are not relevant for this case – and would have not been transferred to the CTM Owner, anyway, but to Rajneesh Foundation Europe, Vaduz. No other assignments exist. In particular, there are no assignments from Rajneesh Foundation Europe, Vaduz, Liechtenstein to the CTM Owner, and no other trademarks “Rajneesh” existed in Europe. Likewise Rajneesh Foundation, Pune, India did not assign any trademark rights to the CTM Owner, as Mr. Steeg knows full well. In the US proceedings on trademark he testified:

*“Question: And Rajneesh Foundation in India never assigned anything directly to Osho International Foundation in Zurich; is that correct?”*

*Steeg: Correct.”*

Insofar, we attach as

**Exhibit A 68**

cover pages and the relevant page (page 553) of the continued deposition of Mr. Steeg of 1 February 2007 in the opposition and cancellation proceeding before the US Patent and Trademark Office “Osho Friends International vs. Osho International Foundation” regarding the US trademarks “Osho” (resp. containing “Osho”), as can likewise be found on the USPTO website at

<http://ttabvue.uspto.gov/ttabvue/v?qt=adv&procstatus=Terminated&pno=91121040&propno=&qs=&propnameop=&propname=&pop=&pn=&pop2=&pn2=&cop=&cn=> (no. 95).

- The CTM Owner also submits **Annex 7**, which purports to be an assignment of rights, including trademark rights, to Rajneesh Foundation International in 1983. As Osho owned no trademark rights relevant to this case and as there is no evidence Rajneesh Foundation International ever transferred any trademark rights after 1983, this document can have no relevancy in this case.

- In an attempt to create the illusion of a “trademark history” the CTM Owner tries to confuse different, separate legal entities located throughout the world (India, USA, Switzerland and Liechtenstein) and conflate them into one fictional entity called “the Foundation”; but this attempt to mingle the different entities, combined with references to a time before the name Osho ever existed, does not create a “history”; it only produces a bizarre patchwork of irrelevant and untrue allegations. A “trademark history” could not exist before relevant trademarks even existed.
- The alleged assignment of the rights to Osho's name in India (!) in 1978 (addressed in **Annex PT 1**, page 3 sec. 12) is irrelevant for the question of a trademark in Europe.
- The alleged assignment of copyrights and trademarks in India (!) and the USA (!) in 1981 (addressed in **Annex PT 1**, page 3 sec. 12) is irrelevant for the question of a trademark in Europe. It is telling that Mr. Toelkes is raising the question of validity of the documents by which the assignments are alleged to have been made, in particular **Annexes 2 to 5a** of Mr. Steeg's first witness statement (**Annex PT 1**, page 4 sec. 12). Obviously, he believes that the Applicant has good reason to controvert the validity. Unless they are simply fakes, the questionable validity of these documents and **Annexes 6 and 7** follows from the failure of the CTM Owner to show that a valid power of attorney existed by producing the original of the alleged 1981 transfer and authenticating **Annex 5a**. In fact, the Applicant pointed out in its submission of 11 January 2012, page 14, that these documents are unauthenticated, and the CTM Owner had ample opportunity to authenticate them. Instead, Mr. Toelkes claims the Applicant has not objected. To make the Applicant's assertion clear, the documents addressed by Mr. Toelkes, in particular **Annexes 2 to 5a** of Mr. Steeg's first witness statement and **Annexes 6 and 7**, must be disregarded; the CTM Owner has not proven that they are valid and in particular that they were signed by authorized persons.

The fact that the CTM Owner is making deliberate misstatements in this proceeding is proven by the fact that Mr. Steeg had already testified to the opposite of what he/the CTM Owner is saying now! In the US proceeding in “Osho Friends International vs. Osho International Foundation” in 2002 before the US Patent and Trademark Office regarding the US trademark “Osho” Mr. Steeg testified as follows:

*“Question: Describe for me how it was that Bhagwan Shree Rajneesh adopted OSHO as a source identifier for works as opposed to a reference to himself personally?”*

*Steeg: Okay, The period between 1974 and 1989 where his name Rajneesh was mark, the name Rajneesh was used as identifier for all of his works in a general trademark...*

...

*Question: You are not aware of any writings that OSHO the man said OSHO was to be treated as a trademark?*

*Steeg: No.*

...

*Question: The claim that OSHO Foundation of Zurich, it has the exclusive rights to the name OSHO, the term, trademark OSHO, is it your understanding that is based on the*

*Foundation Zurich's assertion that it has all copyrights in the writings and artworks and the teachings of the man OSHO?*

*Steed: No.*

*Question: What do you think it is based on?*

*Steed: I mean the mark itself and the name, the name and the mark is based on an assignment of the name and his image.*

*Question: Is that in writing?*

*Steed: That assignment is in writing.*

*Question: When did that assignment take place?*

*Steed: I think in the mid-seventies.*

*Question: In the mid-seventies it was not in use; is that correct?*

*Steed: That's correct.*

*Question: That transfers the trademark rights in the name OSHO?*

*Steed: No, I didn't say that.*

*Question: What does this assignment you are referring to transfer?*

*Steed: The right to use his name and his image.*

*Question: But his name at the time was Rajneesh?*

*Steed: His name at the time was Rajneesh.*

*Question: Is there a specific paper that uses the word OSHO and transfers the term OSHO apart from the man OSHO?*

*Steed: No.*

*(underline added)*

Insofar, we attach as

**Exhibit A 69,**

a copy of the entire deposition of Mr. Steeg of 21 November 2002 (an extract of which has already been submitted as **Exhibit A 60**) in the opposition and cancellation proceeding before the US Patent and Trademark Office "Osho Friends International vs. Osho International Foundation" regarding the US trademarks "Osho" (resp. containing "Osho"). The relevant pages of the deposition including the above mentioned questions and answers are pages 147, 149 and 150.

There were admittedly no writings that Osho said his name was to be treated as a trademark!

But according to Mr. Steeg, the name was a "general trademark"! Mr. Steeg believes, or pretends to believe that a trademark can exist without regard to classes of goods and services, geographical locations, or trademark laws and regulations. To talk about a general trademark means as much as and is as precise as saying: "In some way there was some kind of an



atmospheric of... *I don't know what ...* which was creating a general feeling that there must be ... *something* ....something that could be understood as a trademark.... *somehow*."

