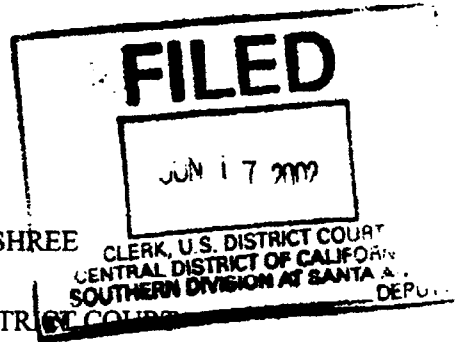


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6 Attorneys for Plaintiffs,
BIKRAM CHOUDHURY, an individual, and RAJASHREE
7 CHOUDHURY, an individual.



8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 BIKRAM CHOUDHURY, an individual, and
RAJASHREE CHOUDHURY, an
12 Individual,

13 Plaintiff,

14 v.

15 KIM SCHREIBER-MORRISON, an
individual, MARK MORRISON, an
16 individual, PRANA INCORPORATED, a
California corporation, and DOES 1
17 THROUGH 20,

18 Defendants.

Case No.: SA02-565 DOC(ANX)

**FIRST AMENDED
COMPLAINT FOR:**

- (1) COPYRIGHT INFRINGEMENT;
- (2) COPYRIGHT INFRINGEMENT;
- (3) TRADEMARK INFRINGEMENT;
- (4) TRADEMARK DILUTION;
- (5) VIOLATION OF LANHAM ACT SECTION 43(a);
- (6) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200;
- (7) COMMON LAW UNFAIR COMPETITION;
- (8) VIOLATION OF PRIVACY RIGHTS

DEMAND FOR JURY TRIAL

19
20
21 Plaintiffs hereby allege as follows:

22 **JURISDICTION AND VENUE**

23 1. This is an action for copyright infringement arising under the Copyright Act of 1976,
24 17 U.S.C. §§ 101 *et seq.*, trademark infringement under 15 U.S.C. § 1114, trademark dilution under
25 15 U.S.C. § 1125(c), as well as unfair competition and false advertising under the Lanham Act, 15
26 U.S.C. 1125(a). This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1337, 1338(a),
27 1338(b) and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the state law claims
28

FIRST AMENDED COMPLAINT

Case No.: SA02-565DOC (ANX)

1 in that those claims are so related to the federal claims that they form part of the same case or
2 controversy.

3 2. This Court has personal jurisdiction over the Defendants in that Defendants reside in
4 and/or are doing business in the State of California and in this District. In addition, many of the acts
5 of infringement and unfair competition complained of herein occurred in the State of California and
6 in this District.

7 3. Venue is proper in this district under 28 U.S.C. §§1391 in that a substantial part of
8 the events or omissions giving rise to the claims herein occurred in this District and all Defendants
9 are residents of this District.

10 NATURE OF THE ACTION

11 4. This is an action for copyright and trademark infringement, trademark dilution,
12 unfair competition, and related state law claims brought by Plaintiff Bikram Choudhury ("Bikram"),
13 a world-renowned yoga guru who developed the unique brand of yoga known as "Bikram Yoga."
14 Bikram's claims arise out of Defendants' unauthorized exploitation of Bikram's copyrighted works,
15 service marks, trademarks and name to promote their own yoga studio and services. Plaintiff
16 Rajashree Choudhury ("Rajashree") joins Bikram in seeking relief for the unauthorized copying,
17 display and sale of a copyrighted video produced by Rajashree and Bikram which provides Bikram
18 Yoga instruction to pregnant women.

19 PARTIES

20 5. Plaintiff Bikram is an individual with his principal place of business located in Los
21 Angeles, California. Bikram is a citizen of the United States of America, and a resident of Los
22 Angeles, California. Bikram sometimes does business as "Bikram's Yoga College of India."

23 6. Plaintiff Rajashree is an individual with her principal place of business in Los
24 Angeles, California. Rajashree is a citizen of the United States of America, and a resident of Los
25 Angeles, California.

26 7. Defendant Kim Schreiber-Morrison is an individual residing in Costa Mesa,
27 California.

28 8. Defendant Mark Morrison is an individual residing in Costa Mesa, California.

1 9. Defendant Prana Incorporated is a California corporation with its principal place of
2 business located at 230 East 17th Street, Suite 222, Costa Mesa, California 92627.

3 10. Kim Schreiber-Morrison and Mark Morrison (together "the Morrisons") are husband
4 and wife. The Morrisons and Prana Incorporated (together "Defendants") are in the business of.
5 among other things, offering yoga classes, including those based upon or derived from Bikram
6 Yoga. Defendants are also in the business of teaching of others to become yoga teachers.
7 Defendants sometimes do business as the "Yoga Studio."

8 11. The true names and capacities of defendants Does 1 through 20, inclusive, are
9 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. As soon as the
10 true names of Does 1 through 20 have been ascertained, Plaintiffs will amend this complaint
11 accordingly. Plaintiffs are informed and believe and on that basis allege that Does 1 through 20
12 claim an interest adverse to Plaintiffs, as hereinafter described.

