

other oppositions (Opposition Nos. 91,156,050 and 91,156,051) that are currently pending before the Board and involve the same mark and common questions of law and fact; and moves pursuant to Rule 510 and 37 C.F.R. §2.117 that the above-entitled Opposition be suspended pending the outcome of a related federal civil action involving the same issues. On June 10, 2003, Applicant filed the Answers to Notice of Opposition in each of the three above-referenced oppositions. Copies of these Answers are enclosed as Exhibit A.

MEMORANDUM OF LAW

Consolidation

This Opposition is as one of three oppositions (Opposition Nos. 91,156,049, 91,156,050 and 91,056,151) filed with the Board by the same counsel on December 6, 2002 and January 6, 2003 against Applicant. Although filed on different dates, the Oppositions were all instituted by the Board by letters dated April 22, 2003. In each Opposition, the respective Opposer asserts that Applicant's mark does not function to identify goods originating with Applicant and is descriptive or generic, and the Applicant is not the proper owner of the mark. Consequently, each Opposition presents identical questions of fact and law for the Board to resolve.

Rule 511 of the Trademark Rules of Practice provides that "[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases." World Hockey Ass'n v. Tudor Metal Prods. Corp., 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (consolidating two opposition proceedings to avoid "duplication of effort, loss of time, and extra expense involved in conducting the proceedings alternately").

Because "common questions of law and fact" are before the Board, consolidation of the three Oppositions here is appropriate.

Because all three Opposers are represented by the same counsel, there is no need for the board to appoint a "lead counsel" to supervise or coordinate the conduct of Opposer's case, as would otherwise be required under Rule 511.

Suspension

Rule 510 of the Trademark Rules of Practice and 37 C.F.R. § 2.117 provide: "[w]henever it shall come to the attention of the Trademark Trial and Appeal Board that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action."

On November 5, 2001 Applicant commenced an action against Opposer, Otsar Sifrei Lubavitch, Inc., ("Otsar") alleging, inter alia, infringement of the logo that is the subject of this Opposition. That case was brought in the United States District Court, Eastern District of New York, file number 01 CV 7406. On December 26, 2001, Otsar answered the complaint, pleading, inter alia, the following affirmative defense:

"Plaintiff's claims with regard to a logo are barred because said logo is and/or has become a functional and generic description."

Copies of the complaint and answer are attached as Exhibits B and C.

In pre-trial proceedings over the past year and a half, Otsar has asserted additional defenses regarding the mark, including claims disputing Applicant's ownership of the mark and asserting that Otsar itself owns rights in the mark. All of the grounds asserted in the Notice of Opposition are at issue in the pending federal lawsuit, and determination of those claims by the

federal court would be binding on the Board and render this Opposition moot. 37 CFR § 2.117 is thus applicable, and suspension is appropriate. General Motors Corp. v. Cadillac Club Fashions, Inc., 22 USPQ 2d 1933 (TTAB 1992) (suspending proceedings because plaintiff in pending civil action sought cancellation of registration in question); The Toro Company v. Harding Industries, Inc., 187 USPQ 889 (TTAB 1975) (suspending opposition in light of pending civil action since "decision of Federal District Court would be binding upon the Patent and Trademark Office"), *rev'd on other grounds*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977).

The federal litigation has been pending for over a year and a half. Counsel for applicant and counsel for opposer are the same in federal court and here. Discovery is complete and the parties are preparing their Joint Pretrial Order in anticipation of trial. In contrast, the Board issued its order commencing this Opposition just over one month ago.

Opposer's counsel has not consented to this motion.

Applicant accordingly requests that this Opposition be suspended pending the outcome of the potentially dispositive civil action, and that discovery and trial dates be reset if and when the Opposition is resumed. Applicant also requests that if the Board denies this motion to suspend, all discovery and trial dates be reset.

