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Hearing:
April 20, 2010

Mailed:
August 30, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Vaad L'Hafotzas Sichos, Inc.

v.

Kehot Publication Society, a division of Merkos L'Inyonei Chinuch, Inc.

Opposition No. 91156051
to application Serial No. 76314502
filed on September 19, 2001

David M. Levy and Daniel Zohny of Robinson Brog Leinwand Greene Genovese & Gluck P.C. for Vaad L'Hafotzas Sichos, Inc.

Arthur J. Greenbaum, J Christopher Jensen, Kieran G. Doyle and Jane Shih of Cowan, Liebowitz & Latman, P.C. for Kehot Publication Society, a division of Merkos L'Inyonei Chinuch, Inc.

Before Seeherman, Grendel and Cataldo, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Kehot Publication Society, a division of Merkos L'Inyonei Chinuch Inc., has applied to register the mark shown below, (hereafter the KEHOT logo),

for “books, magazines, charts, maps, and photographs on a variety of aspects of Jewish life.”[1] The application contains the following translation statement:

> The mark is in the form of a badge design, incorporating Hebrew words, the transliteration of which is as follows - the upper part of the design incorporates the Hebrew words "hotzoas seforim", which, in English, means "publication society". Below that are the Hebrew words "karnei hod torah", which, in English, means "torah is a majestic crown". In the center of the design are the Hebrew letters "K H T", which are the initial letters of the Hebrew words set forth above, ie "karnei hod torah". (This combination of the three Hebrew letters is pronounced "kehot"). At the bottom of the design is the word "Lubavitch", which indicates that applicant is the official publishing house of the Lubavitch organization, of which Merkos L'Inyonei Chinuch, Inc. is the educational arm.

Applicant has disclaimed exclusive rights to “the Hebrew characters translating to "Hotzoas Seforim" and "Lubavitch."

Vaad L’Hafotzas Sichos Inc. has opposed the

[1] Application Serial No. 76314502, filed September 19, 2001, claiming first use and first use in commerce in 1942.

registration of this mark,[2] alleging that since 1976 it has been involved in the publication of various items which it has labeled with the mark for which applicant seeks registration; that the mark that applicant seeks to register is used by parties independent of and unaffiliated with applicant, and the mark does not function to identify goods as originating with applicant; applicant's mark includes Hebrew words which are incorrectly translated in the application and which are merely descriptive of the goods to which they may be applied; the overall mark is merely descriptive and generic in that it has become a common and generic form used by various entities to describe publications and their content as having certain religious characteristics or being in accordance with "the religious principles of the Orthodox Jewish faith, the Lubavitch movement and/or its leader Rabbi Menachem Mendel Schneerson" ¶ 4; that applicant is not the true party in interest and the application is in fact made on behalf of a purported religious corporation or group first created or formed in 1994, and that with respect to this actual applicant,

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[2] Two other entities also opposed registration: Otsar Sifrei Lubavitch Inc. (Op. 91156049) and Vaad Hanochas Hatmimim (Op. 91156050). The Board ordered the consolidation of the three oppositions on September 30, 2003. On May 8, 2004 the Board dismissed Opposition No. 91156050 with prejudice in view of the opposer's withdrawal of the opposition with prejudice, and on August 1, 2005 Opposition No. 156049 was dismissed with prejudice as a result of that opposer's withdrawal of the opposition with prejudice.

"opposer's use of the mark has priority and may not be interfered with by the applicant by way of the registration sought in the application…" § 5. In its answer applicant has denied the allegations of the notice of opposition, except that it has admitted that "opposer has published books bearing Applicant's mark without authorization." ¶ 1.

Opposer has taken various positions as to the grounds for its opposition. In its brief it states that it brought the opposition on the grounds that the mark does not function to identify goods as exclusively created, published or originating with the applicant and that the overall mark is generic. However, the headings in the argument section of the brief say that registration should be denied based on First Amendment considerations; that applicant is not the source of works published under the KEHOT logo; and that applicant abandoned any rights it might have had (by allowing unauthorized third-party use). Opposer also argued that applicant does not have proper standing to prosecute the application on behalf of the Kehot Publication Society. At the oral hearing held in this proceeding opposer's attorney stated that opposer was not pursuing the grounds of genericness or descriptiveness, and that it was pursuing only two grounds: that the First Amendment bars applicant from obtaining the registration, and that applicant is not the owner of the mark. In its brief opposer claimed that

applicant lacks standing,[3] but at the oral hearing opposer made clear that its arguments regarding applicant's lack of standing were, in effect, that applicant is not the owner of the mark. Therefore, we treat any other grounds that may have been asserted or to have been argued in the briefs to have been waived. Opposer also claims that this dispute between the parties should be decided not by the Board, but by the Beth Din of Crown Heights; a Beth Din is a Jewish religious court.

