

Litigator of the Week: Eric Maier of Maier Shoch

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Dogged by sexual harassment allegations, the ultrasuccessful hot yoga guru Bikram Choudhury has been playing defense lately in the courts. But the controversial yogi has waged a legal offensive on another front, suing yoga studios for allegedly breaching a copyright on his sweat-inducing sequence of poses and breathing exercises.

One of Choudhury's targets, Evolution Yoga LLC, has now cut off that line of attack with the help of Eric Maier of the two-lawyer, Los Angeles-based litigation shop Maier Shoch. In an Oct. 8 ruling, the U.S. Court of Appeals for the Ninth Circuit not only rejected copyright infringement claims against Evolution, but found that Choudhury never held valid rights to his yoga routine in the first place.

"At bottom, the sequence is an idea, process or system designed to improve health," Judge Kim McLane Wardlaw wrote for a unanimous three-judge panel. "Copyright protects only the expression of this idea—the words and pictures used to describe the sequence—and not the idea of the sequence itself."

How did Maier, who started his firm in 2007 after six years as an associate at Gibson, Dunn & Crutcher, get mixed up in a headline-grabbing intellectual

property fight with a Rolls Royce-obsessed yoga sensation? And how did he and his tiny firm come out ahead of Choudhury's top-shelf appellate counsel at O'Melveny & Myers?

Maier, pictured right, said he first heard about the copyright lawsuit from friends and family who practiced yoga in one of Evolution's studios in Tampa, Florida—a studio that Maier himself had attended in the past.



"I was very attracted to helping this little guy fight against what really is a much bigger entity," Maier said.

Choudhury and his company, Bikram's Yoga College of India, filed suit in July 2011 in Los Angeles federal court, alleging that Evolution infringed a copyright on the Choudhury-devised sequence of 26 yoga poses and two breathing exercises.

Choudhury, who grew up in India and arrived in Beverly Hills in 1971, helped popularize yoga in the U.S., particularly among celebrities and the elite. He laid out his sequence—meant to be performed over 90 minutes in a room heated to 105 degrees Fahrenheit—in a 1979

book called “Bikram’s Beginning Yoga Class,” which he registered with the U.S. Copyright Office.

When Maier delved into Evolation’s defense, he told us, he learned that Choudhury had been wielding that copyright to threaten legal action against small yoga studios for many years. As a result, Maier said, many studios changed their class offerings, avoiding the hot yoga sequence that Choudhury claimed to own.

“These small studios have come to be afraid of Bikram over the years,” Maier said. “Most of them had to stop because they’re too small to get into a big litigation battle with an international company.”

At the district court, Maier argued that Choudhury’s copyright didn’t extend beyond the pages of his book. Choudhury’s lawyers at O’Melveny, on the other hand, maintained that the copyright had a broader reach that, akin to a piece of choreography, covered the yoga sequence itself.

“They wanted to focus on the creativity that went into arranging this sequence of pre-existing poses,” said Maier. “But our argument was, regardless of how creative it may or may not be, it is a method of doing something, which is excluded from copyright protection.”

U.S. District Judge Otis Wright II sided with Evolation in December 2012, concluding that the sequence couldn’t be protected under copyright law. The case



then went to the Ninth Circuit, where Choudhury and his company turned to O’Melveny & Myers to handle the appeal. (The suit was originally brought by Robert Gilchrist of Silverman Sclar Shin & Byrne.)

Maier delivered oral arguments for Evolation, squaring off against O’Melveny’s Ivana Cingel. Evolation also picked up support during the appeal from the Yoga Alliance, which filed an amicus brief authored by Pillsbury Winthrop Shaw Pittman.

In the end, the Ninth Circuit soundly rejected Choudhury’s appeal, affirming the district court in its Oct. 8 opinion. Given the copyright protection afforded to choreography, the decision has already generated critical commentary by some who think that the court ignored the aesthetics of Choudhury’s yoga sequence. But for now, the Bikram sequence is firmly in the public domain, at least on the West Coast.

O’Melveny’s Cingel didn’t immediately respond to a request for comment on Thursday.