CONCLUSION

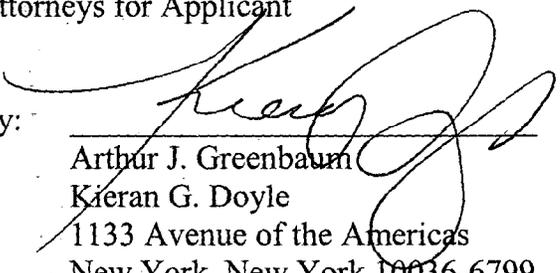
For the foregoing reasons, Applicant's Motion to Consolidate and Motion to Suspend should be granted.

Dated: New York, New York
June 13, 2003

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Applicant

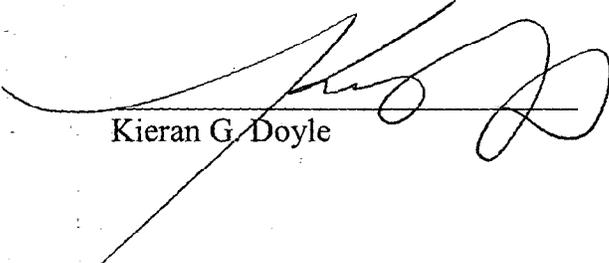
By:



Arthur J. Greenbaum
Kieran G. Doyle
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of June, 2003, caused the foregoing Motion to Consolidate to be served upon Opposer, by mailing a copy first class mail, postage prepaid to Opposer's Attorney, Jacob Laufer, Esq., Laufer & Associates, 1660 60th Street, Brooklyn, New York 11204.


Kieran G. Doyle

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12

TRADEMARK: KEHOT & Design

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter of Application Serial No. 76/314,502
For the mark KEHOT & Design
filed September 19, 2001

-----X
VAAD L'HAFOTZAS SICHOS, INC.,

:
: Opposition No. 91,156,051

Opposer, :

: ANSWER TO NOTICE
: OF OPPOSITION

v. :

KEHOT PUBLICATION SOCIETY, a division :
of Merkos L'Inyonei Chinuch, Inc. :

Applicant. :
-----X



06-13-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

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2900 Crystal Drive
Arlington, Virginia 22202-3514

Applicant, Kehot Publication Society, by its attorneys, answers to the Notice of

Opposition as follows:

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C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for
Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 on

June 10, 2003
(Date of Deposit)

Antoinette Jorge
(Typed or printed name of
person mailing paper or fee)

Antoinette Jorge
(Signature)

1. Applicant denies the allegations contained in paragraph 1 of the Notice of Opposition, except admits opposer has published books bearing Applicant's mark without authorization.

2. Applicant denies the allegations contained in paragraph 2 of the Notice of Opposition.

3. Applicant denies the allegations contained in paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations contained in paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations contained in paragraph 6 of the Notice of Opposition

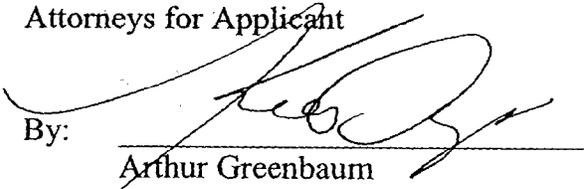
AFFIRMATIVE DEFENSE

7. Opposer fails to state a claim upon which relief can be granted.

Dated: New York, New York
June 10, 2003

Respectfully submitted,

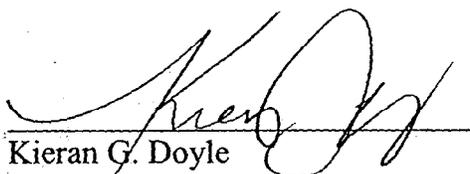
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Applicant

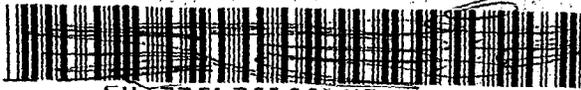
By: 

Arthur Greenbaum
Kieran G. Doyle
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of June, 2003, caused the foregoing Answer to be served upon Opposer, by mailing a copy first class mail, postage prepaid to Opposer's Attorney, Jacob Laufer, Esq., Laufer & Associates, 1660 60th Street, Brooklyn, New York 11204.


