



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0271
September 17, 2024

Angela M. Jarman

CLAIMANT

v.

Hey Ricochet and Shopify Inc.

RESPONDENTS

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. Your infringement claim is compliant, but your claim cannot move forward unless your misrepresentation claim is amended.

If you wish to proceed with this claim, you must file an amended claim by **October 17, 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. 17 U.S.C. § 1506(f)(1)(B). However, you should not submit an amended misrepresentation claim if you know that it cannot be properly amended.

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.

Proper Respondent

You are raising a claim of copyright infringement. You name two respondents, Hey Ricochet and Shopify Inc. (Shopify). You have not presented enough facts to indicate why Shopify may be liable for the alleged infringement. To support an infringement claim against Shopify, you must present more information in an amended claim.

In the “Infringement” section of the claim, you identify Shopify as an online service provider (OSP), and you state that you are bringing the claim against Shopify because it stored, referred to, or linked to infringing material posted by others, and that it did not expeditiously remove that material after you sent Shopify a takedown notice. You allege that Hey Ricochet is selling an infringing item on its website and has advertised the item on Instagram, but you do not allege that Shopify directly infringed your work. However, allegations in the “Misrepresentation” section of the claim indicate that you sent Shopify a takedown notice alleging infringement on Hey Ricochet’s website, and that Shopify did not immediately remove the allegedly infringing work.

A copyright infringement claim may be raised against a “secondary infringer” who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. To support a claim of secondary infringement, if you allege that Hey Ricochet directly engaged in infringing activities, your amended claim must include additional facts about how Shopify acted in relation to those activities.

In particular, a secondary infringement claim must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement.

- A **vicarious liability** claim must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity and received a direct financial benefit from the infringement.
- A **contributory liability** claim must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

If you intend to assert a claim of secondary infringement against Shopify, then your amended claim must include more facts that support either vicarious or contributory liability. If you want the Board to find Shopify *vicariously liable* for a third party’s use of your work, your amended claim must include allegations of facts showing that it was able to control or supervise that use, and that it profited directly from that use. Alternatively, if you want the Board to find Shopify *contributorily liable* for a third party’s use of your work, your amended claim must include allegations of fact showing that Shopify knew, or had reason to know, that uses of your works would be infringing, and that it facilitated that infringing conduct by inducing, causing, or materially contributing to that use.

More information about vicarious and contributory liability is available at page 21 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Misrepresentation Claim – Reliance by Online Service Provider

You are also bringing 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 that only applies to false statements made to an OSP 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 misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to repost the content, and
5. You were harmed as a result of the OSP’s decision to repost the content.

17 U.S.C. § 512(f). “Safe harbor” provisions in section 512 of the Copyright Act protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material after receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. More information is available on the Copyright Office’s [section 512](#) page.

You present the following information and allegations in the “Misrepresentation” section of the claim.

- You sent a takedown notice to Shopify on September 1, 2024, providing links to three pages on Hey Ricochet’s website where you contended infringing works appeared.
- On September 4, 2024, Shopify asked you to identify infringing content on those pages, saying: “We’re unable to identify your original copyrighted work on the content on Shopify that you have reported.”
- You responded with details about allegedly infringing works on each of the three Hey Ricochet pages.
- On September 6, 2024, Shopify responded that it still could not identify your material on those pages.
- You responded that you had provided all the necessary information, and that Shopify would lose its safe harbor protections unless the allegedly infringing listings were removed.
- On September 9, 2024, Shopify informed you that it had received a counter-notice from Hey Ricochet that claimed that the material on one of those pages, <https://heyricochet.com/products/fairy-wings>, had been “removed as a result of a mistake or misidentification[.]”
- You allege that “the infringing item still has an active listing,” and a document filed with the claim labeled “[Infringing listing on Hey Ricochet’s website](#)” seems to show a screenshot of the Hey Ricochet page listed above dated September 9, 2024, displaying an allegedly infringing work.

You contend that Hey Ricochet’s counter-notice falsely denied infringement: “I don’t believe there was any mistake or misidentification. I think it’s clear that their product is substantially similar to my Titania Fairy Wings and therefore infringing.” You appear to also suggest that Shopify’s claims that it could not find the allegedly infringing content were false: “I believe the infringing content is easily identified, and I provided all the necessary information, links, screenshots and a copy of my copyright certificate.” You allege that “Shopify never removed the infringing content after I sent the DMCA takedown notice,” and that “the content was never removed in the first place, so I’m not sure why a counter notice was filed.”

However, those allegations do not support the elements of a section 512 misrepresentation claim. A misrepresentation only violates section 512 of the Copyright Act if it falsely states “that material or activity is infringing” or “that material or activity was removed or disabled by mistake or misidentification”—*and* the OSP then relies on that misrepresentation to take down, or to restore, the allegedly infringing material or activity. 17 U.S.C. § 512(f)(1)-(2). You do not present such facts. None of your allegations suggest that Hey Ricochet or Shopify falsely accused anyone of infringing. You allege that Hey Ricochet falsely claimed that material was “removed as a result of a mistake or misidentification,” but you do not allege that Shopify relied on that claim to restore the material. Instead, you allege that the material at issue “was never removed” from Hey Ricochet’s website. If it was never removed, then it was never restored.

If Shopify had restored the allegedly infringing material by the time you filed this claim on September 9, 2024, your amended claim must state facts about that restoration. However, if Shopify did not remove the allegedly infringing material after receiving your takedown notice, and did not then restore that material in reliance on the counter-notice, this misrepresentation claim cannot move forward.

In addition, it does not appear that Shopify can be a proper respondent for your misrepresentation claim. You state, “it’s my opinion that both Shopify and Hey Ricochet had misrepresentations of my claim.” However, only certain types of false statements violate Section 512(f). To violate Section 512(f), a respondent must falsely state “that material or activity is infringing,” or “that material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f). You allege that Hey Ricochet made such a statement, not Shopify. Also, to

violate Section 512(f), the misrepresentation must be relied on by an OSP in taking down or restoring the allegedly infringing material or activity. Such misrepresentations must be made *to* the OSP. The alleged misrepresentations *by* Shopify do not qualify. If you file an amended misrepresentation claim, it must indicate that the claim is not raised against Shopify, unless you present additional facts in the amended claim that support all of the elements of a misrepresentation claim against Shopify.

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