The record includes, by operation of the rules, the pleadings and the file of the opposed application; the testimony, with exhibits, of opposer's witnesses Rabbi Yosef Shagalov, Rabbi Zalman Chanin and Rabbi Yaakov Chazan, and the rebuttal testimony of Rabbi Chanin and Rabbi Chazan; and the testimony, with exhibits, of applicant's witnesses Rabbi Shalom Dovber Levine and Rabbi Yehuda Krinsky. Opposer has also submitted, under notice of reliance, certain articles, and a paper filed in a civil action between applicant herein (as plaintiff) and Mendel Scharf.[4] Applicant has submitted, under notice of reliance, papers filed in a civil action

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[3] Standing, of course, is a threshold requirement that the opposer, not the applicant, must establish, as it requires the opposer to show that it has a reasonable belief that it will be damaged by the issuance of the registration. Section 13 of the Trademark Act.

[4] Although the articles are properly of record as printed publications, they cannot be used to prove the truth of the statements therein. See Safer Inc. v. OMS Investments Inc., 94 USPQ2d 1031, n. 14 (TTAB 2010).

brought by applicant herein against John Does 1 through 25 and Mendel Scharf; a complaint and consent judgment filed in a civil action between applicant and Otsar Sifrei Lubavitch, Inc.; excerpts from certain printed publications; and, by stipulation of the parties, the declaration of Rabbi Levine and the minutes of an October 7, 1942 meeting of applicant's board of directors. The parties are in agreement as to what is of record; see description of the record at pages 5-7 of opposer's brief and pages 8-10 of applicant's brief.

The proceeding has been fully briefed,[5] and both parties were represented by counsel at the oral hearing held before the Board.

Background

In order to understand the issues and arguments, some background information is necessary. As applicant states in its brief, p. 6, with which opposer concurs, reply brief, p. 1, "The parties to this dispute are part of the Chabad-

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[5] In its reply brief opposer, for the first time, raises the claim that the testimony of applicant's two witnesses "is highly suspect" and should be substantially discounted, p. 13, and that Rabbi Krinsky's testimony should be discredited as self-serving. p. 18. Opposer has two bases for this claim: alleged inconsistencies in the witnesses' testimony as to certain factual statements, and that the witnesses did not have personal knowledge as to all the matters about which they had testified. Such arguments should have been raised in opposer's trial brief, at a point that applicant had an opportunity to respond to them. In any event, in assessing the probative value of any witness's testimony, whether that testimony is on behalf of the opposer or the applicant, we have considered the basis for the witness's knowledge and any self-interest of the witness in the outcome of the proceeding, and have accorded their testimony the appropriate weight.

Lubavitch Chasidic movement," which involves a particular sect of Orthodox Jews. The Lubavitch movement is a Chassidic movement that was founded in the 1700s in Russia. Levine, p. 7. The terms "Lubavitch" and "Chabad" are both used to refer to this particular Chassidic movement; "Lubavitch" refers to the city which was the center of the movement for over 100 years, and "Chabad" is an acronym for the principles upon which the movement is based. The Lubavitch movement has been headquartered in the United States for the last 70 years, with its primary office in the Crown Heights section of Brooklyn, New York, although there are 4000 Chabad centers located throughout the United States and the world. Levine, p. 16.

