



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0302

November 2, 2023

Raymond Charles T Philip

CLAIMANT

v.

David Brandon

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **December 4, 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. 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\(c\)\(2\)](#). As detailed further below, if you cannot provide a registration or application number from the U.S. Copyright Office issued before September 13, 2023, you should not file a second amended claim. If you can file a second amended claim, 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.

Registration

As previously stated in its first noncompliance order, the Board can only hear a copyright infringement claim if, before the claim was filed, (1) the U.S. 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). You did not include in an amended claim a Copyright Office registration or application number that was issued prior to filing your claim. Instead, you reuse a number provided by a private company, ProtectMyWork.com. This is not a replacement for registration with the Copyright Office.

Again, 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 your work

before you are able to refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Clarity – Work Infringed

It appears that your “work” is a useful article not protected by copyright. As a general matter, copyright protects pictorial, graphic, sculptural works, such as technical drawings. Copyright does not protect a “useful article,” which is an object that has “an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101. Copyright will protect pictorial, graphic, or sculptural features in the design of a useful article “that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *Id.* In addition, a technical drawing does not provide copyright protection for any useful article depicted in the drawing. *See* 17 U.S.C. § 113(b).

You describe your work as the “design of a Foldable Stem for BMX Handlebars and Heavy E-bikes.” A foldable stem for BMX handlebars and heavy e-bikes would be a useful article, in that it has the intrinsic utilitarian function of allowing a bike’s handlebars to fold down. A design, to the extent that it is a technical drawing, may be protected by copyright, although that copyright does not extend to prohibiting parties from creating the folding stem. Your allegations, though, focus on the respondent’s activities in recreating the useful article itself. For example, you allege that “Your Turtle Neck SHORTY has all components, processing and Manufacturing same as ours.” In addition, in supplemental documents, you include pictures of prototypes, which suggests that you are attempting to hold the respondent liable for reproducing the foldable stem.

If you amend your claim, or bring a new claim after filing your registration, you will need to limit your allegations to infringement of a copyright protected work, such as a sufficiently creative technical drawing or photograph. These allegations will need to focus on how the respondent copied, distributed, adapted, or publicly displayed the technical drawing or photograph itself, rather than any reproduction or distribution of the foldable stem.

Substantial Similarity

Finally, if you identify a copyright protected work that the respondent has infringed, you will need to include enough facts that the allegedly infringing work is substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

You should include a clear, detailed statement regarding which portions of your work were taken by the respondent or provide documents that are sufficient to show the similarities. In your amended claim, it appears that all supplemental documents you include are of works that you produced. 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.

Final Amendment

Your amended claim did not resolve the compliance issues raised in the September 26, 2023, 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