By Telefax: 0034 965 131 344 (Pages: 123)

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
Avenida de Europa, 4
03080 Alicante
SPAIN

JONAS Rechtsanwaltsgesellschaft mbH
Hohenstaufenring 62
50674 Cologne, Germany

P. O. Box 26 01 20
50514 Cologne, Germany

Telephone +49 (0)221 27758-0
Direct Line +49 (0)221 27758-294
Facsimile +49 (0)221 27758-1
viefhues@jonas-lawyers.com
www.jonas-lawyers.com

Amtsgericht Köln HRB 59300

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

10 September 2013

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

We hereby reply to the CTM Owner's observations of 7 June 2013.

I. Repetitions

In its observations, the CTM owner simply repeats the irrelevant and unsupported arguments previously provided. Again, the CTM owner

- refers to trademarks which are not registered for the services concerned in these proceedings.
- refers to copyrights which are not the subject of these proceedings.
- refers to alleged license agreements which actually are not of this nature. Its belated efforts to "police" the many descriptive uses through so-called "letters of understanding" (which the CTM Owner claims are license agreements) do not magically convert these descriptive uses into source-identifying uses.
- refers to assignment documents which are not relevant for the question of whether Osho's name may qualify as a trademark.
- alleges that Osho products are emanating from the CTM Owner while they actually do not, in particular as regards the services for which the contested CTM has been registered. Consumers do not believe that Osho products are emanating from the CTM owner.

II. Irrelevant observations

To the extent that the CTM owner again refers to various sections of submissions and exhibits, we had already commented on them and identified them as irrelevant and not supporting the CTM owner's position. Any repeated reference to these sections and exhibits does not change this irrelevance.

1. Applicant being the only entity questioning the validity of the CTM "OSHO"

To the extent that the CTM owner mentions that the Applicant is the only entity questioning the validity of the CTM "OSHO", this is not relevant as the Applicant is doing so as a test case which is supported by many meditation centers and therapists. To get the CTM invalidated it requires only one single proceeding.

Anyway, corresponding trademarks have already been - successfully! - contested in other cases like the already mentioned cancellation actions in the US – let alone that in Osho's home country India attempts of several other parties to register his name as a trademark remained without success.

2. Lack of "religious view" complaints

To the extent that the CTM owner alleges that there have not been "religious view" complaints in the history of the "Rajneesh" and "Osho" trademarks, it has been pointed out that this allegation is not only unfounded but irrelevant. The key question is whether the name of a "religious leader" or founder of a world view should be *legally monopolized* in favor of one commercial entity to support the personal commercial benefits of this entity and the monopoly *officially approved* by a governmental authority by registering it as a trademark. It is the principal judgment that this shall not be the case, even if there has not been a public outrage over the monopolization of the respective personal name.

Anyway, it can be assumed that many people may not know that Osho's name has been registered as a trademark, and a lot of disagreement, criticism and feeling of being offended remains silent and is not published. Insofar, the CTM Owner's allegation regarding the number of followers of the CTM Owner's Facebook page is without any relevance as it does not add any substance in this context.

Finally, also trademarks like "BUDDHA" and others already mentioned in our previous submissions have been excluded from registration as a trademark without public outrage.

The fact that Osho was a contemporary person is not relevant insofar.

3. Trademark in block letters

To the extent that the CTM Owner refers on page 11 of the observations that the registration of the trademark in block letters provides protection for any stylized font, the CTM owner has obviously not understood the argument. A word mark may be infringed by a sign even if it is used in various stylized fonts.

The key aspect in this regard is that the totally inconsistent and differing use of Osho's name suggests to the public that "Osho" is not a sign referring to a common origin but that each user is using it at its own discretion. This clearly supports a public perception of "OSHO" not being a trademark.

4. CTM Owner being afraid of suffering

To the extent that the CTM Owner is afraid of suffering if the contested trademark was declared invalid, the CTM Owner is only afraid of losing the power to define at its own discretion which kinds of goods and services should be associated with Osho's name, and to use this power for its own commercial benefits and to control and discipline meditation centers and therapists at its own discretion.

