



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0006

February 2, 2023

Marie C Scheuring

CLAIMANT

v.

Homegain.com, Inc.

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 **March 6, 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.

Copyright Infringement Claim – Clarity

You have brought a copyright infringement claim before the Board. 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your copyright infringement claim must provide enough information for the respondent to understand what its allegedly infringing acts were. However, the current allegations as set forth in the claim are unclear and difficult to understand.

Your claim alleges that “Homegain has published my intellectual property from my personal website,

Representing that I published it there.” In contrast, the supplementary documentation included with your claim includes screenshots of your Homegain.com profile along with blog articles that indicate they were “posted” by you in the “Agent Blog” section of the website. Thus, it appears that you have access to a Homegain profile and may be able to post or control the blog content. Your claim also mentions Keller Williams several times but does not explain their relationship to the infringement or to Homegain. Your claim does not provide enough information about Homegain and what it allegedly did to infringe the copyright in your work. In your amended claim, you will need to include additional clarifying information about your relationship to Homegain and what Homegain did.

Copyright Infringement Claim – Access

You also did not describe how Homegain 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.

More 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.

Copyright Infringement Claim – Substantial Similarity

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

Your claim states that your works are “blog posts.” You separately filed what appears to be a screenshot of an allegedly infringing use. However, you do not provide any information describing or showing your work. No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable Homegain to understand the claim and respond to it. When you submit an amended claim, it must include additional allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by Homegain in the allegedly infringing work, 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.

More 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.

Misrepresentation Claim– Lack of Takedown Notice to OSP

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). Your misrepresentation claim does not assert that Homegain made a misrepresentation in a takedown notice or counter-notice that it sent to an online service provider. Instead, you allege that the only notice sent was the takedown notice that you sent to Homegain. In the section of the claim form that asks you to provide the words of the misrepresentation and explain why it was false, you stated only: “Homegain has published my intellectual property from my personal website, Representing that I published it there.” Your allegations do not identify the sort of misrepresentation that could violate section 512(f) because they do not concern false statements that were made by Homegain in a takedown notice or counter-notice to an online service provider.

Your allegations are not sufficient to state a misrepresentation claim. If you submit an amended claim that includes a misrepresentation claim, you must state facts in support of each element of the claim, including allegations that describe a false or incorrect statement of fact by Homegain in a takedown notice or counter-notice to an online service provider that would violate section 512(f). Your amended claim should also indicate what words in the takedown notice or counter-notice were false or incorrect, and how they were false or incorrect.

To submit an amended claim, log into your eCCB account and take the following steps.

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 supplementary 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