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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 OPEN SOURCE YOGA UNITY, a
California corporation,

12 Plaintiff,

13 vs.

14 BIKRAM CHOUDHURY, an Individual,
15 and DOES 1-20,

16 Defendants.

CASE NO. C 03-3182 PJH

DECLARATION OF BIKRAM CHOUDHURY IN
SUPPORT OF HIS OPPOSITION TO OSYU'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIM 1 (COPYRIGHT)

Date: Wednesday, January 26, 2005
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton
Place: Courtroom 3

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19 I, Bikram Choudhury, declare as follows:

20 1. I am a yoga instructor and the founder of a school of yoga called Bikram's
21 Yoga College of India. I submit this declaration in support of my opposition to OSYU's Motion
22 for Partial Summary Judgment on Claim I (Copyright). I have personal knowledge of the
23 matters set forth in this declaration and if called upon I could and would testify competently
24 thereto.

25 **A. Introduction to Bikram and the Bikram Sequence.**

26 2. I was born and raised in Calcutta, India where I began studying yoga at the
27 age of four with one of India's most renowned yogis, Bishnu Ghosh, the younger brother of
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1 Paramahansa Yogananda (author of “The Autobiography of a Yogi” and founder of the Self
2 Realization Fellowship in Los Angeles). Under the direction of Ghosh, I performed yoga for up
3 to six hours a day at Ghosh’s College of Physical Education in Calcutta and learned from him
4 many of the hundreds of traditional Hatha Yoga asanas (called “postures” in the United States).
5 During my training with Ghosh, he taught me the art of combining postures to vary and refresh
6 my yoga routines and to incorporate the grace and beauty of the postures into my daily practice.

7 3. While training with Ghosh, I entered and won the All-India National Yoga
8 Championship three years in a row, then retired.

9 4. After studying with Ghosh, and demonstrating my skill in yoga, Ghosh
10 asked me to start teaching yoga myself, which I did. I enjoyed such success as a yoga teacher,
11 that Ghosh encouraged me travel throughout India and to Japan to teach yoga, which I did.

12 5. In the early years of my yoga study and practice, I continuously adapted
13 and revised sequences of yoga postures for my individual practice. As I grew as a teacher, I also
14 began adapting and revising posture sequences for my students to perform. By 1971, I had
15 created a particular and unique sequence and arrangement of postures, selecting only twenty-six
16 of the hundreds of known yoga postures and two breathing exercises, and arranging them to be
17 performed in a specific order. This selection and arrangement of the twenty-six postures and
18 two breathing exercises are referred to as the “Bikram Sequence.” A true and correct copy of a
19 page from my website, *bikramyoga.com*, which identifies the postures in the Sequence in the
20 proper order, is attached hereto as Exhibit A. Additionally, I am attaching hereto as Exhibit B a
21 book entitled “Yoga” by Linda Sparrowe, which contains over 200 of the Hatha Yoga poses in
22 the public domain, and which contains some of the postures in my Sequence.

23 6. People have often asked me how I settled upon the particular postures that
24 comprise the Sequence. My response is that there are many reasons. First, I wanted a variety of
25 postures, both standing and prone. I wanted this sequence and arrangement of postures to be
26 accessible to all ability levels – for instance, I wanted postures which are simple enough that a
27 beginner could attempt to perform the very first time he or she walked into a yoga class, yet
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1 which at the same time would provide a challenge to the most advanced students. I also wanted
2 postures which would work all of the body's muscle groups and systems – I did not want to
3 emphasize any one area (for instance, stretching the back) at the expense of any other
4 (strengthening the legs).

5 7. I also chose particular versions of certain postures to be included in the
6 overall sequence and arrangement I wanted. For instance, there are several variants of the
7 Triangle Pose (Trikanasana). The particular one that I use in my Sequence is different from
8 what many people consider the posture to be. As an example, attached hereto as Exhibit C are
9 true and correct copies of several images of the Triangle Pose taken from various publications.
10 My version is the last one, and it is visibly different from the rest.

