



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

OPERATIONS DEPARTMENT
Cancellation Division

C406A

Alicante, 11/06/2014

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Notification of a decision to the applicant

Your reference: 3636/10 MV-JB
Invalidity number: 000005064 C
Contested trade mark: 001224831
OSHO
Fax number: 00 49-221277581

Please find attached the decision terminating the proceedings referred to above. The decision was delivered on **11/06/2014**.

Please note that decisions of the Cancellation Division are not signed by the responsible officials but only indicate their full name and bear a printed seal of the Office in accordance with Rule 55(1) CTMIR.

Rhys Morgan



Enclosures (excluding the cover letter): 13 pages



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Cancellation Division

**DECISION
of the Cancellation Division
of 11/06/2014**

IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY

OHIM reference: **5064 C**

Community trade mark: **1 224 831**
OSHO

Language of the proceedings: English

APPLICANT: **Osho Lotus Commune e.V.**
Venloer Str. 5-7
Cologne 50672
Germany

REPRESENTATIVE: **Jonas Rechtsanwaltsgellschaft
MBH**
Hohenstaufenring 62
Cologne 50674
Germany

Against

COMMUNITY TRADE MARK PROPRIETOR: **Osho International Foundation**
Bahnhof Str. 52
Zurich 80010
Switzerland

REPRESENTATIVE: **Keltie LLP**
Fleet Place House,
2 Fleet Place,
London EC4M 7ET
United Kingdom

THE CANCELLATION DIVISION

composed of José Antonio Garrido Otaola, Rhys Morgan, and Lucinda Carney takes the following decision on 11/06/2014:

1. **The request for a declaration of invalidity of Community trade mark No. 1 224 831 for 'OSHO' is rejected.**
2. **The applicant shall bear the fees and costs of the Community trade mark proprietor.**
3. **The amount of costs to be paid by the applicant to the Community trade mark proprietor shall be EUR 450, corresponding to representation costs.**

FACTS AND ARGUMENTS

- 1) The Community trade mark No. 1 224 831 for 'OSHO' ('the contested mark') was filed on 30/06/1999, published on 06/03/2000, and registered on 29/09/2000, for the following services ('the contested services'):

Class 41: *Educational services; yoga instruction.*

Class 42: *Religious services; meditation services.*

- 2) On 27/12/2010, the applicant filed a request for a declaration of invalidity against the contested CTM, on the basis of absolute grounds under Article 52(1)(a) of the Community Trade Mark Regulation ('CTMR'), namely that the contested mark was registered in breach of the provisions of Articles 7(1)(b), (c) and (f) CTMR.
- 3) The applicant filed its request for a declaration of invalidity in respect of all the services covered by the contested mark.
- 4) The parties exchanged lengthy submissions several times during these proceedings, in accordance with the relevant provisions of the CTMR and the CTMIR, and within the deadlines set by the Cancellation Division.

The arguments submitted by the applicant

- 5) The applicant's case pursuant to Articles 7(1)(b) and (c) CTMR is based on the claim that the contested mark describes the character of the meditations, therapies and teachings of the well-known Indian mystic and spiritual leader Osho. Osho was born Chandra Mohan Jain in 1931 and later called himself Bhagwan Shree Rajneesh, before finally taking the name Osho in 1989. The applicant has provided a detailed description of the philosophy of Osho, and the 'active meditation' techniques he wrote about and taught.
- 6) According to the applicant, the relevant public for the contested services will be offended 'at the legal monopolization of the name of a spiritual leader' in the same way that many consumers would be offended by trade marks such as 'Buddha' or 'Dalai Lama'. Therefore the contested mark violates Article 7(1)(f) CTMR.

