

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

Hearing: October 30, 2008 Mailed: January 13, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Osho Friends International
v.
Osho International Foundation

Opposition Nos. 91121040; 91150372; 91150379; 91152313;
91153103; 91155927; 91157465; 91157610; 91157698; and
Cancellation No. 92031932¹

Mark I. Feldman of Piper Marbury Rudnick & Wolfe for Osho Friends International.

Mary M. Luria and Sara Edelman of Davis & Gilbert LLP for Osho International Foundation.

Before Grendel, Cataldo and Wellington,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Osho International Foundation ("defendant") seeks to register on the Principal Register the following marks, all in typed form:

OSHO ACTIVE MEDITATIONS

for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and

¹ The referenced proceedings were consolidated in a series of Board orders, the most recent of which issued on April 8, 2004.

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training in the field of the teachings of the mystic Osho" in International Class 41 and "spiritual counseling and meditations" in International Class 42;²

OSHO ZEN TAROT

for "instructional books and playing cards for the game of Tarot" in International Class 16 and "entertainment services, namely, providing an on-line computer game" in International Class 41;³

OSHO TRANSFORMATION TAROT

for "instructional books and playing cards for the game of Tarot" in International Class 16 and "entertainment services, namely, providing an on-line computer game" in International Class 41;⁴

OSHO KUNDALINI MEDITATION

² Application Serial No. 75834601 was filed October 29, 1999 under Trademark Act Section 1(a), alleging 1990 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "ACTIVE MEDITATIONS" apart from the mark as shown.

³ Application Serial No. 76159554 was filed November 3, 2000 under Trademark Act Section 1(a), alleging July 1, 1995 as the date of first use and date of first use in commerce for the goods in International Class 16 and December 1, 1995 as the date of first use and date of first use in commerce for the services in International Class 41. The application includes a disclaimer of the exclusive right to use "TAROT" apart from the mark as shown.

⁴ Application Serial No. 76159553 was filed November 3, 2000 under Trademark Act Section 1(a), alleging November 1, 1999 as the date of first use and date of first use in commerce for the goods in International Class 16 and January 1, 2000 as the date of first use and date of first use in commerce for the services in International Class 41. The application includes a disclaimer of the exclusive right to use "TAROT" apart from the mark as shown.

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for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho" in International Class 41 and "spiritual counseling and meditations" in International Class 42;⁵

OSHO

for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the mystic Osho" in International Class 41;⁶

OSHO NADABRAHMA MEDITATION

for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the Mystic Osho" in International Class 41;⁷

OSHO MEDITATION RESORT

⁵ Application Serial No. 76060676 was filed May 31, 2000 under Trademark Act Section 1(a), alleging 1990 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "KUNDALINI MEDITATION" apart from the mark as shown.

⁶ Application Serial No. 75683097 was filed April 15, 1999 under Trademark Act Section 1(a), alleging 1990 as the date of first use and date of first use in commerce. The application includes a statement that "OSHO" does not represent the name of a living individual.

⁷ Application Serial No. 76210213 was filed February 14, 2001 under Trademark Act Section 1(a), alleging 1978 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "NADABRAHMA MEDITATION" apart from the mark as shown.

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for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the Mystic Osho" in International Class 41 and "spiritual counseling and meditations; and providing meditation information via a global computer information network" in International Class 42;⁸

OSHO MULTIVERSITY

for "educational services, namely, conducting individual sessions, workshops, retreats, seminars, groups, courses and training in the field of the teachings of the Mystic Osho" in International Class 41 and "spiritual counseling and meditations; and providing meditation information via a global computer information network" in International Class 42;⁹ and

OSHO TIMES

⁸ Application Serial No. 76158894 was filed November 3, 2000 under Trademark Act Section 1(a), alleging 2000 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "MEDITATION RESORT" apart from the mark as shown and a statement that OSHO does not identify a living individual.

⁹ Application Serial No. 76158895, filed November 3, 2000 under Trademark Act Section 1(a), alleging 1989 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "MULTIVERSITY" apart from the mark as shown and a statement that OSHO does not identify a living individual.

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for "on-line periodical relating to the spiritual and mystical teachings of the Mystic Osho" in International Class 42.¹⁰

Defendant has also registered on the Principal Register the following marks in typed form:

OSHO

for "prerecorded audio and video tapes in the field of education, religion, philosophy and science" in International Class 9;¹¹ "education books and printed teaching materials in the field of religion and philosophy" in International Class 16;¹² and "providing religion, philosophy and science information via a global computer network" in International Class 42;¹³ and

OSHO REBALANCING

¹⁰ Application Serial No. 76158893 was filed November 2, 2000 under Trademark Act Section 1(a), alleging 1989 as the date of first use and date of first use in commerce. The application includes a disclaimer of the exclusive right to use "TIMES" apart from the mark as shown and a statement that OSHO does not identify a living individual.

¹¹ Registration No. 2180173 issued August 11, 1998. Section 8 affidavit accepted.

¹² Registration No. 1815840 issued January 11, 1994. Section 8 affidavit accepted, Section 15 affidavit acknowledged. We note that the Section 15 affidavit was filed prior to the commencement of Cancellation No. 92031932.

¹³ Registration No. 2174607 issued July 21, 1998. Section 8 affidavit accepted, Section 15 affidavit acknowledged. We note, however, the Section 15 affidavit was improperly filed during the pendency of Cancellation No. 92031932.

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for "books and printed materials for education purpose in the field of religion and philosophy" in International Class 16.¹⁴

Osho Friends International ("plaintiff") has opposed registration of defendant's applied-for marks and seeks cancellation of defendant's registrations. As grounds therefor, plaintiff alleges as follows:

the term OSHO as used in the involved alleged marks is generic for the goods and/or services at issue;

the term OSHO as used in the involved alleged marks is merely descriptive of the goods and/or services at issue;

the involved applications and applications underlying the involved registrations are void *ab initio* because defendant did not own the involved alleged marks on the application filing dates;

defendant committed fraud upon the United States Patent and Trademark Office (USPTO) by executing the declarations in the involved applications and applications underlying the involved registrations in which it stated that no other person, firm, corporation or association has the right to use the involved alleged marks when it knew of such use; and

¹⁴ Registration No. 2322901 issued February 29, 2000. Section 8 affidavit accepted; Section 15 affidavit acknowledged. We note, however, that the Section 15 affidavit was improperly filed during the pendency of Cancellation No. 92031932.

defendant has abandoned all proprietary interest in the involved alleged marks.