This is the same approach that allows the CTM Owner to argue that Letters of Understanding could be licenses of the trademark at issue in this case before it was even created, and that use of Osho's name creates "licenses" for non-existence trademarks. The CTM Owner clings to the fantasy that there is a single "OSHO" trademark in the ether, and as part of the fictional "the Foundation" the CTM Owner can reach out and grab that "trademark" for any goods and services in any place it chooses, regardless of nitpicky legal requirements for registration. Using the name Osho causes this sticky ethereal trademark to attach itself to the user, magically turning that person or entity into a "licensee" of "the Foundation" without need for an actual license agreement or even notice to the "licensee".

This fantasy of the CTM Owner to own a trademark in Osho's name was allegedly based on "*an assignment of the name and his image*", an assignment that is not only impossible (since personal names and images cannot be assigned) but that was made at a time when the name Osho did not even exist!

This statement discloses the – understandable but nevertheless obvious – lack of knowledge of Mr. Steeg as regards trademark law, and that his imagination of any rights in Osho's name is based on the amateurish view and wishful thinking: Somehow there must be a property right because this is what Mr. Steeg desires.

It is ridiculous to believe that the CTM Owner could have owned any trademark in Osho's name in Europe before filing the contested trademark, since no trademark exists before registration. This shows that the entire "trademark history" regarding Osho's name is nothing but wishful thinking made by persons who hardly know what they are talking about.

## **2. The CTM Owner still argues that the meditation centers are licensee of the CTM Owner**

This argument is further unfounded, not supported by the exhibits filed and, anyway, irrelevant.

### **a. Lacking relevance**

It is irrelevant whether some meditation centers were granted licenses in the trademark registration "OSHO" (see our submission of 11 January 2012, page 20):

- Even if the meditation centers were licensees of the CTM Owner this would not say anything about the perception of the relevant public of the name "Osho" as a trademark. License structures are unknown to the public that is using the meditation services offered by the meditation centers and therapists. Anyway, the individual meditation, yoga and educational services are led and performed by individual trainers and therapists; they, however, have not been granted licenses in a trademark "OSHO".
- In particular the different appearance of Osho's name in advertising and on the websites of the various meditation centers and therapist does not show a consistent way of use of Osho's name and therefore suggests that the use is not under a central control but decided upon only by the individual meditation center or therapist. The public might perceive Osho's name as a trademark only if the use was always the same, if the "look and feel" of the adverts and centers was always similar so that they appeared as parts of

an overall franchise system, as known e.g. from “McDonald’s” restaurant which all have a same basic appearance. However, this is not the case and the CTM Owner, by way of Mr. Steeg’s “witness Statement” in Exhibit KS 2 expressively states that “*OIF does not set up franchises*” (see page 15 of **Annex KS 2**).

- Even an illegitimate, unjustified trademark registration is in place as long as it is not cancelled. The qualification of a trademark to be – legitimately – registered follows from its character and how it is perceived but not from the fact that its owner can take the chance of making people sign “license” agreements as long as the trademark is registered.

Accordingly, the alleged “license system” is without relevance for this case.

**b. Lacking substance**

Aside from their irrelevance, the allegations of the CTM Owner as regards the alleged license structure are simply incorrect.

Insofar, we had already pointed out in details in our submission of 11 January 2012 (page 38 at the bottom to page 41) why the “Letters of Understanding” to which Mr. Steeg refers when thinking of trademark licenses are actually no trademark license. As there was no trademark “Osho” for meditation services, yoga instruction, educational services or religious services until 1999, all work done and all services offered by the meditation centers and therapists before 1999 have necessarily been done and performed without a respective license as there was nothing to license. The former name of “Osho”, namely “Rajneesh”, however, has never been registered as a trademark for meditation services, yoga instruction, educational services or religious services!

The obstinate repetition of the wrong assessment of the Letters of Understanding does not make it right! And this is not a question of whether a correct assessment of the Letter of Understanding is legally or even morally tenable; the reality is just self-evident.

- 3. The CTM Owner alleges that long-term users of Osho’s name and the knowledge of the structure and history of “the Foundations” by persons who made witness statements in favor of the Applicant, in particular their work in association with the “Osho Multiversity” should make them know that Osho’s name has been used and accepted as a trademark**

These allegations are untrue, not supported by the exhibits filed and, anyway, irrelevant.

**a. Lacking relevance**

Even if long-term users of Osho’s name, had the impression that the name served simultaneously as a trademark this would not say anything about the perception of the relevant public of the name “Osho” as a trademark.

**b. Lacking substance**

Aside from their irrelevance, the allegations of the CTM Owner as regards the perception of long-term users of Osho’s name are simply incorrect and without substance.

Until 1999 there was no trademark "Osho" for meditation, yoga, religious and educational services, and a trademark "Rajneesh" (which the CTM Owner likes so much to refer to in an attempt to allege continuance) for meditation, yoga, religious and educational services never existed at all!! Accordingly, there could be no long-term use of Osho's name as a trademark for those services at that time. Anyway, as explained in our previous submissions, the use of Osho's name in connection with meditation services was not use as a trademark but use as a name and description, a reference to the role the historical person played in inspiring meditation-related activities. As Osho's name had actually not been established as a trademark for meditation, yoga, religious and educational services there was nothing for these witnesses to know.

#### **4. The CTM Owner alleges that it controls the use of Osho's name**

These allegations are untrue, not supported by the exhibits filed and, anyway, irrelevant.

##### **a. Lacking relevance**

Any purported control of the use of Osho's name could be relevant only if it had led to a use of Osho's name as a trademark in a way that the relevant public would recognized Osho's name as a trademark for meditation, yoga, religious and educational services. So, it is not the control that would count (if there was any control) but its effect on the public perception of Osho's name. However, as shown before, the meditation centers, trainers and therapists do not use Osho's name as a trademark for the service offered, and the name can be recognized only as a name but not as a trademark.

##### **a. Lacking substance**

A control of the use of Osho's name under a trademark aspect was not possible.

