



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0299

October 5, 2023

Dark Lab Records Ltd

CLAIMANT

v.

Michael Giles

RESPONDENT

FINDING OF BAD FAITH AND ORDER DISMISSING CLAIM

On September 12, 2023, Lawrence Akash Gomes (Gomes) filed this claim before the Copyright Claims Board (Board) on behalf of Dark Lab Records Ltd (Claimant), alleging copyright infringement and misrepresentation under 17 U.S.C. § 512. The claim provided a clearly invalid mailing address for the respondent Michael Giles (Respondent), and information in the claim indicated that Respondent is not a United States resident, even though claims against respondents that do not reside in the United States are prohibited. In the address fields, the claim provided an obvious New Zealand address for the street address while entering Tennessee as Respondent's state of residence and a Nebraska zip code, seemingly in an attempt to circumvent the filing system's prohibition on entering foreign addresses for respondents.

On September 15, 2023, the Board ordered Gomes and Claimant to show cause why filing the claim in this form did not constitute bad-faith conduct under 37 C.F.R. § 232.3. The Order to Show Cause further ordered Gomes and Claimant to file a response to that order by September 29, 2023. No response was filed.

On October 2, 2023, the Board ordered Gomes and Claimant to appear at a conference, scheduled for October 5, 2023, at 10:30 AM ET, to explain the conduct described in the Order to Show Cause. 37 C.F.R. § 232.3(c). The Board sent Claimant and Gomes, at the email address provided in the claim, a link to the virtual conference beforehand. The presiding Copyright Claims Officer waited 15 minutes after the scheduled time for the conference to begin but Gomes and Claimant did not appear. Gomes and Claimant did not notify the Board that they would not be attending or explain their absence thereafter. The Officer recorded a statement on the record and then concluded the conference.

The fact that Gomes and Claimant submitted a claim with obviously foreign address information, and obviously inaccurate domestic address information, for a foreign respondent, despite the knowledge that claims against foreign entities are prohibited, has not been refuted. Claims "asserted against a person or entity residing outside the United States" are categorically "not subject to determination by the Copyright Claims Board." 17 U.S.C. § 1504(d)(4). The eCCB online filing system specifically informs filers of this prohibition in a notice stating, "the CCB **cannot** hear claims . . . [w]ith foreign respondents," and explaining that the consequences of such a claim include "potential limits on filing future claims." eCCB requires a United States address for respondents, including a United States state or district and zip code. When this claim was submitted through eCCB, an additional notice in

the “Respondent” section of the claim form warned the filer that claims cannot be filed against respondents residing outside of the United States. Before submitting the claim, Gomes also certified under penalty of perjury that the information provided in the claim was accurate and truthful to the best of Claimant’s knowledge. See 37 C.F.R. § 222.2(c)(12). Nevertheless, while the claim stated that the respondent’s mailing address is in New Zealand, it also provided “TN” (Tennessee) as the respondent’s state code, and 68001 as the respondent’s zip code, though 68001 addresses are located in Nebraska.

Entering a Nebraska zip code and designating Tennessee as the state for a respondent in New Zealand means that the filer Gomes must have both ignored the warnings on eCCB and entered U.S. address information to avoid the technological barriers to entering a foreign address. The claim identifies Gomes as Claimant’s authorized representative, and an exhibit filed with the claim indicates that Gomes is one of Claimant’s directors. Therefore, the Board finds that Gomes’s and Claimant’s actions in pursuing this claim constitute bad-faith conduct, as defined in the Board’s regulations: “Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an active proceeding.” 37 C.F.R. § 220.1(c). Under this standard, the Board has no difficulty finding that Gomes and Claimant did not have a reasonable basis in law or in fact to file a claim before the Board against a respondent residing outside the United States despite the clear warnings and technological barriers to deter such a filing. The Board therefore finds Gomes and Dark Lab Records Ltd to have engaged in bad-faith conduct in this proceeding.

In addition, on September 19, 2023, the Board issued an Order to Resubmit Payment notifying Claimant that the filing fee payment for the claim had failed and directing Claimant to resubmit payment within 14 days or the claim would be closed. Payment was not submitted in the time allowed. To assert a claim before the Board, the claimant must submit the proscribed filing fee. 17 U.S.C. § 1506(e)(3); 37 C.F.R. §§ 222.2(a)(2) & 201.3(g). Accordingly, the Board dismisses the claim without prejudice and closes case 23-CCB-0299.

The Order to Amend Noncompliant Claim, issued on September 15, 2023, is now moot.

Copyright Claims Board