Neither the work of Osho nor the independent programs in many Osho centers ever originated with the Owner. Instead, they are the result of many people's efforts.

To the extent that the CTM owner is alleging that its only concern is related to the correct use of Osho's name, it has already been pointed out that this is not a matter of a common business origin of goods and services, but about the matter of consumer deception. However, this aspect is not protected by trademark law but by the law against unfair competition, which prohibits, for example, deceiving the public about the nature of the goods and services by giving them designations that suggest a certain nature which the goods or services do not actually have.

III. Attempt to convert a descriptive term into a trademark

Once a name has become descriptive for a certain content associated with the name holder and thereby entered the public domain, it cannot be restored as a trademark, even though there has been subsequent policing (if it happened at all).

The CTM owner does not have a legitimate basis for complaining after it "adopted" as its "trademark" the word identical to what it already knew was being used descriptively by Osho and the people related to him. Once the meaning of a term exists descriptively in the public domain as such, the status cannot be undone, and no amount of "after-the-fact" registration or so-called "licensing" or "policing" attempts can change that result. Indeed, the public interest strongly favors the result the Applicant seeks in this proceeding because it avoids the *conversion* of a descriptive term into a trademark, the *manufacture* of prima facie exclusive rights in favor of one entity when many different individuals need to use the term in a descriptive way to actually tell people what they are offering.

1. Comparability with the name of Joseph Pilates

Insofar, the case of Osho's name is comparable to the case of the name of Mr. Pilates:

Pilates is a physical fitness system developed in the early 20th century by Joseph Pilates, and popular in many countries, including Germany, the United States and the United Kingdom, see the respective explanation in the "Wikipedia" online encyclopedia,

Exhibit A 74.

Joseph Humbertus Pilates was born in Germany 1880. Starting in or around 1914, he developed a method of conditioning incorporating specific exercises designed to strengthen the entire body, with emphasis on the lower back and abdomen region, while at the same time enhancing flexibility. Throughout his lifetime, Mr. Pilates promoted his method of exercise and attempted to increase its use by the public. Mr. and Mrs. Pilates never did anything to prevent others from using that name to describe what they taught.

While Mr. Pilates was alive, he taught a number of students and they went on to become Pilates instructors themselves. Mr. Pilates died in 1967. After his death, his wife continued the teaching until 1970. Mrs. Pilates was represented by Mr. John Steele, an attorney, until her death. Steele was also a Pilates student and close friend of Mr. and Mrs. Pilates. In 1970 he formed a New York corporation called “939 Studio”. In 1973, “939 Studio” changed its name to Pilates Studio, Inc. Mrs. Pilates died in 1976.

The State University of New York (SUNY) at Purchase maintained a facility from 1975 through 1990 at which students received instruction in the Pilates method. The University never paid anyone for the use of the name “Pilates Studio at SUNY Purchase”.

In 2000, the United States District Court, S.D. New York, ruled that the US Patent and Trademark Office shall be directed to cancel two trademarks PILATES, which had been registered in 1986 and 1995, for genericness. A copy of the decision is attached as

Exhibit A 75.

In finding “PILATES” to be generic for a method of exercise rights related thereto, the court noted that

> “*The evidence … shows that PILATES is understood by the public to refer to either the Pilates method … or to products or services used in connection with the Pilates method. In both uses the primary significance of PILATES is as a method of exercise, not as a source of a product or service. …” (p. 304)*
>
> *“… there is ample evidence that the Pilates method forms the basis for the Balanced Body Method, the Ron Fletcher Work, and another exercises instruction services. … Accordingly, in a proper system of classification, the Pilates method is the genus, and the particular ways of teaching that method are the species. Under this approach, the Ron Fletcher Work is a species of Pilates, as is the Balanced Body program. … (p. 305)*
>
> *… consumers of exercise instruction services and equipment generally do not use any other term to describe the Pilates method. … Efforts by the plaintiff and its lawyers to avoid using PILATES in a generic sense result only in cumbersome expressions such as ‘exercise based on the teachings and methods of Joseph H. Pilates’.” (p. 305, 306)*