- As there were no licenses existing regarding a trademark "Osho" for meditation, yoga, religious and educational services, nothing could be controlled by the CTM Owner. The CTM Owner alleges that the control was made by advice and guidelines. However, there were no guidelines on how to use Osho's name as a trademark. The public could have been influenced to regard Osho's name as a trademark only if the character of Osho's name as a trademark had been pointed out to the public so that a secondary meaning of his name as a trademark could have evolved. Many business corporations have trademark guides with exact rules for the use of a trademark, regarding script, color, placement, combination with other components etc. to create a consistent appearance of their trademark(s) that makes the trademark be understood as one single phenomenon. However, there are no such use guidelines for Osho's name. As a result, Osho's name is used totally heterogeneously and inconsistently, as can be taken from the submitted material. Such heterogeneous and inconsistent use of Osho's name over and against the public prevents the evolution of a perception that Osho's name is a designation of one single source of origin. As a consequence, there is nothing that could be controlled.
- The only remaining control could relate to the primary meaning of Osho's name as a personal name, indicating a certain quality of the services offered, namely the quality of being derived from Osho's visions and teachings. Accordingly, Mr. Steeg pointed out that no objection to the use of Osho's name by the centers, trainers and therapists was necessary since they offered the right content under Osho's name. Aside from the fact

that there was hardly any control, this is a control that does not refer to Osho's name as a source of commercial origin, i.e. a trademark, but – if at all – to Osho's name as an indication of content. Accordingly, there was no control of the use of Osho's name related to a potential to make the name recognized as a trademark.

Furthermore, Mr. Steeg is not credible insofar. In the US proceeding regarding the US trademark "Osho" Mr. Steeg testified as follows:

*"Question: During the period, since I'm talking about I believe the end of 1989, isn't that when the instructions went out from OSHO that people should change names?"*

*Steeg: Yes.*

*Question: After instructions went out and people started using the name OSHO, was there any attempt by anyone to control or license the center that use the name OSHO?*

*Steeg: To control or license?*

*Question: Yes.*

*Steeg: I don't understand the question. The centers were called ...*

*Question: ... OSHO centers?*

*Steeg: Yes.*

*Question: Did anyone communicate with them and say your name is a trademark that is owned by the Zurich Foundation, for instance?*

*Steeg: I don't know."*

(underline added)

see pages 187 and 188 of **Exhibit A 69**.

Accordingly, Mr. Steeg did not even know whether the meditation centers had been told that Osho's name should be regarded as a trademark. "Control" does not look like this.

To the extent that the CTM Owner alleges with respect to **Exhibit A 56** that the London Meditation website (an example of failed policing) was updated "*with correct OSHO branding and now makes use of the word OSHO in a genuine trademark manner*" (submission page 9 last para), this is obviously incorrect.

- First, the use of the ™ symbol is already incorrect in itself, as this symbol does not exist and is without any meaning (other than a misleading one) in Europe.
- Second, even under US practice, the ™ symbol means only that a word is *claimed* to be a trademark, not that it *is* one.
- Third, the use of the ™ symbol on the London Meditation website suggests that only "Active Meditation" is claimed to be a trademark, not "OSHO" – otherwise the ™ symbol would have been placed behind the word "OSHO", not behind "Active Meditation".

### III. The CTM Owner's comments on witness statements submitted by the Applicant

Mr. Steeg is addressing the witness statements submitted by the Applicant as **Exhibit A 49, 54 a) - w)** but his comments are mostly irrelevant and not supported by the material submitted along with his statement. We therefore respond to these comments for the sake of completeness and to show how unqualified, irrelevant and dishonest they are.

Aside from the general mistakes as addressed above under Sec. II, which follow from lack of knowledge and dishonesty, the comments show the following deficiencies:

#### 1. Witness statement of Mr. Doetsch (Exhibit A 54f)

Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license, so that the centers and companies he is addressing are not licensees of the CTM Owner.

The allegation that Mr. Doetsch worked under license of the Rajneesh Foundation is a misstatement if this refers to a trademark license. As in the entire "witness statement", Mr. Steeg is making imprecise and nebulous statements, e.g. he refers, as in this context, to a license without mentioning the right that is allegedly licensed. This is most likely for the purpose of disguising that there are no trademark licenses but – if any licenses at all – only copyright licenses that do not play any role in this proceeding.

At any rate, when referring to a work under license "for the registered "Rajneesh" trademark in Germany", this is another misstatement: A trademark "Rajneesh" for meditations has never been registered and could therefore not be licensed to the meditation center of Mr. Doetsch. The trademark to which Mr. Steeg refers to (**Exhibit KS 97b**) is registered only for goods in class 16. With regard to the addressed Brabanter Gaststätten GmbH and Zorba the Buddha Rajneesh Discotheque, Mr. Steeg also does not realize that business names cannot be licensed.

The comments with respect to Rajneesh Times Verlagsgesellschaft mbH are irrelevant as the addressed license can only be a copyright license regarding the publication of the magazine but not a trademark license.

**Exhibit KS 101** is without any relevance as it does not show any connection to this case or the Applicant.

**Exhibit KS 102** is without any relevance as it does not show the alleged date of September 1989.

**Exhibit KS 103 and KS 104** are without any relevance.

The comments on the change of Osho's name are irrelevant as they do not add anything about the nature of the name other than its being a name (as opposed to a trademark).

**Exhibit KS 105** is neither addressed to Mr. Doetsch nor written by him (but written by the Rajneesh Times company). Even though the exhibit is not relevant, it shows how negligent Mr. Steeg has been making his statement.

When commenting on the selection of center names, Mr. Steeg again does not realize that there is a difference between a center name and a service mark.

The allegation that the CTM Owner has been, and remains to the present day, one of the largest public Foundations promoting meditation (page 8) is a fully unsupported allegation and most likely mere wishful thinking rather than reality. As it is unsupported by evidence, this allegation is irrelevant anyway. The promotion in question apparently does not include actually carrying on meditation-related activities, since the CTM Owner has produced no evidence of any center or institute that it operates directly.

The further allegation that there was *“a licensee relationship and legal authority of OIF”* through *“the countless letters of approval, the letters of guidance, the close relationship between Cologne entities and the OIF and Pune meditation center, the usage questionnaires and the Letter of Understanding Licenses, on-going licensing and publishing agreements”* is willfully imprecise and vague to disguise that there was no trademark license in place. Meaningfully, there is no evidence to support this allegation. All the documents which Mr. Steeg has submitted so far have turned out to be irrelevant. There are no new documents, and – as repeatedly mentioned and again mentioned below with regard to the other witness statements submitted by the Applicant – the Letters of Understanding are not licenses, the questionnaires do not address the trademark issue, letters of approval (generally from Osho International, *India*, not from the CTM Owner) may only relate to a center name, not to a trademark, and publishing agreements relate to copyright not to trademarks. Again, Mr. Steeg is trying to produce verbal fog to disguise the lack of substance in his allegations and documents.

