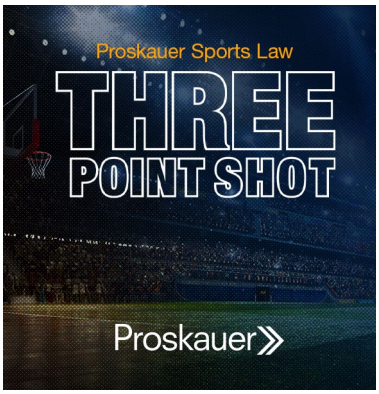

March 2026

A newsletter brought to you by the Sports Law Group at Proskauer.

Welcome to *Three Point Shot*, a newsletter brought to you by the Sports Law Group at Proskauer. *Three Point Shot* brings you the latest in sports law-related news and provides you with links to related materials. In this issue, we feature contributions from Julia L. Jansen, Wyatt B. Bui and Evan T. Rodgers.

Your feedback, thoughts and comments on the content of any issue are encouraged and welcome. We hope you enjoy this and future issues.

Edited by **Robert E. Freeman**

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No Copyright in Cardio: Ninth Circuit Rejects Protection for Tracy Anderson Exercise Routines

Can a workout method be protected as choreography under federal copyright law? The Ninth Circuit recently said no.

Without breaking too much of a sweat, the Ninth Circuit, in a trim five-page order, affirmed summary judgment in favor of defendants, celebrity trainer Megan Roup ("Roup") and her fitness platform, The Sculpt Society ("TSS"), on a copyright infringement claim brought by Tracy Anderson Mind and Body, LLC ("TAMB"), holding that the exercise routines at issue are not protectable works. (*Tracy Anderson Mind and Body, LLC v. Roup*, No. 24-6936 (9th Cir. Feb. 17, 2026) (unpublished)). The decision reinforces a boundary the Ninth Circuit first articulated a decade ago in the *Bikram's Yoga* opinion. In that case, the appeals court confirmed that fitness sequences themselves are generally uncopyrightable methods, processes, or systems that primarily reflect function, not expression (even if the distributed product, such as a branded book or exercise video, could itself be copyrightable). (*Bikram's Yoga College of India, L.P. v. Evolation Yoga, LLC*, 803 F.3d 1032 (9th Cir. 2015)).

TAMB is the parent company to numerous exercise studio entities, and was founded by Tracy Anderson, a fitness entrepreneur who developed the "TA Method," a set of routines combining choreography, fitness, and cardiovascular movement. After working for TAMB for six years, Roup left and developed TSS based on her own cardio workout and fitness philosophy. In July 2022, plaintiff TAMB got off the mat and filed suit in the Central District of California against its former trainer, Roup, and her fitness company, TSS (collectively, the "Defendants"), alleging, among other claims, that Roup's rival fitness platform copied choreography, movements, and sequences from TAMB's TA Method. TAMB sought damages and injunctive relief.

TAMB's copyright infringement claim centered on allegations that TSS's workout videos copied TAMB's nineteen registered workout videos ("TA Works DVDs"), which feature a selection and arrangement of dance-based cardio and sculpt movements from the TA Method. TAMB characterized these routines as original choreographic works entitled to copyright protection. While TSS did not dispute the general similarity between TAMB's and TSS's exercise dance routines, it focused on the threshold issue, arguing that TAMB cannot prove its copyright claim because the underlying exercises in the TA Works DVDs are not copyrightable.

Thus, the central issue in this case was whether the TA Method routines qualified as protectable choreographic "expression," or whether they were instead uncopyrightable "procedures," "processes," or "systems" under Section 102(b) of the Copyright Act. Section 102(b) codifies the "idea/expression dichotomy" and provides that copyright protection does not extend to "any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

The parties were not debating whether the TA Works DVDs may be protectable as audiovisual works or whether the Defendants copied the DVDs themselves; rather, the question was whether the underlying sequence of movements embodied in those recordings could be protected.

This idea/expression distinction proved to be dispositive. In June 2024, the district court granted summary judgment to Defendants on the copyright infringement claim, and after a rest interval, in mid-February, the Ninth Circuit affirmed.

