



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0064
May 20, 2024

Adrian TORRES

CLAIMANT

v.

William E Packer et al.

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **June 19, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended 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 provide enough facts about three of these elements further detailed below. Please provide more details and background regarding these elements in your amended claim.

Infringing Activity — Clarity

Your claim does not present enough facts to clearly state how each 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.

You have brought a claim alleging that multiple respondents infringed your work; however, the claim does not include enough information to provide a basis to hold each respondent liable for infringement. In your claim, you state that “I also learned that Rainforest Films' founder, Will Packer and Clint Culpepper, the CEO of Screen Gems, had formed a partnership” and “I had an attorney contact Rainforest Films, Screen Gems, Beyonce Knowles, and other related entities, regarding the potential infringement of my copyrighted screenplay.” Additionally, you have included several news articles and websites about the respondents. However, you have not included enough facts to show that *each* respondent personally copied, distributed, performed, or prepared derivative works based on your work, or participated in any such infringing activity.

If you submit an amended claim, you must more fully explain how each respondent infringed your allegedly infringed work. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe the infringing acts of each respondent. Specifically, you need to include more information than a mere article about the respondent. You should be as detailed as possible, setting forth what each respondent did. If you cannot state facts to support an infringement claim about against any named respondents, you must omit them in the amended claim

Access

Your claim does not provide facts about how each respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. In your claim, you state that “I submitted my screenplay synopsis to Rainforest Films in 2001, because I felt that it fit the narrative and brand that they were focused on producing.” Additionally, you filed supplementary documentation with your claim that shows correspondence between yourself and Rainforest Films regarding the work. However, you have not clearly detailed how *each* respondent had access to your work. Not all parties need to have had access to your work, to the extent that they were involved in the infringement of the work with persons who did have access, but your claim must have facts that clearly link the respondents that did have access to the work and the other 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 how your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the respondent; or (c) is so strikingly similar to the respondent's work that the respondent could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

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 screenplay about "a young and successful African-American couple." You have also included a copy of your work, a copy of *Obsessed*, and a supplementary document that includes a table of alleged similarities. In this [comparison document](#) you compare the *Obsessed* screenplay to your work. Specifically, you compare specific plot points and themes in your poems to specific words and themes in *Obsessed*. However, the copyrightable expression you described in this document is too general for copyright protection. Copyright does not protect ideas although it may protect the way ideas are expressed. None of the similarities that you identify in the claim appear to relate to similarities in copyrightable expression. "General plot ideas are not protected by copyright law; they remain forever the common property of artistic mankind." *Berkic v. Crichton*, 761 F.2d 1289, 1293 (9th Cir. 1985).

To determine whether two works are substantially similar, it is necessary to focus on similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in the two works. A claimant must show similarities not in "the basic plot ideas for stories, but the actual concrete elements that make up the total sequence of events and the relationships between the major characters." You must describe or show similarities related to the major elements in the work that make up the total sequence of events and relationships between the characters. *Id.*

As a result, the claim still does not provide enough information to enable the respondent to understand the claim and respond to it. You may upload a copy of the allegedly infringing works, along with copies of your work, to make it easier to compare the works and see any expressive similarities. Please note that if you do file the respondents' works with the second amended claim, you must add specific allegations identifying main points in each example that are substantially similar and pointing the Board and respondents to those similarities within the attachments so that the Board and respondents can easily compare the actual works to your descriptions. 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.

Statute of Limitations

In your claim you state that you were aware of the allegedly infringing work when the movie *Obsessed* was released in 2009. This raises questions about whether the statute of limitations prevents the Board from considering your infringement claim. A “statute of limitations” is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, for both federal court and the Board, is three years after the claim “accrues.” 17 U.S.C. §§ 507(b) & 1504(b)(1). Under applicable current law, a claim accrues when the infringement occurs or, if the claimant was not aware of the infringement at the time it occurred, at the time when the claimant knows or reasonably should know that an infringement occurred. In addition, you may not recover damages for acts of infringement that occurred more than three years before you filed your claim with the CCB unless you first knew and reasonably should have known about the infringements within the three years before you filed the claim. Because it is clear from your claim that you had seen “*Obsessed*” in 2009 and concluded that it was strikingly similar to your screenplay, you must include allegations showing acts of infringement within the past three years in order for your claim to move forward. In your amended claim, describe what acts of infringement occurred within three years before you filed your claim with the CCB.

Relief Over CCB Statutory Maximum

It appears that you are seeking a larger damages award than the CCB can grant for this type of claim. If you seek damages in an infringement claim, you can seek either (1) actual damages, and the respondent’s profits from the infringement, or (2) statutory damages. You can request both in your claim, but you will need to choose before the Board issues a final determination. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue you experienced. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss.

In your claim you state a request for “\$27,500 [in] statutory relief.” The most that respondents can be ordered to pay in damages (actual or statutory) in a CCB proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). However, the maximum amount of *statutory* damages available from the CCB is \$15,000 for each work that was infringed (or \$7,500 per work in instances where the copyright was registered both after the infringement started and not within three months of your work’s first publication). 17 U.S.C. §§ 1504(e)(1)(A)(ii)(I)-(II). Your reference to “\$27,500 in statutory relief” could be construed as a request for \$27,500 in statutory damages, which is over the maximum award of statutory damages. You can cure that problem by referring simply to “\$27,000 in damages.” You also seek payment of an “initiation fee of \$2,500 and ... the required documentation/verification for me to become a current membership into the Screenwriters Guild of America – West”; “the 24 writing credits earned for the option to use my screenplay”; and for your screenplay “to be named the original screenplay for the feature film, ‘*Obsessed*.’”

However, if the Board rules in your favor, it cannot order the respondent to do anything other than to pay you your actual or statutory damages.

For more information on what kinds of relief is available in the CCB for copyright infringement, see the discussion of “What harm did you suffer, and what do you want from the CCB?” at page 6-7 in the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Supplemental Documents and Filings

You uploaded multiple additional filings that seem to include supplementary information after filing your claim. Many of these filings have not been and will not be reviewed by the Board or considered a part of your claim unless you upload them with your amended claim using the instructions below. Please make sure that any attachments to your amended claim are relevant to the claim and that it is clear to the Board and to the Respondent why you are including them. If you submit an amended claim, please include only documents that directly pertain or relate to the claim, and provide an explanation of their relevance if it is not clear.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the March 19, 2024, Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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