The involvement of Mr. Doetsch *“with OIF”* or a *“network of corporate entities”* as addressed on page 9/10 of Exhibit KS 2 is irrelevant for the question of whether Osho’s name can be a registered trademark. An outline has been given by Mr. Doetsch in his witness statement; further details would not add any value to the case – and boring OHIM with irrelevant stories is not really of value.

The allegation that *“all use by the Cologne licensees was within the instructions provided to them from OIF”* (page 10 of Exhibit KS 2) is misleading as there were no such instructions related to use of a trademark and no trademark license.

All this shows that Mr. Steeg is merely trying to defame Mr. Doetsch instead of reducing his statement to relevant aspects.

## **2. Witness statement of Mr. Doetsch (Exhibit A 55)**

Again, Mr. Steeg tries to intentionally misunderstand the statement of Mr. Doetsch in an attempt to defame him. Mr. Doetsch did not say that he was not aware of the *“trademark issues”*, i.e. trademark related issues in general, but Mr. Doetsch referred expressively to the trademark issue regarding Osho’s name. As far as Mr. Steeg refers to the agreement submitted as Exhibit KS 62 we have already addressed its irrelevance on page 43 of our submission of 11 January 2012 and refer to these comments to avoid repetition.

Again, all this shows that Mr. Steeg is just trying to defame Mr. Doetsch instead of reducing his statement to relevant aspects.

## **3. Witness statement of Mr. Doetsch (Exhibit A 58)**

Again, Mr. Steeg is misinterpreting the *“Letter of Understanding”* signed by the Osho Uta Institute as a license and asserting the document has a legally binding nature that does not

exist. The allegation that the "Letter of Understanding" had been reviewed by lawyers on behalf of the Applicant is simply untrue and in particular does not follow from the fact that a different agreement, namely a copyright agreement, regarding a different company, namely the Osho Verlag GmbH, has been signed by a different person, namely Mr. Sieberer, only because that persons happens to be a lawyer. This shows once more that Mr. Steeg is trying to mislead rather than to contribute to the relevant questions of this case.

As far as Mr. Steeg addresses the date of 1988 mentioned by Mr. Doetsch, this appears to be an obvious typo as he cited the revocation letter in his statement indicating "*Letter of Understanding of 19 September 1998*".

As far as Mr. Steeg is addressing trademark notices shown in the Osho Times magazine we can only repeat that they are irrelevant.

The "OSHO" trademark registered in 1991 cover goods in class 9 and 16 only (see Exhibit KS 97A).

The statement that the Letter of Understanding was introduced "*to formalize in writing the long existing licenses for the brand Osho*" is nonsense. The only trademark "OSHO" existing at that time was the trademark of 1991 covering only class 9 and 16 goods (Exhibit KS 97A) but no meditation services, yoga instruction, educational services or religious services as covered only by the contested CTM, which was not filed until 1999.

The statement on the background on "Osho's Place" with reference to Exhibit KS 40 are misleading. Mr. Steeg purports that "Osho's Place" was a licensee. However, "Osho's Place" is a restaurant and there is no trademark "OSHO" registered for restaurant services which could have been licensed. Accordingly and as Exhibit KS 40 shows, "Osho's Place" is not using a trademark notice.

The allegations of Mr. Steeg with regard to the termination of the publishing of Osho's books by Osho Verlag are unsupported by evidence and therefore controverted. In particular, they are irrelevant for this proceeding.

#### **4. Witness statement of Mrs. Cordes (Exhibit A 49)**

"Rajneesh" has never been registered for meditations, but only for printed matter in class 16, and is not the subject of this proceeding. Anyway, even if "Rajneesh" had been registered this would not have meant that it was registered legitimately.

The trademark notice on a page of the Rajneesh Times in **Exhibit KS 108** is irrelevant as the whole trademark "Rajneesh" is irrelevant, and as a trademark notice only *claims* that a trademark is protected but does not say whether it is actually protected, for which goods or services, in what geographical location and whether it is legitimately protected.

The knowledge of Mrs. Cordes of organizational structures or things from the time of "Rajneesh", as well as her presence somewhere when Osho changed his name from Rajneesh to Osho, is irrelevant as outlined in the general comments.

**Exhibit KS 109** is irrelevant as it is addressing a center name, not a trademark.

**5. Witness statement of Mr. Peters (Exhibit A 54a)**

Mr. Peters did not sign a license in a trademark. **Exhibit KS 110** does not refer to the name "Osho", the addressed "*name of the Rajneesh program*" is cryptic as what that name would be remains unspecified, and there is no trademark that could be licensed.

Mr. Peters' business did not operate under a trademark license, because there was no trademark to license. As shown in **Exhibit KS 115** the only agreements in place were a music reproduction agreement and a video, audio and photograph reproduction agreement. Again, Mr. Steeg's lack of knowledge has led him to unqualified conclusions; unfortunately they have not been prevented by the representative of the CTM Owner for whatever reason.

As Mr. Steeg does not know the difference between a corporate name and a trademark, **Exhibits KS 111** and **KS 112** are irrelevant.

Any alleged – but unsupported by evidence – cooperation of Mr. Peters with OIF, if it existed at all, is irrelevant for the questions to be answered in this proceeding. **Exhibit KS 113** is without substance insofar as it does not provide anything but an address ripped out of context.

**Exhibit KS 114** does not say anything. To derive from it some recognition that the CTM Owner was the proprietor of "all rights" (in what?) and works, is preposterous and contrary to common sense.

The allegation that the "OSHO Multiversity" is part of the CTM Owner and operating "under license" (license in what?) is a mere allegation and intentional misrepresentation. In fact, Mr. Steeg knows full well, and has known for many years, that the Multiversity is run by Osho International Foundation in Pune, not by the CTM Owner, as he implies here. In the US proceeding on trademarks he testified:

*Question: You talked about the Osho Multiversity. Does the Osho Multiversity only operate in India?*

*Steeg: It operates mainly in India and the teachers travel around the world and offer their programs.*

*Question: When you refer to the Osho Commune, who runs it?*

*Steeg: The Osho Commune is an umbrella name, a d/b/a name for a number of different organizations and trusts that have different responsibilities.*

*Question: Which trusts would those be?*

*Steeg: The main trust is Osho International Foundation in India. At other times there was a trust Rajneeshdam.*

...

