



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0217

September 4, 2024

Hear Now Systems, Inc.

CLAIMANT

v.

XIAO JIN

RESPONDENT

FINDING OF BAD FAITH AND ORDER DISMISSING CLAIM

On July 22, 2024, Michael G. Joly (Joly) filed this copyright infringement claim on behalf of claimant Hear Now Systems, Inc. (Claimant) before the Copyright Claims Board (Board). The claim provided a clearly invalid mailing address for the respondent that indicated that the respondent is in China, though claims before the Board against respondents that do not reside in the United States are prohibited.

On July 25, 2024, the Board ordered Joly and Claimant to show cause why filing the claim in this form did not constitute bad-faith conduct under 37 C.F.R. § 232.3. The Order to Show Cause further ordered Joly and Claimant to file a response to that order, jointly or separately, by August 8, 2024. No response was filed.

On August 26, 2024, the Board ordered Joly and Claimant to appear at a conference to explain the conduct described in the Order to Show Cause, and sent them, at the addresses provided in the claim, a link to the virtual conference, which was scheduled for September 4, 2024 at 11:00 AM ET. 37 C.F.R. § 232.3(c). The presiding Copyright Claims Officer waited 5 minutes after the scheduled time for the conference to begin but neither Joly nor Claimant appeared. They did not notify the Board that they would not be attending or explain their absence thereafter. The Officer recorded a statement on the record and then concluded the conference.

The fact that Joly submitted, on behalf of Claimant, a claim with an obviously inaccurate domestic address for a foreign respondent, despite the knowledge that claims against foreign entities are prohibited, has not been refuted. Claims “asserted against a person or entity residing outside the United States” are categorically “not subject to determination by the Copyright Claims Board.” 17 U.S.C. § 1504(d)(4). The eCCB online filing system specifically informs filers of this prohibition, and eCCB requires a United States address for respondents, including a United States state or district and zip code. When this claim was submitted through eCCB, a notice in the “Respondent” section of the claim form warned the filer that claims cannot be filed against respondents residing outside of the United States, and specified: “Anyone who evades this requirement will have their claim found noncompliant, lose their \$40 filing fee, and may be limited in the ability to file future claims.” Before submitting the claim, Joly also certified under penalty of perjury that the information provided in the claim was accurate and truthful to the best of his knowledge, and that he had confirmed its accuracy with Claimant. See 37 C.F.R. § 222.2(c)(12).

Nevertheless, the claim identified the respondent as a “Chinese national in Hunan,” and stated that the respondent’s street address is in “424400 Changsha Yuhua District . . . Hunan Province, Shengyi City Phase II, RI

02891.” Yuhua is a district of the city of Changsha, the capital city of Hunan Province in China. 424400 is a postal code in that province. In a second document filed on July 22, 2024, styled as an addendum to the claim, Joly recited the same address for the respondent. The street address provided does not resemble a United States address. The address provided also includes facially invalid information. Joly selected the state code “RI,” for Rhode Island, from the drop-down menu in the claim form, and entered 02891, a Rhode Island zip code. Joly’s own address, as entered in the claim form, is in “Westerly, RI 02891.” Entering a Rhode Island state code and zip code for the respondent means that the filer must have both ignored the warnings on eCCB and entered a U.S. address to avoid the technological barriers to entering a foreign address.

Therefore, the Board finds that the actions of Michael G. Joly and Hear Now Systems, Inc. in this proceeding constitute bad-faith conduct, as defined in the Board’s regulations: “Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an active proceeding.” 37 C.F.R. § 220.1(c). Under this standard, the Board has no difficulty in finding that Joly and Claimant did not have a reasonable basis in law or in fact to file a claim before the Board against a respondent residing outside the United States despite the clear warnings and technological barriers to deter such a filing.

In addition, on July 25, 2024, the Board issued an Order to Amend Noncompliant Claim notifying Claimant and Joly that the claim did not comply with the requirements of the CASE Act and related regulations and would be dismissed unless an amended claim was filed by August 26, 2024. 37 C.F.R. § 224.1(c)(2).

No amended claim was filed in the time allowed. Accordingly, the Board dismisses the claim without prejudice and closes case 24-CCB-0053. 37 C.F.R. § 222.17(a)–(b).

Copyright Claims Board