13 GENERAL ALLEGATIONS

14 **Bikram Yoga**

15 12. Bikram is a recognized master of yoga. In about 1971, after years of research,
16 Bikram discovered and developed his unique brand of yoga known as "Bikram Yoga" (also known
17 as "Bikram's Basic Yoga System" or "Bikram's Beginning Yoga Class").

18 13. Bikram Yoga is a proprietary and discrete series of twenty-six (26) yoga postures and
19 two (2) breathing exercises, which are always performed in precisely the same order, in a room
20 heated to 105° Fahrenheit. The postures and exercises are accompanied by a rigidly prescribed
21 series of oral instructions and commands. Bikram Yoga is performed for precisely ninety (90)
22 minutes. The very essence of Bikram Yoga is that its postures are performed in exactly the same
23 order, with exactly the same instructions and commands, in a room heated to 105° Fahrenheit, in
24 every class. The intended benefits from Bikram Yoga can only be derived if the yoga class is
25 performed precisely as Bikram developed it.

26 14. In about 1971, Bikram began offering Bikram Yoga classes through his facilities at
27 Bikram's Yoga College of India, in Los Angeles, California.

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1 15. Bikram Yoga soon became extremely popular. Public demand for Bikram Yoga
2 classes grew steadily once Bikram Yoga participants realized that Bikram's unique yoga style and
3 method offered them tremendous physical, mental and other benefits. Bikram Yoga has become
4 recognized throughout the world not only for its exceptional benefits, but for its distinctive method,
5 style, instructions, and commands. There are now over 250 facilities worldwide that offer Bikram
6 Yoga.

7 16. As demand for Bikram Yoga increased, Bikram saw the need for a regimented,
8 quality-controlled program designed to train others in the art of teaching the Bikram Yoga method
9 and style. Consequently, in on or about 1994, Bikram inaugurated a Bikram Yoga Teacher Training
10 Course.

11 17. Under the Bikram Yoga Teacher Training Course, individuals who desire to lead and
12 instruct classes in Bikram Yoga pay a fee to Bikram, and in return receive instruction and training in
13 the Bikram Yoga method and style. Those who successfully satisfy the high standards set by
14 Bikram and master the academic and physical requirements earn their certification as teachers of
15 "Bikram's Basic Yoga System." Only Bikram himself may grant certification as a Bikram Basic
16 Yoga System teacher.

17 18. Certified teachers receive certain limited licensed rights to teach Bikram's Basic
18 Yoga System and to use Bikram's trademarks and copyrighted works in connection therewith,
19 provided that they agree to teach Bikram's Basic Yoga System precisely as it was taught to them
20 and to abide by strict guidelines set by Bikram with regard to their status as certified Bikram's Basic
21 Yoga System teachers. Currently, prospective teachers pay \$5,000 to attend a two (2) month
22 training.

23 19. Bikram Yoga has become a worldwide phenomenon, and Bikram has trained and
24 certified approximately 1,800 Bikram Basic Yoga System teachers in his unique style and method.

25 20. Bikram Yoga incorporates several protectable elements, each developed, and owned
26 exclusively, by Bikram.

27 21. Bikram's twenty-six (26) yoga postures together with two (2) breathing exercises, all
28 of which are always performed in the exact same strictly prescribed order in a room heated to 105°

1 Fahrenheit, differentiate Bikram Yoga from all other forms of yoga and other types of exercise. The
2 style, method, design, and structure of Bikram Yoga are unique and distinctive. The Bikram Yoga
3 method consists of several distinct and highly recognizable features. These twenty-six (26)
4 distinctive postures and two (2) breathing exercises have become so distinctive in the marketplace
5 of yoga classes that they have acquired fame and secondary meaning and therefore serve as a
6 designation of the source and sponsorship of this type of yoga. Indeed, Bikram Yoga is so
7 distinctive in overall appearance, structure, format, and choreography that it is recognizable in
8 marketplaces throughout the world.

9 22. The Bikram Yoga method, including but not limited to the unique selection,
10 arrangement, and number of yoga postures and breathing exercises, together with the element of a
11 room heated to 105° Fahrenheit, combine to convey a unique and distinctive overall image and
12 impression constituting a federally-protected service mark owned exclusively by Bikram (the
13 "Asana Sequence").

14 **The Bikram Dialogue, A Copyrighted Work**

15 23. In 1971, as part of his development of the Bikram Yoga style and method, Bikram
16 created an original work of authorship consisting of a series of instructions and commands that
17 accompany, and correspond to, each posture of Bikram Yoga (the "Dialogue"). This original work
18 is recited in a precise manner, in the form of a spoken dialogue, by a certified Bikram's Basic Yoga
19 System teacher during each Bikram Yoga session.

20 24. The purposes for the strict requirement that the Dialogue be recited in a precise
21 manner are: (a) to maintain quality control over Bikram's Basic Yoga System since the benefits of
22 the System will not be derived if the yoga is done incorrectly; (b) to ensure uniformity from teacher
23 to teacher and school to school in the teaching of the postures; and (c) to allow students to focus on
24 improving their practice of the Yoga since the Dialogue becomes ingrained and eventually acts
25 almost like a "mantra."

26 25. Bikram fixed the Dialogue in a tangible medium of expression in or about 1971.
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1 26. At all times since 1971, Bikram has been the owner of the copyrightable work of
2 authorship in the Dialogue and the U.S. copyright registration in the Dialogue, and duly possesses
3 all rights, title, and interest therein.

4 27. Between January 1, 1971 and the present, Bikram has complied with all of the laws
5 pertinent to the Dialogue as a copyrighted work.

6 28. On March 4, 2002, Bikram registered a claim for "Bikram's Yoga College Of India
7 Beginning Yoga Dialogue" in the United States Copyright Office, evidenced by a Certificate of
8 Registration issued by the Register of Copyrights dated and identified as follows: "March 5, 2002,
9 TXu-1-022-657."

10 **"Rajashree's Pregnancy Yoga," A Copyrighted Work**

11 29. As an offshoot of Bikram Yoga, Rajashree and Bikram have developed and marketed
12 a video-taped course in Bikram Yoga designed specifically for pregnant women known as
13 "Rajashree's Pregnancy Yoga" ("the Video").

14 30. The Video is an original work of authorship and contains material wholly original to
15 Bikram and Rajashree, and is copyrightable subject matter under the laws of the United States.
16 Rajashree and Bikram own all right, title and interest in the Video.

17 31. In or about June 1, 1993, the Video was first published under the authority of Bikram
18 and Rajashree, on videocassettes recorded by Bikram and Rajashree, in strict conformity with the
19 provisions of the Copyright Laws of the United States.

20 32. Between June 1, 1993 and February 26, 2002, both Bikram and Rajashree duly
21 complied with all of the laws pertinent to the Video as a copyrighted work.

22 33. On February 26, 2002, Bikram and Rajashree duly registered a claim for the
23 "Rajashree's Pregnancy Yoga" video in the United States Copyright Office, evidenced by a
24 Certificate of Registration issued by the Register of Copyrights dated and identified as follows:
25 "February 26, 2002, PA-1-053-335."

26 **The Bikram Service Marks And Trademarks**

27 34. Bikram owns several service marks and trademarks (collectively, "the Marks") used
28 in connection with his business and Bikram Yoga, including, among others:

- 1 (a) "BIKRAM YOGA";
2 (b) "BIKRAM'S YOGA COLLEGE OF INDIA";
3 (c) "BIKRAM'S BEGINNING YOGA CLASS";
4 (d) a design mark of Bikram in the spine twisting pose;
5 (e) BIKRAM'S BASIC YOGA SYSTEM; and
6 (f) BIKRAM'S ASANA SEQUENCE OF 26 YOGA POSTURES, all of which
7 were first used in commerce also as early as February 1, 1971.

8 35. Since at least as early as 1971, Bikram has continually used the Marks to advertise,
9 promote and market Bikram Yoga classes. Bikram has also used the Marks for more for educational
10 services, namely, conducting classes, seminars, conferences, and teacher training in Bikram Yoga
11 and yoga philosophy. Bikram owns all rights, title, and interest in and to the Marks.

12 36. Bikram has filed applications with the U.S. Patent & Trademark Office for U.S.
13 registration of the Marks.

14 **The Limited License Granted To Kim Schreiber-Morrison**

15 37. In or about April, 1994, Kim Schreiber-Morrison enrolled in Bikram's Yoga College
16 of India Teacher Training Course for the purpose of training to become certified to teach Bikram's
17 Basic Yoga System.

18 38. Kim Schreiber-Morrison successfully completed the three-month certification
19 program at Bikram's Yoga College of India in June 1994, and thus became authorized to teach
20 Bikram's Basic Yoga System.

21 39. Bikram granted certain limited license rights (the "License") related to his unique
22 yoga style and method to Kim Schreiber-Morrison. The License was conditioned upon Kim
23 Schreiber-Morrison's teaching of Bikram's Basic Yoga System and use of the Dialogue in strict
24 compliance with the way in which she was taught at Teacher Training. The License included the
25 following rights and licenses:

- 26 (a) to teach Bikram's Basic Yoga System classes;
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- 1 (b) to publicly recite the Dialogue during the course of teaching her Bikram's
2 Basic Yoga System classes in strict conformity with the methods taught to
3 her during her Teacher Training Course;
- 4 (c) to use the Marks for purposes of identifying herself as a Bikram's Basic Yoga
5 System Teacher; and
- 6 (d) to use the Marks for purposes of identifying classes taught in strict
7 conformity with the methods taught to her during her Teacher Training
8 Course.

9 40. The License granted to Kim Schreiber-Morrison was limited to a grant of "rights and
10 privileges to teach Bikram's Basic Yoga System," as set forth on Kim Schreiber-Morrison's
11 certificate of completion of Teacher Training, a copy of which is attached hereto as Exhibit A.

12 41. It is clear from the extensiveness, rigorousness, precision, and clarity of the Teacher
13 Training Course content that the "rights and privileges to teach Bikram's Basic Yoga System"
14 constitute a very clearly delineated right to teach and promote a very clearly prescribed form of
15 yoga. The License did not confer, and Kim Schreiber-Morrison did not possess, rights to do any of
16 the following:

- 17 (a) teach any variations whatsoever of Bikram's Basic Yoga System;
- 18 (b) use the Marks in connection with any variations of Bikram's Basic Yoga
19 System;
- 20 (c) alter the Dialogue in any way; or
- 21 (d) teach other persons to become certified teachers of Bikram Yoga.

