



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0039

March 1, 2023

Diego M. Garcia

CLAIMANT

v.

Abraham Quintanilla

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 **March 31, 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 respondent’s infringing activity, access to the allegedly infringed work, and substantial similarity, as discussed below.

Proper Respondent

Your claim does not present enough facts to clearly state how the respondent used any exclusive rights you have in the allegedly infringed work without permission. 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.

Your allegations do not clearly describe actions taken *by the respondent*, Abraham Quintanilla, that relate to public performance, reproduction, or distribution of your works. In the “Describe the infringement” section of your claim, you allege that someone asked you “to produce music for different projects,” but you do not state who asked or whether that person is the respondent. You allege that you “shared the audio files” you produced, but you do not indicate with whom you shared them. You allege that “the client” decided an amount to pay you, and “has released and taken credit for [your] work,” but you do not name who that client is. Without further explanation, those statements do not allege sufficient facts to show how the respondent may have infringed your rights. Your claim does not make clear what relationship you had with Mr. Quintanilla or what he personally did with your sound recordings.

If you submit an amended claim, you must more fully explain how the respondent infringed your allegedly infringed works. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how the respondent engaged in the infringing activity. Be as detailed as possible in describing the actions that the respondent took with the works that you allege were infringed. If the respondent is the one who took the actions described in your claim, then make that clear in the amended claim.

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 works before the alleged infringement took place. Your claim does not state allegations about where or how your works were available before the alleged infringement so that the respondent had an opportunity to hear them. You allege that you “shared the audio files in good faith,” but you do not state that you shared the files with Mr. Quintanilla.

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 they could not have created their works independently. If Abraham Quintanilla is the “client” mentioned in the claim to whom you sent your works, you can resolve this issue by adding that information in the “Describe the infringement” section of your amended claim.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your works and the respondent's allegedly infringing works. If it is not readily apparent from supplemental materials submitted with the claim, you must provide some specific allegations about how your works and the allegedly infringing works are similar.

You do not provide enough information clearly describing or showing your allegedly infringed works, or stating or showing how they are substantially similar to the respondent's allegedly infringing works. As a result, the similarities between the works are not clear. No allegations in the "Describe the infringement" section of the claim describe your works or the allegedly infringing works, or state or show how they are identical or substantially similar. Your allegation that "the mixing and mastering stages of the songs I arranged led to subpar audio quality that misrepresents my vision" suggests that the respondent's works could be markedly different from your works. In addition, you have not provided copies of your works or the respondent's 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 respondents in the allegedly infringing works, 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.

Permissible Claim

The Board is only authorized to resolve certain types of copyright disputes, including copyright infringement claims. 17 U.S.C. § 1504(c)(1)-(3). You checked the box stating that your claim is a copyright infringement claim. However, the facts described in the "Describe the infringement" section of your amended claim appear as if they may describe a breach of contract dispute, not a copyright infringement. A "breach of contract" is a violation of any of the agreed-upon terms and conditions of a binding contract. When a party to a contract does not fulfill an obligation stated in the contract, such as payment, it is typically considered a breach of contract. The Board cannot consider claims for breach of contract. 17 U.S.C. § 1504(d)(1).

The allegedly infringed works are sound recordings titled "Dame Tu Amor" and "Como Te Quiero Yo A Ti." In the "Describe the infringement" section of your claim, you state that you were "asked to produce music for different projects in exchange for fair pay and receiving the proper credit and royalties," and that you shared the audio files and received payment, but never signed an agreement and have not received credit or royalties.

If you and the respondent had an agreement allowing him to use the works in the way he did, but your claim is that he did not pay you or give you credit, those allegations would be consistent with a breach of contract claim, where the respondent has failed to meet their payment obligations set forth in a contract, license, or other written or

oral agreement. “Use consistent with a license is a defense to an infringement claim.” *Womack+Hampton Architects, L.L.C. v. Metric Holdings Ltd. P’ship*, 102 Fed. Appx. 374, 382 (5th Cir. 2004). Even if there is no written agreement, the respondent may have an “implied license” to use your sound recordings if you delivered them with the intention that the respondent would use them. “Consent for an implied license may take the form of permission or lack of objection.” *Baisden v. I’m Ready Prods., Inc.*, 693 F.3d 491, 500 (5th Cir. 2012). An implied license is created “when the totality of the parties’ conduct indicates an intent to grant such permission[.]” *Id.* (quoting *Lulirama Ltd., Inc. v. Access Broad. Servs., Inc.*, 128 F.3d 872, 874 (5th Cir. 1997)). A claim for breach or nonpayment might be viable in state court but not before the Board. *See Fantastic Fakes, Inc. v. Pickwick Int’l, Inc.*, 661 F.2d 479, 483-84 (5th Cir. 1981) (“A mere breach of covenant may support a claim of damages for breach of contract but will not disturb the remaining rights and obligations under the license including the authority to use the copyrighted material.”).

The Board may only hear infringement claims against a licensee of a work if the claim is based on a licensee failing to satisfy a “condition precedent” of a license from the copyright owner, or if the licensee’s use of the work went beyond the scope of the uses permitted under the license. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, then the payments may be a “condition precedent” to the licensee’s right to publish. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim. However, “when analyzing copyright licenses, many courts have refused to interpret payment as a condition precedent.” *Womack+Hampton Architects*, 102 Fed. Appx. at 381.

If you can state facts that identify such a condition precedent included in your oral agreement, or facts that make clear that you were still in negotiations and had no agreement at all, the Board may be able to hear your claim. If you submit an amended claim, it must include allegations that state or show how and why there was no agreement at all with the respondent, or that any agreement with the respondent required him to satisfy a condition precedent, and that he did not satisfy that condition. Please provide more details and background regarding your agreement including a clear, detailed statement regarding any negotiations, whether they were still ongoing, and any conditions precedent included in any agreement at issue.

In addition, if the respondent engaged in reproduction, distribution, or public performances of your work, or adapted the work, in ways that went beyond the scope of the uses permitted under your agreement, you should describe those uses and explain why they were beyond the scope of your agreement. You may also choose to include correspondence that plays a significant role in your allegations as supplemental documentation in support of your claim. If you include copies of such correspondence as supplemental documents, they must be clearly labeled and identified.

Please review [Circular 1: Copyright Basics](#) and the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended

claim if you can state facts to support a claim under copyright law that can be heard by the Board. For more information about what is required to support a claim of infringement, please refer to the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

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