



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0356

November 17, 2023

Rhonda M Johnson

CLAIMANT

v.

David McGowan

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **December 18, 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. 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 amended 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 — Elements

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 amended claim does not provide enough facts or additional information about the ownership of the work,

how the respondent had access to your work, or how the two works are similar. You have included some additional supplementary documents regarding the takedown and counternotice but have not provided any additional facts about the alleged infringement, including addressing any of the issues in the Board's first noncompliance order, as described below. Please provide more details and background regarding these elements in your second amended claim.

Legal and Beneficial Ownership

Your amended claim provides unclear information about the claimant's status as 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 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 your amended claim you state that the photograph in question was registered as "VAu1469523." A Board search of Copyright Office records show that the registration lists the author and copyright owner as "Anonymous." The registration lists you as the contact for the "rights and permissions" for the work but it is unclear if you are the author or owner of the work. To correct this issue, your second amended claim you will need to confirm that you own, or have an exclusive license to use, the exclusive rights at issue.

Alternatively, you can add additional facts to the "Describe the infringement" section explaining how the claimant gained ownership of the exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may describe the relationship between yourself and the anonymous owner or state/detail how you obtained legal or beneficial ownership of copyright. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Access

Your amended claim does not provide facts about how the respondent had access to your work. "Access" means a reasonable opportunity to view or hear your work before the alleged infringement took place. In your amended claim you state that "The respondent has gotten the photo from another youtuber name Marquis 912. I don't know how he has gotten the photo." It is unclear from this statement if you are not sure how the respondent got the photograph or if you are unsure how "Marquis 912" had access to the photograph. Further, you have not detailed how "Marquis 912" had access to the photograph.

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 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 amended claim also does not include enough facts that explain the similarities between your work and the respondent'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 amended claim states that your work is a photograph. You have included as a supplemental document what appears to be your work. However, you do not provide any information describing or showing the allegedly infringing work. No allegations in the "Describe the infringement" field of the amended claim describe the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of the allegedly infringing work as a supplemental document. As a result, the claim does not provide enough information to enable the respondent to understand the amended claim and respond to it. When you submit a second amended claim, it must include factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element, including 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. 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.

Final Amendment

Your amended claim did not resolve the compliance issues raised in the November 6, 2023, Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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