



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0319

October 31, 2024

Kassandra Thatcher

CLAIMANT

v.

Vakker Limited

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 **December 2, 2024**. 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.

Proper Respondent

The Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). The claim must include the respondent's mailing address. 37 C.F.R. § 222.2(c)(6).

In the "Respondent" section of your claim, you provide an address for the respondent in Baltimore, Maryland. However, a [supplemental document](#) filed with the claim appears to be a letter from your counsel directed to the respondent at an address in Zhongshan City, China. This indicates that the Board may not have jurisdiction to hear your claim because the respondent appears to be a foreign resident.

If you file an amended claim, it must include additional information to address this discrepancy and show that the respondent resides in the United States. You must correct the address in the "Respondent" section, or provide additional information in the "Describe the infringement" section of the claim detailing why you believe that the address you supplied is correct. You should only amend the claim if you are raising it against an individual or entity residing in the United States.

Copyright Registration

The Board can only hear a copyright infringement claim if, *before* the claim was filed, (1) the legal or beneficial

owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and (2) a registration certificate for the copyrighted work has either been issued or has not been refused. 17 U.S.C. § 1505(a).

You allege infringement of five works. Four of the works have been registered. However, Copyright Office records show that registration for the other work, titled “Ma No. 3,” has been refused twice. You applied to register that work in 2023, and the Office issued a letter refusing registration on September 15, 2023, stating that the work could not be registered as a separate copyright claim because all of its copyrightable content was fully contained in your previously registered work titled “Ma No. 4.” You submitted a second application to register “Ma No. 3” on October 22, 2024. The Office issued a letter on October 25, 2024, “refusing to register again for the same exact reasons.”

“Ma No. 3” cannot be a basis of your infringement claim because the Copyright Office has refused to register the work. If you submit an amended claim, the “Works infringed” section of the claim must omit that work.

Copyright Infringement – Elements

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

Your infringement claim does not provide enough facts or clarity about the element of the claim related to the respondent’s access to your work and substantial similarity, as discussed below. If you file an amended claim, please provide more details and background regarding those elements.

Access

Your claim does not provide facts about how the respondent had access to your works. “Access” means a reasonable opportunity to view or hear your works before the alleged infringement took place. In your claim, supplemental documents indicate that images of your works have appeared on your website and on Instagram, but you do not indicate that the works have been widely disseminated or that those images were widely viewed.

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 how your works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or were available to the respondent; or (c) are so strikingly similar to the respondent’s works that the respondent could not have created them independently.

Alternatively, you can upload images of your works and the allegedly infringing works if those images demonstrate that the works are so strikingly similar that they could not have been created independently. The documents filed with the claim do not show such striking similarity between your works and the allegedly infringing works. If you include images 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 claim also does not include enough facts that explain the similarities between your works and the allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your works and the allegedly infringing works are similar.

You describe each of the registered works as a “[s]culptural stoneware scone in soft grey.” In the “Describe the infringement” section of the claim, you describe the claimant as “a commercial artist who creates sculptural artworks, in particular sculptural lighting,” and you allege that “[o]n or about March 5, 2024 Claimant discovered unauthorized reproductions of her sculptural works being offered for sale on Respondent’s website.” However, you do not provide any detailed information describing your works or how they were used in the respondent’s works. You do not state or show how the works are identical or substantially similar. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more factual 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 portions of your works were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. For each of respondent’s allegedly infringing works, you must explain which of your allegedly infringed works (Ma No. 1, Ma No. 2, Ma No. 4, or Ma No. 5) was infringed and what the similarities are between each of the respondent’s allegedly infringing work and your allegedly infringed work(s). If you include copies of the works at issue as supplemental documents, then as discussed above, 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.

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