



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0403
December 20, 2023

Sheri C. Johnson

CLAIMANT

v.

300 ENT

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 **January 19, 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.

Copyright Infringement – Elements

Your claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondent’s alleged infringing activity, access to your work, and substantial similarity, as described below. In addition, after filing the claim, you filed documents that leave unclear which of your registered works is the allegedly infringed work. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

Infringing Activity

Your claim does not present enough facts to clearly state how the named respondent, 300 ENT, used any exclusive rights you have in the allegedly infringed work without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Your claim does not provide enough facts about infringing activity by the respondent. The “Describe the infringement” section of your claim alleges infringing activity by Gunna, not 300 ENT. Gunna is not listed as a respondent to the claim. By contrast, your allegations do not show how 300 ENT directly committed infringement, and do not indicate any relationship that 300 ENT has with Gunna or with Gunna’s allegedly infringing acts. Your claim does not describe actions taken by 300 ENT that relate to reproduction, distribution, or public performance of your work.

To address this issue in an amended claim, please provide more details and background regarding 300 ENT’s allegedly infringing activity. If you contend that 300 ENT infringed your copyright, your amended claim must state facts that describe acts by 300 ENT, not just by a third party, that constitute copyright infringement. For example, if 300 ENT made or distributed copies of an infringing sound recording, include facts that identify what 300 ENT did with the infringing work to infringe your copyright. Alternatively, if you contend that 300 ENT is liable for infringement based upon infringing activity undertaken taken by another person or entity, such as Gunna, you must allege facts showing that 300 ENT either (1) knew about that infringing activity and either induced, caused, or substantially contributed to or assisted that activity, or (2) had the right and ability to supervise or control the infringing activity and received a direct financial benefit from that activity.

However, if you contend that Gunna is liable for infringement rather than 300 ENT, then you may file an amended claim that names only Gunna as a respondent.

Access

Your claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to hear your work before the alleged infringement took place. Your claim does not state allegations about where or how your work was available before the alleged infringement so that the respondent had an opportunity to hear it.

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. If you are alleging that 300 ENT directly engaged in infringing activity, acceptable allegations of access may include that 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 public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. If you

are alleging that 300 ENT is liable based upon infringing acts by another person or entity, such as Gunna, you must state similar facts that indicate how that person or entity had access to your work.

Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. An mp4 file uploaded with your claim, labeled [GUNNA INFRINGES 2023 .mp4](#),” appears to include snippets of the allegedly infringing Gunna recording “fukumean” and of your allegedly infringed sound recording, titled “Trust” or “Trust Me.” However, you have not alleged that 300 ENT made or publicly distributed or performed the Gunna recording. Moreover, as discussed below, those snippets do not demonstrate that the two works are strikingly similar, or even substantially similar.

Substantial Similarity

Your claim does not include enough facts that explain the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how your work and the allegedly infringing work are similar.

In the “Works infringed” section of the claim, you identify your work as a sound recording titled “Sweet and Sour.” You describe the work as: “(File: trust.mp3) within the song, I created adlib sound chants ‘hot hot hot hot’ pronounced ‘ha ha ha ha ha’ recited at 1 second intervals repeatedly as my signature.” You state that the work has been registered by the Copyright Office with Registration No. SRu1060674. The Certificate of Registration for the work lists you as the copyright claimant and author, and states that you claimed authorship in the “sound recording, performance, [and] lyrics” of the work.

You allege that Gunna created derivative works based on your work. In the “Describe the infringement” section, you allege:

Gunna has used and is continuing to use my signature sound “ha ha ha ha” (breath chants of the word HOT) in songs titled HOT ft Young Thug, and song “FUCKUMEAN.” He’s used my sound and is portraying it as his own original creation. I let the first offense slide in 2019 because I thought they were paying me their respects, but he’s done it again in 2023 with song “FUCKUMEAN.” So I see he’s trying to portray it as his own intellectual property and will continue to do so if I don’t stop it now.