- 7) There are many Osho centres around the world practising the Osho method of meditation and publishing articles and newsletters about the Osho philosophy. The centres are independent and separate from each other. None of them are affiliated with the CTM proprietor. Osho himself never established a hierarchy to supervise or control these centres. No successor was appointed to carry on Osho's teachings. In trade mark terms, there has never been one single organisation recognised as the source of the goods (such as CDs and DVDs) and services (such as meditation centres) of Osho's teachings. The centres and individuals all use the designation 'OSHO' to indicate that the meditations, therapies, bodywork techniques, musical events, art and other cultural activities refer to or are inspired by the teachings of Osho. By analogy, if consumers saw various Buddhist centres offering meditation courses, nobody would interpret 'Buddha' as a trade mark or meditations and spiritual services.
- 8) The applicant has provided several (non-mainstream) dictionary citations, as well as other publications, in which Osho is mentioned. Accordingly, the name Osho is generally used to describe the content of goods and services dealing with Osho's teachings and meditations. The name of a person can be registered as a trade mark only for goods and services for which the name does not have a descriptive meaning. In this respect, the sign 'OSHO' is not suitable for registration since it contravenes Articles 7(1)(b) and (c) CTMR.
- 9) The term 'OSHO' describes certain types of meditation which were created and made famous by Osho. The names ought therefore to be in the public domain. The applicant states the following:

'The essence of Osho's vision, philosophy and teaching is "encoded" in the word "Osho". It stands for and equals a far-ranging vision and teaching from which meditation services and spiritual therapies are derived. To describe that a meditation service, yoga instruction or spiritual therapy, and the educational service performed thereby, reflects or is inspired by this vision and philosophy, a meditation service is called an "Osho meditation", a therapy an "Osho therapy". If Osho's name was dropped from the name of the meditation or therapy, the public could no longer recognise the particular character of the meditation.'
- 10) The intentions of Osho himself are irrelevant for the purposes of these proceedings. It is not a person's desire or involvement in a filing process that makes a trade mark, but the quality of the sign in question and its public perception.
- 11) The applicant argues that the CTM proprietor cannot 'own' meditations or education relating to meditation. The lack of ownership means that the CTM proprietor is actually claiming that by registering the name of the creator of the meditation techniques the CTM proprietor 'magically' becomes the owner of Osho's meditation techniques. The sources of the meditation and yoga services or the education connected with them are the individuals providing the services. The Osho meditation techniques and philosophy do not have a common single source of commercial origin. The applicant has filled numerous witness statements from meditation and yoga practitioners in the E.U. which essentially say that nobody has overall control of the OSO name

and that the practitioners are working independently and without the consent or licence of the CTM proprietor.

- 12) The applicant challenges the evidence presented by the CTM proprietor regarding, *inter alia*, the trade mark licences and copyright claims to the name 'OSHO' made by the CTM proprietor. The applicant disputes the 'Letters of Understanding License' provided by the CTM proprietor as being proof of licensing agreements. The users of the 'OSHO' name are not all licensees of the CTM proprietor and do not offer their services according to the rules established by the CTM proprietor. Indeed, many of the meditation centres are competitors of the CTM proprietor rather than affiliated organisations.

The arguments submitted by the CTM proprietor

- 13) The CTM proprietor is the OSHO International Foundation, which was founded under the name Rajneesh Foundation Europe in 1984, and is the administrative body set up during the lifetime of Osho to initially cover the European activities of Rajneesh Foundation International, which is a United States public charity organisation which handled the commercial activities of Osho, and owned the Osho trade marks and the copyright of all Osho's work. Indeed, the CTM proprietor provided the complete set of works of Osho to the library of India's National Parliament in New Delhi.
- 14) The CTM proprietor states that the contested mark has been used by the CTM proprietor since 1989. The fact that Osho was the name of an Indian author and mystic does not render the sign invalid for 'meditation services and related goods and services'. The CTM proprietor argues that OSHO is not the name of a religion or a religious leader. Osho publicly denounced religion. However, even if the name OSHO were the name of a religion this does not prevent its registration as a trade mark. The use of the contested mark is not offensive to the public in any way. The CTM proprietor is unaware of any third parties having taken offence at the registration and use of the contested mark, and denies that Article 7(1)(f) CTMR has any application in this case.
- 15) The applicant has attempted to conceal its longstanding association with the CTM proprietor. The contested mark is rightfully registered in the name of the CTM proprietor, who has used, licensed, monitored and policed the Osho brand globally in order to protect the goodwill and reputation attaching to it.
- 16) The names 'BIKRAM', 'FELDENKRAIS' and 'IYENGAR' are registered and used as trade marks to identify the source of yoga, meditation and spiritual education. 'OSHO' is no different. The contested mark functions perfectly well as a trade mark for the CTM proprietor's services. The sign guarantees the source and quality of the meditation and education services it protects. It distinguishes the CTM proprietor's services from those of other undertakings. A visitor to a meditation centre looking for an OSHO meditation will expect the meditation to be of a certain quality and standard. As long as the meditation is labelled 'OSHO' customers can be certain that the service possesses the qualities and characteristics they are looking for. In the same way that a person will assume that meditation services sold under the name 'PARAMAHANSA YOGANANDA' or yoga services under the name 'BIKRAM' will guarantee origin and authenticity. Meditations which have been inspired

by Osho but are not genuine OSHO meditations cannot be offered under the 'OSHO' brand.