2. **Non-comparability with the name of Moshé Feldenkrais**

Insofar, Osho’s name (like Mr. Pilates’ name) differs from names like “Feldenkrais”:

The Feldenkrais Method, often referred to simply as "Feldenkrais", is a somatic educational system designed by Moshé Feldenkrais (1904–1984). Feldenkrais aims to reduce pain or limitations in movement, to improve physical function, and to promote general wellbeing by increasing students' awareness of themselves and by expanding students' movement repertoire; see the respective explanation in the “Wikipedia” online encyclopedia,

Exhibit A 76.

The first trademark “Feldenkrais Methode” was filed in 1983 for registration by his own foundation that he had established himself and *before he died*, see the respective printout from the database of the German Patent and Trademark Office.

Exhibit A 77.

At that time, “Feldenkrais” could be perceived as referring to services which were under the control of Mr. Feldenkrais and the source of which was Mr. Feldenkrais.

This is different with Osho’s name. His name was first registered as trademark for the services at issue here many years after he had died and after his name had been used by many meditations centers and persons to refer to his teachings and vision, i.e. after his name had entered the public domain.

Even if filed during the lifetime of the holder, a name does not necessarily qualify for registration as a trademark. If, like in the case of Joseph Pilates – or Osho! -, the name holder allowed his name to be generally used to refer to his teachings, methods, exercises etc. and thereby to enter the public domain, the name could no longer be monopolized. In connection with the individual person, the name may still be identifying an individual. In connection with services based on the individual’s teachings, methods, exercises etc., however, the name does not *identify* (a person behind the services) but *describes* the services.

However, the CTM owner had already admitted (document # 112, brief of 21 March 2008, in the US proceedings no. 91121040 before the US Trademark Trial and Appeal Board regarding the cancellation of the US trademarks “OSHO” as already addressed before) that Osho

- never made commercial use of his name,
- never used the mark in connection with any of the products and services specified in the trademark applications challenged in the US proceedings, and
- never controlled any third parties’ use of his name;

and even

- points out that Mr. Steeg had denied that Osho ever made commercial use of his name or controlled the content of products bearing his name,

see

Exhibit A 78.

Anyway, as “Feldenkrais” has become a descriptive term which refers to a somatic educational system, and after the first trademark “Feldenkrais Methode” (**Exhibit A 77**) has been cancelled, those trademarks “Feldenkrais” which have been registered after the death of Mr. Feldenkrais are likely to be vulnerable to cancellation for losing their distinctiveness. It is therefore only consequent that the German Patent and Trademark Office refused to register a trademark “Feldenkrais body care” seeking protection for *“sportive activities in the field of aerobic, gymnastics, dance, yoga and similar styles of movement; education in the fields aerobic, gymnastics, relaxation, dance, yoga and similar styles of movement”* for a lack of distinctive character and being a descriptive indication (to be kept available for general use): The sign indicates that the services are based

on the Feldenkrais method and are related to body treatment and care. A printout from the database of the German Patent and Trademark Office is attached as

Exhibit A 79.

IV. The "Second Supplemental Witness Statement"

Interestingly, in his "Second Supplemental Witness Statement" attached to the CTM Owner's observations as **Annex PT 3**, Mr. Toelkes admits the lack of relevance of the assignment documents for this proceeding. In the previous submissions they had been addressed at length. Obviously, the CTM Owner has now understood that they do not add any value in this proceeding. Even to the extent, that they indicate Osho's intention, they are not relevant.

1. The 1982 Assignment / Amendment of Power of Attorney

In Para. 12, 23 and 27 of the "Second Supplemental Witness Statement", Mr. Toelkes tries to show that the 1982 Assignment / Amendment of Power of Attorney contained an assignment.

However, even the wording which he quotes only shows that the person called Ma Anand Sheela may have been granted the power to act for Osho and to transfer and assign such power (if the document is authentic). It does not contain a transfer or assignment of trademarks. Insofar, this document may indicate that Osho intended to grant Ma Anand Sheela a broad power of attorney to act on his behalf. However, this does not mean that the alleged assignments have actually taken place.