11 8. Similarly, I chose the unique arrangement of the postures in my Sequence
12 for multiple reasons as well. For instance, I wanted to put the two breathing exercises on each
13 end of the series of yoga postures to act as an introduction and conclusion to the Sequence. I
14 arranged others to act as compliments to one another: the Camel Pose (Ustrasana) stretches the
15 abdomen and compresses the spine; so for the next posture, I chose the Rabbit Pose
16 (Sasangasana), which does the converse: stretches the back and compresses the abdomen.
17 While there are many ways to combine the selection and arrangement of these postures to create
18 the same physical effects, the combination and arrangement of the twenty-six postures and two
19 breathing exercises I chose had an aesthetic appeal and graceful “flow” that is unique. And
20 critically, I wanted the arrangement of the postures to be graceful and to “flow” aesthetically as a
21 sequence.

22 9. In addition to these reasons for choosing and arranging the postures in the
23 Bikram Sequence as I did, there are some reasons that I simply cannot explain. For instance, I
24 recall one time in which a student asked me, “Bikram, why did you put the Head to Knee Pose
25 (Janushirasana) with Stretching Pose (Paschimotthanasana)?” After thinking about it for a
26 while, I responded, “I don't know; I just liked them together.” From the hundreds of postures
27 that I could have chosen and the countless arrangements of those postures that I could have
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1 created, I selected the twenty six postures and two breathing exercises and put them in the
2 distinctive and unique arrangement which I believe give the Sequence a graceful flow.

3 **B. Development of the Bikram Method.**

4 10. In 1973, I moved to the United States where I opened yoga studios in San
5 Francisco and Los Angeles and continued to study, perform and teach yoga.

6 11. After arriving in the United States, I continued teaching the Bikram
7 Sequence, but adapted my teaching to my new climate and audience. For example, because the
8 air temperature was much cooler in Los Angeles than in India, I increased the room temperature
9 in my yoga classes to over 100°F to approximate my native climate. I also placed mirrors on the
10 walls of my studio where students could study themselves performing the postures. When my
11 classes became so popular that I could not observe all of the students in the class, I introduced a
12 raised teacher's platform and made markings on the floor to where my students could position
13 their yoga mats so that I could observe each of them during the class. These and other aspects
14 that facilitate the teaching and practice of the Bikram Sequence are referred to as the "Bikram
15 Method." However, I do not claim any proprietary rights in the mere teaching of yoga at a
16 certain room temperature, with mirrors, or with a raised platform.

17 12. During the course of teaching the Bikram Sequence, I also developed a
18 verbal dialogue which I use to guide my students through the performance of the postures in the
19 Sequence, and which I use as part of the Bikram Method. I call these comments the "Dialogue"
20 (even though the teacher is the only one speaking during the performances of the postures). The
21 Dialogue does not only contain a unique way of describing how to do each posture, but it also
22 offers students emotional guidance and vivid imagery to enhance their yoga practice. A true and
23 correct copy of the 1971 version of the Dialogue is attached hereto as Exhibit D. Again,
24 although I claim proprietary rights separately in both the Sequence and the Dialogue, I do not
25 claim proprietary rights in the mere teaching of yoga with verbal instructions generally.

26 13. Since I began teaching it in 1971, my original and unique sequence of
27 yoga postures has become popular the world over. The Bikram Sequence is now being taught in
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1 a rapidly expanding community of studios stretching from the United States and Canada to
2 Europe, Africa, the Middle East, Asia and the South Pacific. Critical to the popularity of the
3 Bikram Sequence and the method in which it is taught is its consistency: one can take my yoga
4 class in Denver, Dublin or Dubai, and know precisely what sequence of postures, encouraging
5 words and ambiance to expect.

6 14. The popularity of the Bikram Sequence also stems from the public's
7 increased interest in yoga generally and the benefits to be gained from the regular practice of
8 yoga. Some of these benefits – which are inherent in all types of yoga – are physical: each pose
9 stretches and strengthens the body. I do not deny that many people have claimed that by
10 performing the Bikram Sequence, as well as other forms and styles of yoga or other exercise
11 sequences generally, they have been “cured” of medical ailments. But this can be said of all
12 forms of yoga. Indeed, I am aware of at least one Japanese study, presented at the International
13 Medical Conference in Kyoto in 1972, which found that yoga generally provides health benefits
14 to the body.