The various leaders of this movement are referred to by the title of "Rebbe." There have been seven rebbes since the movement began, generally with a son succeeding his father, although the most recent rebbe, Menachem Mendel Schneerson, (referred to hereafter as "Rebbe") is the son-in-law of Joseph Isaac Schneersohn (hereafter the "Previous Rebbe").[6] All of these leaders are revered; their writings

[6] Many of the exhibits are in Hebrew and the testimony involves many Hebrew names and words, and there are some inconsistencies in the way they have been transliterated. For example, the Rebbe's name is spelled in some of the transcripts as "Schneersohn" (which is the spelling of the Previous Rebbe's name), although on official documents it appears as "Schneerson," while the Previous Rebbe's name is sometimes shown with the English given names and sometimes with a transliteration of the Hebrew (Yosef Yitzchak). The fact that there are variations in the spellings does not affect the clarity of the evidence, but in

continue to be printed and reprinted, and their oral discourses are written down and published. In particular, the Rebbe is viewed by his followers as a highly spiritual and holy person and, according to applicant's witness Rabbi Krinsky, if anyone has "any connection with Lubavitch, their allegiance to the Rebbe is without limit." p. 64.[7]

The Previous Rebbe came to the United States in 1940, and the Lubavitch movement relocated its headquarters to Brooklyn. Several Lubavitch organizations were set up in New York at that time. Agudas Chasidei Chabad ("Agudas") was incorporated in 1940, and acted as something of an umbrella organization for Chabad; Merkos L'Inyonei Chinuch, Inc. ("Merkos"), the applicant herein, was incorporated in 1942, to act as the movement's educational arm, the name translates as Center for Jewish Education; and Machne Israel was incorporated in 1943, its primary purpose is social

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order to avoid any confusion in this opinion we have chosen to use a consistent spelling for these various names and words except when they are part of a quote.

[7] We quote the following interchange in the testimony of opposer's witness Rabbi Shagalov, pp. 36-37, as illustrative of the Rebbe's authority, and the witness's incredulity at the thought of questioning that authority:

Q: Did you make any objection to the Rebbe or the Rebbe's secretaries about this at the time?

A: Did I make any –if I understand your question correctly, I as a Chassid of the Rebbe made any objection to what the Rebbe has approved? Is that the---

Q: Yes. I think we both know the answer, but I would like you to just say it.

A: Is that the---

Q: That's the question.

A: I objected to the Rebbe, you are asking me if I ever objected to the Rebbe?

Q: Yes.

services. Kehot Publishing Society (Kehot) was created in 1941, but was never incorporated. Levine, pp. 16-17. Until the death of the Previous Rebbe in 1950, he was the president of Agudas, Machne and Merkos, and the Rebbe was the chairman of their executive boards. After the passing of the Previous Rebbe, the Rebbe became not only the spiritual leader of the Lubavitch Chassidic movement throughout the world, but in effect was the CEO of all of the Lubavitch organizations, and the president of the three corporations.

The Rebbe passed away in 1994. The witnesses use the term Gimmel Tammuz to refer to date of the Rebbe's passing. Since Gimmel Tammuz there has been no new Chabad rebbe.

Jurisdiction

Because jurisdiction is a threshold matter, we first consider opposer's claim that jurisdiction is an issue. Opposer cannot seriously contend that this board does not have jurisdiction to hear an opposition proceeding. Opposer brought this proceeding before the board, thereby acknowledging the board's power to adjudicate it. Moreover, Section 13 of the Trademark Act, 15 U.S.C. § 1063, explicitly states that an opposition proceeding, such as the one before us, may be brought in the Patent and Trademark

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A: For sure not.

Office, and Section 17(a), 15 U.S.C. § 1067(a), states that the board is to determine the rights to registration.

Opposer's claims regarding jurisdiction do not involve the board's inherent authority to decide this action, but rest on its contention that the Rebbe issued a mandate that all intramural disputes of a religious nature must be decided by the Beth Din of Crown Heights. Opposer is apparently asserting that applicant must have this matter settled by what is essentially alternative dispute resolution because the Rebbe, as president of applicant, bound applicant to do so. Opposer bases its position not on any specific directive by the Rebbe that any dispute over the KEHOT logo or the trademarks used by Kehot must be determined by a Beth Din, but on the Rebbe's statements in such contexts as whether his followers must follow the directive of the Crown Heights Beth Din that a fast must be observed, or whether the members of the Crown Heights Beth Din must, as a sign of respect, be given a particular honor in synagogue services.

We agree with applicant that by bringing this opposition before the Board opposer has waived its right to seek alternative dispute resolution through the Beth Din. Moreover, opposer never asserted in its notice of opposition a claim that applicant was required to submit this matter to a Beth Din for resolution, nor can this issue be said to

have been tried as applicant objected to testimony and documents identified during trial regarding the Crown Heights Beth Din. In fact, although applicant argued in its trial brief that the issue of jurisdiction was not tried, in its reply brief opposer did not contest this argument or respond to it in any way. Opposer cannot bring an action before this board, engage in a full trial before this board, and at virtually the end of the proceeding argue that this board has no jurisdiction to hear its claim. By its actions opposer has waived any right it might have had to claim that the parties had agreed to have their conflict adjudicated by the Beth Din.