22 42. To protect the quality of Bikram Yoga, failure to strictly conform to the teachings,
23 tenets and conditions taught by Bikram and learned by Kim Schreiber-Morrison during her Bikram
24 Yoga Teacher Training Course would result in termination of the License.

25 43. Following her certification and grant of the limited License, Kim Schreiber-Morrison
26 began offering and teaching Bikram Yoga classes at the Yoga Studio and otherwise exercised her
27 licensed rights, initially in apparent conformance with her License. As alleged below, her license
28 has since been terminated.

1 **Infringement By Mark Morrison**

2 44. Mark Morrison is not, and never has been, certified or licensed to teach Bikram's
3 Basic Yoga System.

4 45. Mark Morrison has and continues to use the Bikram Yoga style and method without
5 authorization from Bikram for commercial purposes.

6 46. Mark Morrison has and continues to use the Dialogue and derivations of the
7 Dialogue to teach Bikram Yoga classes and other yoga classes based upon and derived from Bikram
8 Yoga.

9 47. Mark Morrison has and continues to use the Marks in his advertising, marketing and
10 promotion of Bikram Yoga classes and other yoga classes based upon and derived from Bikram
11 Yoga.

12 **Kim Schreiber-Morrison Breaches And Exceeds The Scope Of The License**

13 48. Defendants began offering and teaching, at the Yoga Studio, yoga classes that
14 diverged from the Bikram's Basic Yoga System that Kim Schreiber-Morrison was certified to teach.
15 In so doing, Kim Schreiber-Morrison breached her obligations under the License by altering the
16 Bikram's Basic Yoga System and the Dialogue in connection with her teaching.

17 49. In addition to the breach described in the preceding paragraph, Kim Schreiber-
18 Morrison exceeded the scope of the License in several respects. One way in which she exceeded the
19 scope of the License was to offer, along with Mark Morrison, unauthorized Bikram Yoga teacher
20 certification courses at the Yoga Studio. Defendants marketed their unsanctioned program by using
21 the Marks to mislead would-be yoga teachers, who believed they were receiving authentic
22 instruction in Bikram Yoga, and who paid large sums of money to Defendants in hopes of earning a
23 Bikram Yoga certification and corresponding licensed rights. Instead, these students received
24 education in a modified yoga system, incorporating elements of the legitimate Bikram Yoga, such as
25 the Dialogue. As a result of this willful and bogus "certification" program, the Yoga Studio has
26 produced, and still produces, unqualified yoga instructors who, in turn, offer and teach classes under
27 the specious guise of legitimate Bikram Yoga method courses.

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1 50. Kim Schreiber-Morrison also exceeded the scope of the License by using the Marks
2 to promote yoga classes which were not actually Bikram Yoga classes and using the Dialogue in
3 connection with classes which did not comport with the strict requirements of Bikram Yoga.

4 51. Based upon her failure to satisfy the conditions required to maintain the License.
5 Bikram notified Defendants that the License granted to Kim Schreiber-Morrison was terminated and
6 ordered that neither she nor her husband could hold themselves out as certified Bikram's Basic
7 Yoga System teachers or "Bikram Method Teachers" or make further use of the Bikram Yoga style
8 and method, the Marks or the Dialogue.

9 **Infringement By Defendants After Termination Of The License**

10 52. Despite having no right, title or interest in or to the Bikram Yoga style and method,
11 including the Marks or the Dialogue, Defendants continue to use the Bikram Yoga style and
12 method, and constituent components thereof, without the permission of Bikram by:

- 13 (a) offering yoga classes employing the elements of Bikram Yoga, including the
14 twenty-six (26) postures and two (2) breathing exercises specifically
15 prescribed in Bikram Yoga, but failing to utilize the Dialogue fully, if at all;
16 (b) offering yoga classes employing elements of Bikram Yoga, including the
17 twenty-six (26) postures and two (2) breathing exercises specifically
18 prescribed in Bikram Yoga, but altering the Dialogue with the addition, or
19 substitution, of phrases and commands, and/or offering classes with music;
20 (c) offering yoga classes employing elements of Bikram Yoga, including the
21 twenty-six (26) postures and two (2) breathing exercises specifically
22 proscribed in Bikram Yoga, but failing to super-heat the room in which such
23 classes are offered to 105° Fahrenheit, if at all;
24 (d) offering yoga classes employing elements of Bikram Yoga, including the
25 twenty-four (24) postures and two (2) breathing exercises specifically
26 prescribed in Bikram Yoga, but with the inclusion of additional postures not
27 authorized or endorsed by Bikram; and
28 (e) offering unsanctioned Bikram Yoga teacher certification programs.

