



# COPYRIGHT CLAIMS BOARD

Docket number: 25-CCB-0148  
May 7, 2025

Alyssa Pitysingh

CLAIMANT

v.

Holli Solutions

RESPONDENT

## ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **June 6, 2025**. 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.

### Impermissible Claim — Breach of Contract

The Board is only authorized to resolve certain types of copyright disputes, including copyright infringement claims. 17 U.S.C. § 1504(c)(1)-(3). You checked the box stating that your claim is a copyright infringement claim. However, the facts described in the “Describe the infringement” section of your claim along with the supplemental documents you have included appear to describe a breach of contract dispute, not a copyright infringement. A “breach of contract” is a violation of any of the agreed-upon terms and conditions of a binding contract. When a party to a contract does not fulfill an obligation stated in the contract, such as payment, it is typically considered a breach of contract. The Board is not authorized to hear claims for breach of contract. 17 U.S.C. § 1504(d)(1).

In your claim, you state that you and the respondent “originally agreed that I would be paid \$500 to photograph an event.” You have also included a supplemental document “[Holli Jouvert Pitysingh Evidence Thread.pdf](#)” that details the negotiation of this agreement from its inception. It appears that you were contacted via Instagram to photograph an event on July 3, 2024, and agreed upon a \$500 fee on July 11, 2024. You further state that the respondent “failed to compensate me for the work I did, which was originally agreed upon for \$500.” Your

allegations suggest that the work was specifically created for the respondent's use, as per an agreement between you and respondent, but that respondent failed to pay the agreed upon price for your work. Your allegations appear to be consistent with a breach of contract claim, where the respondent has failed to meet its payment obligations set forth in a contract, license, or other written or oral agreement. "Generally, a 'copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement' and can sue only for breach of contract." *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1121 (9th Cir. 1999) (quoting *Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998)). **A claim for nonpayment might be viable in state court but not before the Board.**

The Board may only hear infringement claims against a licensee of a work if the claim is based on a licensee failing to satisfy a "condition precedent" of a license from the copyright owner, or if the licensee's use of the work went beyond the scope of the uses permitted under the license. If Holli Solutions did have a license to use the plans, the Board could only hear your infringement claim if you amend the claim to also state facts indicating that Holli Solutions failed to satisfy a "condition precedent" of the agreement, or that its use of the work went beyond the scope of the uses permitted under the license, both of which are further explained below.

#### **A. Condition Precedent to a License**

Your claim can fix these grounds for noncompliance if you are able to state facts in an amended claim that indicate that a "condition precedent" had to occur before the license could take effect, and that it did not occur. A "condition precedent" is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book "if, and only as long as" the licensee makes monthly payments to the author, then the payments may be a "condition precedent" to the licensee's right to publish. Or, if a photographer allows a website to use his photograph "if" the website credits the photographer by name, that credit could be a condition precedent. If a copyright license depends on the licensee **first** satisfying a condition precedent, and the licensee does not satisfy the condition when using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim.

You have not alleged that full payment, or any other requirement, was a condition that Holli Solutions had to meet before it could use the work. If there were terms that Holli Solutions had to satisfy first, your amended claim should provide the terms you imposed, including any specific conditional wording. Typically, lack of payment is breach of a contract term rather than a failure to satisfy a condition unless it is clear that use is allowed "if and only if" payment is first made. The Board notes that you have provided as supplemental documentation a series of text messages that appear to be the communications between you and the respondent in which the terms of the agreement were worked out. The Board sees nothing in those communications that appears to set forth a condition precedent. To show that full payment or any other term of use was a "condition precedent" to a license, your amended claim must include enough details about the term stated to show that it had to be satisfied *before* the license would take effect and include enough information about how it was communicated to show that the parties actually agreed to such a condition. You may also include the agreement, or correspondence that plays a significant role in

your allegations, as supplemental documentation in support of your amended claim.

## **B. Scope of an Implied License**

Your infringement claim could also proceed if you present facts in an amended claim that indicate that, even if a license existed, Holli Solutions exceeded its scope by using your work in a way that the license would not allow. To support a contention that Holli Solutions' use of your engineering plans exceeded the scope of a license, you must provide more details in an amended claim to indicate how the use went beyond what the license permitted. As stated above, you may include the agreement or significant correspondence as supplemental documents. Again, if you include supplemental documents, they must be clearly labeled and identified.

You should only file an amended claim if you can state facts to support a claim under copyright law that can be heard by the Board.

## **Misrepresentation Claim — No Misrepresentation**

You are bringing 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 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 misrepresentation claim are that:

1. The respondent sent an online service provider 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 online service provider's decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it does not provide any information about how the respondent made a misrepresentation in a takedown notice or counter-notice to an online service provider. Your claim alleges that no one sent a DMCA counternotice notice to an online service provider. In the "Words that made up the misrepresentation and explanation of the misrepresentation" section of the claim you give the reasons for the respondent's nonpayment as their alleged misrepresentations. Your allegations do not state facts that the respondent sent any DMCA takedown notice or counter-notice relevant to a section 512(f) misrepresentation claim. If you submit an amended claim, you must omit the misrepresentation claim unless you can state facts in support of

each element of the claim, including the first and second elements set forth above.

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](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.

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