2. The 1983 Assignment

In Para. 14, 22 and 27 of the "Second Supplemental Witness Statement", the 1983 Assignment is addressed.

We had already commented on this document. It is not relevant for the question to be answered in this proceeding.

As said, the CTM owner had already admitted (document # 112, brief of 21 March 2008, in the US proceedings no. 91121040 before the US Trademark Trial and Appeal Board regarding the cancellation of the US trademarks "OSHO" as already addressed before) that Osho

- never made commercial use of his name,
- never used the mark in connection with any of the products and services specified in the trademark applications challenged in the US proceedings,
- never controlled any third parties' use of his name and
- never received any monetary benefit from any use of his name;

the CTM Owner even

- points out that the Mr. Steeg had denied that Osho ever made commercial use of his name, controlled the content of products bearing his name or received payments from the use of his name, and

- claims that instead the CTM Owner branded the works of Osho with his name, which was the first time the term “Osho” ever was used as a trademark by any person or entity,

see **Exhibit A 78** and – below - **Exhibit A 83** (page 4, para 2)**.**

To the extent that it shall, as Mr. Toelkes now mentions, merely indicate a certain intention, it is by far too vague to be somehow related to the question whether Osho’s name qualifies as a trademark.

Anyway, the document, being signed by the person called Ma Anand Sheela referring to the 1982 Assignment / Amendment of Power of Attorney does not express Osho’s intention.

As can be taken from an “Interview of the German Rajneesh Times with Bhagwan Shree Rajneesh” (later: Osho) of 15 December 1985, see

Exhibit A 80,

everything what Sheela did was absolute against Osho:

> *“Ich will überhaupt keine Struktur. Denn alle Strukturen schaffen eine gewisse Art von Sklaverei. Und genau das haben Sheela und ihre Gang gemacht. Sie hat Strukturen geschaffen. Strukturen können besser funktionieren. Sklaverei funktioniert immer besser. … Die Freiheit darf keinem anderen Wert geopfert werden. Also, jetzt gibt es keine Strukturen mehr.*
>
> *Darin unterscheide ich mich von Sheela. Als ich anfing, wieder zu sprechen, stellte ich fest, dass sie genau das Gegenteil von dem getan hat, was ich seit dreißig Jahren gelehrt habe. Ich bin für Individualität, ich bin für Freiheit, ich bin für die Schönheit eines Chaos…*
>
> *Sheela hat die kleinen Zentren zerstört, während ich schwieg und in Isolation war…. Ich will meine kleinen Zentren wiederhaben. Denn in einem kleinen Zentrum kannst Du mehr Freiheit, Unabhängigkeit haben. In einer großen Kommune ist eine bestimmte Struktur unumgänglich, ein bestimmter Gehorsam, eine bestimmte Ordnung, sonst wird es zu schwierig, sie zu führen.*
>
> *Und ich schätze grundsätzlich das Individuum. Bringt also die kleinen Zentren zurück. Und sie haben wunderbar funktioniert. Und niemand hat ihnen Befehle gegeben. Sie haben aus Liebe gearbeitet. Als ich im Poona war, wurden Tausende von kleinen Zentren rund um die Welt betrieben ohne jeden Befehl, ohne jede Struktur. Jedes war für sich einzigartig. Und es lag an Ihnen, was Sie daraus machten, wie sie es machten.*
>
> *Sie hat all diese kleinen, wunderbaren Zentren aufgelöst und große Kommunen geschaffen, einfach damit mehr Geld beschafft werden kann. … Aber Sie und Ihre ganze Clique haben konzentriert auf ein Ziel hingearbeitet: Wie man mehr Geld beschafft. …*
>
> *Und so ist es ein Moment des Übergangs, indem es Euch ein wenig schwierig vorkommt, weil Sheela die Dinge völlig gegen mich betrieben hat. Alles, was sie getan hat, war absolut gegen mich. …*
>
> *Legt also jetzt den Schwerpunkt darauf, dass nichts mehr von dem, was Sheela in Eurem Kopf vielleicht zurückgelassen hat, übrig bleibt. …*
>
> *Jetzt muss alles, was Sheela getan hat, wieder gut gemacht werden. …*

Aber jetzt müßt ihr ganz frisch von vorne anfangen: Ich will euch keine Anweisungen geben, wie ihr eure Kommunen führen sollt, wie ihr mehr Geld verdienen könnte. Ich werde Euch überhaupt nichts vorschreiben, …

Es war ein Albtraum, der jetzt vorbei ist….