The case turned on the threshold question of copyrightability. Neither court considered substantial similarity or engaged in a detailed comparison of the parties' routines. Instead, the courts asked whether the TA Method routines were protectable subject matter in the first instance. Both the lower court and appeals court answered this question in the negative, ending the copyright claim as a matter of law.

The district court concluded that the TA Method routines functioned as a system or method of exercise. The court explained that TAMB is a company operating in the wellness industry, "revealing that its purpose is not art or expression, but health and fitness." The record further reflected that the TA Method was marketed as a "method" – a proprietary fitness system engineered to produce specific physiological outcomes. The court found that the sequencing of movements was tied to utilitarian fitness goals and that even if the sequences produced spiritual or psychological benefits, it is "no less an idea, system, or process and no more amenable to copyright protection."

The court also considered consumer perception, stating that the TA Works DVDs were consumed as instructional fitness content. As the court noted, users performed the routines to achieve physical results, not to experience them as expressive dance performances ("Plaintiffs provide no evidence that anyone perceives or understands the TA Method to be a performance art or anything other than an exercise routine"). Although the movements drew from classical ballet, jazz, and contemporary dance vocabulary, the court found that the routines were presented as repeatable exercise regimens ("Even if there is choreography, if the TA Method is a method, process, or system, it cannot be copyrightable.")

On appeal, the Ninth Circuit agreed that the functional character of the routines was dispositive. The panel relied heavily on its 2015 decision in *Bikram's Yoga College of India, L.P. v. Evolation Yoga, LLC*, which addressed whether a fixed sequence of twenty-six yoga poses and two breathing exercises could be copyrighted.

In *Bikram's Yoga*, the court held that the yoga sequence at issue was an uncopyrightable system designed to improve health. While a book describing the sequence could be protected as expression, the sequence itself could not. The court explained that extending copyright protection would effectively grant exclusive rights over a method of exercise.

Here, the Ninth Circuit treated the routines in the TA Works DVDs as analogous to the yoga asanas in *Bikram's Yoga*. Both involved structured series of

physical movements, marketed as proprietary regimens and "arranged for their 'health and fitness benefits.'" The Ninth Circuit stated that the design of the routines "primarily reflects function, not expression" and highlighted that "the record also lacks any evidence that the audience for these routines perceives them as expressive choreography."

Underlying the panel's reasoning was a structural concern. The court reasoned that extending copyright protection to "functional physical sequences" would extend copyright protection "beyond its constitutional [and statutory] limits."

Taking a high-level view, the Ninth Circuit's decision does not foreclose copyright protection for choreography more broadly. Citing a decision covered in a prior edition of this newsletter, the court clarified that choreography may be protectable based on the original selection and arrangement of movements and other elements.

However, by reaffirming *Bikram's Yoga*, the Ninth Circuit drew a line: exercise regimens like the TA Method or a sequence of yoga poses, when designed and marketed to improve health, are unprotectable methods. For fitness platforms and content creators, the decision reinforces several points:

- Copyright protection may extend to the audiovisual recording of a workout sequence, but not necessarily to the underlying exercise system.
- Courts may examine purpose, structure and market presentation in classifying the copyrightability of a work under the idea/expression dichotomy.
- Efforts to protect proprietary fitness methodologies are more likely to succeed through contract, trade secret and brand-based strategies than through copyright claims.

Enter the TTCA: The '12th Man' That Ended a Copyright Case Against a College Athletics Employee

After more than eight years of a long-running copyright infringement case, the whistle has finally blown. Last month, a Texas district court dismissed the remaining defendant from a lawsuit that arose out of claims made by an author and his publishing company alleging that the Texas A&M University ("Texas A&M") Athletic Department posted without permission an excerpt from Plaintiffs' forthcoming book manuscript about the university's storied "12th Man" tradition.

On February 13, 2026, the U.S. District Court for the Southern District of Texas granted a motion for judgment on the pleadings filed by the remaining defendant, Texas A&M University Athletics employee Brad Marquardt ("Marquardt" or the "Defendant"). (*Canada Hockey LLC v. Marquardt*, No. 17-00181 (S.D. Tex. Feb. 13, 2026)). The court held that sovereign immunity, together with the election-of-remedies provision of the Texas Tort Claims Act ("TTCA"), barred the copyright claims against the Defendant.