Kieran G. Doyle



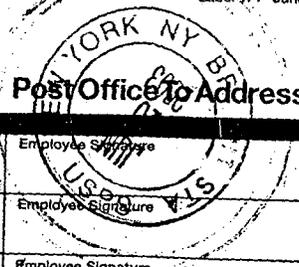
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 v.
 FILI KEHOT PUBLICATION SOCIETY, a division
 of Merkos L'Inyonei Chinuch, Inc. Applicant.
 MA Opposition No. 91,156,051
 PLE Date Mailed: June 10, 2003
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TRADEMARK: KEHOT & Design

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter of Application Serial No. 76/314,502
For the mark KEHOT & Design
filed September 19, 2001

-----X
VAAD HANOCHOS HATMIMIM, :

Opposition No. 91,156,050

Opposer, :

ANSWER TO NOTICE
OF OPPOSITION

v. :

KEHOT PUBLICATION SOCIETY, a division :
of Merkos L'Inyonei Chinuch, Inc. :

Applicant. :

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Applicant, Kehot Publication Society, by its attorneys, answers to the Notice of

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June 10, 2003 Antoinette Jorge

(Date of Deposit)

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person mailing paper or fee)

Antoinette Jorge
(Signature)

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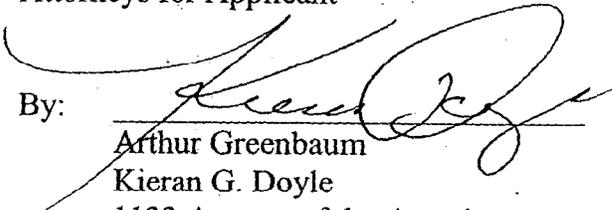
AFFIRMATIVE DEFENSE

7. Opposer fails to state a claim upon which relief can be granted.

Dated: New York, New York
June 10, 2003

Respectfully submitted,

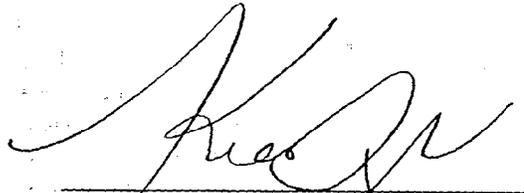
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Applicant

By: 

Arthur Greenbaum
Kieran G. Doyle
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of June, 2003, caused the foregoing Answer to be served upon Opposer, by mailing a copy first class mail, postage prepaid to Opposer's Attorney, Jacob Laufer, Esq., Laufer & Associates, 1660 60th Street, Brooklyn, New York 11204.



Kieran G. Doyle



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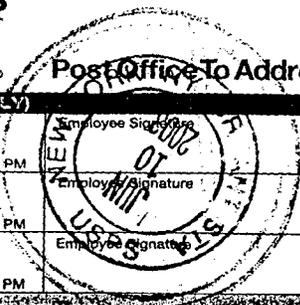
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1133 AVE OF THE AMERICAS FL 50
NEW YORK NY 10036-2710
Tel. 24579-01
KEHOT
ANSWER TO NOT. OF OPP.

OPP. NO
91,156,050
COMMISSIONER
VAAD HANOCHOS HATMIMIM

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F VAAD HANOCHOS HATMIMIM, Opposer,
N v.
P KEHOT PUBLICATION SOCIETY, a division
C of Merkos L'Inyonei Chinuch, Inc. Applicant.

Opposition No. 91,156,050

Date Mailed: June 10, 2003
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TRADEMARK: KEHOT & Design

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In The Matter of Application Serial No. 76/314,502
For the mark KEHOT & Design
filed September 19, 2001

-----X
OTSAR SIFREI LUBAVITCH, INC. :

Opposer, :

v. :

Opposition No. 91,156,049

KEHOT PUBLICATION SOCIETY, :
a division of Merkos L'Inyonei :
Chinuch, Inc. :

ANSWER TO NOTICE
OF OPPOSITION

Applicant. :
-----X

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Arlington, Virginia 22202-3514

Applicant, Kehot Publication Society, by its attorneys, answers the First Amended
Notice of Opposition as follows:

1. Applicant denies the allegations contained in paragraph 1 of the Notice of
Opposition, except admits that Opposer has published books bearing Applicant's mark
without authorization.

