



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0326

September 29, 2023

Adam D. Indes-Kuehr

CLAIMANT

v.

TYLER HENTZNER

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 **October 30, 2023**. 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.

Infringed Works

To bring an infringement claim, you must provide for each work at issue in the claim the title, author, registration, and work of authorship category. 37 C.F.R. § 222.2(c)(7). In your claim form, you list all seven allegedly infringed works as a “sound recording.” Your attached registration, however, indicate that the works are “musical compositions.” You also describe your works as “songs.” It appears that you own a copyright in musical compositions. Musical compositions and sound recordings are considered separate copyright protected works under the law. The authorship in musical compositions typically consists of the music and any accompanying lyrics, while the authorship in sound recordings consist of the performance and production authorship. For more information, please see *Musical Compositions and Sound Recordings* ([Circular 56A](#)).

When you amend your claim, please clarify that the allegedly infringed works are musical compositions, not sound recordings.

Infringing Activity

You do not identify in your claim any respondent activity that would support a valid copyright infringement claim. 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.

You allege that your works were “unlawfully ‘registered’ and listed by infringer on BMI for license and use.” You do not allege that the respondent reproduced, adapted, distributed, or publicly performed your work without authorization. If you submit an amended claim, you must include facts in the claim form that more fully explain how each respondent is liable for infringing your work. The claim must provide enough information to enable the respondents to understand the claim and respond to it.

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 amended claim does not provide clear facts to support the elements related to the respondent’s access to your work and substantial similarity, as described below. Please provide more details and background regarding these elements in your amended claim.

Access

Your claim does not provide any facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. 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. 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. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Substantial Similarity

Your claim also does not provide enough clarity about the similarities between your work and the allegedly

infringing work. If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

As described above, you do not allege that the respondent unlawfully copied, adapted, distributed, or publicly performed your work. Accordingly, you do not describe in any detail how the respondent used your work, much less any similarity that respondent's allegedly infringing copy would have with your work. When you describe the allegedly infringing activity of the respondent, be sure to include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing works, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

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.