- 17) The claim by the applicant that the term 'OSHO' describes a world view is not correct. There is no particular world-view or philosophy behind the meditations which were devised by Osho. 'OSHO' no more describes a meditation service than 'BIKRAM' describes yoga.
- 18) The CTM proprietor was involved in making applications to register the RAJNEESH trade mark. Witness statements from Mr. Klaus Steeg and Mr. Michael Byrne (Directors and Members of the Board of the CTM proprietor) have been filed as evidence by the CTM proprietor which attest, among other things, to the fact that shortly before his death, Rajneesh changed his death to Osho and was actively involved in making sure that the centres offering Rajneesh branded activities were re-branded as OSHO. The CTM proprietor argues that the following three things therefore become inconceivable:
 - (i) Osho did not approve of the name 'OSHO' being used as a trade mark.
 - (ii) That the contested mark is not a valid mark belonging to the CTM proprietor.
 - (iii) The registration of the contested mark will cause offence or be against public policy or accepted principles of morality.
- 19) The applicant has never challenged the validity of the trade mark RAJNEESH in any territories, but in fact for many years publicly acknowledged the RAJNEESH trade mark in its own activities. Klaus Steeg's witness statement shows use by the applicant of 'RAJNEESH DYNAMIC MEDITATION' and 'RAJNEESH KUNDALI MEDITATION'.
- 20) The applicant has referred to 300 OSHO meditation centres in 45 countries, with particular reference to the E.U. In an attempt to prove this the applicant has filed a list taken from the CTM proprietor's website which consists entirely of licensees of the CTM proprietor who are using 'OSHO' in relation to meditation and education services. This is confirmed by the witness statement of Klaus Steeg, as well as by letters, e-mails and licence agreements filed by the CTM proprietor in these proceedings.
- 21) The CTM proprietor has recorded and transcribed Osho's discourses, with Osho's consent, as part of Osho's request that all his intellectual property rights be protected.
- 22) The word 'Osho' does not appear in the British National Corpus or the Oxford English Corpus. A search made on the Web Corpus reveals hits which mainly refer to the CTM proprietor's www.osho.com web site, its Youtube Channel and Facebook page.
- 23) Names of famous people appear in dictionaries but also function as trade marks and are the subject of registered trade mark rights. The founder of Scientology, for example, 'L. Ron Hubbard', is the subject of a CTM registration for 'philosophical services' (CTM No. 178 475). 'Hare Krishna' is registered as a CTM for, *inter alia*, 'religious services' (CTM No. 7 119 233).

- 24) No evidence has been provided by the applicant to indicate that the term 'OSHO' cannot function as a commercial badge of origin for the contested services.

GROUNDS FOR THE DECISION

On the admissibility

- 25) The request complies with the formalities prescribed in the CTMR and CTMIR, in particular in Article 56(1) CTMR and Rule 37 CTMIR, and is therefore admissible.

On the substance

- 26) The Cancellation Division considers that the request for a declaration of invalidity against the contested CTM is without foundation and will be rejected for the reasons below.

The law in relation to Articles 7 and 52 CTMR

- 27) Pursuant to Article 52(1)(a) and (3) CTMR a Community trade mark shall be declared invalid on application to the Office, where the Community trade mark has been registered contrary to the provisions of Article 7 CTMR. Where the ground for invalidity exists in respect of only some of the goods or services for which the Community trade mark is registered, it shall be declared invalid as regards those goods or services only.
- 28) Furthermore, as follows from Article 7(2) CTMR, Article 7(1) CTMR shall apply notwithstanding that the grounds of non-registrability apply in only part of the Community.
- 29) Article 76(1) CTMR, entitled 'Examination of the facts by the Office of its own motion', states as follows:

'In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.'