Standing

There is no dispute that opposer has standing to bring this action. Applicant has acknowledged that opposer has published works using the KEHOT logo, although it asserts that the use of the logo was essentially under license. Whatever the arrangement by which opposer used the logo, its use shows that it has a real interest in this proceeding, and is not a mere intermeddler. See Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

First Amendment Ground

Opposer appears to claim that permitting applicant to register the KEHOT logo mark would violate the First

Amendment prohibition that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Some of the arguments made in connection with this point of opposer's brief appear to relate to the jurisdiction of this Board and opposer's claim that this is a matter that should be decided by the Beth Din. We have already discussed our jurisdiction herein. Opposer also argues that control over the KEHOT logo is part of a broader theological conflict between the parties. To the extent that opposer's arguments in its brief set forth a cognizable claim before this board, we find that this issue was not pleaded or tried. Specifically, opposer did not assert First Amendment considerations as a basis for its opposition, nor was such an issue tried by consent of the parties; applicant objected to testimony and exhibits relating to the doctrinal controversy. Further, although applicant pointed out in its trial brief that this issue was not pleaded or tried, in its reply brief opposer did not contradict applicant's position, and in fact made no response whatsoever to applicant's argument. Because we find that the issue of whether the applicability of First Amendment considerations to the registration of the KEHOT logo was neither pleaded nor tried, we have given this claim no consideration.[8]

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[8] As a general comment, there is clear precedent that this board

Ownership of the Logo

The record shows that the Kehot Publication Society was formed in October 1941, and the KEHOT logo was first used at that time. At the beginning Agudas, Merkos and Machne published books under the Kehot Publication Society name and logo. For example, applicant's exhibit 22 has the KEHOT logo and applicant's name and address and the notation, in English, "Copyright by the Merkos L'Inyonei Chinuch, Inc., 1943." However, the bulk of the publications that are of record have legends stating that they are published by and claim copyright in "KEHOT" or "Kehot Publication Society." Applicant's witness Rabbi Levine testified that Kehot Publication Society published Merkos books, which were books for education, and books edited by Otzar Hachassidim ("Otzar'), "the editing department of Chabad under Kehot who was editing Hasiduth [Chassidus] or the code of law or anything else other than educational." p. 42-43.[9]

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and the courts are not precluded from determining trademark rights when religious groups are involved, or when there has been a split within a religious group, with each group claiming rights of ownership of or rights to use a mark. In this case, a determination of whether applicant has the right to register the KEHOT logo would not involve a decision on the doctrinal dispute between the parties; our decision herein has an effect only on opposer's right to register the KEHOT logo or a mark that is likely to cause confusion with it.

[9] We note that the translations that were submitted for some of the Hebrew title pages of the latter books use the phrase "Published by Oitzar Hachasidim," although the books have the KEHOT logo and the English legend "Published and Copyrighted by 'KEHOT' Publication Society." See applicant's exhibit 14; see also applicant's exhibit 23. Rabbi Levine has explained that, although "published" is an acceptable translation of the Hebrew

In 1967 opposer herein, Vaad L'Hafotzas Sichos (hereafter "Vaad"), was established to publish the talks or discourses of the Rebbe, and the KEHOT logo was used on these publications. Some of the volumes of this work have the legend that they were published and copyrighted by Kehot Publication Society, (see opposer's ex. 11-D), and some say that they were published and copyrighted by Vaad. (see opposer's ex. 11-B). Subsequently Vaad took on additional responsibilities, including publishing under the KEHOT logo books other than the discourses, and administering the Tanya campaign.[10] By 1979 Vaad took over the arrangements for doing all the printing for Kehot Publication Society, e.g., arranging for edited works to be printed and bound.

The minutes of the first meeting of the Board of Directors of Merkos on October 7, 1942, at which the Previous Rebbe and the Rebbe were present, show that, with the incorporation of Merkos, it was determined that Merkos would take over the activities of the Kehot Publication Society and that the names KEHOT and KEHOT PUBLICATION SOCIETY were assigned by the previous Rebbe to Merkos.[11] The specific language of the resolution is as follows:

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wording before Otzar Hachassidim, the nuance of the phrase, which literally translates as "coming to light," means editing.

