Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

9th Circ. Copyright Ruling Will Make Exercise Gurus Sweat

Lindsey N. Casillas

Law360, New York (November 18, 2015, 10:48 AM ET) -- On Oct. 8, 2015, the Ninth Circuit Court of Appeals issued a significant opinion definitively stating that the Bikram's Yoga College of India LP compilation of 26 yoga poses and two breathing exercises known as the "Sequence" is not subject to copyright protection.[1] The Sequence, practiced in a room heated to approximately 105 degrees Fahrenheit, is not only the foundation of the entire Bikram Yoga franchise but also is accredited with launching the practice of hot yoga in the United States.

Bikram Choudhury, born and raised in Calcutta, India, arrived in California in 1971 and proclaimed himself "yogi to the stars." He arranged a series of 26 hatha yoga asanas (individual poses) and two breathing exercise into a particular order, which he called the "Sequence." In 1979, Choudhury published a book, "Bikram's Beginning Yoga Class," describing his method and the Sequence. He then popularized the Sequence by marketing its health and fitness benefits.

As a result of the popularity of the Sequence and hot yoga, in 1994, Choudhury began offering teacher training. Mark Drost and Zefea Sampson both enrolled in and completed the three-month Bikram course. In 2009, Drost and Samson founded Evolation Yoga LLC, offering several types of yoga including a hot yoga class similar to that described in Bikram's Basic Yoga System.

On July 1, 2011, Choudhury and Bikram's Yoga College filed a complaint against Evolation in the U.S. Central District Court of California alleging infringement of Bikram's copyrighted works. On Nov. 12, 2012, Evolation moved for a partial summary judgment arguing the Sequence is not entitled to copyright protection. The district court agreed, and Choudhury appealed leading to the Oct. 8, 2015, ruling.

In affirming the lower court's decision, the Ninth Circuit articulated that the Sequence, at its most basic level, is an idea and not the proper subject of copyright. Moreover, because the Sequence in an idea, it is also ineligible for copyright protection as a "compilation" or as a "choreographic work."

Copyright protects only the form in which ideas or information are expressed, not the ideas or information itself.[2] In fact, the primary purpose of copyright is to "promote the Progress of Science and the useful Arts."[3] Copyright balances the interests of authors with freedom of expression by assuring "authors the right to their original expression," but simultaneously encouraging "others to build freely upon the ideas and information conveyed by the work."[4]

In evaluating the Sequence, the Ninth Circuit noted that courts have routinely held that the “copyright for a work describing how to perform a process does not extend to the process itself.” The Ninth Circuit cited Palmer v. Braun,[5] holding that meditation exercises described in a manual on exploring consciousness were "a process" and such processes, even if original, cannot be protected by copyright. The Ninth Circuit also cited Publications International Ltd. v. Meredith Corp.,[6] holding that recipes in a copyrighted cookbook are not entitled to copyright protection because they merely describe a procedure by which the reader may produce the various dishes.

In this case, Choudhury described the Sequence as a system or method designed to systematically work every part of body and yield physical benefits and a sense of well-being. An essential element of that system is the order in which the yoga poses and breathing exercise are arranged. The Ninth Circuit analogized Choudhury’s Sequence to a copyright for a book describing how to perform a complicated surgery. In the same way a book describing a surgery does not give the holder the exclusive rights to perform the surgery, a book describing a healing methodology comprising a series of movements does not give the author exclusive rights to that Sequence.

Furthermore, the Ninth Circuit explained that because the Sequence is an idea, it is not entitled to copyright protection as a compilation. A compilation is a work formed by the collection and assembling of preexisting materials or data that are selected, coordinated or arranged in such a way that the resulting work is an original work of authorship.[7] However, Section 103 complements 102. Therefore, a compilation still cannot extend to any idea, procedure, process or system.

The example of a copyright-protected compilation provided by the Ninth Circuit was that of Feist,[8] involving a collection of names, towns and telephone numbers in a telephone directory. The Ninth Circuit reiterated that in no event may a copyright extend to the facts themselves and returned to the example that a recipe may be viewed as a compilation but the process would still not be suitable for copyright protection as an original work of authorship. Again, the Ninth Circuit noted the Sequence’s composition rendered it a process or system, and not any more suitable for copyright protection as a compilation.

Finally, the Ninth Circuit noted the Sequence did not qualify for protection as a choreographic work for the same reason it did not qualify as a compilation. The term “choreography” in the copyright context remains largely undefined, however at least one court concluded that choreography represents a series of dance movements organized into a whole.[9] The term "dance" is defined in the U.S. Copyright Office, Compendium II: Compendium of Copyright Office Practices 450.01 (1984) as “static and kinetic successions of bodily movements in certain rhythmic and spatial relationships.” The Ninth Circuit reasoned that while the Sequence may involve static and kinetic successions of bodily movements in certain rhythmic and spatial relationships, such movements do not become copyrightable as choreographic works when they are merely part of a process. Just as the bodily movements involved in a method to churn butter or drill for oil do not receive copyright protection, nor would the Sequence.

The takeaway here is that a process remains an idea. While published works in the form of a book or images themselves are entitled to copyright protection, the process, information or ideas contained therein will not. Businesses that are built upon sequences or process-type programs — think Bikram yoga studios, CrossFit gyms and Zumba classes — should take note that this decision is game-changer. A definitive statement that developed movement based methods for improving health, even if original, are a process or idea; thus not subject to copyright protection.

The looming question remaining is: What is Bikram's next move? Hundreds of Bikram franchise owners who paid fees for the exclusive rights to be the only hot yoga studio teaching the Sequence now find that exclusivity diminished as other studios will be able to utilize that process and teach the same classes. The Ninth Circuit commented that if the Sequence is entitled to protection at all, that protection is more properly sought through the patent process, but refused to opine on the patentability of the Sequence. However, any patent practitioner assessing patentability of the Sequence will immediately direct Bikram to the novelty statutory bar described at 35 U.S.C. 102.[10]

Whether Bikram chooses to appeal this decision or not, it will remain an interesting franchise to watch in the coming months.

—By Lindsey N. Casillas, Klinedinst PC

Lindsey Casillas is an associate in Klinedinst's Sacramento, California, office.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Bikram's Yoga Coll. of India, L.P. v. Evolation Yoga, LLC, 803 F.3d 1032 (9th Cir. Cal. Oct. 8, 2015)

[2] 17 U.S.C. §102

[3] U.S. Const. art. I, section 8, cl. 8

[4] Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 349-350 (1991)

[5] 287 F.3d 1325 (11th Cir. 2002)

[6] 88 F.3d 473 (7th Cir. 1996)

[7] 17 U.S.C. 101, 103(a)

[8] 499 U.S. at 350-351

[9] Horgan v. Macmillan, Inc., 789 F.2d 157, 160 (2nd Cir. 1986)

[10] 35 U.S.C. 102 bars patentability where, among other things, an invention has been disclosed in a publication (such as a book) before the effective filing date of the claimed invention.