15 15. In addition to the physical benefits of the Bikram Sequence, however,
16 there are also purely aesthetic and spiritual benefits as well. I believe that the sequence of
17 postures that I developed satisfies a desire to create a yoga program that has aesthetic appeal.
18 For instance, there are many ways to stretch the ribcage, but the particular combination and
19 arrangement of postures that I have chosen, I believe, are particularly graceful and beautiful. I
20 believe that students who see themselves performing these beautiful postures feel graceful and
21 beautiful themselves just like a ballet dancer does. I also believe that students who see others
22 performing the same poses at the same time feel the beauty of community. These feelings lead
23 to a general sense of peace and well-being that is undoubtedly of benefit to all of us.

24 16. And while I believe that the particular and unique sequence and
25 arrangement of postures that comprise the Bikram Sequence are the “best” because they
26 incorporate both physical benefits and an appeal that satisfies my own aesthetic need, I do not
27 doubt that there are other combinations of postures that may provide the same benefits. In fact,
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1 there are multiple styles and forms of yoga that are currently being taught and which serve the
2 same functions and purpose as the Bikram Sequence. For instance, in addition to Bikram Yoga,
3 there is Ananda Yoga, Anusara Yoga, Ashtanga Yoga, Integral Yoga, Ishta Yoga, Jivamukti
4 Yoga, Iyengar Yoga, Kripalu Yoga, Kundalini Yoga, Power Yoga, Sivananda Yoga, Svaroopa
5 Yoga, and Viniyoga Yoga. Some of these styles of Hatha Yoga consists of a specific sequence
6 of postures (much as the Bikram Sequence does) which were developed by various individuals.
7 In fact, I am aware that several members of OSYU, including Jimmy Barkan and Brandon
8 Hartsell, have each developed their own styles of yoga which they teach. All of these styles of
9 yoga incorporate many a different combinations of basic yoga postures, including postures
10 which are in the Sparrowe book attached here as Exhibit B.

11 **C. Growth of the Bikram Style of Yoga.**

12 **1. Increase in Bikram Students and Instructors.**

13 17. Over the years, due to the growing number of people becoming interested
14 in yoga generally, and in my Sequence in particular, more and more people have been taking my
15 Bikram Method classes. Indeed, there are currently many tens of thousands of people world-
16 wide who take classes in the Bikram Method. In my Los Angeles yoga school alone, on
17 average, over 100 persons per day attend my Bikram Method classes.

18 18. Since 1971, I have personally trained nearly 3000 people to become
19 Bikram Method instructors. Since 1993, approximately 2892 of these instructors have graduated
20 from a formalized and rigorous Teacher Training Program, led by me and offered at my Los
21 Angeles school. By personally training instructors, I can ensure that the instructors learn the
22 Bikram Sequence and Bikram Method precisely as I conceived them, and that the quality and
23 consistency that people have come to expect of the Bikram Sequence and the Bikram Method
24 classes are maintained wherever in the world my certified instructors teach.

25 19. Before a student begins my Teacher Training Program, he or she must
26 complete a Teacher Training Course Registration Form (the "Teacher Training Agreement")
27 which sets forth the rights and obligations required of the student upon successful completion of
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1 the program. Attached hereto as Exhibit E is a true and correct copy of the current Teacher
2 Training Agreement, which is featured on my website (*www.bikram yoga.com*).

3 20. Upon the successful completion of the Teacher Training Program, for
4 which the highest standards of performance are required, I bestow on the student a certification
5 acknowledging the successful completion of the Teacher Training Program and reaffirming the
6 rights and privileges granted to the student in the Teacher Training Agreement. At this point, the
7 student is authorized to call him or herself a “Bikram Method Teacher” or “Bikram Certified
8 Instructor” and teach the Bikram Sequence exactly as I conceived of it in a studio that has been
9 approved by me. (*See Exhibit E hereto.*)

10 21. Notwithstanding any certification, however, the Teacher Training
11 Agreement explicitly prohibits the use of my name or trademarks in any way (except for limited
12 use in connection with teaching the Bikram Sequence at an approved studio) unless licensed by
13 me in writing. Nor does such certification authorize the student to, in turn, certify others to
14 become instructors of the Bikram Method. Because these training programs are essential to
15 ensuring that the Bikram Method is taught in the precise way that I designed it and that the
16 instructors meet my expectations, only I am authorized to certify Bikram Method teachers.