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June 10, 2003
(Date of Deposit)

Antoinette Jorge
(Typed or printed name of
person mailing paper or fee)

Antoinette Jorge
(Signature)

2. Applicant denies the allegations contained in paragraph 2 of the Notice of Opposition, except admits that Opposer has used Applicant's mark without authorization.

3. Applicant denies the allegations contained in paragraph 3 of the Notice of Opposition.

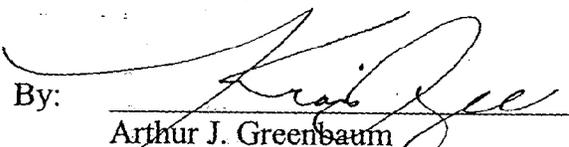
AFFIRMATIVE DEFENSE

4. Opposer fails to state a claim upon which relief can be granted.

Dated: New York, New York
June 10, 2003

Respectfully submitted,

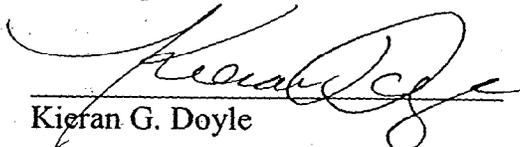
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Applicant

By: 

Arthur J. Greenbaum
Kieran G. Doyle
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

Certificate of Service

The undersigned hereby certifies that the forgoing Answer to Notice of Opposition was served on opposer by mailing a copy first class mail, postage prepaid to opposer's counsel Jacob Laufer, Esq., 1660 60th Street, Brooklyn, New York 11204 on June 10, 2003.


Kieran G. Doyle



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No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void. Waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent. If delivery employee judges that article can be left in secure location and I authorize that delivery employee's signature constitutes valid proof of delivery.		
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1133 AVE OF THE AMERICAS FL 36
NEW YORK NY 10046-3710
Tel. 24579-01 Kehot opp no 91,156,049
Answer to NOT. of opp.

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FILIN OTSAR SIFREI LUBAVITCH, INC, Opposer,
MARF v.
PLEAS KEHOT PUBLICATION SOCIETY, a division
OF RE of Merkos L'Inyonei Chinuch, Inc. Applicant.
Opposition No. 91,156,049
Date Mailed: June 10, 2003
ExpressMailNo EV 325 628 174 US
please find the following:
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EV325628174US



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ NOV 05 2001
**RAGGI, J.
GO, M.J.**
BROOKLYN OFFICE

----- X
MERKOS L'INYONEI CHINUCH, INC.,

Plaintiff,

-against-

OTSAR SIFREI LUBAVITCH, INC.,

Defendant.
----- X

CV 01 () 7406
COMPLAINT

Plaintiff, by its attorneys, Cowan, Liebowitz & Latman, P.C., for its complaint,
alleges:

PARTIES AND JURISDICTION

1. Plaintiff, Merkos L'Inyonei Chinuch, Inc. ("Merkos"), is a New York not-for-profit religious corporation with its principal place of business in Brooklyn, New York. Plaintiff is in the business, among other things, of printing and distributing religious, educational and scholarly publications.

2. Upon information and belief, defendant, Otsar Sifrei Lubavitch, Inc. ("OSL"), is a corporation organized under the laws of the State of New York and is located at 1301 President Street, Brooklyn, New York 11213.

3. This is a civil action for copyright infringement arising under the copyright laws of the United States, 17 U.S.C. § 101 et seq. (hereinafter the "Copyright Act"), and for trademark infringement arising under the trademark laws of the United States, 15 U.S.C. § 1051

et seq. (the "Lanham Act"), and for related causes of action. Jurisdiction is based on 28 U.S.C. §§ 1331, 1338 and 1367, and 15 U.S.C. § 1121.

The Merkos Siddur

4. Plaintiff operates as the publishing arm of the Chabad-Lubavitch Chasidic community, which is dedicated to worldwide Jewish education and outreach.

5. Among plaintiffs' publications is a work, created in or around 1978, entitled "Siddur Tehillat Hashem", (hereinafter "the Merkos Siddur"), a traditional Hebrew prayer book with a new English translation. The name "Siddur Tehillat Hashem" may be translated as "Prayer Book Praise of G-d."