[10] The Tanya campaign was a project the Rebbe started in 1978 to have the Tanya, which is the basic book of Lubavitch philosophy, printed by and in each community throughout the world.

[11] Opposer has, in both its brief and reply brief, made statements that appear to question the validity of this evidence.

> Whereas "KEHOT" has been engaged in the publication of literature of great value both in the religious and pedagogic field, and
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> Whereas it appears that such activity would well fit into the program of MERKOS L'INYONEI CHINUCH, INC. and it would be for the best interests of MERKOS L'INYONEI CHINUCH, INC. to assume and adopt the continuance of these publications hereafter, and
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> Whereas Rabbi Joseph I. Schneersohn [the Previous Rebbe] has signified his willingness to and does give and assign to MERKOS L'INYONEI CHINUCH, INC. the right to use the trade names of "KEHOT" and "KEHOT PUBLICATION SOCIETY" in publishing, advertising and distributing religious and pedagogic literature,
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> Now, therefore, it is resolved that the proposal as set forth above be and the same hereby is approved and the Executive Committee is directed to carry out the terms of this resolution in all respects.

On June 3, 1960 applicant obtained a New York State registration for the KEHOT logo which was renewed through 1990. Applicant's witness Rabbi Krinsky testified that it was not renewed at that point due to an oversight.

"Only after the testimony period was closed and briefing underway, did the Applicant emerge with an entirely new proposition to give strength to Merkos' standing as a proper applicant." Reply brief, p. 1. It is true that the minutes, and the declaration attesting to the authenticity of the minutes and how they were discovered, were submitted after the completion of testimony. However, the parties stipulated to these submissions, and therefore they are properly of record. Further, if opposer had wanted to submit additional evidence with respect to the authenticity or probative value of this evidence, presumably it could have made this a condition of its stipulation.

Opposer has set forth in its brief several positions as to why applicant is not the owner of the KEHOT logo. First, opposer appears to argue that applicant is not the owner of the mark because there is no evidence that the Kehot Publication Society, which has used the KEHOT logo through the years, is a division of applicant. It appears that opposer is saying that Kehot Publication Society is part of an entity other than Merkos. However, because opposer's statement that "Merkos does not have proper standing to prosecute this application on behalf of the Kehot Publication Society," brief, p. 32, could be read as asserting that Kehot Publication Society is itself the owner of the KEHOT logo, we will address that point first.

Opposer itself has acknowledged that

> Kehot was never incorporated, never operated under the direction of a formal board of directors; nor did it ever employ its own staff. It never maintained its own bank account. Its ephemeral existence is perhaps best illustrated by the fact that on the title page of many publications it was identified <u>in quotation marks</u> as "*Kehot Publication Society*".

Brief, p. 33 (emphasis in original). We add that the evidence supports what opposer has stated, i.e., Kehot Publication Society was never incorporated, never paid the salaries of the staff that worked there, and never had a bank account. Thus, although numerous books bearing the KEHOT logo state that they were published and copyrighted by

Kehot or Kehot Publication Society, we cannot find on this record that Kehot Publication Society is a separate company and that it owns the KEHOT logo.

Opposer's primary argument is that there is insufficient evidence to demonstrate that Kehot Publication Society is a division of Merkos. In support of this, opposer points, inter alia, to its exhibits 45 and 50, see p. 33 of opposer's brief. Exhibit 45 is a declaration by Rabbi Levine (applicant's witness) that was submitted in a civil action that provides information about the history of the Chabad-Lubavitch Chasidic movement and the corporate structure of the Chabad organizations.[12] However, the declaration actually states, at paragraph 16, that Kehot Publication Society is a division of Merkos:

> Once established, Merkos was assigned primary responsibility for education and publishing activities. Its publishing activities were carried out through its Kehot Publishing Society division under the Kehot logo.