1 53. Despite Bikram's termination of the License, and clearly without Bikram's consent,
2 Defendants advertise, market, and promote their unauthorized, and improperly modified, yoga
3 classes, as well as their purported Bikram Yoga teacher certification program, through various uses
4 of the Marks. Specific instances of Defendants' infringement of the Marks include, but are not
5 limited to:

- 6 (a) using the Marks to offer unsanctioned Bikram Yoga teacher certification
7 programs;
8 (b) using the Marks in the offering and performance of yoga classes based upon,
9 or derived from, the authentic Bikram Yoga style and method;
10 (c) displaying the Marks on the Internet website owned and operated by
11 Defendants, located at <www.hotyogastudio.com>;
12 (d) using the Marks in various advertising, marketing, and promotional material
13 for the Yoga Studio; and
14 (e) each holding himself or herself out as a "Bikram Yoga Teacher," and/or a
15 "Bikram Certified Teacher."

16 54. Copies of examples of promotional materials published and distributed by
17 Defendants which state that Defendants offer and teach "Bikram Yoga" are attached hereto as
18 Exhibits B, C, D, E, F, and G and are incorporated herein as if set out in full. A description of such
19 exhibits is as follows:

20 Exhibit B - Yoga Studio website <www.hotyogastudio.com/yogastudio.html>
21 describing Yoga Studio;

22 Exhibit C - Yoga Studio website <www.hotyogastudio.com/studios.html> describing
23 Bikram Hot Yoga;

24 Exhibit D - Yoga Studio website <www.hotyogastudio.com/classdesc.html>
25 describing class descriptions including "Bikram Beginners," "Bikram
26 Intermediate," and "Bikram Music";

27 Exhibit E - Yoga Studio website <www.hotyogastudio.com/workshops.html>
28 describing workshops;

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Exhibit F - Yoga Studio website <www.hotyogastudio.com/schedule.html>
describing yoga studios 1 & 2 schedules; and
Exhibit G - Yoga Studio brochure.

55. As a result of Defendants' unauthorized uses of the Bikram Yoga style and method and the corresponding use or modification of the elements of the Dialogue and the Marks, consumers seeking Bikram Yoga classes are misled into believing the yoga programs and classes offered at the Yoga Studio are authentic Bikram Yoga classes, taught by certified Bikram Yoga teachers.

56. As result of Defendants' alteration of the Bikram Yoga style and method, the yoga classes offered at the Yoga Studio utilize several different derivations of the Dialogue and are different from the Bikram's Basic Yoga System taught and licensed to Kim Schreiber-Morrison.

Defendants Use Of The Video.

57. Defendants have been engaged in the copying, distributing, marketing, and selling the Video, without authorization from either Bikram or Rajashree.

58. Defendants have also prepared, used, and continue to use, distribute, market, and sell derivative works of the Video.

Demands that Defendants Cease and Desist

59. Bikram has contacted Defendants, by telephone and in writing, to demand that Defendants cease and desist all uses of the Bikram Yoga style and method, including the Marks and the Dialogue. Bikram further demanded that Mark Morrison cease and desist teaching Bikram Yoga or any yoga class based upon or derived from the Bikram Yoga style and method, and discontinue all uses of the Marks and the Dialogue.

60. Notwithstanding this notice and Bikram's demands, Defendants have continued their unlawful and infringing conduct as alleged herein.

61. Defendants unlawful and infringing conduct has been willful and deliberate, designed specifically to trade upon the goodwill associated with the Bikram name, copyrights and Marks.

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FIRST CLAIM
FOR COPYRIGHT INFRINGEMENT – DIALOGUE
17 U.S.C. §§ 101 ET SEQ.,
(By Bikram against All Defendants)

62. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 61. above, as though fully set forth herein.

63. On March 4, 2002, Bikram registered a claim for “Bikram's Yoga College Of India Beginning Yoga Dialogue” in the United States Copyright Office, evidenced by a Certificate of Registration issued by the Register of Copyrights dated and identified as follows: “March 5, 2002, TXu-1-022-657.”

64. Defendants have infringed and continue to infringe the copyrights in the Dialogue through substantial use of the Dialogue in and as part of Defendants’ offering of yoga classes and their advertising and marketing efforts thereof by preparing derivative works; substantially copying; making and distributing copies; authorizing the making and distributing of copies; participating in and furthering such infringing acts; and/or sharing in the proceeds from such infringing acts.

65. Defendants infringing acts have been willful, intentional and purposeful, in disregard of and indifferent to Plaintiffs’ rights.

66. Bikram is entitled to permanent injunctive relief restraining Defendants, and their officers, agents, and employees, and all persons acting in concert with them, from engaging in any further such acts in violation of the Copyright Laws of the United States.

67. Bikram is further entitled to recover damages, including attorneys’ fees, he has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants as a result of their acts of infringement alleged above, in an amount greater than \$500,000, according to proof to be determined at time of trial.

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SECOND CLAIM
FOR COPYRIGHT INFRINGEMENT – THE VIDEO
17 U.S.C. §§ 101 *ET SEQ.*

(By Bikram and Rajashree against All Defendants)

68. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 67, above, as though fully set forth herein.

69. In or about June 1, 1993, the Video was first published under the authority of Bikram and Rajashree, on videocassettes recorded by Bikram and Rajashree, in strict conformity with the provisions of the Copyright Laws of the United States.

70. Between June 1, 1993 and February 26, 2002, both Bikram and Rajashree duly complied with all of the laws pertinent to the Video as a copyrighted work.