*Question: Has Osho International Foundation Zurich ever run the Osho Commune?*

*Steeg: No."*

Insofar, we attach as



cover pages and the relevant pages (pages 585 and 586) of the continued deposition of Mr. Steeg of 1 February 2007 in the opposition and cancellation proceeding before the US Patent and Trademark Office "Osho Friends International vs. Osho International Foundation" regarding the US trademarks "Osho" (resp. containing "Osho"), the deposition already referred to as **Exhibit A 68**.

Mr. Steeg also knows that Osho International Foundation in Pune/India, not Osho International Foundation in Zurich, the CTM Owner, has attempted to register trademarks in India. He testified:

*"Question: To your knowledge did OIF India register – apply to register the mark Osho in India?"*

*Steeg: Yes."*

Insofar, we attach as

**Exhibit A 71**

cover pages and the relevant page (page 315) of the deposition of Mr. Steeg of 25 January 2007 in the opposition and cancellation proceeding before the US Patent and Trademark Office "Osho Friends International vs. Osho International Foundation" regarding the US trademarks "Osho" (resp. containing "Osho"), the deposition already referred to as **Exhibit A 66**.

This means that any "license" of OIF, India is not a license of trademarks for activities in India by the CTM Owner, even if activities in India had any relevance for European trademarks. Mr. Steeg is being intentionally dishonest.

Aside from this demonstration of dishonesty, like **Exhibits KS 116** and **KS 117**, this exhibit is irrelevant. It is obvious that there was no license of Mr. Peters, at least no trademark license, as otherwise Mr. Steeg would have enclosed it in his so-called "witness statement".

The trademark notice on a page of the Osho Times in **Exhibit KS 119** is irrelevant as the content of the page does not show any relation to Mr. Peters (advertising customers of a magazine do not have anything to do with the design and further content of the magazine), is not related to meditation services, hardly legible, and does anyway not say anything about the legitimacy of a possible trademark registration. Accordingly **Exhibit KS 120** is also useless paper. The same applies to **Exhibit KS 121** and **KS 122**.

Again, the center name and institute "permission" have nothing to do with a trademark for services. The reference to **Exhibit KS 88** is misleading as it does not even contain a "Letter of Understanding" of Mr. Peters (let alone that such a Letter of Understanding would not have any relevance). The reference to Exhibit KS 90 as regards "Osho Risk Therapist training" is misleading as it does not contain a license but the mere "Letter of Understanding". The conclusion from **Exhibit KS 122** to an association of Mr. Peters with and his work "under" OIF is preposterous and contrary to logic; it is more a result of wishful thinking than reality.

**6. Witness statement of Mrs. Autzen (Exhibit A 54b)**

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

Further, Mr. Steeg does not realize that there is a difference between a legal and a lawful document. The comment of Mrs. Autzen referred to the legal nature not the legality of the document. Not considering the Letter of Understanding as a document of a legal nature (which is indeed supported by the poor and amateurish language of the Letter of Understanding), did of course not have to raise concerns.

**Exhibit KS 124** shows that even the CTM Owner considered “Osho” as a mere name, as the only mention of “Osho” is in “Osho’s meditation” and “Osho’s guidance”, i.e. in genitive form, which excludes a trademark character of the word and is a reference to a personal name.

The allegation that the questionnaire in **Exhibit KS 124** was sent out to ensure that the center practices were in line with the guidelines is a blatant misstatement with respect to meditation services, as the questionnaire as it only contain an inquiry of what is actually done. The only reference to a guideline relates to AIDS tests.

**Exhibit KS 125** is once more irrelevant as the ® symbol cannot be attributed to Mrs. Autzen, who, as a mere advertising customers of the magazine, is not responsible for the placing of the symbol. The symbol also could not be related to a trademark for meditation services, as no such trademark existed. Anyway, as already said, the use of a ® symbol does not say anything about the legitimacy of a trademark registration, even if there is one.

The allegation that in **Exhibit KS 126** Mrs. Autzen requested details on how to use trademark notices is a willful misstatement of Mr. Steeg. Nothing in that regard has been asked by Mrs. Autzen – as to be seen by simply reading the Exhibit. By the way, the part of the Exhibit which contains Mrs. Autzen’s request is still in German and – meaningfully – not translated, and not relevant anyway. However, it demonstrates that Mr. Steeg is quite economical with the truth. Actually, the Exhibit is a wonderful telltale document in that it expressively says

*“For the descriptions of the OSHO Mediations please use the logo – for example; OSHO Kundalini Meditation...”*

(underline added)

Does it need any more to show that even the CTM Owner regarded “Osho” as a description?

#### 7. **Witness statement of Mr. Smith (Exhibit A 54c)**

Mr. Smith’s work in India is irrelevant.

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

**Exhibit KS 127** does not say anything of relevance and shows just an advert. The allegation that the publications always featured a trademark notice is unsupported by evidence, actually wrong and therefore controverted but irrelevant anyway, as mentioned before.

Mr. Smith’s does not at all allege that he created the “Osho Awareness Intensive” course. On the other side, the allegation that the addressed course originated from the CTM Owner is – meaningfully unsupported by evidence and therefore controverted, but anyway irrelevant.

**Exhibit KS 128** is without any value as it does not say anything about the course’s creator.

**Exhibit KS 129** is without any value as it does not say anything about the subject of this proceeding.

**Exhibit KS 130** is just a mean defamation and shows that Mr. Steeg is not even above using “arguments” of the lowest level.

**8. Witness statement of Mr. Hardt (Exhibit A 54d)**

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

**Exhibit KS 131** is without any value as it does not even mention the CTM Owner.

**9. Witness statement of Mrs. Hauser (Exhibit A 54e)**

Again and as regards **Exhibit KS 132**, Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license.

The reference to a trademark notice on the Ketan e.V. program is another willful misstatement as it refers to Osho International , N.Y. not – as alleged - to the CTM Owner. Anyway, the trademark notice is irrelevant, see above.