6. Merkos is the author of the Merkos Siddur's English translation, a work made for hire, which is an original creation and constitutes copyrightable subject matter under the Copyright Act.

7. Merkos has duly complied with all relevant requirements of the Copyright Act with respect to the Merkos Siddur, has registered its copyright in such work in the United States Copyright Office, and obtained registration certificate TX4-508-037 for this work. A copy of the copyright registration for the Merkos Siddur is annexed hereto as Exhibit A. The nature of authorship claimed in this registration is "new English translation."

First Claim Copyright Infringement

8. Plaintiff repeats and realleges the allegations contained above in paragraphs 1 through 7 as if fully set forth herein.

9. Beginning in or about September 2001, OSL, without authorization from Merkos, has advertised, offered for sale, and sold its own prayer book, also entitled "Siddur

Tehillat Hashem" (hereinafter, the "defendant's Siddur") that includes an English translation that is copied from and identical, or virtually identical, to the English translation in the Merkos Siddur.

10. OSL has infringed and, upon information and belief, is continuing to infringe upon Merkos's registered copyright in the Merkos Siddur.

Second Claim
Trademark Infringement

11. Plaintiff repeats and realleges the allegations contained above in paragraphs 1 through 10 as if fully set forth herein.

12. Merkos is engaged in the sale and distribution in interstate and foreign commerce of books and other publications both under its own name and under the name of its division, Kehot Publishing Society ("Kehot").

13. Merkos's publications have been advertised, offered for sale, sold and distributed throughout the United States, including in this district.

14. Among the Merkos publications so advertised, offered, sold and distributed is the Merkos Siddur. Total sales of the Merkos Siddur exceed 250,000 volumes, and have generated approximately \$3,000,000 in sales.

15. Each volume of the Merkos Siddur bears on its binding and title page the trademark logo of Kehot, which consists of a distinctive pattern of words and letters identifying Kehot as the publishing house of the Lubavitch organization.

16. The Kehot logo was created in 1942, and has been in continuous and extensive use since then.

17. Because of their continuous and substantial use for over fifty years, the Kehot logo and the trade name Kehot Publication Society have considerable value, and have become famous in the relevant market for Jewish publications as identifying Kehot and Merkos as the source and publisher of those materials.

18. Defendant's Siddur bears the Kehot logo and falsely represents to the public that it is published, sold and/or sponsored by plaintiff.

19. The contents of defendant's Siddur are also similar in appearance to the Merkos Siddur, in that the pagination, formatting and page layout of defendant's Siddur are virtually identical to those of the Merkos Siddur.

20. Defendant's Siddur is intended to confuse purchasers and lead them to believe that plaintiff is the source of defendant's Siddur.

21. Defendant's actions constitute false designation of origin and are in violation of 15 U.S.C. §1125(a)(1)(A).

Third Claim
Federal Trademark Dilution

22. Plaintiff repeats and realleges the allegations of paragraphs 1 through 21 hereof as if fully set forth herein.

23. The trademark Kehot logo, and the trade name Kehot, are famous marks within the relevant market for Jewish publications within the meaning of 15 U.S.C. §1125(c)(1).

24. Defendant's unauthorized use in interstate commerce of the Kehot logo and trade name began after those marks became famous.

25. On information and belief, defendant adopted and used the Kehot logo and trade name intentionally and willfully intended to trade on plaintiff's reputation and to causes dilution of plaintiff's famous mark and name.

26. Defendant's wrongful acts, as alleged herein, will destroy the ability of Kehot's logo and trade name to serve as identification of a single source, will dilute the marks by lessening their capacity to distinguish goods emanating from plaintiff from the goods of others, and will destroy the value of plaintiff's trademarks.

27. Defendant's unauthorized use of the Kehot logo and trade name causes dilution of the distinctive quality of plaintiff's genuine trademarks in violation of 15 U.S.C. §1125(c)(1).

Fourth Claim
New York State Law Unfair Competition

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 hereof as if fully set forth herein.