Exhibit 50 is a document signed in 1985 that is the response to discovery by Agudas Chasidei Chabad (the Chabad umbrella corporation set up by the Previous Rebbe) in a

[12] The declaration was submitted in connection with a summary judgment motion in a civil action between Merkos as plaintiff and a third party before the U.S. District Court for the Eastern District of New York.

civil action brought by Agudas.[13] The response was signed by Rabbi Krinsky, one of applicant's witnesses in this proceeding. Agudas responded to an interrogatory to identify all organizations through which the "Lubavitch Rabbi and community" perform their major functions, by listing four organizations: Kehot Publication Society (publishing), Merkos (educational services), Machne (social services) and United Lubavitch Yeshivot (yeshivas). Opposer considers the fact that Kehot is listed as a separate organization from Merkos in this response, and that its publications are listed separately from the publications of Merkos in other documents, as showing that Kehot is not a division of Merkos.[14]

Opposer is correct that many of the exhibits make a distinction between Merkos and Kehot. History of Chabad in the U.S.A., opposer's exhibit 46, describes Merkos and Kehot in separate chapters, and does not describe Kehot as a division of Merkos or list Merkos as overseeing the activities of Kehot.

Ultimately, however, whether or not the publications given out to the public state that Kehot Publication Society

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[13] The action was brought by Agudas in the U.S. District Court for the Eastern District of New York against third parties because of physical damage to the plaintiff's library.

[14] However, opposer does not apparently view the listing of Kehot as a separate organization as proof that Kehot is an independent entity, and for the reasons we have already discussed, we agree.

is a division of Merkos is not determinative. It is not required that a division of a corporation identify the corporation on the pamphlets or books it publishes. So although there is meager evidence in terms of the publications themselves to show that Kehot is a division of Merkos, there are other documents and testimony that does. First, there are the minutes of the first Merkos board meeting in 1942, discussed above, in which it was determined that the newly incorporated Merkos would continue the activities of Kehot, and in which the previous Rebbe assigned the names Kehot and Kehot Publication Society to Merkos. Although opposer argues that this assignment did not "transform the Kehot Publication Society into a division of Merkos," brief, p. 35, there is significant documentary evidence and testimony that shows that it did. As opposer has acknowledged, the Kehot Publication Society does not function as an actual company paying the salaries of employees and maintaining a bank account; rather it has been more of a vehicle through which written material is published. The evidence shows that Merkos has paid the salaries of Kehot staff. Rabbi Levine testified that he was a senior editor in Kehot, but "all checks, all orders, all instructions of Kehot came by Merkos," p. 95; Merkos has paid all the expenses of Kehot, and all income from Kehot has gone into Merkos's account, p. 96. See, for example,

applicant's exhibit 96, a 1978 bill from Empire Press for work on the Tanya, which was published under the KEHOT logo; Rabbi Krinsky, who has been on the board of directors of Merkos since the 1970s, confirmed his handwriting on the bill which indicated that he wrote out the check in payment of the bill. Similarly, exhibit 97 is a 1978 bill from Empire Press to Kehot Publication Society where, again, Rabbi Krinsky testified as to his handwriting on the bill indicating that he wrote the check.

In addition, Merkos applied for and obtained a New York State trademark registration in 1960 for the KEHOT logo and renewed the registration in 1980.

Viewing the evidence in its totality, there is ample support for the conclusion that Kehot Publication Society is a division of Merkos, and that Merkos is the owner of the KEHOT logo and is the proper applicant for this trademark. Put another way, opposer has not met its burden of proving by a preponderance of the evidence that Kehot is not a division of Merkos.

Opposer argues, alternatively, that "any assignment of Kehot publishing rights to Merkos was unmistakably superseded or terminated in 1979 when the Rebbe designated Vaad to operate Kehot." Brief, pp. 35-36. The record shows that Vaad was established in 1967 to publish the Rebbe's talks and circulate them to the Chabad centers and

synagogues in the United States. Levine, p. 44. Merkos provided Vaad with space in its building for offices and printing equipment, rent free. Levine, pp. 44-45. Later, Vaad took on more responsibilities, managing publishing activities for Kehot. At the end of 1978 or beginning of 1979[15] Vaad entered into a more formal relationship with Kehot. According to opposer's witness Rabbi Chanin, he was told that the Rebbe wanted Vaad to take on the management of Kehot, and that Vaad should prepare a contract in accordance with the notes of the Rebbe. The relationship is shown by opposer's exhibit 14, an agreement between Kehot and Vaad.[16]

The document between Kehot and Vaad spells out the different responsibilities of each party. Essentially Vaad accepted responsibility for the actual printing process—deliberations with the printers, binders, etc., supervising

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[15] The agreement, opposer's exhibit 14, bears a date in Hebrew which follows the Jewish calendar. The English translation does not reflect a date. Rabbi Krinsky stated that the date would coincide with December 1978.