In its answers, defendant has denied the salient allegations of the notices of opposition and petition to cancel.¹⁵

The Record

The record consists of the pleadings and the files of the involved applications and registrations. In addition, plaintiff submitted the trial testimony, with related exhibits, of Prabhat Tiwari, leader of an Osho center in Maryland; Rachael Freeman, board member of an Osho center in Colorado; Sirlea Naster, leader of an Osho center in North Carolina; Gloria Terhaar, leader of an Osho center in California; Leonard Rosansky, leader of an Osho center in California; Priya Hemenway, officer of an Osho center in California; Maniko Dru Dadigan, an individual in California associated with a number of Osho centers; and Atul Anand, a trustee of plaintiff. Plaintiff further submitted notices of reliance upon defendant's responses to plaintiff's First and Second Requests for Admissions; defendant's responses to plaintiff's First Set of Interrogatories and First Request for Production of Documents; selected pages of the discovery deposition transcripts of two of defendant's directors,

¹⁵ In addition, defendant asserted certain affirmative defenses, but did not pursue them by motion or at trial. Accordingly, they are deemed waived.

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Klaus Steeg and D'Arcy O'Bryne; copies of articles retrieved from the Lexis/Nexis computer database; certified copies of official records from the United States Copyright Office; excerpts from books containing quotes from Osho; public records on file with the Arizona Secretary of State regarding the American Multi-Media Corporation; and additional selected pages of discovery deposition Klaus Steeg.

Defendant, for its part, submitted the trial testimony, with related exhibits, of two of its directors, Klaus Steeg and John Andrews; one of defendant's volunteers, Ursula Hoess; and David Alexander, an employee of David Alexander Publishing Ltd. Applicant further submitted notices of reliance upon plaintiff's responses to defendant's First Set of Interrogatories and Second Request for Admissions; the discovery depositions of Atul Anand and Chaitanya Keerti, trustees of plaintiff; printed publications, dictionary definitions, and USPTO Trademark Electronic Search System (TESS) printouts; certified copies of its involved registrations; and copies of several Osho Times magazine covers.

The parties have designated portions of the record as "confidential." While the information contained therein plays a role in determining the issues before us, we are mindful that such information was filed under seal. Thus,

we will endeavor to refer to those portions of the record that are marked confidential only in a very general fashion.

Both parties filed main briefs on the case, and plaintiff filed a reply brief. In addition, counsel for the parties presented arguments at an oral hearing held before the Board on October 30, 2008.

Evidentiary Objections

Plaintiff has filed numerous objections against certain testimony and exhibits introduced by defendant. Plaintiff's objections number approximately 125; defendant has responded to plaintiff's objections.

None of the testimony and/or exhibits sought to be excluded is outcome determinative. Given this fact, coupled with the number of objections, we see no compelling reason to discuss the objections in a detailed fashion. Suffice it to say, we have considered all of the testimony and exhibits submitted by the parties. In doing so, we have kept in mind the various objections raised by the parties, and we have accorded whatever probative value the subject testimony and exhibits merit.

General Facts

Rajneesh Chandra Mohan was born in India in 1931.¹⁶ He obtained a masters degree in philosophy from the University of Sagar, located in India, and taught philosophy for nine

years at the University of Jabalpur, also located in India.¹⁷ While serving as a professor of philosophy, he traveled throughout India giving lectures, engaging attendees in public debate, and introducing his meditation techniques.¹⁸ Beginning in 1962, he began conducting guided meditations at the end of his talks.¹⁹ As a result, meditation camps and meditation centers began to emerge based upon his teachings.²⁰ In 1971, he changed his name to Bhagwan Shree Rajneesh.²¹ In 1974, he moved from Bombay to Pune, India, where he established a place of learning dedicated to meditation and self-discovery.²² The Pune commune was and remains a combination of 10 separate and independent entities offering programs relating to his teachings.²³ Between 1981 and 1985, he and a number of his followers lived in the high desert of eastern Oregon, on a 126-square mile former cattle ranch organized as a commune. Following his deportation from the United States in 1985, he went on a world tour to meet his followers, returning to

¹⁶ Amended petition to cancel, p.2; answer to amended petition to cancel, p. 1.

¹⁷ Id.

¹⁸ Id.

¹⁹ Answer to amended petition to cancel, p. 2.

²⁰ Id.

²¹ Id.

²² Id.

²³ Steeg testimony at 603-4.

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Pune, India on January 4, 1987.²⁴ Later, in 1989, he adopted the name Osho.²⁵ Osho died on January 19, 1990.²⁶

Osho urged and authorized his followers to spread his teachings as broadly as possible, throughout the world.²⁷ To this end, his followers transcribed and recorded his discourses and shared them with others during Osho's lifetime.²⁸ In addition, Osho's followers opened meditation centers and camps in different parts of the world, offering several of his meditation techniques.²⁹ These followers have created and offer their variations of music, cultural and celebratory events, education and therapeutic courses, workshops and retreats based upon Osho's ideas.³⁰ Some of these followers and their centers have offered and continue to offer publications, recordings and newsletters relating to their activities and Osho's ideas.³¹ Such centers have also begun operating internet websites relating to the same

²⁴ Answer to amended petition to cancel, p. 2.

²⁵ Steeg Discovery Deposition, p. 101.

²⁶ Answer to amended petition to cancel, p. 3.

²⁷ Hemenway testimony at p. 13-14; Steeg discovery deposition at 99.

²⁸ Id. at 8; Terharr Testimony at 39; Freeman Testimony at 33; Discovery Deposition on written questions of Keerti at q. 84-87.

²⁹ Naster Testimony at 24, 27 and 30; Tiwari Testimony at 7-9; Dadigan Testimony at 14-15 and 114-116; Rosansky Testimony at 11; Freeman Testimony at 8-9; and Terharr Testimony at 7-9.

³⁰ Id.

