



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0235

August 17, 2023

Iosif Mermelshtayn

CLAIMANT

v.

300 Entertainment (Warner Music Group)

RESPONDENT

## ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is amended.

If you wish to proceed with this claim, you must file an amended claim by **September 18, 2023**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your amended claim compliant, you must resolve the issues identified below. 37 C.F.R. § 224.1(c)(2). You may also choose to correct or edit any errors or other information in your claim before you file it again. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit, so please be as detailed as possible.

### Copyright Registration Number

A copyright infringement claim before the Board must include the copyright registration number and effective date of registration for the allegedly infringed work, if the registration has issued. 37 C.F.R. § 222.2(c)(7)(ii)(C). In the “Works infringed” section, you provided the service number for an application for registration of the copyright instead of the registration number. If you file an amended claim, include the registration number SR0000965237.

### Clarity – Allegedly Infringed Work

The claim includes confusing allegations about the allegedly infringed work. The “Works infringed” section identifies the work as a sound recording titled “Blissful Endings” and describes it as an “instrumental hip hop influenced track.” Copyright Office registration records also identify “Blissful Endings” as a sound recording. However, in the “Describe the infringement” section of the claim, you appear to allege infringement of elements of the musical composition rather than of the registered sound recording.

When a song is recorded, two works may be created that are protected by copyright: a musical composition (also known as a musical work) and a sound recording. “A copyright in a musical composition is distinct from a copyright in a particular recording thereof.” *TufAmerica, Inc. v. WB Music Corp.*, 67 F. Supp. 3d 590, 591 n.1

(S.D.N.Y. 2014). A musical composition is the underlying composition along with any accompanying lyrics. Musical compositions are usually created by a songwriter or composer. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are usually created by the performer and the producer of the recording. For example, Aretha Franklin’s recording of “Respect” includes two works protected by copyright: the musical composition of “Respect” written by Otis Redding and the recording of that musical composition performed by Aretha Franklin.

The SR0000965237 registration for “Blissful Endings” covers a sound recording, but not any underlying musical composition. You may not assert a claim of infringement of a musical composition based on that registration. *See Nwosuocha v. Glover*, No. 21 Civ. 04047, 2023 U.S. Dist. LEXIS 50764, \*13 (S.D.N.Y. Mar. 24, 2023) (Plaintiff’s “Certificate of Registration is for a sound recording of Plaintiff’s Composition, not for its musical composition, meaning he cannot assert a copyright claim that the composition has been infringed”). The owner of a sound recording copyright “is limited to claiming that [an alleged infringer] sampled or otherwise directly copied his recording.” *Greene v. Pete*, No. 22-CV-04220, 2023 U.S. Dist. LEXIS 40140, \*8 (S.D.N.Y. Jan. 3, 2023), *adopted*, 2023 U.S. Dist. LEXIS 26898 (Feb. 16, 2023).

You allege, in the “Describe the infringement” section:

The song “My Way” has multiple elements resembling my song “Blissful Endings.”

In music, there are many cases where similar sounds happen inconsequentially from one another. However, in this case, Blissful Endings has multiple elements that are coincidental with the track My Way. The drums, piano melody, main melody (vocals) and bass line are all strikingly similar. The end of My Way features a piano being played on its own, which sounds nearly identical to Blissful Endings.

Those allegations appear to identify similarities between “My Way” and elements of the composition of “Blissful Endings,” not of the registered sound recording. To bring a claim of copyright infringement of a sound recording, the allegedly infringing work must contain actual sounds recorded in the allegedly infringed sound recording. Alleging that the respondent’s work is “strikingly similar” or “sounds nearly identical” is not sufficient.

If you contend that the allegedly infringing work “My Way” contains actual sounds from your recording of “Blissful Endings,” and not just sounds that resemble elements of your recording or the underlying composition, you may amend your claim to clarify that it is based on direct copying of your recording.

