



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0005

February 6, 2023

## United States Copyright Claims Board

The Bin Men

CLAIMANT

v.

DMV Eco Bin Cleaning, LLC and Juan Diaz-Chavarria

RESPONDENTS

### 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 **March 8, 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 – 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 does not present clear facts to support the elements of a copyright infringement claim related to the respondents’ infringing activity, access to your work, and substantial similarity, as discussed below.

## **Copyright Infringement – Infringing Activity**

You allege that one respondent, Juan Diaz-Chavarria, “stole all of our copyrighted material from The Bin Men online intellectual property and duplicated onto a new business website domain.” However, your claim does not present facts that clearly state how the other respondent, DMV Eco Bin Cleaning LLC, used your exclusive rights in the allegedly infringed work without permission. DMV Eco Bin Cleaning has its own legal status. Your allegations do not describe any specific acts that it engaged in that violated your rights, or explain the relationship between the two respondents.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly 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.

If you submit an amended claim, you must include facts in the claim form that more fully explain how each respondent infringed your work. The claim must provide enough information to enable the respondents to understand the claim and respond to it. If you contend that DMV Eco Bin Cleaning LLC infringed your work in the course of its business, then your allegations should describe its infringing activities and how Juan Diaz-Chavarria caused, directed, or engaged in DMV Eco Bin Cleaning LLC’s infringing activities.

## **Copyright Infringement – Access**

Your claim does not provide clear facts about how the respondents had access to your work. “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 respondents had an opportunity to see your work before the alleged infringement. Your allegations that the work is “[w]ebsite intellectual property literature text” that Mr. Diaz “stole . . . from The Bin Men online intellectual property” does not offer enough detail about where or how your work was available to the respondents.

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 work (a) was sent directly to the respondents or a close associate of the respondents; (b) was widely disseminated or was available to the public or the respondents; or (c) is so strikingly similar to the respondents’ work that they could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar. When you filed the original claim, you uploaded what appears to be a copy of the allegedly infringing work, but not a copy of your own work.

## **Copyright Infringement – Substantial Similarity**

Your claim also does not include enough facts that explain the similarities between your work and the respondents’ allegedly infringing work. If it is not readily apparent from supplemental materials that are 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 enough information clearly describing or showing your allegedly infringed work, or stating or showing how it is substantially similar to the respondents' allegedly infringing work.

The claim states that your work is “[w]ebsite intellectual property literature text.” However, you do not provide enough information describing or showing your work. No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work as a supplemental document. While you uploaded what appears to be a copy of the allegedly infringing work with your claim, you do not state how much of your work, or describe which elements of your work, is used in the respondents' work. As a result, the claim does not provide enough information to enable the respondents 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 work were taken by the respondents 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](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