Jede Kommune sollte ihren eigenen Weg finden, ihre eigene Individualität. Und das wird viel bunter sein und viel reichhaltiger."

which can be translated into English as:

"I do not want any structure. Because all structures create certain kind of slavery. And exactly this is what Sheela and her gang have done. She has created structures. Structures can function better. Slavery always functions better. … Freedom must not be sacrificed to any other value. So, now there are no structures anymore.

This is where I am different from Sheela. When I started to speak again, I found out she has been doing exactly the opposite of what I had been teaching for 30 years. I am for individuality, I am for freedom, I am for the beauty of a chaos. …

Sheela destroyed the small centers while I was in silence and isolation … I want my small centers back. Because in small centers you can have more freedom, independence. In a big commune a certain structure is indispensable, a certain obedience, a certain order, otherwise it will become too difficult to lead it.

In general, I appreciate the individual. So, bring the small centers back. And they have functioned in a wonderful way. And no one has given them orders. They have worked out of love. When I was in Poona, thousands of small centers around the world have been operating without any order, without any structure. Each of them walls unique in itself. And it was up to them what they made out of it, how they made it.

She has dissolved all these small wonderful centers and created the communes, simply for the purpose of making more money. … That she and her entire clique have extensively worked towards one goal: How to make more money …

And so this is a moment of transition in which you may find it a bit difficult because Sheela had been running things absolutely against me. All she did was absolutely against me. ...

So now focus on making sure there is nothing remains of what Sheela may have left in your heads. ...

Now everything what Sheela did must be repaired….

But now you must restart from the beginning: I will not give you instructions how to lead you communes, how to earn more money. I will not enjoin anything on you….

It was a nightmare which is now over. …

Each commune should find its own way, its own individuality. And that will be much more colorful and richer."

Osho is, in part, referring here to Sheela's behavior in Europe prior to 1985 and the behavior of the New Jersey-based foundation she controlled, Rajneesh Foundation International (RFI). This behavior is reflected in what the CTM Owner calls *"the voluminous amounts of evidential material submitted by the Registered Proprietor"* (see p. 3 on page of submission/p. 4 of document) where RFI asserts the right to control centers through "trademarks."

The Owner complains about the Applicant's argument that there was no relevant European trademark in the first half of the 1980s and reminds the Examiner *"that we had*

previously provided the Applicant with records of both RAJNEESH and OSHO trade marks. We specifically refer the Examiner to KS6 of our submissions of 29 July, 2011 which are trade mark records of the mark RAJNEESH, a selection of which date back to the 70's and 80's." (see p. 3/4 on page of submission/p. 4/5 of document)

The Owner's own documentation shows that there were no registrations for "Rajneesh" or "Osho" for the services addressed in this proceeding prior to the registration at issue here in 1999. It also demonstrates that neither RFI nor the CTM Owner (under previous names) had registrations for "Rajneesh" or "Osho" for *any* goods or services in Europe prior to Osho's death in 1990. Any attempts by RFI or the CTM Owner to claim trademark rights in Europe at that time, or a trademark history, as reflected in the Owner's "voluminous amounts of evidential material" are false and fraudulent and contrary to applicable trademark law. They are also contrary to Osho's clearly and publically expressed wishes above.

Anyway, the qualification of Osho's name does not depend on any intention of Osho. As admitted by Mr. Toelkes in Para. 14 and 28 of the "Second Supplemental Witness Statement", Osho himself did not use his name as a trademark. Just because "trademarks" are included in a list of possible property rights does not mean Osho actually owned any. Accordingly, all of these documents must refer to other trademarks and signs if they should reflect Osho's intention and if Osho himself did not intend to use his name as a trademark.

To the extent that the agents of the Owner allege in their last submission to OHIM that Osho *"personally instructed use of his name as a trade mark"* (page 14 acc. to counting on top of the pages) this is obviously untrue as – like Mr. Toelkes now admits – Osho himself did not use – and thus regard – his name as a trademark! All he did was:

> *"Osho has suggested that center names start with "Osho" for example "Osho Amito Meditation Center: Then people trying to find His people will be more likely to come across them. Ma Latifa of Global Connections suggests that in the telephone directory you list your center under "Osho" …"*,

see the respective note in the Osho Times of 16 October 1989,

Exhibit A 81,

(also addressed in **Exhibit A 83).**

Suggestions are not instructions, center names are not service trademarks, and a use to *"help people come across His people"* is not a reference to a business origin but just to a center offering services related to – but not necessarily originating from – Osho, let alone from OIF! Finding Osho's people, i.e. people related to Osho, has nothing to do with tracing a business origin to OIF, the Owner!

Osho may have given permission to use his name. However, this does not mean that he has given permission to use his name *as a trademark* (as opposed to the use of the name *as a name*, i.e., referring to Osho as a person) – and why should he if he did not use his name as a trademark himself?

Quite to the contrary, Osho has pointed out in "The Last Testament Vol. 1, Chapter 23":

Q: WHEN OR IF YOU DO PASS AWAY, OR IF YOU DIED, IF SOMETHING HAPPENED, WHO WOULD TAKE OVER? WOULD THERE BE SOMEONE TO TAKE OVER? WHAT WOULD HAPPEN TO RAJNEESHPURAM IF SOMETHING HAPPENED TO YOU?*

A: …*

Q: WHAT COULD WE DO THEN? WHAT COULD WE THE LIVING DO TO HELP?*

A:.... My whole teaching is centered on the present moment, this moment. I do not care for any tomorrows. In the first place, the tomorrow never comes; whatever comes is always the now. You are never there, you are always here. …*

Existence is now and here. I have never bothered about the future. When I leave the body these people will celebrate, as we celebrate everything. And I have no responsibility for them, so the question of anybody succeeding me does not arise.

The successor is needed only when I am having any responsibility. I have no responsibility. My approach is that everybody is responsible for his own life. …

So, I'm not going to say what they have to do when I am gone. That is manipulating people even when you are dead. …"

see,

Exhibit A 82.

Insofar, the case of Osho's name is again comparable to the case of the name of Mr. Pilates. In the decision of the United States District Court, S.D. New York, **Exhibit A 75**, finding "PILATES" to be generic for a method of exercise rights related thereto, the court noted that

> *there is no evidence that Mr. Pilates intended to prevent the use of his name in connection with services and equipment relating to his method of exercise. John Steele, the Pilates' friend and lawyer testified that Mr. and Mrs. Pilates never tried to restrict the use of the name by others. Kryzanowska, plaintiff's principal witness,* agreed that Mr. Pilates wanted the Pilates method everywhere to be for the world so that everyone could benefit from it". (p. 299)

This is precisely the situation here. Just as the Pilates never tried to restrict the use of the name of his, Osho never intended to prevent the use of his name in connection with services and products related to his spiritual teachings. Quite to the contrary, he directly expressed his intention that others use his name freely to spread his teachings as broadly as possible and expressly permitted others to do so.

3. Oregon law and personality rights

Whether Oregon law may allow future works to be assigned as pointed out by Mr. Toelkes in Para. 17-21 of the "Second Supplemental Witness Statement", this is not relevant in this case. This case is not about works and right in them (which would be copyrights!) but about trademarks. Likewise, personality rights as addressed in Para. 29 of the "Second Supplemental Witness Statement" are not relevant in this case; if the *image* or *likeness* of a person may not be used without consent of the person, this does not mean that the *name* of that person must qualify as trademark.

