



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0131
May 13, 2024

Esten E. Morgan and Shawna Morgan

CLAIMANTS

v.

Richard Mosseri

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 **June 12, 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 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. A counter-notice only violates section 512(f) if the respondent infringes that work and falsely claims that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f). Your misrepresentation claim must include the words in the counter-notice that you allege were a misrepresentation, an explanation of the alleged misrepresentation, and a statement describing the harm you suffered as a result of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(vi)-(vii) & 222.2(c)(10).

You allege that you sent a takedown notice to Etsy on April 29, 2024, and that the respondent sent a counter-notice that same day. It appears that in the takedown notice, you identified the respondent’s Etsy listing as infringing two of your works: a device called the Ultimate Tensioner that is designed for use with specific knitting machines, and a Southpaw Bear Paw logo “embossed on the main body” of the device. Supplemental documents filed with the claim show the [logo artwork](#) and the [device](#) bearing the logo on one side. You allege that you sell

the Ultimate Tensioner on Etsy, and that the respondent resells the device on Etsy and presents it “as his own” on social media:

Richard Mosseri has been presenting our intellectual property as his own on TikTok and in his Etsy storefront of BeaniesPlusMoreCo for monetary gain. . . . Richard Mosseri is using TikTok and Facebook platforms to nefariously mislead his followers into purchasing our item from his own Etsy storefront . . . Due to Richard Mosseri’s continuing harmful actions we were forced to raise the price of our item above what he was reselling it for on his storefront BeaniesPlusMoreCo to discourage his continuing attempts to deplete our inventory through straw buyers for his resale on TikTok and Etsy.

It is not clear how the respondent’s Etsy listing is a copyright infringement of either your device or your logo.

Reselling a lawfully made product is not copyright infringement. Under the “first sale doctrine,” the owner of a lawfully made copy of a work may sell or otherwise dispose of that copy. 17 U.S.C. § 109. If the respondent purchased genuine copies of the Ultimate Tensioner, it is not a violation of copyright law to resell them.

You contend that your logo artwork on the Ultimate Tensioner appears in all of your “Etsy shop listings for this item,” but you have not alleged or shown that it appeared in the allegedly infringing listing. Screenshots with the claim of the disputed [listing](#) and the respondent’s BeaniesPlusMoreCo Etsy shop [main page](#) do not indicate that the respondent displayed your logo. If you submit images showing the logo in an amended claim, you should also explain how the logo was used in an infringing manner.

You state that the respondent swore in the counter-notice, “I have a good faith belief that the material was removed or disabled by mistake or because of misidentification of the material.” You do not present facts that show why it was false or incorrect for the respondent to indicate that his use of your works was not infringing. If you submit an amended claim, you must show or explain why such a statement in the counter-notice was false or incorrect, and how it was false or incorrect.

Your claim also does not include a statement describing harm you suffered as a result of the alleged misrepresentation. 37 C.F.R. § 222.2(c)(10). In the “Description of harm suffered and relief sought” section, you instead indicate that you were harmed by the respondent’s purchases, resales, and negative feedback on Etsy. If you submit an amended claim, include a description of how the alleged misrepresentation in the counter-notice itself harmed you.

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