



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0127
June 3, 2024

Francesco Santora

CLAIMANT

v.

Metro-Goldwyn-Mayer Studios Inc.
and Penguin Random House LLC

RESPONDENTS

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still 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 a second amended claim by **July 3, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

To make your second 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.

Proper Respondent

You have named two respondents, Metro-Goldwyn-Mayer Studios Inc. (MGM) and Penguin Random House LLC (Penguin). Your amended claim does not state any allegations of wrongful activity by Penguin. It does not show that Penguin is a proper respondent for a claim before the Board.

You have raised a copyright infringement claim, a claim for a declaration of noninfringement, and a claim of misrepresentation under section 512(f) of the Copyright Act. Your allegations for each claim focus on MGM, not Penguin. The “Describe the infringement” section of the claim alleges infringement by MGM in the Netflix series “Wednesday,” but it does not mention Penguin or identify any allegedly infringing work or activity by Penguin. The noninfringement and misrepresentation claims, which concern contentions by MGM and its lawyers that your works are infringing, do not appear to involve Penguin at all. Your only allegation about Penguin in the amended claim is in a request for relief, under the heading “Non-Infringement in Future Works”:

I request that MGM refrain from creating derivative works based on the original elements in “The Haunted Clock” for any future projects related to the “Wednesday” character. This includes, but is not limited to, future seasons of the Netflix series or any other adaptations in the same literary medium (books, novels, graphic novels) that could directly compete with my copyrighted work such as those announced by Penguin Random House.

That allegation does not describe any activity by Penguin sufficiently to support an infringement claim. You do not allege or present facts indicating that Penguin has committed infringement, or that any future work “announced by Penguin” will infringe your work. The Board cannot hear a claim against Penguin based only on speculation that it may infringe your work at some point. If you file a second amended claim, you must either remove Penguin as a respondent, or present facts that indicate that Penguin has infringed your rights in the allegedly infringed work, accused you of infringement, or made a misrepresentation in violation of section 512(f).

Allegedly Infringed Work – Clarity

An infringement claim before the Board must include the title of the allegedly infringed work. 37 C.F.R. § 222.2(c)(7)(ii)(A). In the “Works infringed” section of the claim, you state that the infringed work is a literary work titled “Wednesday: Child of Woe series,” and you list TX0009381788 as the Copyright Office registration number. That registration issued for a work titled “The Haunted Clock,” as part of a series titled “Wednesday: Child of Woe,” but the registration does not cover the entire series. If you amend the claim, you must change the title in the “Works infringed” section to “The Haunted Clock.”

In addition, your description of the work in that section is confusing. It states: “‘The Haunted Clock’ Book 0 of the Wednesday: Child of Woe series of 7 already published books and 3 unpublished. To including book cover art and unpublish character art.” If you amend the claim, you must omit or clarify that description. If the references to “unpublished” books and “unpublish character art” refer to material from books other than “The Haunted Clock,” you should remove those references, since they do not relate to the allegedly infringed work. If you are contending that the work includes both published and unpublished material, you will need to provide more explanation. However, because the TX0009381788 registration is for a published work and does not extend to any unpublished matter, it does not appear that your infringement claim could extend to any unpublished matter. For that reason, you should remove all references to unpublished matter in your description of the infringed work.

Infringement Dates – Clarity

An infringement claim before the Board must include, to the extent known to the claimant, when the alleged infringement began. 37 C.F.R. § 222.2(c)(7)(iii)(B). Your allegations about when the infringement started are confusing. Under “Infringement dates” in the amended claim, you list “03/03/2024 – Present,” while in the “Describe the infringement” section, under a “Dates and Clarification” heading, you allege that “the infringement commenced before the official publication date of ‘The Haunted Clock’ on October 12, 2023.” Those statements are inconsistent. If you file a second amended claim, you must fix that discrepancy or add allegations that explain why both dates are accurate.

Access

Your amended claim still does not provide enough facts about how the respondents had access to the allegedly infringed work. “Access” means a reasonable possibility that the respondents had the chance to view or copy your work before the alleged infringement took place.

Your allegations of access must show a reasonable possibility, not merely a bare possibility, that the respondents had the chance to view or copy your work. If there is no direct evidence of access, it may be shown through facts and circumstances that (1) establish a chain of events linking your work and the respondents’ access, or (2) show that your work has been widely disseminated. A [supplemental document](#) filed with the amended claim, which appears to be a copy of a demand letter sent to you on behalf of MGM, states that the allegedly infringing Netflix series premiered in November 2022. You allege that you self-published “The Haunted Clock” on October 12, 2023, after it “was circulated in draft form to several literary agents in 2022,” after agents enquired if it was a derivative work, and after “advance copies were provided for review purposes through websites like [www.voraciousreader.com](#),” and “[b]eta readers were recruited via Facebook for drafts of the work in 2021.” Your allegations do not create more than a bare possibility linking “The Haunted Clock” to MGM or Penguin, or showing that “The Haunted Clock” was widely disseminated, before the alleged infringement.