Alternatively, if you wish to assert a claim of infringement of the underlying musical composition, you must have had a copyright registration for the composition or a pending application filed for registration of that work before you filed this claim with the Board on July 11, 2023. 17 U.S.C. § 1505(a). If you had a registration or pending application to register an allegedly infringed composition before you filed your claim, you may amend the claim and provide the registration or application information in the “Works infringed” section. If you did not have a registration or pending application for registration of the musical composition filed before you filed this claim, you cannot successfully maintain a claim for infringement of that composition in this proceeding. You would need to apply to register the copyright for that work before you could refile a new claim for infringement of that work. For more information about registration, please refer to the Copyright Office [Registration Portal](#).

## Copyright Infringement – Elements

Your claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements related to the respondents’ access to your work and substantial similarity, as described below. Please provide more details and background regarding these elements in your amended claim.

### Access

Your claim does not present facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place.

A [document](#) filed with your claim appears to be a screenshot from a YouTube page displaying a video of your work “Blissful Endings.” A work’s availability somewhere online is not enough to show that it was so widely distributed that the respondent’s access to it is reasonably likely. *See Clanton v. UMG Recordings, Inc.*, 556 F. Supp. 3d 322, 328 (S.D.N.Y. 2021) (“[t]he fact that the video was placed on YouTube does not imply it was disseminated widely”) (*quoting Hayes v. Minaj*, No. 12-cv-07972, 2012 U.S. Dist. LEXIS 197043, \*9 (C.D. Cal. Dec. 18, 2012)); *O’Keefe v. Ogilvy & Mather Worldwide, Inc.*, 590 F. Supp. 2d 500, 515 (S.D.N.Y. 2008) (“the mere fact that [a] work was posted on the internet prior to the creation of [the alleged infringer’s] work is insufficient by itself to demonstrate wide dissemination”); *Design Basics, LLC v. Lexington Homes, Inc.*, 858 F.3d 1093, 1108 (7th Cir. 2017) (“the existence of the plaintiff’s copyrighted materials on the Internet, even on a public and ‘user-friendly’ site, cannot by itself justify an inference that the defendant accessed those materials”).

No other facts alleged or shown in your claim indicate where or how your work was available before the alleged infringement so that the respondent had an opportunity to hear it. To address this issue in an amended claim, you must include allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that your work (a) was sent directly to the respondent, or to a close associate of the respondent; (b) was widely disseminated or was available to the public or the respondent; or (c) is so strikingly similar to the respondent’s work that they could not have been created independently.

### Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your work and the respondent’s allegedly infringing work. If it is not readily apparent from supplemental documents that are

submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

As discussed above, your allegedly infringed work is a sound recording of “Blissful Endings,” not the underlying musical composition, but the similarities that you allege in the “Describe the infringement” section seem to relate to the elements of the composition. You do not provide enough information describing or showing the “Blissful Endings” sound recording. The allegations in the “Describe the infringement” section do not clearly describe that work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental materials. As a result, the claim does not provide enough information to enable the respondent to understand and respond to it.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your registered work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental materials in the “Documentation” section, they must be clearly labeled and identified so they can be properly compared to each other.

To submit an amended claim, log into your eCCB account and take the following steps:

1. From your dashboard, click the “**Amend claim**” button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make the necessary edits. If you have filed supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents directly related to your claim, and label them clearly.
4. Once you have completed your edits, continue to click through the fillable claim form until you reach the “**Review**” page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “**Edit**” to revise any entries necessary. Each section of information has an “**Edit**” button, which will take you back to that section so you can make changes. After you make changes, you can click “**Save & review**” to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the “**Digital signature**” box near the bottom of the “**Review filing**” page and click “**Agree & submit.**”

If you have questions, please contact [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov). Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. If you would like to seek further guidance from a lawyer or a law student at reduced or no cost, please visit the [Pro Bono Assistance](#) page on ccb.gov. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney