



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0041

March 14, 2023

Photolive, Inc. dba Stockyard Photos

CLAIMANT

v.

Amstar

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 13, 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.

Registration Number

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a); 37 C.F.R. § 221.1. If a copyright registration has issued for the work, the claim must include the registration number and effective date of registration. 37 C.F.R. § 222.2(c)(7)(ii)(C).

In your claim, you describe the allegedly infringed work as a photograph by photographer Jim Olive. You state that the Copyright Office has registered the work and you provide 20031219-SKAD1049 as the registration number. However, that is not a valid number for a Copyright Office registration. Instead, it appears to be your internal reference number for a particular photograph.

To address this issue, if you submit an amended claim, you must include a valid registration number for the work or a valid service request number for a pending application to register the work. To proceed with a claim before the Board, you must have received a copyright registration or submitted a complete application for

registration on the work at issue before you filed your initial claim on January 30, 2023. The Copyright Office has already issued multiple registrations for photographs by Jim Olive. If any of those copyright registrations cover the allegedly infringed work, you may cite the appropriate registration number, which you may find through the [Copyright Public Records Portal](#) or the Copyright Office's [Official Public Catalog](#).

Allegedly Infringed Work

In your claim, you describe the allegedly infringed work as a “Photo of Omni Hotel Charlottesville, VA,” titled “Stockyard.com image 20031219-SKAD1049.” However, a supplemental document filed with the claim includes what appears to be a demand letter sent to the respondent with that image number, but describing the work as “Houston Cityscape w/ Esperson Building.” The document also appears to show a screenshot of the respondent’s website displaying a picture of the Esperson Building, not an Omni hotel. If you file an amended claim, please make sure that your description of the allegedly infringed work is clear and accurate.

Copyright Infringement – Elements

A copyright infringement 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not present clear facts to support the elements of the claim related to copyright ownership, the respondent’s access to the allegedly infringed work, and substantial similarity, as discussed below.

Legal or Beneficial Ownership

Your claim provides unclear information about the claimant’s status as a legal or beneficial owner of the allegedly infringed work. To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. More information about

legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

The claim does not present facts that indicate that Photolive, Inc. dba StockyardPhotos is a proper claimant. The claim describes the allegedly infringed work as a photograph and names Jim Olive as its author. The claim does not describe or show any relationship between Mr. Olive and Photolive, Inc., or indicate how Photolive, Inc. obtained any exclusive rights in the allegedly infringed work.

To correct this issue, if you file an amended claim, it must include specific allegations about how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how Photolive, Inc. was the owner of exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may describe the relationship between Photolive, Inc. and Mr. Olive, or state how the claimant obtained legal or beneficial ownership of copyright. Alternatively, if the information in the claim identifying the claimant or the authors of the work is inaccurate, you may correct that information in an amended claim. For example, if Mr. Olive owns the copyright and Photolive, Inc. does not, the amended claim should name him as the claimant instead. This issue could also be eliminated if you correct the issues related to the allegedly infringed work and the registration of that work, and Photolive, Inc. is the owner listed in the copyright registration or application for registration for the proper work.

Access

Your claim does not provide clear facts about 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. Your claim does not clearly state allegations about how the respondent had an opportunity to see your work before the alleged infringement. Your allegations do not offer enough detail about where or how your work was available to the respondent.

To address this issue, you must file an amended claim with 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 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 the respondent could not have created its work independently. Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar. When you filed the original claim, you uploaded what appears to be a screenshot showing the allegedly infringing work, but not a copy of your own work.

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

You do not provide information clearly describing or showing your allegedly infringed work, or stating how it is substantially similar to the respondent's allegedly infringing work. No allegations in the "Describe the infringement" section of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, while you appear to have attached a copy of the allegedly infringing work, you have not provided a copy of your work as a supplemental document so that the works may be compared. As a result, the claim does not provide enough information to enable the respondent to understand the claim 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 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 documents, 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. 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