The lawsuit was originally filed in 2017 by Michael J. Bynum ("Bynum"), a sports history book author and editor who operates his own publishing company, Canada Hockey LLC d/b/a Epic Sports (collectively, "Plaintiffs"). Plaintiffs accused the Texas A&M Athletic Department, three university employees, and the university's athletic booster organization, the Texas A&M University 12th Man Foundation, of copyright infringement and related claims.

Back in 2010, Bynum was working on a biography of famed Aggie legend E. King Gill, whose actions inspired the 12th Man tradition. That year, Bynum sent an electronic copy of the unfinished book draft to Marquardt and another Texas A&M Athletic Department employee for assistance with locating photographs. It seems that the Athletics Department placed Plaintiffs' manuscript on the sideline for years (even as Bynum continued to email Marquardt as late as December 2013) until the events that precipitated this lawsuit. According to the Plaintiffs' amended complaint, the alleged infringement kicked off in January 2014 when Marquardt, looking for background material on the 12th Man tradition for promotional purposes, asked his assistant to retype

Bynum's printed manuscript and rewrite the byline to suggest the work was commissioned for the Athletics Department. Marquardt then provided the retyped article to colleagues for publication. The subsequent article was titled "The Original 12th Man" and was posted on the Texas A&M Athletic Department website (and other Texas A&M sites, according to the amended complaint) and promoted and shared on social media. Plaintiffs asserted that this article was a "near verbatim" copy of what was to be the opening chapter of Bynum's book and that the article was posted without authorization and "destroyed Plaintiffs' prospects for a successful print run." After receiving an email from Bynum, the Athletics Department took down the article from its website, yet Plaintiffs contended that this takedown did not remedy the electronic distribution and sharing of the work that had already occurred.

The "12th Man" is a longstanding Texas A&M tradition dating back to 1922. On January 2, 1922, a severely outmanned Texas A&M football team faced top-ranked Centre College in the Dixie Classic, the predecessor to what is now known as the Cotton Bowl. With injuries mounting and the bench nearly exhausted, head coach Dana X. Bible called upon E. King Gill, a former football player then assisting reporters in the press box, to put on the uniform of running back Heine Weir, who was injured in the first quarter. Gill hurried down from the press box, and throughout the remainder of the game, he stood ready on the sidelines. Although he never entered play, Texas A&M pulled off a historic upset of Centre College, winning 22-14. Gill was the only member of Texas A&M's bench left standing by the time the final whistle blew, earning him the title of "12th Man."

The tradition remains central to Texas A&M's identity as both a university and top-tier college football program. Gill is commemorated on campus with a bronze statue outside Kyle Field, the home of Texas A&M football. The school's student section is known collectively as the "12th Man," and since 1990, a walk-on player has worn jersey number 12 each season in recognition of the tradition.

Since its filing in 2017, the case has resembled a prolonged drive marked by sustained defensive pressure. As discussed in our June 2017 newsletter, the case initially progressed beyond the pleadings stage and early motions had been filed. In 2019, the district court dismissed claims against every defendant except Marquardt, effectively stalling Plaintiffs' once-promising offensive series. Among other rulings, the court ultimately held that the Texas A&M Athletics Department, as part of the university, has no capacity to be sued and that the "State (and consequently, the University) retains its Eleventh Amendment sovereign immunity in copyright cases."

However, even as the claims against the other defendants were dismissed, Plaintiffs kept the drive moving against Marquardt. Marquardt had sought the protection of qualified immunity, but the court denied the defense, finding that, at the motion to dismiss stage, Plaintiffs pleaded sufficient facts to plausibly allege that Marquardt "violated a clearly established right" through the copying and posting of Bynum's work. In 2022, the Fifth Circuit affirmed the ruling on the Texas A&M defendants and dismissed Marquardt's separate appeal.