71. On February 26, 2002, Bikram and Rajashree duly registered a claim for the “Rajashree’s Pregnancy Yoga” video in the United States Copyright Office, evidenced by a Certificate of Registration issued by the Register of Copyrights dated and identified as follows: “February 26, 2002, PA-1-053-335.”

72. Defendants have infringed upon, and will continue to infringe upon, the copyrights in the Video through substantial use of the Video in and as part of Defendants’ offering of yoga classes, and their advertising and marketing efforts therefor. Defendants infringement with regard to the video includes the following acts:

- 20 (a) unauthorized copying of the Video in whole or in part;
- 21 (b) distribution of unauthorized copies of the Video;
- 22 (c) authorizing others to make and distributing unauthorized copies of the Video;
- 23 (d) sharing in the proceeds of the unauthorized copying and distribution of the
- 24 Video.

73. The acts of infringement by Plaintiffs as described herein have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiffs’ rights.

74. Bikram and Rajashree are entitled to an injunction restraining Defendants, and their officers, agents, and employees, and all persons acting in concert with them, from engaging in any

1 further such acts in violation of the Copyright Laws of the United States.

2 75. Bikram and Rajashree are further entitled to recover damages, including attorneys'
3 fees, they have sustained and will sustain, and any gains, profits, and advantages obtained by
4 Defendants as a result of their acts of infringement alleged above, in an amount to be determined at
5 time of trial.

6 **THIRD CLAIM**
7 **FOR TRADEMARK INFRINGEMENT**
8 **15 U.S.C. § 1114 AND COMMON LAW**
9 **(By Bikram Against All Defendants)**

10 76. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 75,
11 above, as though fully set forth herein.

12 77. Defendants violated and are infringing the common law trademark rights of Bikram.

13 78. Bikram's rights to the Marks are superior to any rights Defendants may claim in and
14 to such Marks. Bikram was the first, and senior, user of the Marks in California intrastate
15 commerce, and in interstate commerce for the applicable goods and services.

16 79. Defendants operate a business and advertise, market, and promote yoga fitness
17 programs to the public, based upon, or derived from the Bikram Yoga style and method. The yoga
18 fitness programs offered, advertised, and marketed by Defendants under the Marks are not actual
19 Bikram Yoga method programs. Thus, Defendants are passing off their yoga classes as authentic
20 Bikram Yoga classes, originating from Defendants, rather than with Bikram.

21 80. The continued marketing by Defendants under the Marks has and continues to
22 adversely affect, threaten and dilute the goodwill and reputation Bikram has built up with his
23 Bikram Yoga style and method.

24 81. Defendants' advertising, marketing, and offering of yoga fitness classes under the
25 Marks has caused, and continues to cause confusion as to the source and sponsorship of the yoga
26 fitness programs, as well as the Bikram Yoga teacher certification courses, of Bikram and
27 Defendants, all to the detriment of Bikram.

28 82. If not enjoined by the court, Defendants' use of the Marks in advertising, marketing,

1 and promotion, and offering, operation, and management of yoga classes based upon, or derived
2 from, the authentic Bikram Yoga style and methods, will continue to cause, in addition to that
3 which it has already caused, confusion in the marketplace and loss of sales to Bikram, as those
4 seeking Bikram Yoga classes are likely to be confused by Defendants' representations regarding
5 their yoga fitness programs.

6 83. If not enjoined by the court, Defendants will continue to advertise and utilize the
7 Marks which the consuming public will believe originated with Defendants. Bikram, therefore, will
8 have no control over the nature and quality of the Bikram Yoga classes, and Bikram Yoga teacher
9 certification programs, offered, and the information distributed, by Defendants, nor will Bikram
10 have control over the quality of such Bikram Yoga classes and courses offered by Defendants, and
11 any fault or objection therewith will adversely affect future Bikram Yoga classes, and teacher
12 certifications, offered by Bikram under his Marks.

13 84. Defendants' infringement of the Marks, and their distribution of advertising and
14 marketing materials utilizing the Marks constitute intentional, willful, knowing, and deliberate
15 trademark infringement.

16 85. Defendants' infringement of the Marks has caused Bikram to suffer damages in
17 excess of \$500,000, and caused Defendants to profit in an amount unknown at this time, but in
18 excess of \$500,000

19 **FOURTH CLAIM**

20 **FOR TRADEMARK DILUTION**

21 **15 U.S.C. § 1125(c)**

22 **(By Bikram Against All Defendants)**

23 86. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85,
24 above, as though fully set forth herein.

25 87. The Marks are both distinctive and famous, as set forth above.

26 88. Defendants' commercial use of the Marks as set forth above has lessened the
27 capacity of the Marks to identify Plaintiffs' goods and services thereby diluting the distinctive
28 quality of the Marks.

1 association, and connection between Defendants, Bikram, and the Bikram Yoga method.
2 Defendants' acts are further intended to deceive such customers into believing that the services
3 provided by Defendants are Defendants' with regard to both their yoga fitness classes based upon, or
4 derived from, Bikram Yoga, and the Bikram Yoga teacher certification courses. As alleged herein.
5 such services have been, and are provided exclusively by Bikram or Bikram's authorized licensees.

