



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0128
May 24, 2023

Michelle Shocked

CLAIMANT

v.

CD Baby

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 **June 23, 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

Your copyright infringement claim must provide enough information for the respondent to understand its allegedly infringing acts. There are several areas where your allegations need additional clarifying information.

Respondent Clarity

Your allegations are unclear because the claim does not include enough detail about the connection between Jeff Clayton (“Clayton”) and the respondent, CD Baby. In your claim, most of the allegations discuss emails between Clayton and their agents and you about mechanical licenses, compulsory mechanical licenses, and royalties. Towards the end of the claim, you allege only that “CD Baby contributed to the non-compliant physical and DPD infringement by engaging in digital distribution without a mechanical license.” However, your claim does not specify the relationship between Clayton’s alleged actions and CD Baby’s alleged infringement. When you submit an amended claim, you must clarify what activities the respondent, CD Baby, engaged in and specifically the actual infringing actions by CD Baby to the allegations you make about Clayton. Among other things, this might include describing whether (and if so, how) Clayton or CD Baby was acting on behalf of the other, how Clayton was using CD Baby’s services when it engaged in the allegedly infringing activities, or how CD Baby continued to supply such

services after knowing about the alleged infringement. Furthermore, without any allegations against CD Baby individually or a description of the relationship between Clayton's alleged actions and CD Baby, it is currently unclear how CD Baby 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.

If Clayton is alleged to be committing infringement based on the same facts and circumstances as your allegations against CD Baby, you may add Clayton as a respondent. Please note that if you include Clayton as a respondent, your claim must make enough factual allegations to support each "element" of copyright infringement against each respondent. You may also choose to make a claim against Clayton instead of CD Baby. 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.

Compulsory License

Your claim also needs additional clarity about your alleged denial of the compulsory mechanical license and CD Baby's allegedly infringing activities. The claim alleges that after you received a notice of intent on behalf of Clayton to obtain "a compulsory mechanical license for making and distributing 1000 compact discs and another notice of intent to obtain a compulsory mechanical license for making and distributing 100 digital downloads," you denied Clayton's request for a compulsory license. A valid compulsory license request cannot be denied. Your allegations, along with the supplemental documents included with your claim, do not sufficiently allege if the notices of intention to obtain a compulsory license failed to comply with then-applicable law. To correct this issue in your amended claim you must include additional allegations about how the notice of intent you received on behalf of Clayton was inadequate such that Clayton had no right to rely on a compulsory license.

Sync License

Lastly, your claim also alleges that "CD Baby distributed the non-compliant infringing use of my work as an unlicensed sync use on YouTube." This allegation is a legal conclusion and does not provide any facts that explain how the work was used by CD Baby, including details about the sync, what portions of your work and what video were involved in the sync, and how whatever music was used in the sync was substantially similar to your 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. Stating that an unlicensed sync is involved in your claim suggests that the respondent has adapted your work in an audiovisual 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 substantially similar or how the respondent has incorporated your work into a new

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. Please provide more details and background regarding the alleged sync, including the element of substantial similarity, in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents 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.

Copyright Claims Attorney