- 30) The restriction of the factual basis of the examination by the Cancellation Division does not preclude it from taking into consideration, in addition to the facts expressly put forward by the parties to the invalidity proceedings, facts which are well known, that is, which are likely to be known by anyone or which may be learnt from generally accessible sources.

Article 7(1)(c) CTMR

- 31) Under Article 7(1)(c) CTMR, trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service are not to be registered.

- 32) According to settled case-law, the signs and indications referred to in Article 7(1)(c) CTMR are those which may serve in normal usage, from a consumer's point of view, to designate, either directly or by reference to one of their essential characteristics, goods such as those in respect of which the contested CTM is registered (see Judgment of 22/06/2005, T-19/04, PAPERLAB, paragraph 24).
- 33) According to Article 7(2) CTMR a trade mark shall not be registered, even if the grounds of non-registrability pertain to only part of the Community. An obstacle in the Anglophone population of the Community, for example, is consequently sufficient to declare the CTM invalid.
- 34) In accordance with the same case-law, for a sign to be caught by the prohibition set out in Article 7(1)(c) CTMR, there must be a sufficiently direct and specific relationship between the sign and the goods in question to enable the public concerned immediately to perceive, without further thought, a description of the goods in question or one of their characteristics (PAPERLAB, loc. cit., paragraph 25). Moreover, in order to be caught by Article 7(1)(c) CTMR, it is sufficient that at least one of the possible meanings of a word sign designates a characteristic of the goods concerned (Judgment of 10/02/2010, T-344/07, Homezone, paragraph 21).
- 35) The existence of such a relationship must be assessed, firstly, in relation to the goods and services covered by the contested CTM and, secondly, in relation to the perception of the relevant public (Judgment of 14/06/2007, T-207/06, EUROPIG, paragraph 30).

The application of the law to the facts of this case

- 36) The trade mark issue in this case in relation to Article 7(1)(c) CTMR may be stated simply: it is whether the registration of the contested mark for *educational services; yoga instruction; religious services; and meditation services*, ought to be invalidated on the basis that 'OSHO' is part of the common treasury of terms which ought to be kept freely available to all traders to use without restriction.
- 37) The rationale behind Article 7(1)(c) CTMR is to prevent, as far as possible, descriptive signs which have no real distinctive character from appearing on the CTM register. The intention is to reserve places on the CTM register for distinctive signs, and not to provide a platform for businesses to block the registration or use of competitor's marks by registering banal, descriptive or generic words.
- 38) The parties in this case have exchanged several rounds of submissions, with each side filing long and detailed arguments, with numerous items of evidence attached, running to hundreds of pages. The summary of the arguments and evidence contained in paragraphs 5 to 24 above is a distillation of those submissions.
- 39) The applicant and the CTM proprietor have few points of common agreement beyond the notoriety of the Indian mystic and writer Bhagwan Shree Rajneesh, who later became known as Osho.

- 40) Even the esoteric teachings of Osho have been disputed in this case, with the applicant arguing that Osho was a religious figure, a spiritual man with a specific vision and philosophy, and the CTM proprietor stating that, on the contrary, Osho publicly renounced religion as forming any part of his philosophy.
- 41) The CTM proprietor has claimed that Osho expressed his desire to have his work protected under copyright and trade mark law and that the CTM proprietor has given effect to that wish. The applicant disputes this claim, but argues that even if the claim were true it would still not give the CTM proprietor the right to own the name of a well-known religious figure.
- 42) The applicant has alleged that the CTM proprietor has effectively hijacked the trade mark rights to the name 'OSHO' and merely wishes to commercially exploit a well-known name at the expense of numerous meditation and teaching centres around the E.U. that wish to describe their services using the descriptive term 'OSHO'.
- 43) The CTM proprietor claims, *inter alia*, that the applicant is a previous licensee of the CTM proprietor who is motivated by malice to attack the CTM proprietor's registration of the contested mark. The previous business relationship of the parties has been the subject of much argument and counterargument in this case.
- 44) The CTM proprietor appears to have been closely connected with Osho, at least towards the end of Osho's life. Witness statements from Mr. Steeg and Mr. Byrne attest to this fact, as well as to the fact that Osho viewed his work as protectable as items of intellectual property, including the name 'OSHO' itself, which he appears to have been keen to register as a trade mark in relation to meditation and educational services. Osho died in 1990.
- 45) The CTM proprietor started to register 'OSHO' trade marks as early as 1991 (Switzerland). Thereafter, other national registrations (inside and outside the E.U.) were obtained by the CTM proprietor and maintained. The contested CTM has been registered since 2000. Documentary evidence has been forthcoming to prove the CTM proprietor's longstanding involvement with the 'OSHO' brand and ownership of various trade mark registrations. Evidence has also been provided by the CTM proprietor to show that the 'OSHO' brand has been the subject of various licence agreements to different organisations (mostly meditation centres) and individuals around the E.U.
- 46) The applicant has attempted to cast doubt on the veracity and accuracy of the witness statements of Mr. Steeg and Mr. Byrne, especially in relation to the claim that the CTM proprietor is the central OSHO organisation empowered to control and monitor the use of the name 'OSHO' as a brand, through a network of licensees.
- 47) The applicant essentially poses the question: What gives the CTM proprietor the right to monopolise the 'OSHO' name?
- 48) There is conflicting evidence. The CTM proprietor has filed documents which appear to show the existence of numerous licensing agreements in the E.U. with the CTM proprietor as licensor of the 'OSHO' trade mark to various meditation centres as licensees.