4. Last Will of Osho

If in Para. 24 of the "Second Supplemental Witness Statement", a Last Will of Osho of 15 October 1989 is addressed by Mr. Toelkes alleged to be an indication that Osho intended to transfer any and all property he had to the Owner.

However,

- the document is addressing ownership, publishing and related rights to all his work, which could conceivably include copyrights (depending on what Osho owned at his death) but not trademark rights and
- undisputedly, Osho did not have any trademark "Osho" and – as admitted by Mr. Toelkes – he never used his name as a trademark. Accordingly, there was nothing to transfer with respect to his name, which explains why it is not addressed in the "last will & testament".

Interestingly, this last will of 15 October 1989

- has never shown up before, neither in this proceeding, nor – according to the statement of Mrs. Duchane enclosed as

Exhibit A 83 -

in the US proceedings regarding the cancellation of the US trademarks(see page 5, para 8), in which – as Mrs.Duchane points out – the TM Owner already insisted that Osho had never owned or used a trademark "OSHO" (see page 4, para 2 and page 5, para 7) and in which the TM Owner could already not produce sufficient documents (see page 4, para 5 of this Exhibit);
- would have been made only one day before the "Osho Times" published the totally opposite understanding of Osho's wishes that his name not be a trademark, but used descriptively by his "people," namely the quote addressed above as **Exhibit A 81**.

Independent from the question of whether the last will is valid, it is, in the end, not relevant for this proceeding. As said, the question whether Osho's name qualifies for registration as a CTM does not depend on Osho's will.

V. Groundless allegations

In the CTM Owner's letter to the OHIM of 15 January 2013 in response to official letter of 6 November 2012, the CTM owner's representative asked for an opportunity to respond to the submissions of the Applicant received by the OHIM. One reason was that the CTM owner alleged that it

> *"has recently been contacted by several third parties who operate OSHO centers. They have all stated that they have been approached by the Applicant for invalidity who has repeatedly asked them to sign pre-prepared witness statements to the point of insisting and harassing each potential witness. We understand that false information was provided by the applicant in an attempt to obtain the signature of the witnesses and that many were not aware of the full facts of the case. …*
>
> *We have therefore collated statements and evidence from those approached and harassed by the applicant and will heavily provide the people him with this and the next round of submissions."*

However, the CTM Owner's subsequent submission of 7 June 2013 does not contain a single sample of such alleged *"statements and evidence from those approached and harassed by the Applicant"*. Obviously, there are no respective statements and evidence, and the reason is that said approaches and harassments have actually never happened.

Even worse, it is rather the CTM Owner who has started to harass persons who have signed affidavits in favor of the Applicant by filing "Trademark Complaints" with YouTube and Facebook to get videos posted on YouTube shut down and to get accounts closed which Osho therapists had opened with Facebook.

- For example, all of a sudden the Facebook site of the "Diamond Breath Festival" was contested and taken down upon the CTM Owner's initiative,

  Exhibit A 84,

  because – as the Owner states in its e-mail of 4 June 2013 – *"the Diamond Breath people are working closely with Mr. Doetsch in a coordinated attack on the trademark and OIF"*. As the Office knows, it is simply untrue that *"Devapath and Dwari* [note: Mr. Jochen Peters and Mrs. Marita Deutsch] *have joined the legal case against OIF"* as nobody has joined the Applicant in this proceeding. The only thing Mr. Jochen Peters and Mrs. Marita Deutsch did was to explain in a declaration (**Exhibit A 54 a) and i)**) that

  > *"nobody ever objected personally to me in my way to use the name "Osho" and the use of the name was not restricted for me in any way. In the same way, it is clear in my perception that Osho never wanted to exercise control over the centres but gave clear guidance for centres how to facilitate his meditations and therapies. It was up to me how I would implement them but the use of Osho's name would indicate the character of the meditations and therapies, namely they were meditations and therapies inspired by and reflecting Osho's vision and teachings"*

  and

  > "*When I got asked in 1998 to sign a so called 'Letter of Understanding' about the copyright for Osho's books as well as the protection of his name, I felt no need to sign it as all the years before with each centre of institute I created or I was involved in organizing, there has never been any demand of legal bonding or contracts. … As far as I know, Osho never wanted his name to be trademarked.*"

- A video of Osho Diamond Breath Training has been removed on 10 April 2013 from the YouTube platform,

  Exhibit A 85.