³¹ Rosansky Testimony at 23-24, 77; Dadigan Testimony at 14, 21; Freeman Testimony at 10-11; Terharr Testimony at 45; Naster Testimony at 41-2.

subjects.³² These centers operate independently and separately from one another, without coordination by any single source or hierarchy.³³ Osho gave each center a name as a gift and a certificate bearing such name.³⁴ However, Osho neither controlled nor created a hierarchy to control or supervise these centers.³⁵ Nonetheless, in 1989, upon adoption of his name, Osho requested that the centers use Osho in their names so people would recognize them as meditation centers based upon his teachings and ideas.³⁶ Most centers immediately complied with this request.

Plaintiff's Standing

Plaintiff must prove its standing as a threshold matter in order to be heard on its substantive claims. See, for example, *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). The purpose of the standing requirement is to prevent mere intermeddlers from initiating proceedings. Thus, the Federal Circuit has enunciated a liberal threshold for determining standing, namely, whether a plaintiff's belief in damage has a reasonable basis in fact and reflects a real interest in the

³² Rosansky Testimony at 16; Freeman Testimony at 13-14; Terharr Testimony at 17-18; Naster Testimony at 50; Hemenway Testimony at 100.

³³ *Id.*

³⁴ Hemenway Testimony at 13-14; Naster Testimony at 22; Terharr Testimony at 35.

³⁵ Tiwari Testimony at 11; Dadigan Testimony at 39-40; Hemenway Testimony at 43-4; Rosansky Testimony at 8; Freeman Testimony 12.

³⁶ Plaintiff's Fourth Notice of Reliance, doc. 5.

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case. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d, 1023 (Fed. Cir. 1999). See also *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 853 F.2d 888, 7 USPQ2d 1628 (Fed. Cir. 1988).

In this case, plaintiff has established that it is an association of individuals and centers, including members in the United States, who are involved in spreading the teachings of Osho and utilizing the term OSHO in so doing.³⁷ Plaintiff's charter charges plaintiff with preserving and protecting the rights of its members to so use the term OSHO.³⁸ We find that plaintiff's members seek, inter alia, to make descriptive or generic use of the term OSHO for many of the same products and services that are the subject of defendant's involved applications and registrations. As a potential competitor who would use the term OSHO generically, plaintiff has established its standing to oppose defendant's marks and petition to cancel its registrations. See, e.g., *Lipton Industries*, supra, (One basis for standing includes "descriptive use of term in registered mark"); *Ferro Corporation v. SCM Corporation*, 219 USPQ 346, 352 (TTAB 1983) (Opposer "has a real interest sufficient to give it standing. The rationale is that a competitor should be free from harassment based on the presumed exclusive right which registration of a generic

³⁷ Anand Testimony at p. 2, 5.

term would erroneously accord") (citation omitted).

We note in addition that defendant does not dispute plaintiff's standing to bring the above-referenced opposition and cancellation proceedings.

Claim of Genericness

A trademark or service mark that becomes generic is no longer entitled to protection. See *Park 'n Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 105 S.Ct. 658, 83 L.Ed.2d 582 (1985). A mark is subject to cancellation on the ground of genericness at any time, even if it is incontestable. *Id.* 194-5, 105 S.Ct. at 662.

Evidence of the public's understanding of a particular term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *In re Merrill Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567 (Fed. Cir. 1987); and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961 (Fed. Cir. 1985).

Evidence of Genericness

1. Use by Osho

We begin by observing that there is no evidence of record that the individual known as Osho ever used OSHO as a

³⁸ *Id.*

trademark. Indeed, the parties agree that Osho never owned or used OSHO as a mark.³⁹ In that regard, plaintiff has made of record a published statement in which Osho expresses his opinion that certain practices, like meditations, do not lend themselves to trademark protection:

Maharishi Mahesh Yogi has copyrighted transcendental meditation and just underneath in a small circle you will find written TM - that means trademark!

For ten thousand years the East has been meditating and nobody has put trademarks upon meditations. And above all, that transcendental meditation is neither transcendental nor meditation...just a trademark.

I told [my secretary] to reply to these people, "You don't understand what meditation is. It is nobody's belonging, possession. You cannot have any copyright. Perhaps if your country gives you trademarks and copyrights on things like meditation, then it will be good to have a copyright on stupidity. That will help the whole world to be relieved...Only you will be stupid and nobody else can be stupid; it will be illegal."⁴⁰

In addition, plaintiff has made of record a published statement in which Osho indicated that he neither authorized nor expected a single entity to serve as a source for his teachings and ideas:

But nobody is my follower.
Nobody is going to be my successor.
Each sannyasin is my representative.
When I am dead, you all - individually - will have to represent me to the world. There is not going to be any pope. There is not going to be any shankaracharya. Each sannyasin, in his own capacity, has to represent me.⁴¹

³⁹ Defendant's brief, p. 45-7; plaintiff's reply brief, p. 3.

⁴⁰ Plaintiff's Fourth Notice of Reliance, doc. 2.

⁴¹ Id., doc. 1.

Plaintiff has made of record further evidence of Osho's intention that his followers spread his teachings, first utilizing his name Rajneesh and later Osho when he adopted such name:

Q And did you ever hear Osho suggest someone start a mediation center?

A You know, I don't remember those specifically, because it wasn't part of my reality. I'm aware that it was going on somehow.

Somehow we all knew, you know, in the course of what was going on, that the people were coming and people who weren't staying were specifically told to go back and open centers or somehow make the work available, spread the word for other people to come. I mean, everybody, whether they were given specific center names or not, sort of had that desire. And I absolutely know that people were given names for centers and specific tasks to do that.

Q By Osho himself?

A By Osho. ...

Q Do you know personally of any instance where Osho withdrew permission to use his name from any center or other entity using his name?

A No.⁴²

Q During his lifetime did Osho authorize Sannyasins to go forth from India and to open centers in other parts of the world?

A Yes.

Q Did he during his lifetime encourage them to use his name on those centers which were devoted to his teachings and his form of meditation?

A Yes.

⁴² Hemenway Testimony, p. 13-14.

Q Did he ever retract that permission to use his name in that way?

MS. EDELMAN: Objection to form.

A I don't know.

Q Are you aware of any writing?

A I'm not aware.⁴³

Q You changed the name from Rajneesh to Osho?

A Yes.

