



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0317
September 29, 2023

Marshall Securities, ReMax, and Military

CLAIMANTS

v.

Wendy Clensy

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 **October 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.

Authorized Representative

The claim is filed on behalf of three named claimants: Marshall Securities, ReMax, and Military. Information in the claim, or filed in support of the claim, suggests that the named claimants may not have authorized the claim.

A business entity appearing before the Board must appear through a lawyer, authorized law student, or an “authorized representative” who is an owner, partner, officer, member, in-house attorney, or authorized employee of the business entity. 37 C.F.R. §§ 232.6(a)-(b). An authorized representative must:

- certify that they are an authorized agent of the business entity and may bind that entity in the proceeding pending before the Board, 37 C.F.R. § 232.6(c);
- include the representative’s name, mailing address, email address, and phone number in the claim, 37 C.F.R. § 222.2(c)(3); and
- maintain an eCCB user account that includes the same information, 37 C.F.R. § 232.5(a).

More information about representation is available in the [Representation](#) chapter of the CCB Handbook.

The claim was filed by Officer Robyn Griffith (Griffith). The claim lists Griffith as Marshall Securities’ authorized representative and states that Griffith is its “in-house attorney.” However, another document filed by

Griffith after filing the claim suggests that she is not an attorney at all, as it lists her as a “Party Without Attorney.” ([Dkt. 12.](#))

ReMax is listed as a claimant (with a different supposed representative) but the noninfringement claim also lists “ReMax” as the name of the work that the respondent says was infringed. It is not clear how ReMax could be both a claimant and an allegedly infringed work, and it appears highly unlikely that the filer has ReMax’s authority to file this claim.

The other listed claimant (with yet a third supposed representative), “Military,” appears to mean a branch of the United States military. The Board cannot hear a claim brought by a state or federal governmental entity. 17 U.S.C. § 1504(d)(3). It also appears highly unlikely that the filer has the U.S. military’s authority to file this claim.

If you file an amended claim, it must state facts that indicate that each claimant has authorized the claim, and each person listed as the authorized representative of a claimant must register for an eCCB user account. In the alternative, you may omit any claimant who did not authorize the claim. If you file an amended claim on behalf of an entity for which it appears you do not have authorization, the Board may issue an Order to Show Cause why the Board should not find that you are engaging in bad-faith activity. More information is available in the [Participant Conduct](#) and [Representative Conduct](#) chapters of the CCB Handbook.

Respondent Information

To assert a claim before the Board you must include the respondent’s mailing address, unless the Board gives you permission to file it without the address after you certify that the address is unknown, and that you have a good-faith belief that the statute of limitations is likely to expire within 30 days. You must also describe the basis for that belief. 37 C.F.R. § 222.2(c)(6). Your claim does not include the respondent’s street address and you have not been given permission to file a claim without it. To address this issue, if you file an amended claim, it must include a complete mailing address for the respondent.

Impermissible Claims

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act (DMCA).

17 U.S.C. § 1504(c)(1)-(3). You selected each of those types of claims from the drop-down menu in the claim form, but you have not stated facts that support such claims. The “Describe the infringement” section of the claim refers to “stolen funds,” and your description in the noninfringement claim states, “They stole everything.” Those allegations, and certain supplemental documents filed with the claim, indicate that your dispute with the respondent concerns an alleged theft rather than copyright infringement. See [IMG 0641.png](#) (“I know it’s my money. No one

will help me”) & [IMG 0676.png](#) (“everything has been stolen repeatedly by Wendy Clesny and Kayla Drake and Jessica Morrow”). These allegations do not appear to be about any kind of claim that the Board could hear.

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, noninfringement, or misrepresentation please refer to the CCB Handbook:

- [Starting an Infringement Claim](#)
- [Starting a Noninfringement Claim](#)
- [Starting a Misrepresentation Claim](#)

Copyright Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a).

In the “Works infringed” section of your copyright infringement claim, you list an allegedly infringed work titled “US Navcen Byrd” that you describe as “[m]y story.” You state that the work was registered by the Copyright Office with registration number 1150813. However, that is not a valid number for a Copyright Office registration.

To address this issue, if you file an amended claim, include a valid registration number for the work or a valid service request number for a pending application to register the work. Either the registration must have been issued or the application must have been delivered to the Copyright Office before you filed your claim on September 23, 2023. If your work was neither registered nor subject to a pending application at that time, this claim cannot be successfully amended and cannot proceed. Instead, you would need to apply to register the copyright for the allegedly infringed work before you could refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Because you have filed a copyright infringement claim that does not appear to be based on a work covered by a registration or pending application for registration, we have not reviewed the remainder of your infringement claim to determine whether it complies in other respects with the legal and formal requirements for a claim before the Board. If you submit an amended claim that resolves the registration issue, the Board will engage in a full compliance review, so you should review the [CCB Handbook](#) and make sure the rest of your amended claim is compliant.

Noninfringement Claim

A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of the respondent’s copyrighted work. 17 U.S.C. § 1504(c)(2). If someone has accused you of

infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. The claim must identify the party that accused you of infringement and must describe your allegedly infringing activity, the reasons why you believe no infringement occurred, and the reasons why you believe there is an actual controversy about the requested declaration. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v).

Your allegations do not describe a dispute about your alleged use of a copyrighted work that could support a declaration of noninfringement. Your “Describe the allegedly infringing activity” section states only, “See attached,” but the attached documents have no apparent relationship to a copyright dispute. In the “Work(s) respondent says you have infringed” section of the noninfringement claim, you assert that the respondent asserted infringement of a work titled “ReMax.” That is also one of the named claimants. You assert that the Copyright Office registered the work on September 23, 2023, the day you filed your claim, with registration number 1150813, the same number you listed for “US Navcen Byrd” in the infringement claim. As noted above, that is not a valid registration number.

Those allegations are not sufficient to support a claim for noninfringement. If you keep your noninfringement claim in an amended claim, it must specifically describe an actual dispute between you and the respondent over whether your activities infringed the respondent’s copyright, and why you believe that you did not infringe. You must provide enough information in your claim for the respondent to understand the claim and respond to it.

Misrepresentation Claim

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an OSP either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f).

The allegations in your claim do not describe a violation of section 512(f). You do not provide information about how the respondent made a misrepresentation in a takedown notice or counter-notice to an OSP about an

allegedly infringing work. Instead, you state that no one sent or received a DMCA takedown notice, and that no counter-notice was sent. A misrepresentation claim must allege that the respondent made a false or incorrect statement in a takedown notice or counter-notice to an online service provider. Your allegations do not support a claim under section 512(f).

If you keep your misrepresentation claim in an amended claim, it must provide additional facts to indicate that the respondent sent an OSP a takedown notice or counter-notice that included a false or incorrect statement of fact, misrepresenting that material or activity was infringing, or was removed by mistake or misidentification; and it must show or explain why the statement was false or incorrect.

Supporting Documentation

The claim was filed along with 16 documents, and the filer added more than 20 other extraneous documents to the docket within 24 hours. The Board does not consider documents filed after a claim to be a part of that claim, and such filings will not be considered part of an amended claim unless they are uploaded using the instructions below as attachments to the amended claim and not as separate filings.

It is not clear how any of the supplemental and additional documents support or relate to a copyright claim. When 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. If you file additional documents that are not relevant to any claim the Board could consider, the Board will suspend your ability to file on eCCB.

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