- Likewise, the Facebook page of Osho Uta Institut has been closed down without any warning or possibility to comment on the "complaint" raised by the Owner over against Facebook,

  Exhibit A 86.

- The same happened to the Facebook page of Osho Pulsation. It was closed down without any warning or possibility to comment on the "complaint" raised by the Owner over against Facebook, and for the reason that

  > *"Ms. Dillon is part of a legal action (Osho Lotus e.V. represented by Robert Doetsch) against OSHO International Foundation in the context of an attempt to cancel of one of our trademark registrations for OSHO in Europe.",*

see

Exhibit A 87.

As the Office knows, it is simply untrue that Ms. Dillon (whose full legal name is Laura Dillon Ross and whose pen name is Aneesha Dillon) is part of this proceeding. The only thing Ms. Dillon did was to explain in a declaration (**Exhibit A 54 w)**) that

> "*Since 1989 I have called my work Osho Pulsation, and continue to do so to this day. This is because Osho's vision has been an inspiration for my work and his meditations are an integral component of the groups I lead all over the world. …*
>
> *I only started hearing about the idea of his name being trade-marked shortly before the year 2000. No one at OIF has ever mentioned anything to me about the use of 'Osho' in the title of my work, and it was always something I did as a way of indicating a certain quality of my work in association with Osho. In all these years I never signed, nor was I asked to sign any guidelines or Letter of Understanding agreeing to anything related to the use of the name Osho. The participants in my groups around the world have no idea of any of the political efforts of OIF or anyone else to regulate or licence the name 'Osho'. The way they understand my connection with Osho and my use of his name in my work is that he remains an inspiration, that I feel tremendous gratitude to him for what he has given and helped me understand about life. Using his name lets people know that there is a certain flavor, a certain fragrance that can be expected when they come to work with me, and that is Osho.*"

Further, the CTM Owner has been starting to send cease and desist letters to those who had made statements in this proceeding which supported the position of the Applicant, e.g. to Mr. Masshöfer of the Institute for Living and Dying, see

Exhibit A 88,

only because he had stated (**Exhibit A 54 l**):

> *"I used the name Osho only to describe the content of my groups, especially the aspects of meditation and human growth in consciousness, and the spiritual inspiration of an important and internationally acclaimed spiritual teacher. I used the name Osho in an independent way, and have not signed any legal agreement, guidelines of letters of understanding. It means simply that I have not used the name Osho as a trademark. In my seminar descriptions, I have never used the Copyright-Symbol with the name Osho or the group titles"*

even though he is no longer using Osho's name at all, and to Mrs. DeLong, see

Exhibit A 89,

only because she had stated (**Exhibit A 54 m**):

> *"The name "Osho" as part of the institute title represents for me a quality that I feel inside myself when I remember him, a 'oneness' or synchronicity between my inner being and his, … For me, this quality is beyond the domains of trademark. During the period when I was responsible for the Osho Institute for Spiritual Healing, I was not asked to sign any guidelines nor any licensing agreement "Letter of Understanding). The pressure from Osho Foundation International so sign such things came later, after my interest had already changed to another area. … In my groups, I speak about Osho continually, as he is the source of my spiritual inspiration. I don't think any participant gets the idea that his name is the name of a "product", nor have they heard that the name is trademarked."*

It is interesting to see that these attacks were made only against centers and people who had made statements in the proceeding supporting the argumentation of the Applicant.

VI. Result

The CTM owner's observations of 7 June 2013 do not support his position.

As the argumentation of the CTM owner is not containing any new aspects but just repeating previous allegations in endless circles, it seems to be time to render a decision in this case.

Dr. Martin Viefhues
Attorney-at-Law

Exhibit A 74 – A 89