The allegation that Mrs. Hauser “*repeatedly recognized trademark*” (whatever that means) is – meaningfully – unsupported by evidence.

**Exhibit KS 133** is without any value as it does not say anything about the legal nature of the word “OSHO”.

**10. Witness statement of Mrs. Würzburger (Exhibit A 54g)**

Again, Mr. Steeg repeats the unsupported allegation that all work conducted at the “Multiversity” is “under the control” of the CTM Owner – an allegation that is not only unsupported by evidence but so imprecise and ambiguous that it does not say anything of substance.

**Exhibit KS 134** is without any value as it contains just five single pages of five different years.

The allegation that Mrs. Würzburger’s statement is false in that she is not using “Osho”, anyway, is wrong as she expressively states that she dropped “OSHO” from the service name in 2002 but used it before – another attempt of Mr. Steeg to mislead the OHIM and defame witnesses.

**Exhibit KS 135** is without any relevance.

**Exhibit KS 136** is obviously fabricated evidence; its authenticity must therefore be controverted. Anyway, it is irrelevant: Even if the inquiry had been made, it does not say anything about the quality of Osho’s name as a trademark.

Again and as regards in particular **Exhibit KS 136**, Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license and mistakes a center name for a trademark.

**Exhibit KS 137** is without any relevance.

**11. Witness statement of Mrs. Deutsch (Exhibit A 54i)**

Calling this statement and others a template is completely nonsensical. This statement substantially differs from other statements. However, as the other witnesses do, Mrs. Deutsch

has been reducing her statement to relevant aspects – an ability that Mr. Steeg has obviously not mastered.

As mentioned, her possible knowledge of certain organizational structures and her involvement in the work of meditation centers does not say anything about the qualification of the term “Osho” for trademark registration.

The addressed use of “Rajneesh” was certainly as descriptive as the use of “Osho”.

**Exhibit KS 137** is without any substance. It only shows the registration of the Center as a “GmbH” (comparable to a “Ltd.”).

Again, Mr. Steeg mistakes a center name for a trademark. A center name cannot be “branded” – other than in the mind of a legal layman.

Again and with regard to **Exhibit KS 139** this document does not refer to the name “Osho”, the addressed “*name* of the Rajneesh program” is cryptic as what that name would be remains unspecified, and there is no trademark that could be licensed. Accordingly, there is no relation to a trademark as assumed by Mr. Steeg in this amateurish view.

Again, the trademark notice on a page of the Rajneesh Times in **Exhibit KS 108** is irrelevant as the whole trademark “Rajneesh” is irrelevant, as a trademark notice only *claims* that a trademark is protected but does not say whether it is actually protected, for which goods or services, in which geographical location, and whether it is legitimately protected. In fact, “Rajneesh” was not protected for meditation services in the EU, and no trademark notice can be attributed to a mere advertising customer of a magazine, anyway, who is not responsible for the placing of the notice. The license can refer only to copyright. By the way: If this Rajneesh Times was published in India, it would be referring to Indian trademarks, if any.

**Exhibit KS 141** is without any relevance.

The allegation that “several items” (what kind of “items”?) were sent to Mrs. Deutsch with branding instructions in relation to Osho’s name is – meaningfully – unsupported by evidence. **Exhibit KS 142** is without any substance, insofar. It refers to the two-birds logo and to “Rajneesh”, not to “Osho”. Further it contains a deceptive and therefore illegal statement as it is asking for a use of “Rajneesh” with the <sup>TM</sup> symbol within a meditation name even though no trademark “Rajneesh” for meditation services ever existed in Europe and there is no such symbol used in Europe. The final page of the Exhibit is referring to copyright licenses, not to trademark licenses.

**Exhibit KS 143** is without any relevance.

**Exhibit KS 144** is shows once more that Mt. Steeg does not know the difference between a corporate name and a trademark. The center addressed is not “Rajneesh” *branded*. At best it is *designated* with the *name* “Rajneesh” which, however, does not make “Rajneesh” a “brand” or trademark.

**Exhibit KS 145** and **KS 146** are supporting the Applicant’s position: If Mr. Steeg alleges that the TAO center is “branded” then it is branded with “TAO”, while “Rajneesh Zentrum” is a description of the center. This shows impressively that the distinctive elements center names are “TAO”, “UTA”, “MIASTO”, etc. but not “Rajneesh” or “Osho”.

**Exhibit KS 147** is without any relevance.

**Exhibit KS 148** is without any relevance.

Any possible knowledge of Mrs. Deutsch “of the manner in which the Osho Multiversity (in India!) operated” (whatever that means), is irrelevant.

Again and as regards **Exhibit KS 149**, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

**Exhibit KS 150** is again without any relevance as it contains just an inquiry regarding the activity of the center; the only guideline addressed refer to AIDS free zones but not refer to the use of a trademark “Osho” – another one of the many misstatements of Mr. Steeg.

**Exhibit KS 151** is without any relevance.

Mrs. Deutsch’s statement that there has never been a legal agreement is correct, as this refers to trademark agreements and as the “license” of the center (actually again at best just a mere “Letter of Understanding”) for which she worked is – at best – an agreement between Osho International foundation, India and the center, not Mrs. Deutsch herself.

**Exhibit KS 152** does not, as Mr. Steeg tries to make believe, provide information that the name “Osho” is a trademark, but this only provides information that the question whether the name “Osho” is a trademark was a topic at some gatherings. It is significant that the outcome of the discussions is not addressed.

**12. Witness statement of Mr. Green (Exhibit A 54j)**

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**13. Witness statement of Mrs. Willems (Exhibit A 54h)**

Whether or not Mrs. Willems is using the word “Osho” in her *current* work is not relevant.

As regards the publication of her work in the OSHO Times and an alleged trademark notice, **Exhibit KS 153**, we can only repeat that this is irrelevant for the reasons repeatedly mentioned. Anyway, the exhibit is illegible and therefore to be disregarded.

**Exhibit KS 154** is without any relevance as it is not dated.

As a fresh printout from the internet, **Exhibit KS 155** is without any relevance for facts and legal issues of the past.

**14. Witness statement of Mr. Schaden (Exhibit A 54k)**

Again Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license and mistakes a center name for a trademark.

The guidelines addresses do not say anything about the use of “Osho” as a trademark.