29. Defendant's actions constitute unfair competition and deceptive practices in violation of New York General Business Law § 349.

Fifth Claim
New York State Trademark Dilution

30. Plaintiff repeats and realleges the allegations of paragraphs 1 through 29 hereof as if fully set forth herein.

31. Defendant's unauthorized use of the Kehot logo and trade name cause dilution of the distinctive quality of plaintiff's genuine trademarks in violation of New York General Business Law § 360-1.

Sixth Claim
Common Law Unfair Competition

32. Plaintiff repeats and realleges the allegations of paragraphs 1 through 31 hereof as if fully set forth herein.

33. Defendant's actions constitute unlawful and unfair competition in violation of the New York common law of unfair competition.

As To All Claims

34. Upon information and belief, OSL's acts complained of herein are willful.

35. Upon information and belief, by the acts complained of, OSL has made substantial profits and gains to which it is not entitled in law or in equity.

36. Upon information and belief, OSL intends to and will continue to expand the acts complained of herein, unless restrained by this Court.

37. The aforementioned acts of OSL have damaged and will continue to damage Merkos and cause it irreparable harm, for which Merkos has no adequate remedy at law.

WHEREFORE, Merkos demands:

A. That defendant, its agents, officers, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them, be preliminarily and permanently enjoined from reproducing, making, reprinting, publishing, displaying, manufacturing, selling, offering for sale, promoting, advertising, distributing and/or commercially exploiting in any manner, either directly or indirectly, for consideration or otherwise, defendant's Siddur, or other works that incorporate, reflect or contain any unauthorized use of the Merkos Siddur or of plaintiff's copyrighted works or trademarks, or

infringing plaintiff's copyrights or trademarks, or works substantially similar thereto, and from otherwise competing unfairly with plaintiff;

B. That Merkos be entitled to recover:

(1) (a) all damages suffered by Merkos as a result of defendant's infringing acts, and (b) all profits derived from defendant's wrongful acts in an amount to be determined at the trial of this action; or

(2) in lieu of such damages and profits, should Merkos so elect, an award of statutory damages with respect to each infringement as provided by 17 U.S.C. § 504(c);

C. That defendant be directed to deliver to Merkos all books, publications, brochures, catalogues, means of manufacture and/or other materials in defendant's possession or control, which, if sold, distributed or used in any way would violate paragraph A above; and

D. That Merkos recover from defendant all costs incurred in this action, including a reasonable attorney's fee together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 5, 2001

COWAN, LIEBOWITZ & LATMAN, P.C.

By: Ronald W. Meister

Ronald W. Meister (RM-4313)

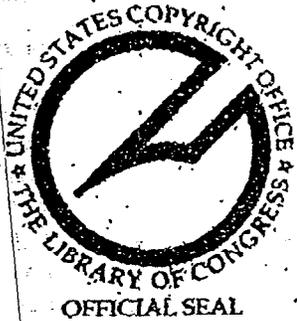
1133 Avenue of the Americas

New York, New York 10036-6799

(212) 790-9200

Attorneys for Plaintiff

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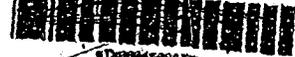


This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

TX 4-508-037



EFFECTIVE DATE OF REGISTRATION

Nov 12 1996
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK

SIDDUR TEHILLAT HASHEM

NUSACH HA-ARI
241 WITH ENGLISH TRANSLATION

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

2 NAME OF AUTHOR

a. MERTOS L'INYONEI CHINUCH

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes
 No

OR Citizen of USA
Domiciled in USA

Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes
 No

OR Citizen of
Domiciled in

Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

NEW ENGLISH TRANSLATION

NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes
 No

OR Citizen of
Domiciled in

Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1978

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Month: 7 Day: 18 Year: 1978

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

MERTOS L'INYONEI CHINUCH
230 EASTERN PARKWAY
BROOKLYN N.Y. 11213

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED
AUG 08 1997
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
NOV 12 1996
FUNDS RECEIVED

MORE ON BACK

Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
See detailed instructions. Sign the form at Form 10.

