



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0166
July 31, 2023

Pedro R Castro, Ramiro M Castro

CLAIMANT

v.

Robert L Hines

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 **August 30, 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.

Copyright Infringement Claim –Infringing Activities

Your claim is unclear about how the respondent used any exclusive rights in the allegedly infringed work without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly (display/perform) the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Improper Registration

In your claim you state that “Mr. Hines improperly registered a copyright for the same sound recording.” Registering a copyright does not constitute an act of copyright infringement, even if the person who registered the copyright does not own the copyright. This allegation does not illuminate how the respondent may have copied, distributed, performed, or displayed your work, or made a derivative work based on your work.

Allegedly Infringing Activities for Each Alleged Work

You further state that “Mr. Hines repeatedly either publishes the original recording or sings it on his multiple social media platforms.” It is unclear if you are alleging that the respondent is reproducing a sound recording; performing the music and lyrics of the work; or performing clips of the motion picture.

When recording a song, you are creating two works that are protected by copyright: a musical work and a sound recording. A musical work is a song’s underlying composition along with any accompanying lyrics. Musical works are usually created by a songwriter or composer. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are typically created by the performer and the producer of the recording. More information on copyrightable expression in musical compositions is available in [Circular 56A: Copyright Registration of Musical Compositions and Sound Recordings](#).

A Board search of Copyright Office records shows that the registration (“SR-956-701”) includes “sound recording, lyrics and music.” To infringe a sound recording, the respondent must duplicate the exact sound recording directly. Similarly, it is unclear if you are alleging that the respondent infringed some or all of the motion picture (“PA-2-392-034”) identified in the claim.

In your amended claim, please clarify what part of the sound recording; the music and lyrics; or the motion picture the respondent has infringed on social media. Additionally, you must clarify which activities involve the sound recording being directly reproduced and which activities involve the musical composition being performed. If you file an amended claim, include more specific allegations about how the respondent infringed the work.

When you submit an amended claim, you must more fully explain how the respondent infringed your allegedly infringed work. To address this issue, your amended claim must include additional facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how the respondent engaged in the infringing activity. You should be as detailed as possible, setting forth what the respondent did in relation to the work you allege was infringed.

Copyright Infringement Claim –Substantial Similarity

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 claim does not provide enough facts or clarity regarding 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 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 claim states that your work is a sound recording of a "Jingle for a fake comedic local commercial" and a "Comedic fake local commercial video." No allegations in the "Describe the infringement" field of the claim describe your works or the allegedly infringing works, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. A Board search of Copyright Office records shows that the respondent's registration is a four second sound recording. It is unclear if you are alleging that this is the "original recording" discussed in the claim, or if you are referring to different infringing works. Further, as noted above, it is unclear if you are alleging if the respondent is infringing the copyright in the sound recording, music and lyrics, or motion picture. You do not state how much of your work, or describe which elements of your work, is used in the respondents' work. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When 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 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

Misrepresentation Claim – Relief

Misrepresentation claims brought before the Board must allege some provable harm or damage, such as a financial loss or other harm for which monetary relief can be given. In your claim you request "the maximum statutory damages allowed." Statutory damages are forms of relief available for infringement, but not for misrepresentation.

Monetary awards granted by the Board for claims of misrepresentation cannot exceed \$30,000. Your claim should identify some financial loss or harm or other provable injury you suffered because of the alleged misrepresentation. Please review the discussions at pages 10-11 of the chapter on [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information about the kinds of relief that the Board can grant.

Please amend the "Description of harm suffered and relief sought" section of your claim to describe the financial harm or loss you are seeking, and how it relates to the misrepresentation identified in your claim. When amending your claim please note that monetary awards granted by the CCB for a claim cannot exceed \$30,000.

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.

Copyright Claims Attorney