



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0073

March 22, 2024

James Colwell

CLAIMANT

v.

Elara Bowman

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 **April 22, 2024**. 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.

Misrepresentation – Clarity

This proceeding raises a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online.

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are:

1. The respondent sent an OSP either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). The claim must include the words in the takedown notice or counter-notice that you allege were a misrepresentation and an explanation of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(vi)-(vii). A counter-notice only violates section 512(f) if the respondent misrepresents that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f).

Your claim does not provide enough information to show that the respondent made that kind of false or incorrect statement of fact. You allege that you sent a takedown notice to Twitch.tv on March 4, 2024, reporting the respondent’s use of your YouTube video on her Twitch channel; and that the respondent sent a counter-notice that same day, claiming that you have “a long history of submitting wrongful takedowns” (as “documented” in a Twitter post). In the “Words that made up the misrepresentation and explanation of the misrepresentation” section of the claim, you state:

Elara claimed she could file a counter notice because some “twitter profile page” makes defamatory statements about me. Elara does not provide evidence that she owns the rights to my copyrighted works. Nor does she provide any evidence under fair use claims, and is simply using my content on her channel against my monetization to cause financial, mental, physical and other forms of harm to me, my channel and my livelihood.

Your explanation does not describe the respondent falsely claiming that her Twitch video was “removed or disabled by mistake or misidentification,” as section 512(f) requires. You do not appear to show the respondent falsely stating that your March 4, 2024 takedown notice was incorrect. Instead, it appears that the respondent accused you of having submitted wrongful takedown notices in the past. Even if that accusation was false or defamatory, as you allege, it is not the kind of false statement that would violate section 512(f).

A [supplemental document](#) filed with your claim appears to show Twitch’s March 4, 2024 email informing you about the counter-notice and providing you with a copy of the counter-notice. It appears that the respondent swore that she had “a good faith belief that the material identified in the [takedown notice] was identified, removed, and/or disabled as a result of mistake or misidentification.” If you submit an amended claim, you must show or explain why *that* statement was false or incorrect, and how it was false or incorrect.

You also do not provide enough information about the alleged infringement that was the subject of your takedown notice. You state that the respondent engaged in “the misuse and stealing of my copyrighted work,” but you do not include enough details describing or showing what the allegedly infringing material was. If you submit an amended claim in this proceeding, provide additional facts that describe the respondent’s alleged infringing activity, for example, by identifying the portion of your YouTube video that appeared on respondent’s Twitch stream, the duration of the portion, and how long it appeared.

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 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. 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