Q That coincides in the same period of time where Osho adopted the name of Osho for himself?

A Yes.

Q You believe the same thing with the Sannyasins that had opened centers to change it from Rajneesh to Osho?

A Yes.

Q To your knowledge did he ever during his lifetime retract permission for them to use the name Osho in connection with centers devoted to his teaching or to his meditation techniques?

A No.⁴⁴

Thus, the record in this case supports a finding that Osho himself neither claimed nor used OSHO as a trademark. The record further supports a finding that Osho gave permission to his followers to individually open centers utilizing his name to spread his teachings throughout the world. In addition, the record supports a finding that upon

⁴³ Steeg Discovery Deposition, p. 99.

⁴⁴ Id. at 101.

his adoption of the name, Osho requested that such centers utilize OSHO at the beginning of their titles so they would be recognized as "Osho meditation centers."⁴⁵ Finally, the record supports a finding that Osho never withdrew his permission for such centers to refer to themselves using his name. Such usage, while not determinative of the issue of genericness, nonetheless illustrates that Osho did not recognize or use OSHO as a trademark, but rather indicates that he used and authorized others to use his name as a generic term for his teachings and meditations rather than as a trademark to identify a single source for goods or services related to such teachings and meditations. As a result, this evidence weighs in favor of genericness.

2. Dictionary Definitions and Reference Works

Plaintiff has not submitted any evidence of the term OSHO appearing in a dictionary. Defendant, for its part, has submitted entries from three dictionaries in which the term OSHO does not appear at all and one in which the term refers to Osho, the individual described above.⁴⁶ Defendant argues that such evidence "overwhelmingly directs a conclusion that OSHO is not a generic mark."⁴⁷ We disagree.

"Dictionary definitions, while not conclusive, reflect

⁴⁵ Plaintiff's Fourth Notice of Reliance, doc. 5.

⁴⁶ Steeg Testimony, Exhibit 60; Defendant's Second Notice of Reliance, docs. 19-20.

⁴⁷ Defendant's brief, p. 13.

the general public's perception of a mark's meaning and are thus helpful in determining whether a term is generic."

Pilates, Inc. v. Current Concepts, Inc. and Kenneth Endelman, 120 F.Supp.2d 286, 296, 57 USPQ2d 1174, 1183 (SDNY 2000), citing Murphy Door Bed Co. v. Interior Sleep Sys., Inc., 874 F.2d 95, 101 (2d Cir. 1989). In this case, we cannot determine from the evidence of record the number of individuals who are followers of Osho. Thus, the absence of references of any kind to OSHO in three of the four English language dictionaries submitted by defendant may simply reflect the relatively small number of English speaking individuals who follow Osho and his teachings. As a result, the dictionary evidence of record does not support a finding that the relevant consuming public perceives OSHO either as a generic term or a trademark. As such, this evidence is far from conclusive on the issue of genericness.

Plaintiff has submitted the following evidence in which OSHO appears in printed reference books:

Different religious groups have different affirmations, renunciations, rituals, core symbols, and dogmas that promote and maintain personal reorganization...

For example, the Osho movement, which was originally founded by Rajneesh, does not renounce wealth but affirms it (Thompson and Heelas 1986). Adherents of the movement differ from mainstream society in the means they advocate for acquiring wealth and the attitude they have toward using it, but on the whole they stand with mainstream society in contrast to more traditional religious groups...

Some new religions argue that truth is attained by nonpropositional revelation - that is, by something other than a set of rational propositions. They contend that truth has little to do with ideas but a lot to do with meditation or silence. As the Bhagwan Shree Rajneesh puts it, "Spirituality simply means that you have gone beyond the mind. Ideas as such are transcended."

Many Americans who join new religions, such as the various meditation groups, come from upper-middle-class homes in which intellectual and/or professional achievements are highly valued...
(New Religions as Global Cultures, Making the Human Sacred, Irving Hexhan and Karla Poewe (1997);⁴⁸

The Osho movement is the only movement, apart from the Brahma Kumaris, that has a female majority in leadership and administrative roles...

The women's movement has been highly critical of the master-disciple relationship for its encouragement of female submissiveness to a male master. The requirement to wear a mala was a particularly regressive symbol to feminists, who single out the Osho movement for criticism on this score. Yet a number of women sannyasins had been in the women's movement prior to joining...

The predominant media image of the Osho movement during Osho's lifetime was of a "sex cult" led by a "sex guru." However, his aim was to create a scientific yet sacramental sexuality based on a synthesis between Tantra and Reichian psychotherapy...

Although the "free love ethic" was normative in the Osho movement, sexual behaviour was as varied as elsewhere in Western society, and serial monogamy was the predominant pattern especially among long-term sannyasins...

(The New Age Movement, The Celebration of the Self and the Sacralization of Modernity, Paul Heelas (1996);⁴⁹

⁴⁸ Id., doc. 12.

⁴⁹ Id., doc. 13.

This use of OSHO in reference works is generic because it identifies OSHO as a religious and meditative movement and not as a trademark. Accordingly, this evidence weighs in favor of genericness.

3. Media Usage

Plaintiff has made of record examples of use of OSHO in various printed publications. The following examples are illustrative:

Puttick's research is based in Britain, where she has personally participated in Eastern-based, New Age, and shamanic religious practices, and was, for five years, a disciple of the Indian guru best known as "Osho."...The group discussed in most depth is the Osho movement, yet references to an incredibly wide variety of New Religious Movements are interspersed throughout...

Puttick describes the typical member of the Osho movement and other Eastern-based movements as class, well educated, professionally qualified, has been divorced at least once, has suffered a "personal crisis," has been through mysticism, drugs, politics, feminism and is "thirtyish"...

...The Osho movement stands out as promoting and preferring women for leadership roles.
(NWSA Journal, Summer 1998);⁵⁰

Now you see it, now you don't. You read a newspaper report that Asia Television Network (ATN) has gone off the air, then you switch on your television and the channel's right there...

Though 75 per cent of the programming is film-based, they also have religious programmes in the morning - everything from Osho to Hindu and Islamic themes...
(Business Line, September 15, 1997);⁵¹

⁵⁰ Plaintiff's Second Notice of Reliance., doc. 1.