Back at the district court, Marquardt utilized new defensive schemes for the fourth quarter of this litigation. In April 2025, he filed a motion for judgment on the pleadings based on sovereign immunity, relying on two core propositions. First, Marquardt argued that he was, at all relevant times, a Texas government employee acting within the scope of his employment and that as an employee of the State, he is, as a matter of law, afforded the protection of sovereign immunity unless that immunity has been waived. Second, he asserted that the Texas Tort Claims Act, which provides a limited waiver of immunity for certain suits against governmental entities and contains certain election-of-remedies provisions protecting government employees, provided the only possible waiver of his sovereign immunity protection. Under his theory, because the copyright claims in this case sound in tort, the TTCA controlled. Building on that premise, Marquardt invoked the TTCA's election-of-remedies provision (Tex. Civ. Prac. & Rem. Code § 101.106), arguing that it barred the suit against him individually because, as one Texas court noted, the provision "forces plaintiffs to decide at the outset whether an employee acted independently and is thus solely liable, or acted within the general scope of his or her employment such that the governmental unit is vicariously liable." Because Plaintiffs sued both the governmental unit and Marquardt, and Marquardt

claimed he was acting within the scope of his employment, he maintained that the TTCA required dismissal of the claims against him. Plaintiffs opposed the motion, arguing, among other things, that the TTCA does not apply to violations of federal law and the Copyright Act preempts state laws within the general scope of copyright.

The district court began by addressing a threshold question: whether the TTCA applies to federal copyright claims. The court tentatively agreed with Marquardt's arguments that copyright infringement constitutes a tort for TTCA purposes and explained that it "hypothetically assumes that the TTCA applies (otherwise defendant is completely immune)," because the State and its employees "can only be sued via a pathway the state has agreed to." While Plaintiffs contended that the TTCA does not apply to any federal claims, the court rejected the argument as a broad proposition lacking any cited authority. Further, the court cited Supreme Court precedent holding that Congress lacked the constitutional authority to strip states of their sovereign immunity in copyright cases and stated that "federal law does not grant a right to invade the Eleventh Amendment protection offered to States," unless a state waiver mechanism is in place.

Turning to whether Plaintiffs' claims were ultimately barred by the TTCA, the court agreed with Marquardt, holding that the TTCA's election-of-remedies provision barred the suit against him. Recall, Plaintiffs not only sued Marquardt, but they also sued the Texas A&M Athletic Department, which employed Marquardt. While acknowledging that the TTCA's election-of-remedies provision might seem "draconian," the court stated that because Plaintiffs sued a department of Texas A&M and the alleged conduct was within the scope of Marquardt's employment, the TTCA required dismissal of the claims against Marquardt. Under the election-of-remedies provision, when a plaintiff brings tort claims arising from conduct within the scope of a state employee's employment, the plaintiff must effectively choose between suing the governmental unit or the employee. As the court explained, by electing to sue both the Texas A&M Athletic Department and Marquardt initially, Plaintiffs triggered the TTCA's election of remedies provision, which bars the suit against the employee Marquardt.

In a dispute centered on Texas A&M's "12th Man" tradition, the case ultimately turned on the parties in the lawsuit caption and who was on the roster. By the time Marquardt had filed his final motion for dismissal, Plaintiffs had little procedural room to maneuver, and the suit was dismissed (barring a successful appeal in the future) without any substantive, final court ruling on the merits of the copyright infringement claim.

Connecticut Parents Strike Out in Little League Safety Suit

A group of concerned parents in Ridgefield, Connecticut came together to sue a Little League Baseball organization for "cutting corners on child safety" by inadequately training coaches and failing to follow certain dictates in the league safety manual. But, because the unassociated plaintiff's group lacked standing and did not show that its members had any children actively participating in the youth baseball league, nor prove any past harm by the league, a Connecticut state court called strike three and dismissed the suit (*Ridgefield Little League Parents Association v. Ridgefield National Little League*, No. DBD-CV-25-6055202-S (Conn. Super. Danbury Dist. Feb. 11, 2026)).

Back on July 3, 2025, a group of parents filed a three-count complaint as the Ridgefield Little League Parents Association (the "Parents Association") against Ridgefield National Little League ("RLL"), its parent entity Little League Baseball, Incorporated ("Little League Baseball"), and each member of RLL's volunteer 24-member board (collectively, the "Defendants"). The Parents Association alleged that RLL's coaches were required to receive periodic child safety training under federal law but had failed to comply from 2019 through May 2025. It also alleged that RLL's published safety manual mandated that certain coaches and managers be certified in basic lifesaving techniques, and that RLL would host annual first aid safety and coaches instruction clinics, but that most coaches and managers were not currently certified and the clinics did not occur in 2025. Finally, the Parents Association alleged that Little League Baseball's national rules required an adult game coordinator to be present for any game with adolescent umpires, but RLL rarely complied.