17 22. Over the years, some of the people that have taken my Teacher Training
18 Program and that have been certified by me include Bill and Sandy McCauley, Kimberly Clark,
19 Ted Grand, Darla Magee and Erin Thibeault, each of whom I understand to be a current or
20 former director of plaintiff Open Source Yoga Unity. Each of these persons has signed Teacher
21 Training Agreements prior to taking the Teacher Training Course. Attached collectively hereto
22 as Exhibit F are true and correct copies of the Teacher Training Agreements signed by each of
23 these persons.

1 **2. Growth of Bikram Studios.**

2 23. Due to the growing demand for Bikram Method classes, I have expanded
3 the number of yoga studios offering classes in the Bikram Method. Accordingly, not only do I
4 certify individuals to become Bikram Method instructors, but I have also begun a program of
5 entering into affiliation agreements with numerous yoga studios throughout the world to offer
6 classes in the Bikram Method. An affiliated studio may use the name “Bikram’s Yoga College
7 of India,” or have my name - Bikram - in its name, although it does not have to do so. Affiliated
8 studios are also allowed to use my name to advertise their Bikram Method classes.

9 24. To ensure the highest level of quality and consistency of services offered
10 by the affiliated studios that use the Bikram name, I regulate *who* is entitled to open an affiliated
11 studio, and *where* one is allowed to be opened. I also require any affiliated studio to adhere to
12 strict requirements set out in an affiliation agreement. For example, the owner of an affiliated
13 studio must be a Bikram Certified Instructor. All persons teaching yoga at an affiliated studio
14 are required to be certified by me, all classes must offer the Bikram Method only, and no other
15 methods, sequences or styles of Hatha Yoga may be taught in that studio. If an affiliated studio
16 fails to comply with any provisions in the affiliation agreement, including altering the Sequence
17 in any way, I take steps to immediately correct such non-compliance, including terminating the
18 affiliation. As an example, a true and correct copy of the affiliation agreement entered into on
19 June 12, 2000 by Kimberly Clark, an OSYU director, is attached hereto as Exhibit G.

20 25. There are currently over 300 affiliated yoga studios world-wide using the
21 name Bikram or Bikram’s Yoga College of India, with approximately 265 of those in the United
22 States alone.

23 26. Contrary to what many people believe, I do not receive payment or any
24 other compensation for allowing certified Bikram Method Teachers to open an affiliated studio.
25 The only requirement for affiliation is that the studio abide by the terms of the affiliation
26 agreement, which sets forth strict standards for maintaining consistent quality in the location,
27 instructors and classes offered. For instance, nowhere in Kimberly Clark’s Affiliation
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1 Agreement is there any discussion of any payment. (*See, e.g.*, Exhibit G hereto.) The only
2 “compensation” I want from my affiliates are that they teach a pure Bikram Method, in the
3 manner in which I conceived it.

4 27. In addition to the affiliated studios using the name Bikram or Bikram’s
5 Yoga College of India, there are upwards of 900 additional studios throughout the world that
6 offer Bikram Method yoga classes by instructors that have been certified by me in my Teacher
7 Training Program. Again, I do not receive any compensation from any of these teachers or any
8 of the studios in which they teach. I do not receive any money for any Bikram Method class that
9 is taught (except, of course, from the classes that are taught at my schools in Los Angeles and
10 San Francisco). The only demand I make from a Bikram Method Instructor is that that person
11 abide by the Teacher Training Agreement, that they teach the Bikram Sequence exactly as I
12 conceived it and that they do not attempt to certify others to become a Bikram Method
13 Instructor.

14 **D. My Copyrights.**

15 **1. Bikram’s Beginning Yoga Class Book.**

16 28. In 1978, I created a book entitled “Bikram’s Beginning Yoga Class” (the
17 “Book”). This Book contains a description of the Bikram Sequence and contains photographs,
18 explanations on how to do the postures, anecdotes from students and other information on yoga
19 generally. This book was first published on January 1, 1979.

20 29. The United States Copyright Office (the “Copyright Office”) issued
21 Copyright Registration Certificate No. TX 179-160 to me for the Book. This federal registration
22 became effective on January 17, 1979. Attached hereto as Exhibit H is a true and correct copy
23 of Certificate of Registration No. TX 179-160 for the Book.

24 30. I am the sole owner of Registration No. TX 179-160.

25 31. In the year 2000, I revised my Book to update the photographs, the
26 explanation of the postures and to add various other pieces of information. This second edition
27 was published in 2000.

1 32. The Copyright Office issued Copyright Registration Certificate No. TX 5-
2 259-325 to me for the second edition of the Book. This federal registration became effective on
3 September 1, 2000. Attached hereto as Exhibit I is a true and correct copy of Certificate of
4 Registration No. TX 5-259-325 for the second edition of the Book.

5 **2. The Sequence.**

6 33. On or about October 23, 2002, my attorney at the time, Jacob Reinbolt,
7 filed an application with the Copyright Office for registration of the Bikram Sequence itself.
8 The cover letter prepared by Mr. Reinbolt advised the Copyright Office that special handling
9 was necessary because the work was “the subject of actual infringement” and that the
10 “registration is necessary as part of pending litigation” (referring to the litigation entitled *Bikram*
11 *v. Kim Schrieber-Morrison, et. al.*, Case No. SA02-565 DOC (ANx) (C.D. Ca.)). This
12 application was filed on Form PA for Performing Arts, and sought protection of the “[s]election,
13 arrangement, and ordering of physical movements” contained in the Bikram Sequence. The
14 application also states that the selection, arrangement and ordering were in connection with the
15 “public domain asanas” that make up the Bikram Sequence. Accompanying this application
16 were two copies of a videocassette showing me performing the Bikram Sequence. These
17 videocassettes were to be used as deposit copies for the application. Attached hereto as Exhibit J
18 is a true and correct copy of the Form PA application, dated October 21, 2002, and my counsel’s
19 October 23, 2002 cover letter to the Copyright Office.

20 34. On or about October 28, 2002, James Holloway, Senior Examiner of the
21 Performing Arts Section of the Copyright Office and the person handling my application for
22 registration of the Bikram Sequence wrote back to my attorney, advising that the Copyright
23 Office was “delaying registration” of the Sequence due to questions about publication of the
24 work, particularly the date that the deposit videocassettes were made. Attached as Exhibit K
25 hereto is a true and correct copy of the October 28, 2002 correspondence from James Holloway.

26 35. After receiving this letter, Mr. Reinbolt had several telephone conferences
27 with Mr. Holloway in an effort to resolve this matter. The next correspondence from Mr.
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1 Holloway was a November 27, 2002 letter, in which he summarizes the telephone conferences
2 he had with Mr. Reinbolt. Attached hereto as Exhibit L is a true and correct copy of Mr.
3 Holloway's November 27, 2002 letter to Mr. Reinbolt. Specifically, Mr. Holloway confirmed
4 his understanding that the work being claimed in the Form PA application was the "compilation
5 of exercises" shown on the videocassette (the Bikram Sequence), but that the Bikram Sequence
6 was first "fixed in text form and published early in 1979 as 'Bikram's Beginning Yoga Class,'" my
7 Book which obtained copyright registration under number TX 179-160. (See Exhibit H
8 hereto.)

9 36. Mr. Holloway explained that because my Sequence had already been
10 published in my Book, and that the previous registration in the Book (TX 179-160) broadly
11 covered the contents therein – including the Sequence itself – the proper method to achieve
12 registration specifically in the selection and arrangement of the postures in the Bikram Sequence
13 would be by "refin[ing] the basic registration made in 1979 by adding the term 'compilation of
14 exercises' or 'selection and arrangement of exercises' to the nature of authorship line of the basic
15 registration by using a Form CA." Mr. Holloway also stated that there was no deposit
16 requirement for a Form CA application. (See Exhibit L hereto.)

17 37. Mr. Holloway further advised Mr. Reinbolt that, in fact, a Form CA was
18 the only method for obtaining registration of the selection and arrangement of postures in the
19 Sequence. (*Id.*) Mr. Holloway explained that it was not necessary to use the Form PA
20 application to register the compilation of exercises because, "[a]s a practical matter, a claim in
21 any copyrightable work of authorship may be registered on any standard form with the exception
22 of sound recordings and certain special categories (e.g., vessel hills and mask works). (*Id.*) Mr.
23 Holloway thus advised Mr. Reinbolt that the Copyright Office was "filing the application Form
24 PA and the videotapes you sent without action." (*Id.*)

25 38. Finally, Mr. Holloway stated that, with respect to the pending litigation
26 identified in Mr. Reinbolt's October 23, 2002 letter:

27 [The Copyright Office] would like to point out the benefit of using the 1979 registration
28 with a 2002 supplemental registration as the foundation of your client's claim. The

1 additional benefits described in sections 410 through 412 of the copyright law apply to
2 the original claim. The court would grant *prima facie* [sic] status to the facts given on
3 that application because registration was made within the first five years of publication.
4 Because the original registration was filed within the first three months of publication,
5 and the ability to pursue court costs and attorneys' fees would be preserved (emphasis in
6 original).

7 39. In the fax cover page attached to Mr. Holloway's November 27, 2002
8 letter, he further advised Mr. Reinbolt that he had consulted with Linda Gill, head of the
9 Copyright Office's Performing Arts section, about the matter, and that "she came to the same
10 conclusion" he did with respect to filing a Form CA application, as well as the benefits available
11 to me under Sections 410-412 of the Copyright Act.

12 40. Of particular note, in a handwritten comment on the November 27, 2004
13 fax cover page, Mr. Holloway advised Mr. Reinbolt that the Copyright Office does "not register
14 [gymnastic floor exercises] as choreography, *but rather [as] a compilation of floor exercise*"
15 (emphasis added). This suggests to me that the Copyright Office *does* grant copyright
16 registrations to a selection and arrangement of physical exercise, even though the exercises may
17 provide a physical benefit to the body.

18 41. Based on Mr. Holloway's November 27, 2002 letter, Mr. Reinbolt, on my
19 behalf, filed an application for copyright registration of the Bikram Sequence on a Form CA,
20 dated December 3, 2002. This Form CA application identifies Registration No. TX 179-160 as
21 the basic registration, to which Form CA further claims copyright in the "compilation of
22 exercises." Attached hereto as Exhibit M is a true and correct copy of this Form CA with Mr.
23 Reinbolt's December 5, 2002 cover letter.

24 42. On December 21, 2002, the Copyright Office issued Registration No. TX
25 5-624-003 to my Form CA application, with an effective date of October 24, 2002, the date the
26 Copyright Office first received the Form PA application. Attached hereto as Exhibit N is a true
27 and correct copy of Certificate of Registration No. TX 5-624-003 for the Bikram Sequence.

28 43. I am the sole owner of Registration No. TX 5-624-003.

3. The Dialogue.

44. In March 2002, I applied for copyright registration of the Dialogue that I

1 created in 1971 in connection with the Bikram Method class.

2 45. The United States Copyright Office issued Copyright Registration
3 Certificate No. TXu 1-022-657 to me for the Dialogue. This federal registration became
4 effective on March 4, 2002. Attached hereto as Exhibit O is a true and correct copy of
5 Certificate of Registration No. TXu 1-022-657 for the Dialogue.

6 46. I am the sole owner of Registration No. TXu 1-022-657.

7 **4. My Other Copyrights.**

8 47. I also own several other copyright registrations for works relating to the
9 Bikram Method. Effective March 25, 2002, Certificate of Registration No. TXu 934-417 was
10 issued to me for a written work entitled "Bikram's Yoga College of India: yoga teacher training
11 course: curriculum outline." This document is the curriculum outline I use in my Teacher
12 Training Program. Attached hereto as Exhibit P is a true and correct copy of Certificate of
13 Registration No. TXu 934-417.