Fearing the apocalypse, Osho - a Hindu meditation group formed by the late Bagwan Shree Rajneesh - moved onto a spectacular patch of land near Alto Paraso where it runs a type of eco-spiritual resort.

(Sun-Sentinel [Fort Lauderdale, FL] June 2, 1999);⁵²

The Taliban and others say they will wage a Holy War and that the God of Islam is behind them. So be it.

We will meet them on the fields of the holy battleground.

But behind us, we also have a God.

The God(s) of Christianity, Judaism, Baha'i, Mormon, Jehovah's Witnesses, Buddhism, Hinduism, Shinto, Confucianism, Jainism, Taoism, Sikhism, Moonies, Hare Krishna, Zoroastrianism, Roma, Asatru, Druidism, Wicca, Caodism, Damanhur, Druse, Gnosticism, Lukumi, Macumb, Mowahhidoon, Unitarians, Native Americans, New Age, Osho, Thelem, and so many others.

Plus we have behind us, the God of true Islam.

Are they prepared?

(Intelligencer Journal [Lancaster, PA.] September 24, 2001);⁵³

At first glance, prisons may seem an unlikely place to find religion. There's not much in the way of stained glass, but plenty of security fencing and razor wire...

But as inmates grapple with the despair and monotony of prison life, some find religion for the first time. Others return to the beliefs of their childhood or the religion they abandoned as teens and adults for more worldly and criminal ways...

The prison population also includes five Mennonites, one Coptic Christian, two Jainists, one Sikh, a Confucian, 23 Unitarians and seven

⁵¹ Id., doc. 2.

⁵² Id., doc. 3.

⁵³ Id., doc. 4.

Quakers.

There are Druids and Wiccans, practitioners of Shamanism, Osho, Santeria and Zoroastrianism... (The Dallas Morning News, July 14, 2002);⁵⁴

Going over the articles in this issue on Health Consciousness, I took notes from each and every one to include in this column. With my space limited, however, none can be shared, but you'll surely find your own favorite.

Welcome New Advertisers & Newz!

-Rev. Pipsa Hos, Sound and Healing, mediator of sound medicine and crystal bowl healing concerts. She resides in Odessa

-Lauana Lei's Enviro-Clay Intl., magnetic clay detox bath kits, Mars Hill, NC

-Swami Prem Prabuddh's Osho event (see special events)
(Tampa Bay New Times September 1998/October 1998);⁵⁵

When Pragito Dove first sat down to meditate all those years ago in London, she never dreamed she'd spend time in India, write a book called "Lunchtime Enlightenment: Modern Meditations to Free the Mind and Unleash the Spirit - at Work, at Home, at Play." ...

"I'm a bit of a fidget, and I can't really sit still for very long, so those long Zen things don't work for me," she says. "You can imagine how great it was for me to be doing all this gibberish (another Osho meditation technique) and all this laughing or crying or dancing. I realized I can sit there after I've been doing something energetic."

(The San Francisco Chronicle July 8, 2001);⁵⁶

This evidence demonstrates use of OSO in the media as

⁵⁴ Id., doc. 5.

⁵⁵ Id., doc. 7.

⁵⁶ Id., doc 9.

a generic term for a religious and meditative movement and not as a trademark. "Newspaper and magazine use of a term in a generic sense is strong evidence of genericness." Pilates, 120 F.Supp.2d at 300, citing Harley-Davidson, Inc. v. Grottanelli, 164 F.3d 806, 811 (2d Cir. 1999).

4. Use by Plaintiff and Others in the Trade

In his discovery deposition, defendant's director, Klaus Steeg, acknowledged that in 1994 there were over 300 OSHO information and meditation centers located in 45 countries.⁵⁷ Further, and despite defendant's efforts at enforcement, Mr. Steeg was unable to say how many of those centers were licensed by defendant's predecessor, or how many centers existed at the time of his discovery deposition.⁵⁸ In addition, plaintiff has made of record testimony and evidence of use of OSHO by its members and third parties:

Q You testified that you changed the corporate name of the Deepta Rajneesh Meditation Center to Osho Deepta in 2002, 2001?

A Yes.

Q And at that time did OIF Zurich object to the change?

A No.

Q Did Global Connections object to the change?

A No.

⁵⁷ Plaintiff's First Notice of Reliance, doc. 6.

⁵⁸ Id.

Q In your opinion, could the center carry on what you have described as the purpose of the center, in a real way, if it were not allowed to use the word Osho to refer to those activities?

A No.

Q Why not?

MS. EDELMAN: You mean in its trade name?

MS. DUCHANE: Q To refer to the activities, that's the question.

A Right. Osho - I mean, Osho is like the blood of it. If you can't, you know, if you can't describe it by its substance, how can you describe it? You know, it's not like we could call ourselves the Priya Meditation Center, that's meaningless. The fact is that it's an Osho meditation center. We couldn't describe what we're doing as, you know, Shivanandas meditation, they're Osho meditations.

Q So that would be, if I understand you correctly, partly because some of the meditation techniques that you use are Osho's meditation techniques?

A Right;⁵⁹

Q What kind of work do you do [at your work address]?

A Run the Osho center.

Q Are you an Osho sannysin?

A Yes.

Q How long have you been an Osho sannysin?

A January 6, 1981.

Q Were you involved with Osho Viha [center] during the period when Osho was still alive?

⁵⁹ Hemenway Testimony, p. 46-7.

A Yes.

And did the center have a legal relationship with Osho at the time?

A No.

Q To your knowledge, did Osho ever ask Osho Viha to sign a legal agreement with him?

A No.

Q. To your knowledge, did Osho ever establish any kind of legal hierarchy to supervise or control Osho Viha?

A No.

Q During the time you've been involved with the center, did Osho Viha ever agree to be part of a legal hierarchy where the center would be subject to outside control?

A No.

Q To your knowledge, did Osho ever transfer legal authority over the centers to anyone else?

A No.

Q Does Osho Viha use Osho in its activities?

A Yes.

Q Does - well, you've already testified that it uses Osho in its activities and its name. Does it use Osho in any other way?

A Well, Osho activities, Osho books, everything we do is Osho.

Q What are the activities of your center, what kind of activities does your center engage in?

