



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0039
May 22, 2023

Diego M. Garcia

CLAIMANT

v.

Abraham Quintanilla

RESPONDENT

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 properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **June 21, 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.

Claim Form

The Board claim form is a standardized form, available on [eCCB](#), where claimants must enter all relevant allegations. [37 C.F.R. § 222.2\(a\)\(1\)](#). Allegations in support of the claim must be made through the standard form. [37 C.F.R. § 222.5\(a\)](#). An infringement claim must include a description of the facts leading the claimant to believe that their work has been infringed. [37 C.F.R. § 222.2\(c\)\(7\)\(iii\)\(D\)](#). Supplemental documents may be attached to the claim as well to provide evidence, but not as a substitute for adequately filling out the claim form.

In your amended claim, the “Describe the infringement” section states only, “Please see the attached pdf file for a timeline of events,” and you submitted a PDF document named “TIMELINE Garcia v. Quintanilla_Redacted” (“Timeline”) as a supplemental document, which appears to include the factual allegations related to your claim along with screenshots of various emails, social media posts, and other materials. Uploading such a document without providing the details in the claim form is not sufficient.

If you submit a second amended claim, use the Board's claim form to enter your factual allegations. You may still attach any relevant materials in a "Timeline" document or as separate supplemental documents, as long as they are clearly labeled.

Authorship – Clarity

Your allegations about your authorship of the allegedly infringed works are unclear because your Timeline indicates that other people were involved in creating the works. When two or more people contribute to a work, with the intention that their contributions will be merged into a single work, they are considered "joint authors" of that work. If you file a second amended claim, you will need to clarify the authorship of the works. If either work has any co-authors, you must name them in the "Works infringed" section. 37 C.F.R. § 222.2(c)(7)(ii)(B).

The allegedly infringed works are titled "Dame Tu Amor" and "Como Te Quiero Yo A Ti." You describe each work as a "[c]ompletely new arrangement/recording of a song to support a vocal track." You contend that in 2019, you wrote and recorded new arrangements based on vocal tracks by Selena Quintanilla ("Selena"). You allege that infringing acts occurred "during the release of Selena Quintanilla's Moonchild Mixes album." You do not appear to assert any authorship in the pre-existing compositions and vocal tracks, but you claim full authorship of new arrangements used on that album, stating that you created "100% of the music" for the two works. The [Certificates of Registration](#) filed with the claim list you as the sole author of both works and indicate that, for each work, you created the "Sound Recording and Musical Work (with or without vocals)." The works covered by the registrations do not include Selena's vocal tracks because the deposit copies of those works that you submitted to the Copyright Office are fully instrumental sound recordings.

The following allegations and information drawn from the Timeline indicates that others were involved, so the works may have co-authors. On July 25, 2019, Noe Nieto sent you an email containing audio files of Selena's vocals and a guide track for "Dame Tu Amor." You built an arrangement, including piano and trumpet parts, and shared it with AB Quintanilla (the respondent's son) on July 31, 2019. He requested more trumpets in the bridge, and you complied, finishing the arrangement on August 1, 2019. On August 5, 2019, Noe Nieto sent you an email containing audio files of a pop version of "Como Te Quiero Yo A Ti" and Selena's isolated vocals from the same track, both at 77 beats per minute (bpm). The email requested an arrangement with additional strings, and a "mariachi/international" remix arrangement, and noted that "Ab [Quintanilla] asked if you could look up 'love of my life' by Brian McKnight as a reference starting point." You completed the string arrangement in August and a version of the remix on September 7, 2019, "at the provided tempo of 77 bpm." You shared that version with AB Quintanilla, who asked you to change the tempo to 83 bpm, and you complied on September 10, 2019. You provided Brian Moore the files for the Selena arrangements on September 24, 2019. Both Mr. Moore (as shown in the Timeline) and the respondent (as listed in the "Respondent" section of the amended claim) have email addresses at the domain "q-productions.com."

If the information you have given regarding the authorship of your alleged work is incorrect, you must correct that information if you file a second amended claim. Information about joint ownership of a copyright is available

at pages 9-10 of the [Responding to an Infringement Claim](#) chapter of the CCB Handbook. The authors of a joint work are co-owners of the copyright in that work, and if the respondent co-owns the copyright of the allegedly infringed works, you cannot raise an infringement claim against him. Joint owners generally must share any income they receive from their use and licensing of the work with the other owners, but a claim about failing to make such payments is called an “accounting” claim, which is not a claim that the Board can hear.

Implied License

You must also clarify facts about a potential implied license between you and the respondent. Facts asserted in the Timeline document suggest that, by your actions, you granted the respondent an implied license to use your works. If you submit a second amended claim, it must include allegations that indicate that the implied license was not effective because the respondent failed to satisfy a “condition precedent,” or that the respondent’s use of the works went beyond the scope of the uses permitted by the implied license.