DO NOT WRITE HERE

EXAMINED BY *M*

FORM T

CHECKED BY

CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preceding work or works that this work is based on or incorporates. ▼

HEBREW LANGUAGE SIDRAH

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

NEW ENGLISH TRANSLATION

See instructions
before completing
this space.

—space deleted—

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10 and a check in one of the boxes here in space 8 constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

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See instructions

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

KERHOT TOR SOC

DA 039 144

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP ▼

ABBA DEUTSCH

See Below

Area Code and Telephone Number ▼

212-338-0216

Be sure to
give your
date and
number

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▶

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

ABBA DEUTSCH

date ▶ 7/24/97

Handwritten signature (X) ▼

Abba Deutsch

MAIL
CERTIFI-
CATE TO

Certificate
will be
mailed in
window
envelope

Name ▼

ABBA DEUTSCH

Number/Street/Apartment Number ▼

291 KINGSTON AVE

City/State/ZIP ▼

BRONX N.Y. 11213

YOUR SET

- Complete all necessary spaces.
- Sign your application in space 10.

SEND ALL ATTACHES
IN THE SAME ENVELOPE

1. Application form.
2. Non-refundable \$20 filing fee in check or money order payable to Register of Copyrights.
3. Deposit material.

MAIL TO

Register of Copyrights,
Library of Congress,
Washington, D.C. 20540-6000

17 U.S.C. § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.



RECYCLED

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LFB
ANSWER

Jacob Laufer, Esq. (JL-7179)
LAUFER & ASSOCIATES
1660 60th Street
Brooklyn, New York 11204
718-331-7999
Attorney for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MERKOS L'INYONEI CHINUCH, INC.,

Plaintiff,

-against-

OTSAR SIFREI LUBAVITCH, INC.

Defendant.

01 CV 7406

Judge Raggi
Magistrate Judge Go

ANSWER &
JURY DEMAND

Defendant OTSAR SIFREI LUBAVITCH INC., by its undersigned attorney respectfully interposes the following Answer to the Complaint:

1. Denies knowledge or information sufficient to form as a belief as to the allegations of paragraph 1 of the Complaint.
2. In answer to paragraph 2 of the complaint admits that defendant is a corporation organized under the laws of new York State and otherwise denies the allegations of said paragraph.
3. Admits that this action purports to be brought under the Statutes set forth in paragraph

3 of the complaint but denies that this action is properly brought or that Plaintiff is entitled to relief under the Statutes and sections alleged.

4. Admits the allegation in paragraph 4 of the complaint that the Chabad -Lubavitch Chasidic community is dedicated to worldwide Jewish education and outreach, but otherwise denies the allegations of said paragraph.

5. Denies the allegations contained in the first sentence of paragraph 5 of the complaint and admits the allegations of the second sentence of said paragraph.

6. Denies the allegations of paragraph 6 of the complaint.

7. In answer to paragraph 7 of the complaint admits that Exhibit A to the complaint purports to show a document referred to in said paragraph but otherwise denies the allegations of paragraph 7 of the complaint.

8. In answer to paragraph 8 of the complaint Defendant repeats and realleges its answers contained above in paragraphs 1-7 as if fully set forth herein.

9. In answer to paragraph 9 of the complaint admits that Defendant has advertised, offered for sale and sold a prayer book entitled in part "Siddur Tehillat Hashem" and otherwise denies the allegations of said paragraph.

10. Denies the allegations of paragraph 10 of the complaint.

11. In answer to paragraph 11 of the complaint defendant repeats and realleges its answers contained above paragraphs 1-10 as if fully set forth herein.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the complaint except denies that Kehot Publishing Society is a name which refers to a division of plaintiff.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 of the complaint.

