



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0023

April 17, 2023

Brandon Vogts

CLAIMANT

v.

US LA Home Remodeling, Inc.

RESPONDENT

## SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

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

If you wish to proceed with this claim, you must file a second amended claim by **May 17, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C.

§ 1506(f)(1)(B); [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended 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.

### Clarity – Allegedly Infringed Work

The amended claim alleges that the claimant Brandon Vogts, “a professional real estate photographer,” is the author of the allegedly infringed work, titled “20160914\_9551\_Cherokee\_012.jpg,” which the amended claim describes as a “[p]rofessional photograph of a kitchen.” You allege that the Copyright Office registered the infringed work as part of Registration No. VA 2-080-940, which is a group registration for 742 photographs authored by Mr. Vogts. You allege that the infringed work “was available for viewing online,” and that the respondent “used an actual verbatim copy of the photograph at issue to promote its construction and remodeling business without seeking a license to use that work.” Those allegations are not specific enough to resolve the issues raised in the initial noncompliance order. Bare allegations of availability “online” and “verbatim” copying, without more, do not support a claim that the respondent had access to the allegedly infringed work before the alleged infringing act, or that the respondent’s work is substantially similar to the allegedly infringed work.

You also attach two supplemental documents to the amended claim, labeled as “[Vogts kitchen photo.pdf](#)” and “[Vogts infringing use.pdf](#).” The first document (“Claimant Image”) is a photograph of a modern kitchen, while the second appears to be a screenshot from a page of the respondent’s website, including a photograph of the same kitchen (“Respondent Image”). The problem with these images is that the Respondent Image actually depicts more of the kitchen—at least horizontally—than the Claimant Image, suggesting that the Respondent Image could not have been copied from the Claimant Image. Copyright Office records appear to explain the discrepancy. Those records show that the Claimant Image is a cropped version of the “20160914\_9551\_Cherokee\_012.jpg” file submitted as a deposit with the registration for application.

If the deposit copy is a more accurate representation of the allegedly infringed work than the Claimant Image, then to correct this issue, you may file a second amended claim that includes the correct image as a supplemental document instead of the Claimant Image. This, if accurate, would support your assertions of “verbatim” copying, and satisfy the access and substantial similarity issues noted in the first noncompliance order. Alternatively, if you file a second amended claim that maintains that the Claimant Image is the allegedly infringed work, you must include allegations that explain how the allegedly infringing Respondent Image, which depicts more of the kitchen than the Claimant Image, is nevertheless a reproduction of the Claimant Image.

### **Final Amendment**

Your amended claim does not clearly resolve the compliance issues raised in the February 17, 2023 Order to Amend Noncompliant Claim, and raises an additional issue, explained above, that must be resolved for the claim to go forward. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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 supplemental 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