

Appeal No. 13-55763

United States Court of Appeals
FOR THE
Ninth Circuit

BIKRAM'S YOGA COLLEGE OF INDIA, L.P. and BIKRAM CHOUDHURY,
Plaintiffs-Appellants,

v.

EVOLUTION YOGA, LLC, MARK DROST, and ZEFEA SAMSON,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
THE HONORABLE OTIS D. WRIGHT, DISTRICT JUDGE
CASE No. 2:11-CV-11-05506-ODW (SSx)

**MOTION FOR 45-DAY EXTENSION OF TIME TO PETITION FOR
PANEL REHEARING AND FOR REHEARING EN BANC**

O'MELVENY & MYERS LLP
DANIEL M. PETROCELLI
IVANA CINGEL
1999 AVENUE OF THE STARS
LOS ANGELES, CA 90067-6035
TELEPHONE: (310) 553-6700
FACSIMILE: (310) 246-6779

Attorneys for Plaintiffs-Appellants

Plaintiffs-Appellants Bikram's Yoga College of India, L.P. and Bikram Choudhury (collectively, "Bikram") respectfully request a 45-day extension of the due date within which to file a Petition for Panel Rehearing and Rehearing En Banc ("Petition") in this matter. Good cause exists for the requested extension on account of the complexity of the issues presented in this case, the schedules of counsel of record, and the need for review and analysis of the Court's opinion. *See* Declaration of Ivana Cingel ("Cingel Decl.") ¶¶ 3-4.

On October 8, 2015, this Court issued a 23-page published opinion in this case affirming the District Court's grant of summary judgment in favor of Defendants-Appellees Evolation Yoga, LLC, Mark Drost, and Zefea Samson (collectively, "Evolution"). The panel held that Bikram's work reflected in "the Bikram Yoga Sequence is not a proper subject of copyright protection." Slip Op. at 3.

Under Fed. R. App. P. 40(a)(1), a petition for panel rehearing "may be filed within 14 days after entry of judgment," unless that time is extended. Under Fed. R. App. P. 35(c), a petition for rehearing en banc must be filed "within the time prescribed by Rule 40 for filing a petition for rehearing." Because this Court's opinion issued on October 8, 2015, the Petition would ordinarily be due on October 22, 2015. The due date for filing the petition may be extended for good cause. *See* Fed. R. App. P. 26(b); Fed. R. App. P. 40(a)(1).

As set forth in the enclosed Declaration, good cause exists for a 45-day extension. This case presents novel issues of copyright law, and any petition for rehearing necessarily requires careful analysis and deliberation. In addition, Bikram's counsel have conflicting commitments in other cases that will require considerable attention within the same time period. *See* Cingel Decl. ¶ 4. Finally, time is required for review and analysis of the Court's 23-page published opinion.

Bikram has not previously sought an extension of the due date for its Petition and has exercised diligence in seeking to comply with the existing October 22, 2015 deadline. *See id.* ¶ 7. Counsel for Evolation has stated that it will not oppose the requested extension. *See id.* ¶ 5. If this Motion is granted, Bikram will file any Petition on or before December 7, 2015.

For the foregoing reasons, Bikram respectfully submits that a 45-day extension of the due date for filing the Petition should be granted.

Respectfully submitted,

Dated: October 15, 2015

DANIEL M. PETROCELLI
IVANA CINGEL
O'MELVENY & MYERS LLP

By: /s/ Ivana Cingel

Ivana Cingel
Attorneys for Plaintiffs-Appellants
Bikram's Yoga College of India,
L.P. and Bikram Choudhury

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2) and 32(a), I hereby certify that Plaintiffs-Appellants Bikram’s Yoga College of India, L.P., and Bikram Choudhury’s Motion for 45-Day Extension of Time to Petition for Panel Rehearing and for Rehearing En Banc is proportionately spaced, has a typeface of 14 points or more, and does not exceed 20 pages.

Dated: October 15, 2015

O’MELVENY & MYERS LLP

By: /s/ Ivana Cingel

Ivana Cingel

icingel@omm.com

O’Melveny & Myers LLP

1999 Avenue of the Stars

Los Angeles, California 90067-6035

(310) 553-6700

*Attorneys for Plaintiffs-Appellants
Bikram’s Yoga College of India, L.P.
and Bikram Choudhury*

CERTIFICATE OF SERVICE

I, Ivana Cingel, a member of the Bar of this Court, hereby certify that on October 15, 2015, I caused to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system the following document:

**MOTION FOR 45-DAY EXTENSION OF TIME TO PETITION FOR
PANEL REHEARING AND FOR REHEARING EN BANC**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 15, 2015

By: /s/ Ivana Cingel

Ivana Cingel

Appeal No. 13-55763

United States Court of Appeals
FOR THE
Ninth Circuit

BIKRAM'S YOGA COLLEGE OF INDIA, L.P. and BIKRAM CHOUDHURY,
Plaintiffs-Appellants,

v.

