



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0299

October 21, 2024

Jalic Inc

CLAIMANT

v.

MyPartyShirt.com and Michael Rutcofsky

RESPONDENTS

## 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 **November 20, 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. More information is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### Allegedly Infringing Activity

For each respondent you name as an alleged infringer, you must state allegations regarding that respondent's allegedly infringing activity. You have named two respondents, MyPartyShirt.com and Michael Rutcofsky. You describe alleged infringing activity on the website mypartyshirt.com, but no allegations in the claim indicate how Michael Rutcofsky used any exclusive rights you have in the work without permission.

If you choose to leave Michael Rutcofsky in any amended claim you file, you must provide more details and background regarding how he personally engaged in infringing activity. In the alternative, you may file an amended claim that only names MyPartyShirt.com as a respondent.

### Access

Your claim does not provide facts that indicate how the respondents had access to your work. "Access" means a reasonable opportunity to view your work before the alleged infringement took place. In the "Works infringed" section of the claim, you describe your work as a "[s]word design titled 'Longclaw' featuring a black grip, wolf head pommel, and other identifying characteristics." The claim does not specify anywhere that your sword has been

accessible to the respondent or the public at large. You included images of your work and the allegedly infringing work as supplemental documents, but they do not demonstrate that the works are so strikingly similar that they could not have been created independently, especially given that your sword appears to be derived from *Game of Thrones* by George R.R. Martin.

To address this issue, you must add allegations that make access by the respondent a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how 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 respondent; or (c) is so strikingly similar to the respondent's work that they could not have been created independently.

### **Substantial Similarity**

Your copyright infringement claim does not include enough facts to indicate how the allegedly infringing work is substantially similar to original, expressive elements of your work that copyright protects. To address this issue, if you file an amended claim, you should include more information about your work, the allegedly infringing work, and how creative elements of the works are similar.

No allegations in the "Describe the infringement" field of the claim describe your work or the allegedly infringing work, or why they may be identical or substantially similar, beyond a bare assertion that the respondents' work is "a counterfeit derivative work of our copyrighted product design." You contend that after a "test buy," you "were able to confirm it is an unapproved counterfeit," but you do not identify facts that support that view. You do not state how much of your work, or which portions of your work, the respondents used, and you do not describe any elements of your work or the allegedly infringing work, or how they may be similar. Supplemental documents filed with the claim show that both works are sword designs, with a wolf head on the hilt and curved points at the cross guard, but both the wolf head, the cross guard, and the sword itself exhibit substantial differences.

A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect ideas, such as the mere idea of an animal head on the hilt of a sword. 17 U.S.C. § 102(b); *see also Compendium* Section 313.3(A). It only protects original elements of expression. Because the claim does not clearly identify substantial similarity in material that copyright protects between the two works, it 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 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 respondents in the allegedly infringing work, or documents that are sufficient to show substantial similarity in material that copyright protects.

In addition, the 2008 copyright registration certificate filed with the claim indicates that some material from a

1995 registration was excluded from the copyright claim. That 1995 registration was for the literary work *A Game of Thrones*, listing George R.R. Martin as the copyright claimant. If you file an amended claim, include a description of what material was excluded, what creative material you contributed to the 2008 work, and what protected elements covered by the 2008 work were used in the allegedly infringing work.

To the extent the material excluded is the description of the sword from the *Game of Thrones* series, you should know that “useful articles,” which are works that have “an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information,” are not protected by copyright law, unless their “design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” 17 U.S.C. § 101. If your sword is derived from the book series, you must specifically describe in your amended claim what details of creative expression you added, separate from merely creating a physical copy of the sword in the book. You must then describe how the respondent’s allegedly infringing work is substantially similar to the creative elements added by you.

## Relief Sought

The Board can grant only certain types of relief. If you seek damages for your infringement claim, you can seek either (1) actual damages and the profits of the infringer attributable to the infringement, or (2) statutory damages. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue or licensing fees you experienced. An award can also include any additional profits the infringing respondent made from the infringement. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss.

It appears that you are seeking a larger statutory damages award than the Board can grant. In the “Description of harm suffered and relief sought” section of your claim, you state that you are seeking \$30,000 in statutory damages. The most that respondents can be ordered to pay in damages (actual or statutory) in a Board proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). However, the maximum amount of *statutory* damages available from the Board is \$15,000 for each infringed work. 17 U.S.C. § 1504(e)(1)(A)(ii)(I). More information about the available forms of relief can be found in the [Damages](#) chapter of the CCB Handbook, and on pages 6-7 of the [Starting an Infringement Claim](#) chapter.

You are not required to choose between actual or statutory damages at this point. 17 U.S.C. § 1504(e)(1)(B). If you file an amended claim, you may include a request for damages—although you do not have to—without giving a specific amount. But if you give a dollar figure for statutory damages, it cannot be more than \$15,000.

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.

Copyright Claims Board