I. Elements of an Implied License

You state in the Timeline that you “never signed a work-for-hire agreement.” However, a license does not need to be in writing. It “may be implied from conduct or granted orally.” *Carson v. Dynegy, Inc.*, 344 F.3d 446, 451 n.5 (5th Cir. 2013).

An implied license is created when “(1) a person (the licensee) requests the creation of a work, (2) the creator (the licensor) makes the particular work and delivers it to the licensee who requested it, and (3) the licensor intends that the licensee-requestor copy and distribute his work.” *Lulirama Ltd., Inc. v. Access Broadcast Services, Inc.*, 128 F.3d 872, 879 (5th Cir. 1997) (quoting *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 776 (7th Cir. 1996)). An implied license may also “arise in other circumstances where the totality of the parties’ conduct supported such an outcome.” *Baisden v. I’m Ready Prods., Inc.*, 693 F.3d 491, 501 (5th Cir. 2012).

Allegations in your Timeline seem to show that your actions created an implied license. It appears that you started arranging the allegedly infringed works only after you received the Selena files. You made adjustments to both works as requested by AB Quintanilla. You state in the Timeline: “The multitrack files were shared by Diego Garcia with Q Productions as soon as they were ready to transfer, as requested by Abraham Quintanilla [the respondent].” The day that you uploaded the files, September 24, 2019, Mr. Moore told you, “AB [Quintanilla] gets so many different versions going that it’s hard to keep up with which is the latest but I’m sure I’ll need it as soon as you can get it to me ... they are very anxious to finish up this project.” On October 3, 2019, you received a \$3,000 check from Q-Productions, and on October 4, 2019, Mr. Moore emailed you seeking your Social Security number “because you will receive a 1099 form for the work you’ve been doing.”

It seems that you created and delivered both of the allegedly infringed works as a result of requests by those working on a project to remix Selena vocal tracks with instrumental music on an album. Therefore, it appears that an implied license may have existed to use your works for that purpose. The allegations in your amended claim and Timeline suggest that the respondent or Q Productions specifically requested the creation of your works, and that

you made the works and delivered them to the respondent or Q Productions as requested. It also appears likely that you intended that the respondent, or Q Productions, would copy and distribute the works as remixes, as part of the project that became the *Moonchild Mixes* album.

For your claim to proceed, you must provide more facts detailing any discussions and negotiations about your work on the arrangements, and how those arrangements could be used. The Board may only hear an infringement claim against a licensee of a work if the claim is based on a licensee failing to satisfy a “condition precedent” of a license from the copyright owner, or if the licensee’s use of the work went beyond the scope of the uses permitted under the license, both of which are explained below. If you file a second amended claim, it must state facts indicating that a “condition precedent” to the license was not satisfied or that the use of the works went beyond what the license allowed.

II. Condition Precedent to an Implied License

Your claim can proceed if you state facts in a second amended claim that indicate that a “condition precedent” had to occur before the implied license could take effect, and that it did not occur. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, then the payments may be a “condition precedent” to the licensee’s right to publish. Or, if a photographer allows a website to use his photograph “if” the website credits the photographer by name, that credit could be a condition precedent. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim.

Texas law, which applies to any license related to this claim, disfavors interpreting a contract or license provision as a condition precedent. Unless conditional language is used, such as “if,” “provided that,” or “on condition that,” a license term will not be interpreted as a condition precedent when another interpretation is reasonable. See *Solar Applications Engineering, Inc. v. T.A. operating Corp.*, 327 S.W.3d 104, 109 (Tex. 2010); *Hohenberg Bros. Co. v. George E. Gibbons & Co.*, 537 S.W.2d 1, 3 (Tex. 1976).

Your Timeline indicates that you may have negotiated at least some terms related to credits and payment. You contend that in July 2019, you prepared a mariachi arrangement intended for the vocalist Brooke T, as requested by AB Quintanilla, and at his request, you emailed Q Productions’ Brian Moore on July 24, 2019, and indicated that the credits for that Brooke T recording should be divided between you, AB Quintanilla, and the lyricist Pete Astudillo. You state that you received the first of the Selena files the next day. You state that you completed the productions of the Selena arrangements on the basis of “a promise from AB Quintanilla” that you would “get all the proper credit and the pay that belongs to [you].” However, you have not described who asked you to prepare the Selena arrangements, or on what terms. You have not provided the specific wording of any promise made to you by AB Quintanilla or the respondent related to the Selena project. In order to show that a promise of credits, payment, or any other term was a “condition precedent” to an implied license, your second amended claim must include enough

details about the promise—who made the promise, when, and how; what was specifically promised; and how the promise was stated—to show that the term had to be satisfied before the implied license would take effect.

III. Scope of an Implied License

Your claim could also proceed if you present facts in a second amended claim that indicate that, even if an implied license existed, the respondent exceeded its scope by using your works in a way that the license would not allow. To support a contention that the respondent's use of your arrangements exceeded the scope of an implied license, you must provide more details in a second amended claim to indicate how the use went beyond the scope of the implied license formed when you created and delivered the allegedly infringed works on request of the respondent.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the March 1, 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 supplementary 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