



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0401  
December 8, 2023

Paul Mahle

CLAIMANT

v.

shen yu chan

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 8, 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.

### Registration Number

You have brought a claim of copyright infringement before the Board. The claim must include the registration number and effective date of registration or, if the work has not yet been registered, the service request number for a pending application to register the copyright. 37 C.F.R. §§ 221.1(b) & 222.2(c)(7)(ii)(C)-(D).

In the “Works infringed” section of the claim, you state that the Copyright Office has not registered the allegedly infringed work and you provide SR13272104434 as the service request number for an application for registration. However, that number is incomplete. A Board search of Copyright Office records indicates that the complete service request number is SR 1-13272104434. If you file an amended claim, include the complete service request number or registration number in the “Works infringed” section.

### Legal or Beneficial Ownership

Your claim does not present facts that indicate that you are a proper claimant because it is not clear that you are a legal or beneficial owner of the allegedly infringed work.

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal

owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue.

In the “Works infringed” section, you identify the author of the allegedly infringed work as Harp Holdings, LLC (“Harp”). Copyright Office records for SR 1-13272104434 indicate that the application for registration named Harp as both the author and the copyright claimant for the allegedly infringed work. Those records indicate that the owner of the work is Harp, not you personally. The claim does not present facts that indicate that you have the right to bring a claim of infringement for the work as either a legal or beneficial owner.

To correct this issue, your amended claim must include specific allegations about how you own, or have an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how you were the owner of exclusive rights in the work at the time of the infringement or by submitting supplemental documents. That may include explaining the relationship between you and Harp. In the alternative, if the information in the claim identifying the claimant or the author of the work is inaccurate, you may correct that information in an amended claim. For example, if Harp (rather than you) owns the exclusive rights in the work, then you may amend the claim to name that entity as the claimant.

### **Clarity – Allegedly Infringed Works**

The claim must include the title of each allegedly infringed work. 37 C.F.R. § 222.2(c)(7)(ii)(A). Your claim does not present clear allegations identifying the particular work or works at issue.

In the “Works infringed” section of the claim, you identify the allegedly infringed work as pictorial, graphic, or sculptural work, titled “Fireplace hookup instructions.” In the “Description of harm suffered and relief sought” section, you state that “a seller” is “using our images,” and that “[w]e are seeking financial compensation of \$1,000 per image (\$3,000 Total),” which indicates that three works are at issue. Moreover, SR 1-13272104434 is the service request number for an application to register a group of *four* photographs, titled “Fireplace 1.jpg,” “Fireplace 2.jpg,” “Fireplace 3.jpg,” and “Fireplace 4.jpg.” It is not clear which of those photographs are the basis of your infringement claim. To address this issue in an amended claim, list each allegedly infringed work in separate entries in the “Works infringed” section.

### **Infringing Activity**

Your claim does not present enough facts to clearly state how the named respondent, shen yu chan (“Chan”), 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 display 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. Instead, the “Where the alleged infringing acts occurred” section of your claim alleges infringing activity by Hengxi Direct, which is not listed as a respondent to the claim: “Images are being distributed inside packaging sold online on Amazon.com sold by Hengxi Direct.” By contrast, your allegations do not show how Chan directly committed infringement. The “Description of harm suffered and relief sought” states that you are seeking “the destruction of all images in possession of shen yu chan,” which indicates that Chan has copies of your images, but does not describe Chan making, distributing, or publicly displaying those copies. Your allegations do not indicate any relationship that the respondent Chan has with Hengxi Direct or with its allegedly infringing acts.

To address this issue in an amended claim, please provide more details and background regarding Chan’s allegedly infringing activity. If you contend that Chan infringed your copyright, your amended claim must state facts that describe acts by Chan, not by a third party, that constitute copyright infringement. Alternatively, if you contend that Chan is liable for infringement based upon infringing activity undertaken taken by another person or entity, such as Hengxi Direct, you must allege facts showing that Chan either (1) knew about that infringing activity and either induced, caused, or substantially contributed to or assisted that activity, and specifically how, or (2) had the right and ability to supervise or control the infringing activity and received a direct financial benefit from that activity.

In the alternative, if you contend that Hengxi Direct is liable for infringement rather than Chan, you may file an amended claim that names only Hengxi Direct as a respondent. However, be aware that the Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). The claim must include the respondent’s mailing address. 37 C.F.R. § 222.2(c)(6). You should only file an amended claim if you are raising it against an individual or entity residing in the United States, and provide a U.S. address.

## **Access**

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view 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 those images 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 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 some specific allegations about how your work and the allegedly infringing work are similar.

In the “Describe the infringement” section, you allege that your “[i]mages have been copied and used,” but you do not describe how much of your works were used. You describe your work as “[i]nstructions on how to connect a relay to a fireplace,” but your allegations do not describe the allegedly infringing work, or state or show how it is identical or substantially similar to your work. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include factual allegations that support the element of substantial similarity. Please include a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. As mentioned above, 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](mailto: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