- 49) The applicant has filed witness statements from several independent providers of 'OSHO' meditation services in different E.U. countries who state that they teach 'OSHO' meditation to customers without having any consent or licence agreement with the CTM proprietor.
- 50) The CTM proprietor acknowledges that there may well be practitioners using the 'OSHO' brand without the proper lawful consent or agreement they should obtain from the CTM proprietor.
- 51) It is not realistic for the Cancellation Division to investigate every claim and counterclaim made by the parties to these proceedings, or to explore in minute detail the business activities of the CTM proprietor in relation to the 'OSHO' brand, or to chronicle the history of business relations between the parties to this case, and to reach a definitive finding as to the validity of the registration of the contested mark based on the conclusions arrived at as a result of those investigations.
- 52) However, what does appear to emerge reasonably clearly from the evidence is that the CTM proprietor has to all intents and purposes controlled the 'OSHO' trade mark for many years without interruption, and from its very inception as a brand. The CTM proprietor has obtained several national registrations for 'OSHO' and does appear to operate a network (albeit not exhaustive) of licence agreements in the E.U. for the 'OSHO' brand in relation to the contested services.
- 53) But far more significant for the purpose of these proceedings is the fact that the CTM proprietor has held the registration of the contested mark for the past 14 years. In registering the contested mark the CTM proprietor got there before anyone else, so to speak.
- 54) It has taken over 10 years for anyone to raise an objection to the registration of the contested mark on absolute grounds.
- 55) There is therefore a *prima facie* presumption in the CTM proprietor's favour that the registration is valid unless and until the applicant can show a good reason why the registration should be declared invalid.
- 56) In relation to Articles 7(1)(b) and (c) CTMR, the applicant has argued that the name 'OSHO' is indicative of a specific world-view, spiritual teaching, vision, philosophy and way of life. According to the applicant, the term 'OSHO' is therefore descriptive (and generic) in relation to the contested services.
- 57) There are obvious difficulties involved in attempting to differentiate between belief systems, religions and philosophies, when assessing distinctiveness and descriptiveness, and granting the right to obtain a trade mark registration. Attempting to set black and white, hard and fast criteria to decide which names and terms in this field are suitable to be registered as trade marks is prone to contradiction and bias. Nobody has the knowledge that would be required to make that kind of judgement based on theological, philosophical, cultural, or political considerations. The teachings of L. Ron Hubbard, for example, are every bit as religiously valid for a Scientologist as those of Jesus Christ are for a Christian. Yet, while the name 'L. Ron Hubbard' has been registered as a CTM for 'philosophical services', the name 'Jesus Christ' would be unacceptable.