A Well, we had Satsang meditation, we have Kundalini, not at the center, but we have Kundalini and promote it, we have musicians and people coming through that we advertise and promote and make them known, and of course we sell all kinds of Osho products.

Q And what is an Osho product?

A Well, Osho's books, Osho's meditation CDs, Osho's tapes.

Q Do you believe you could continue fulfilling the purpose of your center if you were not allowed to call the center Osho Viha?

A No. It has to be Osho. Viha you could eliminate but you can't eliminate Osho.

Q Why is that?

A Because everything is Osho. If there's no Osho, then there's nothing.⁶⁰

Osho Viha Information Center is proud to supply books, tapes, CDs, videos, Tarot cards and other reflections of Osho's work, to you through this web site. Please use the links on this page to find the Osho material you want and contact us. We are always happy to assist you;⁶¹

Osho Networking

Osho International Commune Information and Booking - Call Ma Avinasho at Viha...

Osho Times Subscriptions - Call Viha OMC...

Osho Commune International...

Osho Net Computer Network...

Major Osho Centers in the USA-

Osho America-Yorba Linda, CA

Osho Bindu-Encinitas, CA

Osho Payonidhi-New York City, NY

Osho Suravi-Seattle, WA

Osho Viha-Mill Valley, CA;⁶²

Q Are you familiar with any meditation techniques created by Osho?

A Yes.

⁶⁰ Rosansky Testimony, p. 7-28.

⁶¹ Id., Exhibit 2.

⁶² Id., Exhibit D.

Q What's your familiarity with those techniques?

A Well, I have done all of them for years.

Q For how many years?

A Since 1977.

Q Okay. And were you ever aware or were you ever informed that Osho had restricted the use of his meditation techniques by centers or individuals?

A No.

Q Were you ever aware that Osho issued a legal license to use his meditation techniques?

A No.

Q Have you ever been informed that Osho transferred any rights to control his meditation techniques to anyone else?

A No.⁶³

THE ESSENTIAL OSHO DIRECTORY
Osho Viha Information Center:
Osho Commune International:
Pune Information and Booking Center:
Osho Pages on the World Wide Web:⁶⁴

In the autumn of that year I found out about the Osho commune, Medina Rajneesh, and I immediately booked in for the Birthday Celebration weekend.

Over a weekend in August I was attuned to Osho Neo-Reiki Level One. The four attunements were very special and very powerful, and the reconnection with Osho meditations encouraged me to dive back into sannyas.⁶⁵

REIKI + OSHO = Awesome weekend
Courses - all levels, all locations. Amazing,

⁶³ Dadigan Testimony, p. 8.

⁶⁴ Rosansky Testimony, Exhibit 2.

⁶⁵ Id.

powerful healing in your hands & deep meditative awareness, sensitivity, skill, as you channel this energy. Distance sessions available. Call today.⁶⁶

Plaintiff's evidence demonstrates generic use of OSHO for meditative techniques and a meditative movement by members of plaintiff who are competitors with defendant and third-parties, including use with the permission of Osho himself, as discussed above. Such use "by competitors and other persons in the trade weighs strongly in favor of genericness." *Pilates*, 120 F.Supp.2d at 299.

4. Use By Defendant

Defendant has made of record numerous documents in which it claims trademark use of OSHO and its asserted OSHO formative marks. However, many of these same exhibits demonstrate use of OSHO as a generic term.

Osho International Meditation Resort is a great holiday destination where visitors can have a direct personal experience of the Osho vision of a new way of living with more alertness, relaxation and fun. Located in Pune, India, the resort attracts thousands of people from around the world every year. Courses and workshops ranging from creative arts and holistic health to personal transformation and therapy are offered, as well as a full daily schedule of meditations.⁶⁷

Just released by the Harmony Imprint of Random House (USA) this groundbreaking work brings Osho publishing to a new level, and introduces Osho to a new generation of readers. *The Book of Understanding* is drawn from Osho's revolutionary and prescient talks in America, given at a time

⁶⁶ Id.

⁶⁷ Steeg Testimony, Exhibit 29.

when Ronald Reagan was leading the country with a cowboy mentality and a Christian fundamentalist worldview.⁶⁸

ONLY IN eBook FORMAT

There are several books in eBook format in English that are not available in any other form. One of them is a fascinating compilation of Osho insights into the seven energy centers of the body-mind known as "chakras." For more information see The Seven Vital Energy Centers.⁶⁹

Osho International Foundation in Switzerland a non profit foundation is the registered copyright owner of all the published and unpublished Works by Osho and the owner of other intellectual property including the trademark OSHO and ancillary rights, music, photos, art, images related to Osho and/or Osho International Foundation.

More than 22 publishing houses in more than 80 countries around the world have publishing licenses signed with the foundation. Currently we have 2,537 active publishing contracts in a total of 54 languages around the world. Each contract represents an Osho book reaching thousands of readers. Total annual sales are now close to 3 million copies - 10 to 15 times the volume of sales during Osho's lifetime. In 2004 alone Osho International signed 395 publishing agreements for Osho titles worldwide - the equivalent of more than one new Osho title or reprint per day.⁷⁰

OSHO TIMES

OSHO MEDITATIONS FOR BUSY PEOPLE

Would you like to discover another Osho Meditation?

Remember "I am"⁷¹

The OSHO Experience

⁶⁸ Id., Exhibit 46.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

A new magazine-style coffee table presentation of the Osho experience. This elegant, notebook-sized production will be of interest both to those already familiar with Osho and those wanting to know exactly what "Osho" can mean for them today.⁷²

As you are interested in Osho, I am enclosing our latest book and audio-tape lists. You can find subscription forms for both the English and Hindi editions of the Osho Times International magazine included in this mailing. Subscribing to it is a beautiful way to be in touch with what is happening here in the commune, news about Osho and His work from around the world. Each issue features excerpts from Osho's discourses, colorful pictures and other news from the world of Osho. In it you can also find more information about the Osho meditation camps happening in your area. I am sending you an English Osho Times as a gift by separate mail.⁷³

OSHO INTERNATIONAL
Secretariat

We received your request to open an Osho meditation center. Recently Osho said that all new meditation centers be called "Osho Meditation Center." So, the name for your center is Osho Meditation Center.

