



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0142

United States Copyright Claims Board

William Grecia

CLAIMANT

v.

Twitter, Inc.

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 **November 23, 2022**. 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 extra 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 – Access

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, and
4. The respondent’s work is identical or substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work. The “Describe the infringement” section of your claim alleges that “[t]he infringer’s representative received a tangible copy of the copyright owner’s protected design on March 14, 2020.” This allegation does not provide enough factual information about who received a copy of the work, how they received it, and their role in, or relationship with, the respondent. Supplemental documents filed with the claim include what appears to be a copy of email correspondence related to “Early Warning Systems,” but no allegations describe or show how those emails relate to any access, or infringement, by the respondent.

Please provide more details and background regarding this element in your amended claim. 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.

Copyright Infringement – Substantial Similarity

Your 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 materials that are submitted with the claim, you must provide some specific allegations about how the allegedly infringing work is similar to the original elements of expression in your work.

Your claim states that your work is an “Original Icon Design presented to infringer’s representative for partnership on March 20, 2020.” You do not provide any other information stating or showing how it is identical or substantially similar to the allegedly infringing work. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

A valid copyright only extends to copyrightable subject matter. Copyright law does not protect ideas. 17 U.S.C. § 102(b); *see also* Section 313.3(A) of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Rather, it protects original elements of expression. Therefore, you cannot allege that because you have obtained a copyright registration for a depiction of a QR code, you can then claim copyright infringement against anyone who also uses a depiction of any QR code. Familiar symbols or designs are not subject to copyright. [37 C.F.R. § 202.1\(a\)](#). An alleged infringer must have copied your original elements of expression.

If you submit an amended claim, it must include allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which elements of expression in your work were taken by the respondent in the allegedly infringing work, or copies or other 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.

Copyright Infringement – Online Service Provider

In your claim, you checked the box to state that respondent Twitter is *not* an online service provider. However, your allegations are entirely based on the respondent failing to take down infringing content that others posted on its website. For example, you state, “Copyright owners contacted Twitter DMCA portal and they refused to enforce the Takedown request,” and “Copyright owner seeks immediate takedown of the infringing post and disablement of the infringing user’s entire account until resolution.” Those allegations contradict your assertion that the respondent is not an “online service provider.”

“Safe harbors” in section 512 of the Copyright Act shield certain online service providers from paying damages for copyright infringement claims if, among other things, the online service providers take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. To avoid liability, online service providers must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the re-posting of the allegedly infringing material. An infringement claim against an online service provider that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures. If the respondent is operating as an online service provider, then under the CASE Act, the claim cannot be compliant unless you affirm that you sent the online service provider a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 512(f)(1)(C)(i). Your claim does not include such an affirmation.

To address this issue in an amended claim, you must state facts that either identify the respondent (1) engaging in infringing activity on its own, not on the basis of infringing material posted on its website by others (and so not in its capacity as an online service provider), or (2) failing to follow the safe harbor procedures for an online service provider. Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an online service provider protected by a section 512 safe harbor.

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 supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

October 24, 2022