Mr. Schaden’s participation in the “Buddhafield Intensive” course is irrelevant. The statement of the course minutes submitted as **Exhibit KS 155** that “Osho Global Connections takes care of all the Osho Centers around the world, ...” does not say anything. Nobody takes actually care of anything simply but saying that he does. This statement corresponds to the level of argumentation of the CTM Owner: If only something shall be, just say that it is and everybody

must believe that it is. In the perception of the CTM Owner a trademark comes into existence by repeatedly saying that there is a trademark, like care starts to exist by saying that care exists. This perception is based on a view according to which the perfect relation between people builds on command and obedience. There may have been times during which this principle was applied in the world of Mr. Steeg but this is not OHIM's world.

**Exhibit KS 155** is without any relevance as it is unclear to whom it was sent. Furthermore, it does not show whether the understanding of Osho Global Connections was shared by the participants of the program or not. Talking about a trademark is one thing, perceiving a name as a trademark is another thing.

**15. Witness statement of Mr. Masshöfer (Exhibit A 54l)**

Again and as regards in particular **Exhibit KS 156**, Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license and mistakes a center name for a trademark.

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

Again, the trademark notice on a page of the Rajneesh Times in **Exhibit KS 157** is irrelevant as the whole trademark "Rajneesh" is irrelevant, as a trademark notice only *claims* that a trademark is protected but does not say whether it is actually protected, for which goods or services, in what geographical location and whether it is legitimately protected, as "Rajneesh" was not protected for meditation services in the EU and a trademark notice cannot be attributed to a mere advertising customers of the magazine, anyway, who is not responsible for the placing of the notice.

Mr. Steeg's further comments are irrelevant. In particular the fact that he may have been "in contact with OIF" as the CTM Owner claims in **Exhibit KS 158**, does not say anything relevant for this proceeding. The permission to use works sought by Mr. Masshöfer related to the copyright in the works. The entire correspondence does not even touch on trademarks, and, consequently, Mr. Masshöfer did not get any guidelines related to *trademarks* through this correspondence. Mr. Steeg's statement that this correspondence shows that the CTM Owner supervises use of the name "Osho" is blatantly untrue, as is apparent from a simple reading.

**16. Witness statement of Mrs. DeLong (Exhibit A 54m)**

Again Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license and mistakes a center name for a trademark.

**17. Witness statement of Mrs. Chiappini (Exhibit A 54n)**

The statement that Mrs. Chiappini worked "for and through" the CTM Owner is a full unsupported statement and irrelevant, anyway. Accordingly, **Exhibits KS 159** and **KS 160** are irrelevant, too. Mr. Steeg's statement that he "*could not find any instance of independent use in any site on which she promotes her services*" is bare nonsense. The independence in the use of Osho's name is nothing that is highlighted on a website but follows from the way and condition of the performance of the services.

Again and as regards the reference to **Exhibit KS 31**, Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license and mistakes a center name for a trademark.

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

**18. Witness statement of Mr. Seyboth (Exhibit A 54q)**

Again, the statement that Mr. Seyboth worked “with the Osho Commune International in Pune” or for an “associated licensee” is irrelevant. Accordingly, **Exhibits KS 161** is irrelevant, too, and again Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license and mistakes a center name for a trademark.

As Mr Seyboth’s statement refers to use of Osho’s name as a trademark, and as Mr. Steeg himself admits that the use of trademarks had not been discussed with Mr. Seyboth, Mr. Seyboth’s claim in his statement that “the trademark of Osho’s name” was never mentioned are – as admitted by Mr. Steeg – true.

Again and as regards the reference to **Exhibit KS 162**, Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license and mistakes a center name for a trademark. The ™ symbol behind “OSHO” show on the first page of this exhibit is not relevant. First, the ™ symbol does not – as alleged by Mr. Steeg – refer to a registered trademark but to a trademark that the user claims to be his trademark *even though it is not registered*. However, as use of a trademark is irrelevant for the protection and ownership in a trademark in Europe, the ™ symbol is unknown in European trademark practice and is, rather, a US habit that is irrelevant in Europe.

Again and as regards the reference to **Exhibit KS 163**, Mr. Steeg’s statement that despite a Google search “*no evidence can be found of him using the OSHO mark ‘freely’*” is bare nonsense. The independence in the use of Osho’s name is nothing that is highlighted on a website but follows from the way and condition of the performance of the services.

**19. Witness statement of Mrs. Verbeek-Heemskerk (Exhibit A 54r)**

Again, Mr. Steeg does not realize that there is a difference between a center name and a service mark.

**Exhibit KS 164** was obviously not addressed to Mrs. Verbeek-Heemskerk (“Anand Nirad”) but somebody else (“Anand Frank”).

Again and as regards the reference to **Exhibit KS 165**, the guidelines did not address the use of Osho’s name (see page 15 of our submission of 11 January 2012 and Exhibits A 48a) and b)).

**20. Witness statement of Mrs. Sturm (Exhibit A 54s)**

The statement is irrelevant because a mere allegation without supporting evidence.

**21. Witness statement of Mr. Modic (Exhibit A 54p)**

Again, the addressed guidelines did not address the use of Osho’s name (see page 15 of our submission of 11 January 2012 and Exhibits A 48a) and b)), so that Mr. Steeg’s comments are irrelevant.

Mr. Modic's "*connection with the Foundation and the legal structure being the operations*" is not only imprecise, nebulous and unsupported but in particular irrelevant for this proceeding.

Any possible US trademark "Rajneesh" is irrelevant.

The ™ symbol in **Exhibit KS 166** is irrelevant (see above 15.).

The statement that all work provided by Mr. Modic "*was contributed to OIF and belongs to OIF*" is nonsense. Work cannot be owned by somebody, only rights in a work.

Again, as already said, the use of a ® symbol (on the second page of the exhibit) does not say anything about the legitimacy of a trademark registration.

**Exhibit KS 167** does not say anything relevant. It does in particular not indicate that the "Rebalancing" technique was created by the Rajneesh International Meditation University, as Mr. Steeg tries to make believe – another willful misstatement. Again, the "Rajneesh" trademark is not relevant in this proceeding and anyway only covered class 16.

**Exhibit KS 168** does not say anything about who created the Osho International Academy of Healing Arts. Even if it became a faculty of the Multiversity in India this does not say anything about its creation.

The adverts of **Exhibit KS 169** do not say anything relevant.