We've enclosed the guidelines for His meditation centers and your center's name paper with this letter. Let us know how you're doing from time to time.⁷⁴

NEW FROM OSHO MYSTERY SCHOOL
Osho Dreamwork

Using the energy and insight contained in dreams to further creativity and mystical transformation.
Osho Creative Leap: Out of the Gap
A seven day, four-stage leap into a new creative surge.

⁷² Id.

⁷³ Id., Exhibit 73.

⁷⁴ Id., Exhibit 94.

A permanent jump in understanding and creativity.
Osho Co-Dependency
As a child, one way or another, we were betrayed.
We lost touch with ourselves and with our feelings
and became false. Now, when we get close to
someone, we lose ourselves because we don't know
who we are. We lose our personal boundaries.
This is co-dependency. The remedy is to create a
whole new way of relating.
Osho Deprogramming: Cutting the Roots of Fear
...Short and immensely powerful, it is not a
therapy, not a catharsis, not a training, not a
process. It imparts no new body of knowledge. It
is utterly new and unique. It is a transmission,
a revolution - surgical and final.
Osho Tibetan Pulsing Healing
Using hidden techniques from the monasteries of
Tibet and China, this profound energy work
involves the internal organs of the body and
brings subconscious experience to the surface,
exploding into a new awareness. It gives new
meaning to the word "release."⁷⁵

Thus, notwithstanding its claim of trademark rights in
OSHO and OSHO-formative marks, defendant itself uses OSHO as
a generic term at least for meditative techniques as well as
those related to spirituality and religion. Such use
further weighs in favor of a finding of genericness.

Analysis

In determining whether the primary significance of a
term is generic, our primary reviewing court has stated:

...[D]etermining whether a mark is generic ... involves a
two-step inquiry: First, what is the genus of goods or
services at issue? Second, is the term sought to be
registered ... understood by the relevant public
primarily to refer to that genus of goods or services?

H. Marvin Ginn Corporation v. International Association of

⁷⁵ Id., Exhibit 105.

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Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). See also *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999). The critical issue in genericness cases is, therefore, whether members of the relevant public primarily use or understand the term sought to be registered to refer to the genus or category of goods or services in question. See *In re Montrachet S.A.*, 878 F.2d 375, 11 USPQ2d 1393, 1394 (Fed. Cir. 1989); *In re Merrill Lynch*, supra; and *Zimmerman v. National Assn. Of Realtors, Inc.*, 70 USPQ2d 1425 (TTAB 2004).

In some genericness cases, the specification of the genus of goods or services is a subject of dispute. See, e.g., *In re American Institute of Certified Public Accountants*, 65 USPQ2d 1972, 1981 (TTAB 2003). In the case at hand, we find the genus to be cogently specified by defendant's identifications of goods and services in the subject registrations and applications. See *In re Reed Elsevier Properties Inc.*, 77 USPQ2d 1649, 1654 (TTAB 2005) ("we consider applicant's identification as largely defining the genus of services involved in this case"), aff'd 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007).

Based upon the testimony and evidence of record, we find that the primary significance of OSHO is as a religious or meditative movement, and not as a source identifier for goods or services. The parties do not dispute that the

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mystic known as Osho developed a number of meditative techniques, established centers to spread the teaching of such techniques, and encouraged his followers to do the same. Further, the evidence outlined above demonstrates that OSHO is understood by the public to refer to these meditation techniques as well as the meditative and religious movement that developed around them.

We recognize that OSHO does not present a clear case of a generic noun, but rather often appears as a generic adjective. Certain of the evidence referenced above points to use of OSHO as a generic noun for a religious or meditative movement. More commonly, however, the term OSHO appears as an adjective, directly naming the most important or central aspect or purpose of defendant's goods and services, that is, that they are based upon the religious and meditative teachings of the mystic Osho. As such, this term is generic and should be freely available for use by competitors. See *In re Northland Aluminum Products, Inc.*, supra, (BUNDT for coffee cake held generic); *In re Sun Oil Co.*, 426 F.2d 401, 165 USPQ 718 (CCPA 1970) (CUSTOMBLENDED for gasoline held generic because category of gasoline was blended personally for the motorist); and *In re Central Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998). As a result, defendant cannot appropriate the term OSHO to identify the source of its goods and services related to

such teachings.

As this tribunal previously held in *American Montessori Soc'y, Inc. v. Association Mostessori Internationale*, 155 USPQ 591 (TTAB 1967): "it necessarily follows that if the term 'MONTESSORI' is generic and/or descriptive as applied to the 'MONTESSORI' teaching methods, it is equally so as used in connection with toys, games, teaching aids, and other material employed in connection with said methods." *Id.* at 593. See also *Pilates, Inc.* at 304. In this case, because the term OSHO is generic for a series of religious and meditative teachings, it is necessarily generic for goods and services offered in connection therewith. See *Pilates, Inc.* at 304-5. Because the evidence of record shows that consumers identify the term OSHO with a series of meditative and religious teachings, defendant cannot monopolize such teachings by asserting trademark rights in the generic term used to identify them.

"A final factor in the genericness inquiry is the availability of other means to describe the product or service at issue." *Pilates, Inc.* at 305. In this case, testimony and evidence of record establishes that Osho himself requested that his followers change the names of their centers to include OSHO so that they would be recognized as "Osho centers." Further testimony and evidence establishes that the term OSHO is necessary to

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describe the meditations, practices and beliefs that form the core of the OSHO meditative and religious movement. Several witnesses have stated that they do not, and cannot, use any other term to describe the teachings and techniques of OSHO. As such, the term OSHO must be freely available for the practitioners and followers of the mystic Osho to be able to identify their activities based upon his teachings.

Based upon the foregoing, we find the term OSHO is generic for the meditations devised by the mystic Osho and the meditative and religious movement arising therefrom. As a result, defendant cannot foreclose others from utilizing the term OSHO to describe their own goods and services based upon such meditations and movements.

Accordingly, we grant plaintiff's petition to cancel as to those marks consisting in whole of the term OSHO, and Registration Nos. 1815840; 2180173; and 2174607 will be cancelled in due course.

Claim of Mere Descriptiveness

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215,

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217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the defendant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use. That a term may have other meanings in different contexts is not controlling. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

Finally, we note that a mark need not describe all of the goods or services for which registration is sought.