[16] Opposer has pointed out that the agreement that is Exhibit 14 is not signed. Rabbi Chanin testified that he signed the agreement and gave it to Rabbi Hodakovs, the Rebbe's Chief of Staff, and that he does not know who else may have signed it. Although an unsigned agreement would normally have little probative value, in the present situation, given that the Rebbe was regarded as a righteous man, and the authority that he wielded, ("if we got such offer from the Rebbe, there is no—-can't refuse it," Chanin, p. 50), the fact that Rabbi Chanin and Vaad would act in accordance with the agreement without a signed copy does not seem unusual. We also note that opposer's witness Rabbi Krinsky, who was part of Kehot's management at the time, stated that the paragraph in the agreement setting forth Vaad's obligations accurately reflected what Vaad's responsibilities actually were, and there is also documentary evidence that indicates that the provisions of the agreement were followed.

the aesthetic quality of the printing; maintaining contact with the "handlers" (presumably the editors) about the progress of their work; and publicity. The agreement states very clearly that Vaad was not responsible for the preparation of the books themselves: "the responsibility of [Vaad] in the printing of books begins only after it receives from Kehot an entirely complete book." Kehot was responsible for payment of all expenses, including printer's bills and publicity expenses.

It is not clear just what opposer means by its statement that any assignment of Kehot publishing rights to Merkos were terminated by the changed relationship in 1979 as evidenced by this agreement. Certainly opposer is not asserting that the rights the Previous Rebbe assigned in 1942 somehow reverted to him; he had passed on many years earlier. Nor is there any basis to conclude that the rights in the Kehot name somehow vested in Kehot itself. As we have discussed at some length, Kehot is not actually a business entity that operates as an independent organization. To the extent that opposer is asserting that it became the owner of the logo in 1979, there is simply no evidence to support such a claim. The agreement makes no

mention whatsoever of the KEHOT logo, let alone a transfer to Vaad of rights in the logo.[17]

On the contrary, there is documentary evidence that, subsequent to 1979, Merkos continued to act as the owner of the KEHOT logo. Merkos continued to receive and pay bills for Kehot after 1979. See applicant's exhibit 105, a 1991 bill for "Kehot Publications/Catalog"; applicant's exhibit 106, a 1988 bill from Crown Bookbindery, Inc. to Kehot Publication Society for the "History of Chabad in the U.S.A."; applicant's exhibit 107, a 1987 bill from Expert Bookbinding Corporation for a Kehot publication; and applicant's exhibit 108, a 1990 bill to Kehot from the Algemeiner Journal for a newspaper advertisement placed by Kehot. Rabbi Krinsky testified that all of these bills were paid by Merkos, identifying the people who had approved the payments. Perhaps most significantly in terms of showing its continued ownership of the KEHOT logo, in 1980 Merkos renewed its New York State registration for the logo.

Given the testimony and documentary evidence showing that Merkos acted as the owner of the KEHOT logo after 1979, and the omission from the agreement between Vaad and Kehot on which Vaad relies from which a termination of Merkos's ownership rights in the KEHOT logo can even be inferred, we

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[17] Under this alternative theory by Vaad, presumably the putative assignment would have been by Merkos, acting through its Kehot division.

find that opposer has not proved by a preponderance of the evidence that Merkos lost its ownership rights in the KEHOT logo, or that Vaad obtained them.

Finally, throughout opposer's brief there is a claim that the KEHOT logo is not a trademark, and that it represents something spiritual, namely that the Rebbe has sanctioned the material identified by the logo. Although the Rebbe sanctioned the use of the logo for some material but not for other material, this does not make it a "spiritual" mark. Ownership of a trademark gives the owner the right to determine what goods will be sold or offered under the mark; thus, while the Rebbe may be a spiritual leader, his actions in approving the use of the logo are no different from any other trademark holder. Further, the record shows that both the Previous Rebbe and the Rebbe treated the KEHOT logo not as some spiritual or holy item. Rather, they each took the business steps that any trademark owner would take with respect to a trademark, including filing for protection of the mark under the laws of New York State.

Again, it is opposer's burden as the plaintiff in this proceeding to prove its case. Under any of the theories opposer has advanced, it has simply failed to meet that burden.

Decision: The opposition is dismissed.