- 58) Ultimately, from a trade mark point of view, the issue must be one of source. Article 7(1)(c) CTMR exists to prevent signs coming onto the CTM register which are incapable of identifying a single source of goods and services. The names 'Jesus Christ', and 'Prophet Muhammad', for example, represent the origins of two of the great monotheistic religions, but clearly not the origin of goods and services of a particular undertaking.
- 59) L. Ron Hubbard is also the originator of a particular world-view, which is recognised in many jurisdictions as a religion, but goods and services sold under the trade mark 'L. Ron Hubbard' are adjudged to be indicative of a single specific organisation, namely, the Church of Scientology, which rigorously manages, monitors and controls its brands and commercial activities 'under one roof'.
- 60) The applicant has likened the registration of the name 'OSHO' to registering 'Buddha' or 'Dalai Lama' as a trade mark. This, in a sense, is the nub of the argument. Buddhism is one of the major ancient religions or philosophies of the world, and the Dalai Lama is the best known spiritual leader of a branch of Tibetan Buddhism. Clearly, the term 'Buddha', being the name of the founder of a major world religion or philosophy, which has numerous historical branches and offshoots, cannot be monopolised by one undertaking for commercial exploitation, or even charitable activities, in relation to religious services, meditation and the like. It is a name that belongs firmly in the public domain and must remain available to all organisations and individuals to use freely as a descriptive term. The same considerations apply in relation to the spiritual leader of the Tibetan Buddhist movement.
- 61) By contrast, Osho (Bhagwan Shree Rajneesh) could by no stretch of the imagination be described as the spiritual head of a major world religion, and certainly not an ancient religion with numerous different traditions and variations. It is highly doubtful whether the name 'OSHO' calls to mind a specific set of precepts, morals, rituals, teachings, or practices for the vast majority of the public in the E.U., assuming the name is recognised at all. Indeed, for a large section of the public the name 'Bhagwan Shree Rajneesh' is probably more familiar than the name 'OSHO', and will be associated with an Indian guru living in California in the 1970s and 1980s, establishing a cult of followers and owning a vast collection of Rolls-Royce cars.
- 62) In the view of the Cancellation Division, more appropriate and accurate analogies to the name 'OSHO' are those posited by the CTM proprietor in its submissions, namely, 'BIKRAM' or 'FELDENKRAIS'. 'BIKRAM' refers to a particular method of Yoga developed by Bikram Choudhury, and 'FELDENKRAIS' is the name of a method of bodily movement (for pain relief and greater mobility) developed by Moshé Feldenkrais. Similarly, the name 'OSHO' indicates a method of meditation and a style of yoga, with concomitant metaphysical teachings and beliefs.
- 63) The applicant has not convinced the Cancellation Division that the term 'OSHO' is a descriptive term which is virtually synonymous with meditation and yoga, and that it is incapable of indicating a type of meditation or style of yoga or spiritual teaching emanating from a specific source. In the view of the Cancellation Division, the CTM proprietor does not appear to have usurped the name 'OSHO' in the first place, or to have carried out a commercial smash and grab of a precious piece of public linguistic property, or generic

philosophical term, as alleged by the applicant. No cogent evidence has been supplied by the applicant to indicate that the term 'OSHO' is generic or descriptive of a spiritual teaching or method of meditation that is widely practiced outside of the aegis of the CTM proprietor.

- 64) Consequently, the Cancellation Division therefore finds that the contested mark was legitimately accepted for registration, with no objection raised in relation to Article 7(1)(c) CTMR.

Article 7(1)(b) CTMR

- 65) Under Article 7(1)(b) CTMR trade marks which are devoid of any distinctive character are not to be registered.
- 66) For a trade mark to possess a distinctive character within the meaning of Article 7(1)(b) CTMR, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings.
- 67) Given the findings above, the contested mark is clearly not adjudged to be devoid of all distinctive character, since it consists of an expression which has at least a modicum of distinctiveness. The applicant has not persuaded the Cancellation Division that the Office erred in allowing the contested mark onto the register.

Article 7(1)(f) CTMR

- 68) Article 7(1)(f) CTMR prohibits the registration of 'trade marks which are contrary to public policy or to accepted principles of morality'. By virtue of Article 7(2) CTMR, the grounds of non-registrability set out in Article 7(1) do not have to exist throughout the EU; it is sufficient if they 'obtain in only part of the Community'.