EVOLUTION YOGA, LLC, MARK DROST, and ZEFEA SAMSON,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
THE HONORABLE OTIS D. WRIGHT, DISTRICT JUDGE
CASE No. 2:11-CV-11-05506-ODW (SSx)

**DECLARATION OF IVANA CINGEL IN SUPPORT OF MOTION FOR
45-DAY EXTENSION OF TIME TO PETITION FOR
PANEL REHEARING AND FOR REHEARING EN BANC**

O'MELVENY & MYERS LLP
DANIEL M. PETROCELLI
IVANA CINGEL
1999 AVENUE OF THE STARS
LOS ANGELES, CA 90067-6035
TELEPHONE: (310) 553-6700
FACSIMILE: (310) 246-6779

Attorneys for Plaintiffs-Appellants

DECLARATION OF IVANA CINGEL

I, Ivana Cingel, declare and state as follows:

1. I am an attorney licensed to practice in the State of California and admitted to practice before the United States Court of Appeals for the Ninth Circuit. I am a counsel at the law firm of O’Melveny & Myers LLP. Daniel M. Petrocelli, Carla Christofferson, and I are counsel of record for Plaintiffs-Appellants Bikram’s Yoga College of India, L.P. and Bikram Choudhury (collectively, “Bikram”) in the action captioned *Bikram’s Yoga College of India, L.P., et al. v. Evolation Yoga, LLC, et al.*, Appeal No. 13-55763. I have personal knowledge of the matters set forth herein, and if called to testify thereto, I could and would do so competently.

2. This Court issued its opinion in the above-captioned action on October 8, 2015. Under the Federal Rules of Appellate Procedure, any Petition for Rehearing and Rehearing En Banc (“Petition”) is due on October 22, 2015.

3. Bikram is presently evaluating the Court’s opinion and the possibility of filing such a Petition.

4. Counsel believe that good cause exists for a 45-day extension of time to file the Petition because the Court’s 23-page published opinion decides novel questions of copyright law and because counsel of record have numerous

commitments in other cases that will require considerable attention within the coming weeks:

- i. Daniel M. Petrocelli has ongoing responsibilities in numerous pending matters, including: (1) oral argument before the California Court of Appeal on October 15, 2015 in *Stephen Slesinger, Inc. v. Walt Disney Co.*, Appeal No. B259686; (2) hearing on demurrer and motion for protective order in Los Angeles Superior Court on October 23, 2015 in *Dreyfuss v. Walt Disney Pictures*, Case No. BC578297; (3) reply brief due on October 27, 2015 in the Court of Appeals for the Second Circuit in *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Appeal No. 15-1164; (4) oral argument in the Court of Appeals for the Ninth Circuit on November 3, 2015 in *Laura Siegel Larson v. Warner Bros. Entm't Inc. & DC Comics*, Appeal Nos. 13-56243, 13-56244, Cross Appeal Nos. 13-56257, 13-56259; and (5) additional court appearances in New York on November 16, 2015 and November 23, 2015.
- ii. I have ongoing responsibilities in numerous pending matters, including: (1) motion to dismiss due on November 20, 2015 in the Northern District of Illinois in *City of Chicago v. Purdue Pharma, et al.*, Case No. 14-cv-04361; (2) reply brief due on November 30, 2015 in the Appellate Court of Illinois in *City of Chicago v. Janssen Pharmaceuticals*, Case No. 15-

- 0870; (3) various discovery deadlines and discovery-related filings and hearings in the Superior Court of California, County of Fresno in *Crop Production Services, Inc. v. EarthRenew, Inc.*, Case No. 09 CE CG 02733; and (4) various production deadlines and filings in the Superior Court of the State of New Hampshire in *State of New Hampshire v. Actavis Pharma, Inc., et al.*, among others.
- iii. Carla Christofferson is no longer with O'Melveny & Myers LLP or in private practice.

5. On October 14, 2015, I conferred with Eric R. Maier, counsel for Evolation, who informed me that Evolation will not oppose Bikram's request for a 45-day extension.

6. With the 45-day extension, the Petition deadline is December 7, 2015.

7. Bikram has not previously sought an extension of the Petition due date and has exercised diligence in seeking to comply with the existing October 22, 2015 deadline.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 15th day of October, 2015, at Los Angeles, California.

Dated: October 15, 2015

By: /s/ Ivana Cingel
Ivana Cingel

CERTIFICATE OF SERVICE

I, Ivana Cingel, a member of the Bar of this Court, hereby certify that on October 15, 2015, I caused to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system the following document:

**DECLARATION OF IVANA CINGEL IN SUPPORT OF MOTION FOR
45-DAY EXTENSION OF TIME TO PETITION FOR PANEL
REHEARING AND FOR REHEARING EN BANC**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 15, 2015

By: /s/ Ivana Cingel

Ivana Cingel