6 97. If not enjoined by the court, Defendants' acts of unfair competition and false
7 advertising as alleged herein will cause confusion in the marketplace and loss of revenue to Bikram.
8 as customers are likely to confuse the services offered by Defendants, believing them to be
9 authorized by Bikram.

10 98. If not enjoined by the court, Bikram is informed and believes, and thereon alleges,
11 that Defendants will continue to utilize the Marks which the consuming public will believe
12 originated with and are the domain of Defendants. Bikram, therefore, will have no control over the
13 nature and quality of the Bikram Yoga classes, and the Bikram Yoga teacher certification courses
14 offered and the information distributed by Defendants, and any fault or objection with such Bikram
15 Yoga fitness classes and courses will adversely affect future revenues generated by Bikram under
16 his Marks.

17 99. Defendants' acts of unfair competition and false advertising have caused Bikram to
18 suffer damages of more than \$500,000, and caused Defendants to gain profits of more than
19 \$500,000. Pursuant to 15 U.S.C. § 1117(a), Bikram is entitled to an award of monetary damages in
20 an amount equal to the losses suffered by him, and the profits gained by Defendants.

21 100. Pursuant to 15 U.S.C. § 1117(a), Bikram is entitled to an award of attorneys' fees
22 and costs of suit.

23 **SIXTH CLAIM**
24 **FOR UNFAIR COMPETITION**
25 **CAL. BUS. & PROF. C. §§ 17200, ET SEQ.**
26 **(By Bikram and Rajashree Against All Defendants)**

27 101. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 100,
28 above, as though fully set forth herein.

1 which restitution and/or disgorgement is appropriate.

2 110. Defendants' acts of unfair competition have caused and are causing, and unless
3 enjoined by the Court, will continue to cause Plaintiffs great and irreparable injury that cannot be
4 fully compensated in money. The Court should award permanent injunctions prohibiting further
5 acts of unfair competition.

6 111. Through the conduct alleged herein, Defendants are guilty of malice, fraud and/or
7 oppression. Plaintiffs should therefore be awarded punitive damages in an amount according to
8 proof.

9 **EIGHTH CLAIM**
10 **FOR VIOLATION OF PRIVACY RIGHTS**
11 **CAL. CIV. C. § 3344 AND COMMON LAW**
12 **(By Bikram against all Defendants)**

13 112. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 111,
14 above, as though fully set forth herein.

15 113. Defendants acts also violated Bikram's right to privacy under California Civil Code
16 section 3344 and the common law.

17 114. Defendants knowingly and without Bikram's consent, invaded Bikram's right to
18 privacy by appropriating Bikram's name by using Bikram's name to advertise Defendants' business
19 so as to give the appearance that Defendants' business is certified by, endorsed by, supported by,
20 owned by, or affiliated with Bikram.

21 115. The appropriation was without the consent of Bikram.

22 116. Copies of examples of promotional materials published and distributed by
23 Defendants which state that Defendants offer and teach "Bikram Yoga" are attached hereto as
24 Exhibits B, C, D, E, F, and G and are incorporated herein as if set out in full.

25 117. The appropriation by Defendants was for the purpose of, and directly connected to,
26 advertising and soliciting purchases of Defendants' services, specifically yoga instruction and yoga
27 teacher certification at Defendants' yoga studio.

28 118. As a proximate result of Defendants' appropriation, Bikram has suffered injury to his

1 reputation and standing in the community to his humiliation, embarrassment, mental anguish and
2 suffering all to his general damage in an amount according to proof.

3 119. As a further proximate result of the above-described appropriation of Bikram's name
4 by Defendants, Defendants have gained commercial advantage and earned gross revenues in an
5 amount which cannot be ascertained at this time, but exceed \$500,000 and will be proven at trial.

6 120. As a further proximate result of Defendants' appropriation, Bikram has suffered
7 injury to his business in that he has lost an unknown amount of business as a result of students
8 attending Defendants' studio and classes rather than studios and classes operated by Bikram and/or
9 Bikram-licensed teachers, the loss of students and sales of Bikram's books and services as a result
10 of the appearance that Defendants' inferior services are certified by, endorsed by, supported by,
11 owned by or affiliated with Bikram. The amount of these and other special damages cannot be
12 ascertained at this time, but exceed \$500,000 and will be proven at trial.

13 121. The above appropriation was done with oppression, fraud and/or malice, in that
14 Defendants continued to engage in the appropriation after being notified of Bikram's rights and the
15 impropriety of their acts. Bikram therefore seeks an award of punitive damages.

