



Colonizing and Commoditizing Language: The Problem of the *Dosha* Trademark

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In the United States, the Patent and Trademark Office exists to protect and distinguish the source of innovations; original writings and productions; and goods and services through patents, copyrights, and trademarks/service marks, respectively. In particular, trademarks are a word, phrase, symbol, or design that distinguishes the source of goods from one party to another.

The word *dosha* (alternative spelling: *doṣa*) is the English transliteration of a Sanskrit term. The U.S. Ayurvedic community generally considers the term *dosha* to be a generic term. Therefore, *dosha* should not be able to be trademarked. Generic terms, such as “strawberry”, may not be trademarked unless they are used to represent something entirely different than their definition, such as “a tire company,” or are qualified with a unique term, such as “Wendy’s Strawberry Jam.” As of this writing, a U.S. business has successfully trademarked the term *dosha*. So how did we get here, and what does this mean for the Ayurvedic community on a broader scale?

History

January 8, 1997 marked the first recorded date that the term *dosha* met with the United States Patent and Trademark Office (USPTO). Doshas, Inc. filed a claim to register a typed drawing that included the generic term *dosha*, but this filing was abandoned on November 10, 1997. That same year, a Portuguese company, Almonda-Sociedade Gestora de Participacoes Sociais, S.A., filed a similar claim that sought to register a typed drawing that included the term *dosha*. On April 20, 1999, the typed drawing was registered, but was cancelled on January 28, 2006.

On January 23, 2007, a Colorado-based company, Posh Hair Salon, Inc., filed for a standard character trademark to register the term *dosha* without claim to any particular font style, size, or color, and absent of any design element. A word with a standard character trademark provides broad rights of use to the registrant of such a trademark, whereby the trademarked term can be used in any manner of presentation and is not limited to style or drawing.

A little over a year later, on March 6, 2008, California-based company H & B Beauty Supplies also applied for a standard character trademark to register the term *dosha* and acknowledged in its filing that the term *dosha* was a translation of a generic Sanskrit term: “The foreign wording in the mark translates into English as three humors that are responsible for the functioning of the human organism.” However, on September 14, 2010, the word *dosha* was registered to Posh Hair Salon as a standard character trademark.

Between March and July of 2012, several Ayurvedic companies received notices from the *Dosha* trademark holder, Posh Hair Salon, to stop using the word *dosha* in their company name or products. At least one company was sued, with the lawsuit including a demand for a percentage of sales [1]. The National Ayurvedic Medical Association—an organization whose mission includes preserving, improving, and promoting the science and practice of Ayurveda for the benefit of humanity—petitioned for cancellation of the *Dosha* trademark on July 19, 2012, but has since withdrawn its petition due to the cost of litigation. H & B Beauty Supplies is the current owner of the *Dosha* trademark.

Implications

A review of the USPTO trademark database shows that there is a history of companies seeking trademarks for a host of generic Sanskrit terms, including *prana*, *ojas*, *vata*, *pitta*, *kapha*, and *agni*. In the list of applications on USPTO website, some have been denied, while others have succeeded.

I have been told that upper management at the USPTO is aware of the inconsistencies in its examiners’ rulings and the success or failure of registrations (personal communication, Wynn Werner, November 12, 2013). Also, it has been communicated that they are aware of the problems of words in other languages receiving registrations when their English counterparts never would have passed through the rigorous approval process. Despite these discussions, the problem remains [2].

There are two main courses of action. Ayurvedic institutions or organizations at the international, national, regional, or local levels can follow the currently accepted channels for filing complaints to the USPTO to ultimately revoke the registration of a trademark. This outcome, however, has economic limits because the funding necessary to revoke the trademark may be more than any one organization can afford. A possible solution is for Ayurvedic organizations to partner with one another. A positive outcome of acquiring financial backing from schools, vendors, and philanthropists who have a vested interest in the outcome is the unification of the Ayurvedic community. However, even if the *Dosha* mark was revoked, other translated trademarked terms still exist, and there are economic limits to revoking all trademarks in a piecemeal fashion.

Another course of action is for H & B Beauty Supplies to keep the registration of the *Dosha* mark and grant privileged use to allied individuals and organizations. While creating strategic alliances allows allied participants the freedom to use the word *dosha*, it may also cause a political and linguistic split in the Ayurvedic community. Further, organizations that seek to be free of political entanglements may lose credibility if becoming allied partners because they may be seen as being biased or opportunistic. Thus, privileged use of the *Dosha* mark may limit the broader community’s right to individuality and independency.

Conclusion

At present, H & B Beauty Supplies owns the *Dosha* trademark, and Posh Hair Salon has been successful in receiving trademarks for the

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words *vata*, *pitta* and *kapha* in the cosmetic category. The argument put forth here is that basic Ayurvedic terms alone should not be able to be trademarked and thus, colonized and commoditized to the extent that others cannot use them in the names of their company, products, services or descriptions of them. Combining a generic word along with another word is deemed acceptable, as is trademarking a generic term in the context of a drawing or image. But, trademark holders should not

make claims of ownership of the Sanskrit generic terms and prevent other companies from also using these Ayurvedic terms.

References

1. United States Patent and Trademark Office (2012) Protecting your trademark.
2. United States Patent and Trademark Office (2013) Trademarks.