The adverts of **Exhibit KS 170** are irrelevant as they do not cover meditation services but only goods of classes 9 and 16. Anyway, the registration of a trademark does not say anything about its legitimacy.

The search results of **Exhibit KS 170** do not say anything relevant.

The e-mail of **Exhibit KS 169** do not say anything relevant as it is related to the term "Rebalancing", not to the name "Osho". And there is no trademark "Rebalancing" for meditation or comparable services!

Accordingly, the statement of Mr. Modic is fully correct.

And another meaningful aspect in the statement: Mr. Steeg is concerned that allowing the free use of Osho's name "*would dilute the methods and techniques ... to create the products under various brand names*". It is the method or technique *in itself* what Mr. Steeg tries to get control of by claiming trademark protection for the descriptive term "Osho". He does not want them to be offered by various others ("under various brand names"). However, the method or technique *in itself* cannot be monopolized. Offering it by third parties under another designation has to be accepted by the CTM Owner. To avoid that methods or techniques are offered under the designation "Osho" which do not have anything to do with Osho is a matter of consumer deception, i.e. a matter of the law against unfair competition. If avoiding a deception was the CTM Owner's concern, then the CTM Owner is in the wrong playing field.

## **22. Witness statement of Mr. Morgan (Exhibit A 54o)**

**Exhibit KS 172** does not say anything relevant.

Again and as regards the reference to **Exhibit KS 173**, Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license and mistakes a center name for a trademark.



The reference to the trademark notice is irrelevant as repeatedly mentioned before.

Again, the trademark notice on a page of the Osho Times in **Exhibit KS 174** or on the website in **Exhibit KS 175** is irrelevant as a trademark notice only *claims* that a trademark is protected but does not say whether it is actually protected, for which goods or services, in what geographical location, and whether it is legitimately protected, and a trademark notice cannot be attributed to a mere advertising customers of the magazine, anyway, who is not responsible for the placing of the notice. This is supported by Page 3 of this exhibit in which Mr. Morgan does not feature any reference to a trademark "Osho".

**23. Witness statement of Mrs. Kranenburg (Exhibit A 54t)**

Again Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license and mistakes a center name for a trademark.

The search results of **Exhibit KS 176** do not say anything relevant.

**24. Witness statement of Mr. Ledema (Exhibit A 54u)**

The comments of Mr. Steeg are mere allegations unsupported by any evidence.

**25. Witness statement of Mrs. Kurvers (Exhibit A 54v)**

Mrs. Kurvers clearly points out in her statement that she used the name of Osho in a descriptive way, namely to describe the spiritual inspiration for her work.

**26. Witness statement of Mrs. Ross (Exhibit A 54w)**

Again and as regards the reference to **Exhibit KS 177**, Mr. Steeg does not realize that "Rajneesh" has never been protected as a trademark for meditations in the EU. Accordingly, this exhibit is irrelevant.

Again and as regards the reference to **Exhibit KS 178**, Mr. Steeg does not realize that the involvement of Mrs. Ross in the "Osho Multiversity" does not have any relevance for this case.

Again and as regards the reference to **Exhibit KS 179**, Mr. Steeg does not realize that the "Letter of Understanding" does by no means qualify as a license and mistakes a center name for a trademark so that the meditation centers are actually not licensees of the CTM Owner, at least not with respect to a trademark.

Again, the trademark notice on the website in **Exhibit KS 180** is irrelevant as a trademark notice only *claims* that a trademark is protected but does not say whether it is actually protected, for which goods or services, in what geographical location and whether it is legitimately protected, and as any trademark notice cannot be attributed to a mere advertising customers of the magazine, anyway, who is not responsible for the placing of the notice. Furthermore, it is an unsupported allegation that Mrs. Ross was actually aware of the notice.

**27. Witness statement of Mrs. Land (Exhibit A 59)**

The comments of Mr. Steeg regarding the corporate nature of the Applicant are irrelevant.

**Annex GS 4** does not show anything of substance.

The comments on the creation of the "Osho Therapist Training" are irrelevant as a creation "*in the Osho Multiversity*" does not exclude a creation by Mr. Hardt. Insofar, also Exhibit KS 131

does not say anything about who created the Training, only that the training “*is in*” the Osho Multiversity – whatever that means.

The ™ symbol behind “OSHO” show on the first page of **Exhibit KS 181** is not relevant. The ™ symbol does not – as alleged by Mr. Steeg – refer to a registered trademark but to a trademark that the user claims to be his trademark *even though it is not registered*. However, as use of a trademark is irrelevant for the protection and ownership in a trademark in Europe, the ™ symbol is unknown in European trademark practice and is, rather, a US habit that is irrelevant in Europe.

The ® symbol behind “OSHO” show on the second page of **Exhibit KS 181** is not relevant for the reasons mentioned before. Furthermore, at the time when this edition was published, April 1999, a trademark “OSHO” for meditation services did not yet exist (the contested CTM was not filed until 30 June 1999).

The allegation that Mrs. Land had continuously acknowledged Osho’s name as a trademark is a misstatement that is – meaningfully – not supported by evidence.

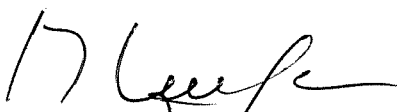
Again Mr. Steeg does not realize that the “Letter of Understanding” does by no means qualify as a license.

#### IV. Summary

To summarize: The CTM Owner’s observations of 9 July 2012 do not contain any relevant facts or aspects. The CTM Owner’s allegations and the allegations made in the so-called “witness statements” submitted by the CTM Owner are partly dishonest, partly misrepresentations, partly unsubstantiated and, most importantly, not supported by the exhibits submitted to support the allegations. They appear as not even intended to add value to the proceeding but as an attempt to let the relevant facts get lost in the process.

#### V. Result

The request for cancellation of the contested CTM is well-founded since the contested CTM no. 1 224 831 “OSHO” had been registered contrary to the provisions of Article 7(1)(b), (c) and (f) CTMR. The CTM Owner’s reply observations were not appropriate to disprove such lack of registrability. Therefore, the contested CTM no. 1 224 831 “OSHO” needs to be declared invalid and cancelled from the registry for all services.

  
Dr. Martin Vietnues  
Attorney-at-Law

**Exhibits A 64 to 71**