The rationale behind Article 7(1)(f) CTMR

- 69) The provisions of Article 7(1)(f) CTMR mirror those of Article 6 *quinquies* B(3) of the Paris Convention of 20 March 1883 (as revised at Stockholm on 14 July 1967), which provides for the refusal of trade mark applications and the invalidation of registrations where trade marks are 'contrary to morality or public order'.
- 70) The question whether a trade mark can be registered under Article 7(1)(f) is separate from the question whether it can be used. No provision of the CTMR (or of Community law in general) says that a trade mark which has been refused registration under Article 7(1)(f) cannot be used; that is essentially a matter for national law. Conversely, when the Office decides to accept a trade mark, the mere fact that it has been registered as a CTM does not mean that its use cannot be prohibited in the Member States. Article 106(2) CTMR expressly safeguards the right to prohibit the use of a registered CTM under the civil, administrative or criminal law of a Member State.
- 71) It follows that the purpose of Article 7(1)(f) is not to identify and filter out signs whose use in commerce must at all costs be prevented; rather the rationale of the provision is that the privileges of trade mark registration should not be

granted in favour of signs that are contrary to public policy or the accepted principles of morality. In other words, the organs of government and public administration should not positively assist people who wish to further their business aims by means of trade marks that offend against certain basic values of civilised society or accepted standards of public policy.

- 72) If the provision is interpreted too widely, there is a risk that commercial freedom of expression in relation to trade marks would be unduly curtailed. While it is true to say that a refusal to register does not amount to a gross intrusion on the right of freedom of expression, since traders can still use trade marks without registering them, it does represent a restriction on freedom of expression in the sense that businesses may be unwilling to invest in large-scale promotional campaigns for trade marks which do not enjoy protection through registration because the Cancellation Division regards them as, for example, contrary to public policy.
- 73) If the Cancellation Division construed Article 7(1)(f) too narrowly, by for example refusing to register only those signs which violate the criminal law, the Office would effectively abrogate its responsibility to ensure that the privileges of trade mark registration are not extended to trade marks which are deeply offensive, or which flout widely held tenets of public policy. It would also amount to ignoring the spirit of the provision, which refers to 'accepted principles of morality'. Article 7(1)(f) clearly imposes a duty on the Office to exercise a degree of moral judgment in assessing the suitability of signs to be granted trade mark protection.
- 74) Keeping in mind the above, the Cancellation Division can see no serious basis upon which to justify removing the sign 'OSHO' from the CTM register, for any of the contested services, on the basis of Article 7(1)(f) CTMR. The contested mark does not breach any principle or practice of public policy that the Cancellation Division is aware of. For the reasons expounded above (especially paragraphs 60-61), the Cancellation Division can see no reason why a significant part of the public will be offended by the registration of the contested mark. Moreover, there is no evidence that a section of the public in the E.U. has been caused offence over the past 14 years by the registration of the contested CTM.

Conclusion

- 75) The applicant has not persuaded the Cancellation Division that the Office erred in allowing the contested mark onto the register for the services concerned.
- 76) Consequently, having regard to all the factors of the case, the Cancellation Division concludes that the request for invalidity must be rejected in its entirety.

COSTS

- 77) Pursuant to Article 85(1) CTMR and Rule 94 CTMIR, the party losing cancellation proceedings shall bear the fees and costs of the other party. The applicant, as the party losing the cancellation proceedings shall therefore bear the fees and costs of the CTM proprietor.

- 78) The amount of costs to be paid by the applicant to the CTM proprietor pursuant to Article 85(6) CTMR in conjunction with Rule 94(3) CTMIR shall be EUR 450, corresponding to representation costs.



THE CANCELLATION DIVISION

<hr/> José Antonio Garrido Otaola	<hr/> Rhys Morgan	<hr/> Lucinda Carney
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Notice on the availability of an appeal

Under Article 59 CTMR any party adversely affected by this decision has a right to appeal against this decision. Under Article 60 CTMR notice of appeal must be filed in writing at the Office within two months from the date of notification of this decision and within four months from the same date a written statement of the grounds of appeal must be filed. The notice of appeal will be deemed to be filed only when the appeal fee of EUR 800 has been paid.

Notice on the review of the fixation of costs

The amount determined in the fixation of the costs may only be reviewed by a decision of the Cancellation Division on request. Under Rule 94(4) CTMIR such a request must be filed within one month from the date of notification of this fixation of costs and shall be deemed to be filed only when the review fee of EUR 100 (Article 2(30) CTMFR) has been paid.