



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0107

United States Copyright Claims Board

Elle Hong

CLAIMANT

v.

Jamie Park

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 **November 21, 2022**. 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 extra 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 Claim – False Statement

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement 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 takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider’s decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). To support your misrepresentation claim, you must provide additional facts to show that the counter-notice included a false or incorrect statement of fact that was important to the online service provider’s decision to restore the content at issue.

The allegedly infringing content is a recipe posted at [drivemehungry.com/italian-meatballs](#). Your claim asserts that you sent a takedown notice to Google on August 7, 2022, “in regards to a copyright infringement of a recipe that was originally published on January 28, 2021 by a different author, in all aspects of photography, description, ingredients, and cooking method.” A supplemental document filed with your claim appears to be [a copy of your take-down notice](#), including a description of the allegedly infringing content: “The photograph of spaghetti and meatballs in a pasta bowl garnished with grated parmesan cheese and chopped parsley, as well as the written content and recipe that have been rephrased from my original post published in January 2021.” You assert that the respondent made a misrepresentation in a counter-notice sent to Google on August 11, 2022. A supplemental document filed with your claim appears to be [a copy of the counter-notice](#), which states in part, “I am the owner of the content. . . . All photos and written content are my own and have been taken or written by me. There is no copyright infringement.” You allege that this counter-notice was “false and a misrepresentation of my case as the recipe post that I have submitted a report initially for is a clear case of copyright infringement and Jamie Park is continuing to state that her work is completely original, despite the evidence I have provided in my report.”

Your claim depends on an underlying act of alleged copyright infringement by the respondent. It would not be a misrepresentation to tell Google that “[t]here is no copyright infringement” if there was no infringing use of your recipe. Based on the information you have provided, your claim does not state enough facts to support your assertions that the respondent’s post of a photograph and recipe at [drivemehungry.com](#) amounts to copyright infringement. [A supplemental document](#) filed with the claim, which you describe as a “side-by-side comparison of the two recipes,” depicts some apparent similarities between your recipe and the respondent’s recipe. However, these similarities appear to be due to common features of meatball recipes which are not protected by copyright. An alleged infringer must have copied your original elements of expression. Stated another way, to be infringing, the respondent’s recipe must be substantially similar to original elements of expression in your recipe that copyright protects.

A valid copyright only extends to copyrightable subject matter. Copyright law does not protect ideas. 17 U.S.C. § 102(b); *see also* Section 313.3(A) of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Rather, it protects original elements of expression. The copyright in a recipe does not cover the list of ingredients that appear in the recipe, or “[w]ords and short phrases such as names, titles, and slogans.” [37 C.F.R. § 202.1\(a\)](#). It also does not cover the underlying process for making the dish, or any other activities described in the recipe that are procedures, processes, or methods of operation, which are not subject to copyright protection. As the Copyright Office explains in [Circular 33: Works Not Protected By Copyright](#), “A recipe is a statement of the ingredients and procedure required for making a dish of food. A mere listing of ingredients or contents, or a simple set of directions, is uncopyrightable. As a result, the Office cannot register recipes consisting of a set of ingredients and a process for preparing a dish. In contrast, a recipe that creatively explains or depicts how or why to perform a particular activity may be copyrightable.”

The list of ingredients and basic instructions in your allegedly infringing work are not protected by copyright. Copyright can protect the particular manner in which an uncopyrightable set of directions is expressed or described in writing, *see* [37 C.F.R. § 202.1\(b\)](#); and some of the instructions in your recipe may creatively explain how to perform a particular activity, but the respondent’s recipe does not appear to have copied any expressive aspects of those instructions.

The photograph used with the allegedly infringing recipe also does not appear to infringe the copyright in your photograph. Copyright would protect the original, expressive elements in a “photograph of spaghetti and meatballs in a pasta bowl garnished with grated parmesan cheese and chopped parsley.” However, that copyright does not cover the resulting dish itself, or the idea of depicting a different bowl with similar contents. Your “side-by-side comparison” document indicates that the recipe you posted on cookerru.com appeared with a photograph of five meatballs on spaghetti in a white bowl on a white tablecloth, while the allegedly infringing recipe posted on drivemehungry.com appeared with a photograph of six slightly larger meatballs on spaghetti in a white bowl on a blue-and-white striped tablecloth.

If you submit an amended claim, include more specific allegations that could support a finding that your recipe and the respondent’s recipe are substantially similar, for example, by identifying particular details in the respondent’s recipe that are similar to copyrightable expression in your work, and describing how they are similar. Your description should help the respondent and the Board understand the similarities you see between the respondent’s allegedly infringing work and the protectable aspects of your work.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the Copyright Claims Board Handbook for more assistance.

Copyright Claims Attorney

October 20, 2022