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Registration must be refused if the mark is merely descriptive of any of the goods or services for which registration is sought. See *In re Quik-Print Copy Shop, Inc.*, 616 f.2d 523, 205 USPQ 505, 507 (CCPA 1980); and *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

In this case, the above evidence of record supports a finding that OSHO merely describes, without conjecture or speculation, a significant characteristic or feature of defendant's goods and services, namely, that they involve or are based upon the meditative techniques as well as the meditative and religious movement arising from the teachings of the mystic Osho.⁷⁶ Indeed, the identifications of goods and services for several of the involved marks specifically recite "the field of the teachings of the mystic Osho" as their subject matter.⁷⁷ We further note that defendant's disclaimer of additional wording in many of its applied-for marks is a concession that such wording is merely descriptive. Moreover, the combination of OSHO and the disclaimed, descriptive wording in the applied-for marks

⁷⁶ In its brief on the merits of the case, defendant argues in the alternative that its asserted OSHO marks have acquired distinctiveness under Section 2(f) of the Trademark Act. However, defendant did not plead that its marks have acquired distinctiveness in any of these consolidated proceedings. Accordingly, the issue of acquired distinctiveness of the term OSHO under Section 2(f) is not before us.

⁷⁷ See application Serial Nos. 75834601; 76060676; 75683097; 76210213; 76158894; 76158895; and 76158893, *supra*.

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does not create any new or different significance beyond the merely descriptive meaning thereof.

We find, therefore, as follows:

The mark OSHO ACTIVE MEDITATIONS in application Serial No. 75834601, consisting of the descriptive term OSHO and the disclaimed wording ACTIVE MEDITATIONS, merely describes a function or characteristic of the recited services, namely, that the educational services, spiritual counseling and meditations employ active meditation techniques created by the mystic Osho;

The mark OSHO ZEN TAROT in application Serial No. 76159554 consists of the descriptive term OSHO, the disclaimed term TAROT, and the term ZEN. We note that defendant's own evidence indicates that its instruction books and Tarot playing cards are used for "THE TRANSCENDENTAL GAME OF ZEN."⁷⁸ We further take judicial notice of the word "ZEN:" "An approach to religion, arising from Buddhism, that seeks religious enlightenment by meditation in which there is no consciousness of self."⁷⁹ Thus, we find that the mark OSHO ZEN TAROT merely describes books and playing cards as well as an on-line computer game

⁷⁸ Steeg Testimony, Exhibit 32.

⁷⁹ The American Heritage New Dictionary of Cultural Literacy, 3d ed. (2005). The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002). See also *University of Notre Dame du Lac v. J.*

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employing Tarot cards combining the meditation techniques of Zen Buddhism and Osho;

The mark OSHO TRANSFORMATION TAROT in application Serial No. 76159553 consists of the descriptive term OSHO and the disclaimed term TAROT. In addition, defendant's evidence indicates that its OSHO TRANSFORMATION TAROT provides "insights & parables for renewal in everyday life."⁸⁰ We further take judicial notice of the following definition of "TRANSFORMATION:" the act or process of transforming; the state of being transformed; change in form, appearance, nature, or character.⁸¹ Thus, we find that the mark OSHO TRANSFORMATION TAROT merely describes books and playing cards as well as an on-line computer game employing Tarot cards utilizing Osho meditative techniques to achieve change in one's nature;

The mark OSHO KUNDALINI MEDITATION in application Serial No. 76060676 consisting of the descriptive term OSHO and the disclaimed wording KUNDALINI MEDITATION, merely describes a function or characteristic of the recited services, namely, that the educational services, spiritual counseling and meditations employ Kundalini meditation techniques created by the mystic Osho;

C. Gourmet Food Imports Co., Inc., 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁸⁰ *Id.*

⁸¹ Random House Dictionary (2009).

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The mark OSHO in application Serial No. 75683097 merely describes a function or characteristic of the recited educational services, namely, that they provide instruction pertaining to the teachings of the mystic Osho;

The mark OSHO NADABRAHMA MEDITATION in application Serial No. 76210213, consisting of the descriptive term OSHO and the disclaimed term NADABRAMHA MEDITATION, merely describes a function or characteristic of the recited educational services, namely, that they employ Nadabramha meditation techniques created by the mystic Osho;

The mark OSHO MEDITATION RESORT in application Serial No. 76158894, consisting of the descriptive term OSHO and the disclaimed term MEDITATION RESORT merely describes a function or characteristic of the recited services, namely, that the educational services, spiritual counseling, meditations and meditation information are provided at a meditation resort employing Osho's meditation techniques;

The mark OSHO MULTIVERSITY in application Serial No. 76158895, consisting of the descriptive term OSHO and the disclaimed term MULTIVERSITY, merely describes a function or characteristic of the recited services, namely that the educational services, spiritual counseling and meditations, and meditation information in the field of the mystic Osho is provided at a university with several campuses;

The mark OSHO TIMES in application Serial No. 76158893,

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consisting of the descriptive term OSHO and the disclaimed term TIMES, merely describes the recited on-line periodicals on the subject of the teachings of the mystic Osho; and

The mark OSHO REBALANCING in Registration No. 2322901 consists of the descriptive term OSHO and the term REBALANCING. We hereby take judicial notice of the following definition of REBALANCE: "to restore balance or equilibrium to something."⁸² Thus, we find that OSHO REBALANCING merely describes a function or characteristic of the recited educational books and printed materials in the field of religion and philosophy, namely, that they employ the teachings of Osho to promote a restoration if equilibrium.

Plaintiff's Remaining Claims

Having found that defendant's marks are generic and/or merely descriptive, we do not reach the issues of whether the applications at issue and applications underlying the registrations at issue are void *ab initio*; whether the marks in the involved applications and registrations have been abandoned; and whether defendant has committed fraud against the USPTO.

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

⁸² Webster's New Millennium Dictionary of English (2009).

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cancel is further granted on the ground of mere descriptiveness as to Registration No. 2322901. Accordingly, these registrations will be cancelled in due course. Plaintiff's oppositions to the registration of application Serial Nos. 75834601; 76159554; 76159553; 76060676; 75683097; 76210213; 76158894; 76158895; and 76158893 are sustained on the ground of mere descriptiveness.