



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0037  
March 8, 2024

Charles Osuchowski

CLAIMANT

v.

Tyler F. Lewis, Kathy E. Diaz,  
and Christopher Annis

RESPONDENTS

## ORDER TO AMEND NONCOMPLIANT COUNTERCLAIM

Respondents (collectively “you”) separately filed responses to the claim on October 30, 2023, raising various counterclaims. Dkt. 33-35, 37, 39. As discussed at the initial conference on November 30, 2023, you then filed a joint, consolidated response and counterclaim on February 6, 2024. Dkt. 42; *see* Dkt. 41.

The Copyright Claims Board finds that your counterclaim does not comply with the requirements of the CASE Act and related regulations. Your consolidated response to the claim is complete and does not need to be changed. However, your counterclaim cannot move forward unless it is amended.

If you wish to proceed with this counterclaim, you must submit an amended counterclaim by **April 8, 2024**. If you do not, the Board must dismiss your counterclaim without prejudice, and the proceeding will continue on Claimant’s claim. If you file an amended counterclaim, it will be reviewed for compliance and you will be notified if it is found compliant or noncompliant. 17 U.S.C. § 1506(f)(2).

To make your amended counterclaim 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 counterclaim before you file again. You do not need to provide a legal argument in your counterclaim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your counterclaim. There is no character limit, so please be as detailed as possible.

### Agreement

You have raised a “contractual counterclaim,” which is a counterclaim that must be based on a contract or agreement that (1) pertains to the same transaction or occurrence as the Claimant’s infringement claim, and (2) could affect the relief awarded to the Claimant. 17 U.S.C. § 1504(c)(4)(B)(ii). A contractual counterclaim must describe the contract or agreement on which the counterclaim is based, how it pertains to the same transaction or occurrence as the infringement claim, and how it could affect the relief awarded. 37 C.F.R. § 222.9(c)(6)(i)-(iii).

Your counterclaim is not compliant because it does not describe any contract or agreement on which it might be based. Instead, in the “Describe the agreement” section, you appear to deny that such an agreement exists. You assert in that section that you were in a band with Claimant, who decided to quit the band in 2022. *Id.* ¶¶ 1, 9. You allege: “At no time did the band ever enter into any contracts with the Claimant for anything.” *Id.* ¶ 22. You add

that before Claimant left the band, “at no time was there ever any discussion as to what would happen if the Claimant was no longer in the band in terms of the records and merchandise that was already paid for and printed.” *Id.* ¶ 8. These allegations suggest that your counterclaim cannot proceed.

If you file an amended counterclaim, you must more fully state or show how a contract or agreement is at issue that relates to the infringement claim and could affect the relief awarded. To address this issue, your amended counterclaim must include facts in the “Describe the agreement” section that specifically identify the relevant contract or agreement, including when and how it was formed, and what terms were included.

For example, at a November 15, 2023 conference with a Copyright Claims Attorney, Respondent Christopher Annis indicated that the parties formed such an agreement through a series of Facebook Messenger exchanges around the time Claimant left the band. If you maintain that such an agreement is the basis for your contractual counterclaim, your amended counterclaim must include allegations that describe those communications in sufficient detail, or provide copies as supplemental documents, so that Claimant and the Board can understand the terms that you allege were agreed to. If you contend that the Claimant breached (violated) the terms of the agreement, include allegations that indicate which terms were violated, and what Claimant did that amounts to a violation. The counterclaim must provide enough information to enable Claimant to understand and respond to it.

You should only file an amended counterclaim if it will show that an agreement between the parties that relates to the infringement claim could affect any relief awarded. If there is no such contract or agreement, you should not amend the counterclaim. It is not necessary to submit a counterclaim in order to have the Board consider the merits of the claim and of the defenses you raised in your consolidated response. More information is available in the [Counterclaims](#) chapter of the CCB Handbook.

In order to submit an amended counterclaim, prepare a joint filing using the Amended Counterclaim form provided to Respondents separately by email and submit the joint filing on eCCB by **April 8, 2024**. 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