The Parents Association handed a short lineup of claims to the Superior Court clerk. The first count alleged negligence, claiming the Defendants breached their duty by failing to follow federal law and their own internal rules, and thereby exposed RLL players to potential harm. The second count alleged fraud by the board members and RLL for misrepresentation in the published safety manual that "induce[d] parents to enroll their children in RLL." The third count alleged a violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), claiming deceptive trade practices. The complaint sought damages and injunctive relief requiring RLL to comply with the law and its own rules.

In August 2025, the Defendants filed a motion to dismiss, contending that the plaintiff group lacked standing to sue because it is not a "legally cognizable entity" (and "does not identify a single member of its purported class who has standing in their own right") and because the plaintiff group did not allege any player was actually injured beyond pleading "general allegations of misconduct" against the RLL. In opposition, the Parents Association argued that it had standing to sue as a "voluntary association" and that the complaint alleged an "actual injury," namely that "their children are exposed to unnecessary safety risks" to which the RLL has "falsely represented its safety precautions."

This dispute was decided in the early innings when the court granted the Defendants' motion and ruled each count was a swing and a miss, dismissing the complaint for lack of standing.

First, the Connecticut state court determined that the Parents Association did not have standing to sue. To have associational standing, the court stated that an association must, among other things, identify at least one member who has been aggrieved in his or her own right beyond conclusory allegations. However, because the Parents Association failed to establish the association itself or any of its members suffered any concrete injury, the court found it had neither direct nor associational standing to sue.

Further, the court found that the Parents Association did not claim any actual player injuries – the action merely alleged that the Defendants were "exposing RLL players to potentially irreparable harm" and did not offer evidence of any actual or imminent harm caused by the RLL's alleged failure to follow its rules. The court found the Parents Association failed to establish that it had any member with children that were playing in the RLL or any planned future participation such that any member had a legal interest in RLL's future safety training, thereby compelling the judge to punch out the claims for negligence and injunctive relief. As for the state consumer protection claims, the court used similar grounds to find the Parents Association failed to advance an "ascertainable loss" related to the league entry fee. The court explained that the Parents Association did not assert that RLL's alleged unfair trade practices caused the entry fee to become more expensive, that any child was ever injured in a manner causing a loss, or that paying the fee otherwise caused any cognizable deprivation, detriment or injury. With no cognizable injury, the court called the game and dismissed the complaint.

The Ridgefield Little League Parents Association stepped up to the plate with good intentions to spur the RLL to step up its compliance, but failed to connect. In any case, with spring in the air and the return of baseball (and Little League), it's time to get out of the courtroom and back on the field.

Postscript: Splish, Splash. International Swimming League Secures Favorable Jury Verdict in Antitrust Trial but Awarded Only Token Damages

There have been new developments in swimming-related antitrust litigations that have gone multiple laps in California federal courts. Back in the Winter 2023 edition of *Three Point Shot*, we first wrote about a summary judgment ruling in favor of swimming's global governing body (now known as World Aquatics) in an antitrust case brought by a group of champion swimmers and the International Swimming League ("ISL"). The swimmers and the ISL both filed antitrust suits in 2018 related to World Aquatics' alleged group boycott of the upstart ISL, contesting World Aquatics' former rules that effectively barred national swimming federations from collaborating with "non-sanctioned" competitions such as the ISL. In the November 2024 newsletter, we detailed the Ninth Circuit's reversal that allowed the suit to go forward. Now out of the pool, in October 2025, the swimmers-plaintiffs

reached a $4.6 million settlement with World Aquatics that also included injunctive relief barring World Aquatics from maintaining or enforcing any rule or policy that penalizes any swimmer's participation in any "independent events" or restricts the organization of independent swimming events. In a separate development in the ISL's own suit against World Aquatics, a jury recently returned a verdict finding, among other things, that ISL sufficiently proved its claims related to World Aquatics' group boycott against ISL; however, the jury only awarded $1 in damages. (*International Swimming League, Ltd v. World Aquatics*, No. 18-07394 (N.D. Cal. Final Verdict Jan. 23, 2026)).

Proskauer has more than 50 years of experience counseling the world's premier sports organizations on their most critical and complex matters.

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