

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

BIKRAM'S YOGA COLLEGE OF INDIA,
L.P., a California limited
partnership; BIKRAM CHOUDHURY,
an Individual,

Plaintiffs-Appellants,

v.

EVOLUTION YOGA, LLC, a New
York limited liability company;
MARK DROST, an Individual; ZEFEA
SAMSON, an Individual,

Defendants-Appellees.

No. 13-55763

D.C. No.
2:11-cv-05506-
ODW-SS

OPINION

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Argued and Submitted
May 8, 2015—Pasadena, California

Filed October 8, 2015

Before: John T. Noonan, Kim McLane Wardlaw,
and Mary H. Murguia, Circuit Judges.

Opinion by Judge Wardlaw

SUMMARY*

Copyright

Affirming the district court's grant of partial summary judgment, the panel held that a sequence of yoga poses and breathing exercises was not entitled to copyright protection.

The panel held that under 17 U.S.C. § 102(b), the "Sequence," developed by Bikram Choudhury and described in his 1979 book, *Bikram's Beginning Yoga Class*, was not a proper subject of copyright protection because it was an idea, process, or system designed to improve health, rather than an expression of an idea. Because the Sequence was an unprotectible idea, it was also ineligible for copyright protection as a compilation or choreographic work.

COUNSEL

Ivana Cingel (argued), Carla Christofferson and Daniel Petrocelli, O'Melveny & Myers LLP, Los Angeles, California, for Defendants-Appellants.

Eric R. Maier (argued) and Louis Shoch, Maier Shoch LLP, Hermosa Beach, California, for Plaintiffs-Appellees.

Kevin M. Fong and Cydney A. Tune, Pillsbury Winthrop Shaw Pittman LLP, San Francisco, California, for Amicus Curiae Yoga Alliance.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION

WARDLAW, Circuit Judge:

We must decide whether a sequence of twenty-six yoga poses and two breathing exercises developed by Bikram Choudhury and described in his 1979 book, *Bikram's Beginning Yoga Class*, is entitled to copyright protection. This question implicates a fundamental principle underlying constitutional and statutory copyright protection—the idea/expression dichotomy. Because copyright protection is limited to the expression of ideas, and does not extend to the ideas themselves, the Bikram Yoga Sequence is not a proper subject of copyright protection.

I. Factual and Procedural History

The Indian practice and philosophy of yoga date back thousands of years. *See* Linda Sparrowe, *Yoga* 9 (2002). Derived from ancient Hindu scriptures, including the Bhagavad Gita, the practice of yoga teaches students to attain spiritual fulfillment through control of the mind and body. *See* Stefanie Syman, *The Subtle Body: The Story of Yoga in America* 4 (2010). Yoga has evolved into a diverse set of spiritual, philosophical, and physical disciplines. Some students practice yoga to transcend the physical body and unite with divine powers; others focus on improving strength, flexibility, and overall physical fitness.

The history of yoga in the United States reflects its wide-ranging appeal. Some of yoga's first American adherents included nineteenth-century transcendentalists, such as Henry David Thoreau and Ralph Waldo Emerson, who were fascinated by yoga's approach to achieving enlightenment.

In the early twentieth century, yoga grew more popular as scientists and physicians began to study the physical benefits of the practice. These physical benefits caught the attention of Hollywood celebrities, including Gloria Swanson, Greta Garbo, and Marilyn Monroe, who embraced yoga as a tool to fight illness and aging. See Pankaj Mishra, *Posing as Fitness*, N.Y. Times, July 23, 2010.¹ By the 1960s, Americans increasingly turned to yoga as a “non-religious, decidedly unspiritual” form of physical exercise. Sparrowe, *supra*, at 50.

In 1971, Bikram Choudhury, the “self-proclaimed ‘Yogi to the stars,’” *id.* at 56, arrived in Beverly Hills, California. He soon became a central figure in the growing popularity of yoga in the United States. Born and raised in Calcutta, India, Choudhury began studying yoga at age four and learned hundreds of traditional Hatha yoga “asanas,” or individual poses. Hatha yoga places particular emphasis on the physical components of yoga. Choudhury developed a sequence of twenty-six asanas and two breathing exercises, arranged in a particular order, which he calls the “Sequence.” See Bikram Choudhury, *Bikram’s Beginning Yoga Class* (1979). Choudhury opened his own studio, where he began offering “Bikram Yoga” classes. In a Bikram Yoga class, the Sequence is practiced over the course of ninety minutes, to a series of instructions (the “Dialogue”), in a room heated to 105 degrees Fahrenheit to simulate Choudhury’s native Indian climate.

Choudhury popularized the Sequence by marketing the many health and fitness benefits it provides. Choudhury

¹ This article may be found at <http://www.nytimes.com/2010/07/25/books/review/Mishra-t.html>

informs prospective students that his “system of Hatha Yoga is capable of helping you avoid, correct, cure, heal, or at least alleviate the symptoms of almost any illness or injury.” He claims that he developed the Sequence after “many of years of research and verification . . . using modern medical measurement techniques.” He tells reporters that he extended the careers of professional athletes, including Kareem Abdul-Jabbar and John McEnroe. This message has resonated with an American audience: as the complaint in this action explains, “[p]ublic demand for Bikram Yoga classes grew steadily once Bikram Yoga participants realized that Bikram’s unique yoga style and method offered them tremendous physical, mental and other benefits.”

In 1979, Choudhury published the book *Bikram’s Beginning Yoga Class*, which includes descriptions, photographs, and drawings of the Sequence’s twenty-six poses and two breathing exercises. Choudhury registered the book with the U.S. Copyright Office in 1979. In 2002, he also registered the “compilation of exercises” contained in the book, using a supplementary registration form that referenced back to the 1979 book.²

In 1994, Choudhury introduced the “Bikram Yoga Teacher Training Course.” In 2002 and 2005, respectively, Mark Drost and Zefea Samson enrolled in and successfully completed the three-month Bikram Yoga Teacher Training

² Choudhury has registered several other works with the Copyright Office, including *Bikram’s Beginning Yoga Class* (2d ed.) (2000), *Bikram’s Beginning Yoga Class* (sound cassette) (2002), *Bikram’s Yoga College of India Beginning Yoga Dialogue* (2002), *Bikram’s Yoga College of India: Yoga Teacher Training Course: Curriculum Outline* (2002), *Yoga for Pregnancy* (2002), *Bikram’s Advanced Yoga Class* (2006), and *Bikram’s Yoga* (2007).

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