You also allege that “certain characters have appeared in unrelated published literary works since 1993,” such as a character named “Francesco PENTEX.” However, you do not state any facts about the dissemination of those works, or how they relate to the alleged infringement, and no character named Francesco PENTEX (or Francesco or Pentex) appears in the deposit copy filed with your Copyright Office application to register “The Haunted Clock.” You contend that the showrunners for “Wednesday” had not created horror or dark fiction before, and that they “could have been exposed to elements of ‘The Haunted Clock,’” but you have not stated facts that make it reasonably possible that the respondents had access to “The Haunted Clock” before the alleged infringement began.

To address this issue, you must file a second amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how your work (a) was sent directly to the respondents or a close associate of the respondents; (b) was widely disseminated or was available to the respondents; or (c) is so strikingly similar to the respondents’ work that they could not have been created independently.

Substantial Similarity

Your amended claim still does not include enough facts that explain the similarities between your work and the respondents’ 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 the allegedly infringing works are substantially similar to elements of your work that copyright protects.

As the May 10, 2024 noncompliance order stated, “None of the similarities that you identify appear to relate to similarities in copyrightable expression. . . . Copyright law does not protect ideas; it only protects original elements of expression.” For example, you allege that both “The Haunted Clock” and the “Wednesday” Netflix series depict

a character “with a penchant for communicating with the dead through manipulating shadows.” The general idea of using shadows to communicate with the dead is not protected, and you do not describe or show any material in the works that expresses that idea, or any other general character trait, in similar ways.

General, unsupported assertions of similarity are not sufficient. You state that “the Netflix series incorporates unique elements originally established in “The Haunted Clock”” and that it uses “several distinctive creative elements protected by my copyright,” but your amended claim does not describe or show how any such similarities are expressed in either work so that the Board and the respondents could understand the alleged similarities. You state that your “work features a meticulously crafted magic system blending high fantasy elements with magical realism, governed by specific rules consistent with the World of Darkness magical system,” and that “[t]he magic system depicted in the Netflix series bears striking similarities to my unique system.” However, the general idea of a magic system with elements of both fantasy and realism is not protectable. You also assert that your work and the Netflix series both include “werewolves and vampires with similar characteristics and societal roles,” but you have not described or shown how such alleged similarities are expressed in either work. Moreover, no character is identified as a werewolf or vampire in the Copyright Office deposit copy of “The Haunted Clock.”

Your amended claim does not identify any other original elements of expression in your allegedly infringed work as substantially similar to any aspect of the allegedly infringing work. If there are such areas of substantial similarity, you must provide specific allegations that detail the similarity. If you submit a second amended claim, your description should include more specific allegations, identifying specific copyrightable subject matter in your work that the respondents copied. More information about what to include in the “Describe the infringement” section is available at pages 15-16 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Misrepresentation

You are also bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Your allegations in the misrepresentation section of the claim indicate that MGM, through one of its lawyers, made misrepresentations in takedown notices issued to Amazon, and that you sent Amazon a counter-notice. However, in the part of the claim form inquiring whether the misrepresentation occurred in the takedown notice or the counter-notice, you checked the “Counter-notice” box. MGM would not be liable for any misstatements in a counter-notice that *you* sent.

In your second amended claim, to maintain that MGM is liable for misrepresentation in the takedown notices that you allege it sent, you must check the box in the claim form that indicates that the misrepresentations occurred in MGM’s takedown notices, not the box that indicates that the misrepresentations occurred in your counter-notice.

Supplemental Documents

You uploaded four additional filings that seem to include supplementary information after filing your amended claim. These filings will not be reviewed by the Board or considered a part of your claim unless you upload them with your second amended claim using the instructions below.

Please make sure that any attachments to your amended claim are relevant to the claim.

Final Amendment

Your amended claim does not resolve all of the issues raised in the May 10, 2024 noncompliance order, and raises new issues identified above, that also must be resolved for the claim to move forward. **This is your third and final opportunity to submit a compliant claim.** While you have stated a compliant claim for a declaration of noninfringement, your infringement and misrepresentation claims are still not compliant. **If any of your claims remain noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). Alternatively, you may omit any noncompliant claim from your second amended claim.

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.