14 48. Effective April 18, 2002, Certificate of Registration No. TX 5-499-662
15 was issued to me for the text contained in a sound cassette of "Bikram's Beginning Yoga Class."
16 Attached hereto as Exhibit Q is a true and correct copy of Certificate of Registration No. TX 5-
17 499-662.

18 49. Finally, my wife, Rajashree Choudhury, and I are the authors of a
19 selection and ordering of yoga postures, which we created in 1992 and which were fixed in
20 videocassette format and first published on June 1, 1993. This video demonstrates a yoga
21 sequence similar to the Bikram Sequence, but which has been modified so that women in various
22 stages of pregnancy can perform the routine. The sequence in the videocassette is performed by
23 Rajashree when she herself was pregnant. Attached hereto as Exhibit R is a true and correct
24 copy of the application and cover letter seeking registration of this work as "[a]udio, video,
25 video production, choreography, and sequences, selection, and development of postures".

26 50. On March 4, 2002, my attorney received a letter from the Copyright
27 Office stating that the submitted videotape was not a work of choreography, and that it could not
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1 be registered on that basis. However, the Copyright Office did state that it could, however
 2 “register a claim based on the selection and ordering of those exercises” contained in the video.
 3 The Copyright Office further directed that we should “identify the preexisting material in space
 4 6a [of a new application] as ‘public domain exercises’.” A true and correct copy of this March
 5 4, 2002 letter from the Copyright Office is attached hereto as Exhibit S.

6 51. Accordingly, on March 12, 2002, a new copyright application was
 7 submitted to the Copyright Office, claiming, among other things, a “compilation of exercises”.
 8 The preexisting work was identified as “[p]ublic domain exercises” and the material added to the
 9 work contained the “selection and ordering of exercises.” A true and correct copy of this new
 10 application with the March 12, 2002 cover letter is attached hereto as Exhibit T.

11 52. Accordingly, effective February 26, 2002, the Copyright Office issued
 12 Certificate of Registration No. PA 1-053-335 for the “Rajashree’s Pregnancy Yoga”, and which
 13 claims the “selection and ordering of exercises”. Attached hereto as Exhibit U is a true and
 14 correct copy of the Certificate of Copyright Registration No. PA 1-053-335.

15 **E. Bikram’s Trademarks.**

16 53. To ensure that the Bikram name is always associated with the Sequence
 17 that I created and that people would recognize my name as being the sole source of the Bikram
 18 Sequence, since at least as early as 1971, I have made continuous and pervasive use of several
 19 trademarks and service marks incorporating my name or likeness in connection with yoga
 20 instruction and related goods and services.

21 54. Specifically, I own the following valid federal trademark and service mark
 22 registrations:

Mark	Reg. No.	Goods/Services	First Use Date	Reg. Date
BIKRAM YOGA	2,746,346	Class 41: educational services, namely, conducting classes, seminars, conferences, and teaching training in the fields of yoga instruction, yoga philosophy, yoga theory and practice, allopathic physical systems, yoga therapy, marketing of yoga instruction, physical fitness, meditation, mental training and discipline, and health,	2/1/71	8/5/03

Mark	Reg. No.	Goods/Services	First Use Date	Reg. Date
		and distributing course materials in connection therewith.		
BIKRAM'S BEGINNING YOGA CLASS	2,829,135	Class 9: pre-recorded audio tapes featuring yoga instruction. Class 41: educational services, namely, conducting classes, seminars, conferences, and teaching training in the fields of yoga instruction, yoga philosophy, yoga theory and practice, allopathic physical systems, integration of medical and yogic systems, yoga therapy, marketing of yoga instruction, physical fitness, meditation, mental training and discipline, and health, and distributing course materials in connection therewith.	2/1/71	4/6/04
BIKRAM'S YOGA COLLEGE OF INDIA	2,718,899	Class 9: pre-recorded audio tapes featuring yoga instruction. Class 25: clothing namely, shirts, hats and sweatshirts. Class 41: educational services, namely, conducting classes, seminars, conferences, and teaching training in the fields of yoga instruction, yoga philosophy, yoga theory and practice, allopathic physical systems, yoga therapy, marketing of yoga instruction, physical fitness, meditation, mental training and discipline, and health, and distributing course materials in connection therewith.	2/1/71	5/27/03
SPINAL TWIST DESIGN	2,775,407	Class 25: clothing namely, shirts, hats and sweatshirts. Class 41: educational services, namely, conducting classes, seminars, conferences, and teaching training in the fields of yoga instruction, yoga philosophy, yoga theory and practice, allopathic physical systems, integration of medical and yogic systems, yoga therapy, marketing of yoga instruction, physical fitness, meditation, mental training and discipline, and health, and distributing course materials in connection therewith.	2/1/71	10/21/03

