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# **Bikram’s Yoga College of India, L.P. v. Evolution Yoga, LLC 803 F.3d 1032 (9th Cir. 2015)**

KELCEY PHILLIPS\*

## BACKGROUND

Bikram Choudhury, founder of Bikram’s Yoga College of India (“Choudhury”), moved from India to Beverly Hills, California in 1971 and quickly became a “central figure” in yoga. Choudhury began his study of the practice of yoga at the age of four, and learned an abundance of traditional poses that date back thousands of years. Following his studies, Choudhury developed a yoga sequence that included two breathing exercises and twenty-six yoga poses (“the Sequence”). He arranged the Sequence in a specific order and the Sequence was performed over ninety minutes with the guidance of instructions (the “Dialogue”) in a room heated to 105 degrees Fahrenheit. The Sequence was developed by Choudhury after years of research and medical measurements, and was intended to provide mental, physical, and overall health benefits. After opening his own studio, the Sequence quickly gained popularity.

The Sequence, now known as “Bikram Yoga,” was described and illustrated through drawings and photographs in Choudhury’s book, *Bikram’s Beginning Yoga Class*, (“the book”). In 1979, he published the book and registered it with the U.S. Copyright Office. In 2002, Choudhury used a supplementary registration form to register the “compilation of exercises” featured in the published book.

In 1994, following the growing demand for his classes, Choudhury began offering three-month training courses for teachers (“Bikram Yoga Teacher Training”). Mark Drost and Zefea Samson were repeat students of the Bikram Yoga Teacher Training. In 2009, four years after Drost and Samson successfully completed their second Bikram Yoga Teacher Training, they opened Evolution Yoga, LLC (“Evolution”). Evolution offers yoga classes (“hot yoga”) which has a stark similarity to Bikram Yoga, including twenty-six poses performed to oral instructions in a room heated to 105 degrees Fahrenheit. Consequently, in 2011, Choudhury brought an action against Evolution, alleging copyright infringement through the hot yoga class’ substantial use of his copyrighted works.

## PROCEDURAL HISTORY

Evolution moved for partial summary judgment on the claim of infringement of the Sequence. The District Court of the Central District of

California granted Evolution's motion for partial summary judgment. The district court determined that the Sequence could not be granted copyright protection, since it was a collection of ideas and facts.<sup>1</sup> After agreeing to settle his other claims, Choudhury appealed the district court decision to the Ninth Circuit Court of Appeals.

### ISSUE

The Ninth Circuit addressed the issue of whether the district court erred in granting a partial summary judgment in favor of Evolution, on the basis that the Sequence developed by Choudhury was not entitled to copyright protection.

### DECISION

The Ninth Circuit affirmed the district court's decision. First, the court reasoned that as under the idea/ expression dichotomy,<sup>2</sup> the Sequence was not entitled to copyright protection. Second, the court reasoned that the Sequence was not a copyrightable compilation or choreographic work because, as a threshold analysis, it is still subject to the idea/expression dichotomy.

### REASONING

To determine whether the Sequence was protectable, the Ninth Circuit analyzed the scope of Choudhury's existing copyright protection for his 1979 book, *Bikram's Beginning Yoga Class*, and whether that protection extended to the Sequence. The Copyright Act of 1976 sets forth copyright protection exclusions based on the idea/expression dichotomy.<sup>3</sup> The idea/expression dichotomy is constitutionally founded in both the First Amendment<sup>4</sup> and the Copyright Clause.<sup>5</sup> These clauses encourage free speech and publication of facts and ideas, while simultaneously permitting others to build and develop those facts through original expression.

Choudhury described the Sequence as a "system" or "method" for exercise to achieve health benefits. Relying on the idea/expression dichotomy, which excludes protection for processes and methods of operation, the Ninth Circuit held that the sequence was not entitled to copyright protection. The court's decision adheres to the constitutional principle that an exclusive monopoly of factual information should not be granted. Furthermore, copyright protection for a book describing a process

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1 See *supra*, Reasoning.

2 Codified in 17 U.S.C. § 102(b) (1976).

3 17 U.S.C. § 102(b) (1976).

4 U.S. Const. amend. I.

5 U.S. Const. art. I, § , cl. 8.

or method, does not extend to the process or method itself.<sup>6</sup> The Ninth Circuit analogized to the limited scope of copyright protection in a book describing how to perform a complicated surgery. The book is protected, however the protection does not extend to the surgery itself. Thus, the Ninth Circuit found that the copyright protection for Choudhury's book does not extend to the Sequence itself, despite the health benefits.

Additionally, Choudhury raised the argument that the sequence and its arrangement should receive copyright protection due to the beautiful and graceful composition of the postures. However, the court held that beauty is neither a basis for copyright protection, nor does it transform a process into an expression.

Next, the Ninth Circuit addressed whether the Sequence was a compilation and entitled to copyright protection. Compilations are entitled to copyright protection. However, compilations of a method or process are not entitled to copyright protection. The Ninth Circuit determined that the Sequence could not be categorized as a compilation because the facts, the yoga postures, were not selected and arranged in an original way. It was not enough that the Sequence was a process with separate, identifiable parts of breathing exercises and poses.

Choudhury also argued that the Sequence was entitled to copyright protection as a compilation because other yoga sequences could achieve the same result,. However, the court cited prior case law holding that a work does not gain copyright protection as a compilation due to the mere existence of other possible methods that could obtain the same result.<sup>7</sup> Furthermore, the Ninth Circuit held that the Sequence would be barred from copyright protection due to the threshold idea/expression dichotomy, even if it was deemed a compilation.

Lastly, the Ninth Circuit determined that the sequence was not entitled to copyright protection as a choreographic work. Though the Copyright Act of 1976 extended copyright protection to "pantomimes and choreographic works"<sup>8</sup>, no clear definition of a choreographic work exists. Legislative history shows that choreography includes dance movements that "must be more than mere exercises."<sup>9</sup> Irrespective of the ambiguity in the definition of choreographic works, the court held that even if the sequence was a choreographic work, it was barred from copyright protection under the idea/expression dichotomy. The court noted that the idea/expression dichotomy prevents individuals from gaining monopoly rights over what might be routine physical movement . The court refused to grant Choudhury monopolistic rights over all 26 poses and breathing exercises in the Sequence. Therefore, the Ninth Circuit affirmed the district

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6 *Baker v. Selden*, 101 U.S. 99 (1879).

7 *Bell South Advert. & Publ'g Corp. v. Donnelley Info. Publ'g. Inc.*, 999 F.2d 1436 (11th Cir. 1993).

8 17 U.S.C. § 102(a)(4).

9 U.S. Copyright Office, *Compendium II: Compendium of Copyright Office Practices* § 450.03(a) (1984).

court's decision that the Sequence was not entitled to copyright protection as a choreographic work.

A categorization of the Sequence was immaterial because as a method, process, or idea it must be excluded from the scope of copyright protection. The Ninth Circuit held that the district court properly granted a partial summary judgment in favor of Evolution because the Sequence was not protectable and therefore Evolution's use of the sequence of poses and breathing techniques did not constitute copyright infringement.