15. Denies the allegations of paragraph 15 of the complaint.

16. Denies the allegations of paragraph 16 of the complaint.

17. Denies the of paragraph 17 of the complaint.

18. Admits that a Siddur published by Defendant bears a logo but otherwise denies the allegations contained in paragraph 18 of the complaint.
19. Denies the allegations of paragraph 19 of the complaint.
20. Denies the allegations of paragraph 20 of the complaint
21. Denies the allegations of paragraph 21 of the complaint.
22. In answer to paragraph 22 of the complaint repeats and realleges the above answers contained in paragraphs 1-21 as if fully set forth herein.
23. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 of the complaint except denies that there is a trademark Kehot logo as defined in the complaint.
24. Denies the allegations of paragraph 24 of the complaint.
25. Denies the allegations of paragraph 25 of the complaint.
26. Denies the allegations of paragraph 26 of the complaint.
27. Denies the allegations of paragraph 27 of the complaint.
28. In answer to the allegations contained in paragraph 28 of the complaint Defendant repeats and realleges the above answers contained in paragraphs 1-27.
29. Denies the allegations of paragraph 29 of the complaint.
30. In answer to the allegations contained in paragraph 30 of the complaint Defendant repeats and realleges the above answers contained in paragraphs 1-29.
31. Denies the allegations of paragraph 31 of the complaint.
32. In answer to the allegations contained in paragraph 32 of the complaint Defendant repeats and realleges the above answers contained in paragraphs 1-31.
33. Denies the allegations of paragraph 33 of the complaint.
34. Denies the allegations of paragraph 34 of the complaint.
35. Denies the allegations of paragraph 35 of the complaint.
36. Denies knowledge or information as sufficient to form a belief as to the allegation in paragraph 36 of the complaint which refers to "expand the acts complained of herein" and to the extent required therefore otherwise denies the allegations of said paragraph.
37. Denies the allegations of paragraph 37 of the complaint.

38. Denies that plaintiff is entitled to the relief requested as set forth in paragraphs A and B in the Demand at the conclusion of the complaint.

AS AND FOR AFFIRMATIVE DEFENSES

39. Plaintiff's claims are barred by reason of the invalidity of the copyright registration alleged in the complaint.

40. Plaintiff's claims are barred by reason of failure to comply with the requirements for federal copyright registration and by publication of the work in question without compliance with the statutory notice requirements, or other requirements knowledge of which is at present in the control of plaintiff.

41. Plaintiff's claims are barred in whole or in part by reason of non copyrightable subject matter including but not limited to by reason of 17 USC 102(b).

42. Plaintiff's claims are barred because it is not the real party in interest and owner of the rights asserted..

43. Defendant's actions complained of herein, in whole or in part, constitute a fair use.

44. Plaintiff's claim in whole or in part is barred by reason of collateral estoppel and/or res judicata.

45. Plaintiff's claim is barred in whole or in part by reason of copyright misuse.

46. Plaintiff's claim is barred in whole or in part because the applicability of the laws asserted is unconstitutional under the First Amendment.

47. Defendant's actions complained of herein are licensed and authorized by a party authorized for same.

48. Plaintiff's claims are barred in whole or in part by reason of laches, equitable estoppel, waiver, abandonment, detrimental reliance, unclean hands, bad faith and/or acquiescence.

49. Plaintiff's action is barred because it is undertaken in violation of and is not authorized under its charter and the applicable legal and religious requirements pertaining thereto and the Chabad Chasidic Lubavitch movement..

50. Plaintiff's claims with regard to a logo are barred because said logo is and/or has become a functional and generic description.

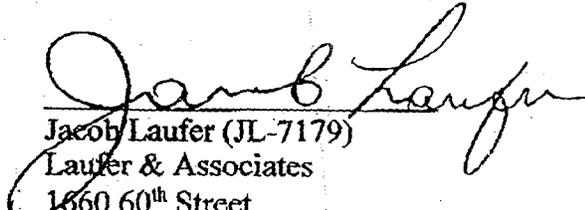
51. Plaintiff's claims are barred because as a member of the Chabad Chasidic Lubavitch community Defendant is an owner of the rights asserted by Plaintiff.

52. The Court should decline to exercise jurisdiction over this matter including but not limited to the non federal claims asserted by plaintiff.

DEFENDANT HEREBY DEMANDS TRIAL BY JURY OF THIS ACTION

WHEREFORE, Defendant respectfully requests that Judgment be entered herein dismissing the complaint together with such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
December 26, 2001


Jacob Laufer (JL-7179)
Laufer & Associates
1660 60th Street
Brooklyn, New York 11204
718-331-7999