When a song is recorded, two works may be created that are protected by copyright: a musical composition (also known as a musical work) and a sound recording. “A copyright in a musical composition is distinct from a copyright in a particular recording thereof.” *TufAmerica, Inc. v. WB Music Corp.*, 67 F. Supp. 3d 590, 591 n.1 (S.D.N.Y. 2014). A musical composition is the underlying composition along with any accompanying lyrics. Musical compositions are usually created by a songwriter or composer. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are usually created by the performer and the producer of the recording. For example, Aretha Franklin’s recording of “Respect” includes two works protected by copyright: the musical composition of “Respect” written by Otis Redding and the recording of that musical composition performed by Aretha Franklin.

The repeated use of “hot” or “ha,” as an element of the lyrics in the *musical composition* underlying your work, is not a basis for an infringement claim. “Words and short phrases” are “not subject to copyright.” 37 C.F.R. § 202.1(a). “Ordinary phrases are not entitled to copyright protection.” *Narell v. Freeman*, 872 F.2d 907, 911 (9th Cir. 1989). Taking an ordinary phrase, rather than an original “sequence of creative expression,” is not infringing. *Id.* (quoting *Salinger v. Random House, Inc.*, 811 F.2d 90, 98 (2d Cir. 1987)). A single syllable or word, such as the short, common terms “hot” and “ha,” is not a protectible element of the lyrics, so it cannot be the source of substantial similarity. See *TufAmerica*, 67 F. Supp. 3d at 594 (“The word ‘oh’ is a single and commonplace word. Standing alone, it likely is not deserving of copyright protection.”); *Prunte v. Universal Music Group, Inc.*, 699 F. Supp. 2d 15, 26-27 (D.D.C. 2010). More information about copyright law related to short phrases is available in Section 313.4(C) of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition* and in [Circular 33: Works Not Protected by Copyright](#).

To the extent your claim is instead based on infringement of the *sound recording*, including the vocal performance, you must clearly allege that sounds captured on your sound recording itself appear in the allegedly infringing work. To bring a claim of copyright infringement of a sound recording, the allegedly infringing work must contain actual sounds recorded in the allegedly infringed sound recording. If you maintain the allegations that the infringing activity is the creation of a derivative work based on your sound recording, your amended claim must allege facts that show that the respondent rearranged, remixed, or in other ways reproduced and altered the actual sounds embodied in your sound recording, because for sound recordings, the right to prepare derivative works is limited to such acts. See 17 U.S.C. § 114(b) (the exclusive rights to make copies and derivative works of a sound recording “do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording”).

The mp4 file uploaded with your claim appears to include a snippet of the allegedly infringing Gunna recording, in which a “ha” sound is repeated eight times, and a snippet of your allegedly infringed work, in which a “ha” sound is repeated six times. However, the sounds do not appear to be identical or substantially similar. If you submit an amended claim based on this use, to support the element of substantial similarity you must include more factual allegations that describe or show how the allegedly infringing work includes reproduced or altered sounds from your work that make up a substantial part of the creative expression of your work.

Clarity – Allegedly Infringed Work

In your claim, you list the allegedly infringed work, titled “Sweet and Sour,” with Registration No. SRu1060674. Three days after filing the claim you uploaded several additional documents, including a [document](#) showing copies of Copyright Office records and correspondence related to both the “Sweet and Sour” registration and Registration No. SRu001101009, for a work titled “The Execution Mix CD.” It is not clear how the second registration relates to your claim. That document indicates that “Sweet and Sour,” the allegedly infringed work, is a mixtape that includes a sound recording titled “Trust.mp3,” which you appear to allege is the infringed track. However, that

document also indicates that “The Execution Mix CD” includes several tracks with the same or similar titles as on “Sweet and Sour,” including a track titled “trust me.mp3.”

To be considered as part of your claim, any supporting materials must be included as supplemental documents when filing the claim. If you include the registration records for “The Execution Mix CD” as part of your amended claim, please explain how that work is relevant to your claim. For example, if the “Trust.mp3” and “trust me.mp3” tracks are the same, you should explain that in the claim form. However, if they are different recordings, and you allege that “fuckumean” infringes both works, you must list each work separately in the “Works infringed” section and describe which elements of each work you contend the respondent infringed.

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.