



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0080

March 31, 2023

Fat Damon Records, Ray Johnson

CLAIMANT

v.

Albert J Evans

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 **May 1, 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 – Elements

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 includes conflicting information about copyright ownership by both claimants, the respondent’s access to the allegedly infringed work, and substantial similarity, as discussed below.

Legal or Beneficial Ownership

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

I. Fat Damon Records

The claim does not present facts that indicate that Fat Damon Records is a proper claimant. Your claim lists five works in the “Works infringed” section of the claim. However, Fat Damon Records is not listed as the author or copyright owner of any of the listed works. Because the person listed on the registration certificate is not the entity named as claimant in the proceeding and you have not included any additional information about the ownership of the copyright rights, your claim may not proceed. Even if the copyright registrant owns Fat Damon Records, the law considers most businesses to be separate legal entities from the individuals who own them.

To correct this issue, you can either (1) amend the claim to eliminate Fat Damon Records as a claimant or (2) provide additional information about how the copyright was transferred from, or exclusively licensed by Ray Johnson to Fat Damon Records. It may also be helpful to include additional information in the “Describe the infringement” section of the claim that explains the relationship between Ray Johnson and Fat Damon Records.

II. Ray Johnson

The claim also does not present clear facts to indicate that Ray Johnson is a proper claimant to allege infringement of the motion picture “Mr. Douchebag,” which the claim describes as an animated music video. The Copyright Office issued Registration No. PA0002017275 for that work. The registration certificate names Mr. Johnson as an author of the motion picture, but not as a copyright claimant. Instead, RayWJ, Inc. is named as a claimant, with a note stating that all rights were transferred through assignment. Even though Ray Johnson may be the owner of RayWJ, Inc. the law considers corporations to be separate legal entities from the individuals who own them. If you assigned your copyright interest in that work to RayWJ, Inc., you are not legal owner of the copyright.

To correct this issue, if you submit an amended claim, you must add facts to the “Describe the infringement” section of the claim that (1) explains the assignment, or transfer, of rights to RayWJ, Inc., and (2) detail how Ray Johnson retained legal or beneficial ownership of exclusive rights for the “Mr. Douchebag” motion picture. For example, if Ray Johnson assigned the copyright but has retained the right to receive royalties from the motion

picture, he would still be a beneficial owner. Alternatively, if he is not a legal or beneficial owner of exclusive rights for that work, but RayWJ, Inc. is, then your amended claim should add RayWJ, Inc. as a claimant and explain that it owns rights for that work and that RayWJ, Inc. is being added for purposes of the alleged infringement of the motion picture “Mr. Douchebag.”

Access

Your claim does not provide clear facts about how the respondent had access to your works. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. Your claim does not clearly state allegations about how the respondent had an opportunity to see or hear your works before the alleged infringement. Your allegations do not offer enough detail about where or how your works were available to the respondent.

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 works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or were available to the public or the respondent; or (c) are so strikingly similar to the respondent’s works that the respondent could not have created its works independently. Alternatively, you can upload copies of your works and the allegedly infringing works if those images demonstrate that the works are so strikingly similar.

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 submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar. You do not provide information clearly describing or showing your allegedly infringed works, or stating how they are substantially similar to the respondent’s allegedly infringing works. The allegations in the “Describe the infringement” section of the claim do not describe your works or the allegedly infringing works with any detail, and do not state or show how they are identical or substantially similar. Your allegation that “[t]he infringing individual copied, remixed, repurposed, and created derivative copies of 1 or more our musical works and uploaded them to his/her public Youtube channel” is not specific enough to explain the similarities between the works. In addition, you have not provided copies of your works or the allegedly infringing works 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. 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. 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.

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 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