(collectively, the "BIKRAM Marks"). Attached hereto as Exhibit V are true and correct copies of the Service Mark Registrations for each of these marks.

55. Each of the registrations for the BIKRAM Marks is valid and subsisting in full force, unrevoked and uncanceled. Each of the BIKRAM Marks has been in continuous and uninterrupted use since their respective dates of first use, February 1, 1971.

F. Enforcement Bikram's Rights In His Copyrighted Works Trademarks.

56. Because people have come to associate my name with the Bikram

1 Method, and because I have obtained and use several trademark registrations incorporating my
2 name in connection with teaching the Bikram Method and for related products and services, I
3 have a duty to consumers to monitor the uses of my name to ensure that any goods and services
4 provided under my name conform to the highest quality standards that I have set for the Bikram
5 Method and for myself. For instance, because the public has come to understand that the Bikram
6 Method consists of the Sequence, performed in a heated room, with the Dialogue spoken, I must
7 ensure that that is how Bikram Certified Instructors teach the Bikram Method. Similarly, if a
8 yoga studio advertises that they are offering “Bikram Yoga” classes, I must ensure that those
9 classes are taught by Bikram Certified Instructors and that those classes are using the Bikram
10 Sequence exactly as I conceived. To do otherwise – to simply allow people to offer yoga classes
11 under my name, but which do not use the exact Bikram Sequence or Bikram Method – would
12 destroy the goodwill and the expectations that consumers have come to associate with the name
13 Bikram.

14 57. In order to ensure that the goods and services offered under my name are
15 of the type and quality I demand and the public expects, I will, when necessary, send letters to
16 persons believed to be exploiting my name or the Bikram Sequence in an improper manner,
17 advising them of my rights and requesting that all improper use of my name or my Sequence,
18 cease. Over the years I have been able to stop numerous third parties from the unauthorized use
19 of my name, including my trademark BIKRAM YOGA®, in connection with providing yoga
20 instruction and related goods and services. True and correct copies of several of these “cease
21 and desist letters” are attached collectively hereto as Exhibit W.

22 58. In none of the cease and desist or notice letters that I have sent or caused
23 to be sent relating to the improper use of my trademarks or copyrights, have I ever demanded
24 that any person cease teaching, performing, using or otherwise exploiting yoga poses generally,
25 unless my name is being used. These letters simply advise the recipient of my intellectual
26 property rights, and request that they cease exploiting those specific rights without my
27 permission. Each of these letters relate specifically to the trademarks and copyrights for which I
28

1 am the lawful owner, and I do not recall any instance in which I attempted to enforce my
2 copyrights without also having to enforce my trademark rights.

3 59. In its Amended Complaint at paragraph 21, OSYU takes issue with the
4 February 5, 2003 press release that my former counsel, Jacob Reinbolt, prepared and which was
5 posted on the *bikramyoga.com* website. I am not a lawyer, nor do I purport to have any legal
6 training, but to the best of my understanding, that press release simply states that the Copyright
7 Office did issue to me a copyright registration for the selection and arrangement of the postures
8 that make up the Bikram Sequence (Registration No TX 5-624-003). I also understand that the
9 press release identifies the protections that the copyright registration enjoy under the federal
10 Copyright Act, including the right to prevent the creation of “derivative works.”

11 60. The press release also states that the “copyright registration [in the
12 Sequence] joins Bikram’s growing portfolio of registered copyrights and trademarks that lie at
13 the heart of the proprietary Bikram Yoga system.”

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 5, 2005 /s/ Bikram Choudhury
Bikram Choudhury

Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Laura M. Franco hereby attests that concurrence in the filing of this document has been obtained.