16 122. Unless enjoined and restrained by this court, Defendants continued appropriation of
17 Bikram's name will cause great and irreparable injury in that Bikram will continue to suffer injury
18 to his reputation and standing in the community to his humiliation, embarrassment, mental anguish
19 and suffering. Bikram has no adequate remedy at law for the injuries being suffered in that a
20 judgment of monetary damages will not end the invasion of Bikram's privacy.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs Bikram and Rajashree pray for judgment as follows:

23 **On the First And Second Claims:**

- 24 1. That the Court find that Defendants have infringed Plaintiffs' copyrights;
- 25 2. That the Court find a substantial likelihood that Defendants will continue to infringe
26 Plaintiffs' copyrights unless enjoined from doing so;
- 27 3. That Defendants, their directors and officers, agents, servants, employees, and all
28 other persons in active concert or privity or in participation with them, be enjoined from directly or

1 **On the Third Through Fifth Claims:**

2 1. For a permanent injunction restraining and enjoining Defendants, and their agents.
3 servants, employees, and all others in active concert or participation with them, as follows:

- 4 a. From further use or infringement of the Marks belonging to Bikram, as
5 alleged herein, including but not limited to the trademarks and service marks
6 "BIKRAM YOGA," "BIKRAM'S YOGA COLLEGE OF INDIA,"
7 "BIKRAM'S BEGINNING YOGA CLASS," the design mark of Bikram in
8 the spine twisting pose, "BIKRAM'S BASIC YOGA SYSTEM," and
9 "BIKRAM'S ASANA SEQUENCE OF 26 YOGA POSTURES," or any
10 other confusingly similar designation, alone or in combination with other
11 words;
- 12 b. From further advertising, marketing, promoting, or offering Bikram Yoga
13 classes, any portion thereof, or any derivatives thereof, in concert with the
14 Marks;
- 15 c. From further acts of false advertising and unfair competition, as alleged
16 herein; and
- 17 d. From utilizing, registering, or maintaining any further Internet domain names,
18 websites, or Internet locations containing the Marks, including but not limited
19 to the <www.hotyogastudios.com> website.

20 2. For an order that Defendants be required to deliver up to be impounded during the
21 pendency of this action, all advertising, promotional, or marketing materials or packages in their
22 custody or control utilizing the Marks, and that such materials be destroyed upon final resolution of
23 this action;

24 3. For an award of damages suffered by Bikram, plus any profits earned by Defendants,
25 as a result of Defendants' trademark infringement, in an amount of more than \$500,000, according
26 to proof;

27 4. For an award of monetary damages for the acts of unfair competition and false
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1 advertising perpetrated by Defendants, in an amount of more than \$500,000, according to proof:

2 5. For an award of punitive and exemplary damages in an amount to be proven at trial.
3 but sufficient to punish and deter Defendants; and

4 6. For an award of attorneys' fees.

5 **On the Sixth Claim for Statutory Unfair Competition:**

6 1. For a permanent injunction enjoining Defendants and their agents, servants and
7 employees, and all such persons acting under, in concert with or for them, from continuing to
8 engage in the acts of unfair competition alleged herein;

9 2. That Defendants disgorge all ill-gotten gains received as a result of the unlawful,
10 unfair and/or fraudulent business practices alleged herein;

11 3. For restitution to Plaintiffs in an amount of more than \$500,000, according to proof;
12 and

13 4. For an order that Defendants' render an accounting to ascertain the amounts received
14 by Defendants as a result of the unlawful, unfair and/or fraudulent business practices alleged herein.

15 **On the Seventh Claim for Common Law Unfair Competition:**

16 1. For a permanent injunction enjoining Defendants and their agents, servants and
17 employees, and all such persons acting under, in concert with or for them from continuing to engage
18 in the acts of unfair competition alleged herein;

19 2. That Defendants disgorge all ill-gotten gains received as a result of the unfair
20 competition as alleged herein;

21 3. For restitution to Plaintiffs in an amount of more than \$500,000, according to proof;

22 4. For an order that Defendants render an accounting to ascertain the amounts received
23 by Defendants as a result of the acts of unfair competition as alleged herein; and

24 5. For punitive damages.

25 **On the Eighth Claim for Violation of Privacy Rights:**

26 1. For statutory damages in an amount according to proof;

27 2. For general damages of more than \$500,000, according to proof;

28 3. For special damages of more than \$500,000, according to proof;

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4. For punitive damages;

5. For a permanent injunction enjoining Defendants and their agents, servants and employees, and all such persons acting under, in concert with or for them from continuing to use Bikram's name in connection with advertisement and marketing of Defendants' services; and

6. For attorneys fees.

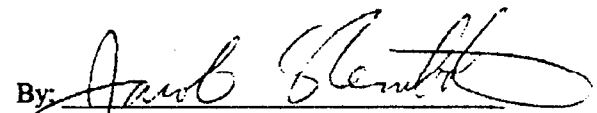
On All Claims:

1. For costs of suit incurred herein; and

2. For such other, further and different relief as the Court deems proper under the circumstances.

DATED: June 17, 2002

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

By: 

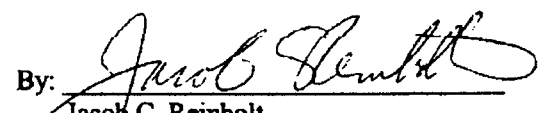
Jacob C. Reinbolt
Stephanie Sontag
Paul A. Tyrell
Attorneys For Plaintiffs,
BIKRAM CHOUDHURY, an
individual, and RAJASHREE CHOUDHURY, an
individual.

JURY DEMAND

Plaintiffs BIKRAM CHOUDHURY and RAJASHREE CHOUDHURY hereby demand trial by jury on all issues triable to a jury.

DATED: June 17, 2002

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

By: 

Jacob C. Reinbolt
Stephanie Sontag
Paul A. Tyrell
Attorneys For Plaintiff,
BIKRAM CHOUDHURY, an
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