



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0252

September 12, 2023

Wendy Papula, George T Jones

CLAIMANT

v.

BrandShield

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 **October 12, 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.

### Respondent Clarity

Your allegations are unclear because they appear to intertwine the actions of the respondent Brandshield, with those of a third party, Starbucks, which you have not named as a respondent. In your claim, you quote the misrepresentation notice stating, “Your listing was reported by Starbucks Corporation for offering a counterfeit item.” However, you name Brandshield as the respondent in this proceeding. While Brandshield may have been acting as an agent for Starbucks and might be liable under 17 U.S.C. § 512(f), you must provide additional information about Brandshield’s role and the role of Starbucks in the activities that form the basis of your misrepresentation claim. Please note that if you include Starbucks as a respondent, your claim must make enough factual allegations to support each “element” of a misrepresentation claim, which are provided below.

### Misrepresentation Claim – No misrepresentation

You are attempting to bring a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Your claim must make enough factual allegations to support each “element” of the claim. That kind of misrepresentation has a very specific meaning under copyright law, which involves false

statements made to an online service provider related to a copyright-protected work posted online. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
  - a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider's decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). However, the allegations and supplemental documentation included with your claim do not appear to show a *copyright* takedown under 17 U.S.C. § 512. The notice from eBay that you included as a supplemental document states that “The listings are unlawfully using Starbucks trademarked design logo/name on the products which are not manufactured by or affiliated with the rights holder. The use of the rights holder's trademark name is deceptive and misleading.” Thus, it appears that you are alleging a misrepresentation in connection with a trademark under eBay's counterfeit policy and not a misrepresentation claim in connection with a copyright.

In addition, the misrepresentation must have been made by the respondent. Your allegations appear to state that the misrepresentation was not made by the respondent but by Starbucks. For all of the reasons stated above,, your claim as currently stated is not the type of claim that can be heard by the CCB. You should only file a misrepresentation claim if you believe you actually have a claim under copyright law and that that could be heard by the CCB. Please review the [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information.

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](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