



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0166

August 26, 2024

Katherine E. Quinn

CLAIMANT

v.

Feiwei and Friends &  
Stimola Literary Studio

RESPONDENTS

## 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 amended.

If you wish to proceed with this claim, you must file a second amended claim by **September 25, 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 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.

### Substantial Similarity

As amended, your copyright infringement claim still does not include enough facts to indicate how the allegedly infringing work is substantially similar to original, expressive elements of your work that copyright protects. The Copyright Claims Officers who decide cases before the Board have reviewed the amended claim (including the supplemental document named “[Direct Comparisons \(1\)](#)”) and have concluded that the amended claim fails to allege facts that could plausibly support the conclusion that there is substantial similarity between your work and the allegedly infringing work. The similarities you identify between the two works are limited to unprotectible ideas, settings, and common plot points.

Copyright protection only extends to the specific creative expression in a work that is original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313.4 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Not all elements of a creative work are protected by copyright. For example, copyright law does not protect ideas, facts, systems, or methods of operation. Copyright

can only protect the particular way that such things are expressed. Copyright also does not protect stock characters, settings, or events that are common to a particular subject matter (“*scènes à faire*”). See *Compendium* Section 313.4(I).

Not all similarities are infringing. When two works only share similarities in unprotectable elements they are not “substantially similar” under copyright law. The similarities you describe in the amended claim do not show substantial similarity in copyrightable expression, only in unprotectable elements.

You identify the allegedly infringed work as a children’s picture book titled *Little Gray* that you wrote and illustrated in 2020, and the allegedly infringing work as a children’s picture book titled *Oddbird*, written and illustrated by Derek Desierto and published in 2021. The amended claim names two respondents: Mr. Desierto’s literary agency Stimola Literary Studio and *Oddbird*’s publisher Fiewel and Friends. You describe your book as:

A picture book including writing and illustrations, in which a little gray bird does not fit in with the other colorful birds. He attempts to remedy this by adorning himself in bright colors. When this does not work, he learns to accept himself and be happy with who he is, an odd gray bird. The illustrations include a gray bird, and many other colorful birds on a white background.

You assert that *Oddbird* shares those features, adding: “Both works feature an ending where the colorful birds and the gray bird reconcile happily.” Stories of an outsider seeking to fit in by changing its appearance, before ultimately gaining acceptance as its true self, are commonplace, including the trope of the “ugly duckling.” You state: “In the middle of each work, the little gray bird is by himself, and feels bad about his feathers.” Depicting outsiders as alone and sad is also common. These general ideas are not protected, and you do not describe or show that you and Desierto have specifically expressed these ideas in a substantially similar way. You assert that certain art design elements are similar: “Both works use rainbow colors to juxtapose the gray bird with the rest of the characters” and “to emphasize the theme of acceptance,” and “both use a white background to emphasize the colors of the characters.” These are common design choices in children’s picture books.

Moreover, your Direct Comparisons document includes seven comparisons of pages from *Little Gray* next to pages from *Oddbird* that are allegedly substantially similar, but despite the descriptions you have provided comparing those pages, the Board can discern no substantial similarity of protected expression in any of those pages. At most, there is some similarity in general ideas, such as those described above.

You note that some of the same or similar words appear in both books:

- In *Little Gray*, your bird character is described (and describes itself) as “odd.”  
In *Oddbird*, the main character is named “Oddbird” and is described as “an oddbird.”
- In *Little Gray*: “The little bird forgot about what he looked like. He liked how he felt.”  
In *Oddbird*, the colorful birds’ “feathers got frizzy. Their colors became dull. But no one cared anymore about those things. What was more important was how they felt.”
- At the end of *Little Gray*, your bird “felt so happy he could burst!”  
At the end of *Oddbird*, the colored birds and Oddbird swim together: “And they felt happy.”

(Emphases added.) However, copyright does not protect individual words or common, short phrases, and the sporadic use of the same word or similar phrases is not enough by itself to make two works substantially similar.

You have not shown substantial similarity between aspects of the works that copyright protects, and you have not identified any other original elements of expression in *Little Gray* as being substantially similar to any aspect of

the *Oddbird*. If there are such areas of substantial similarity that you did not already present in your amended claim, you must provide specific allegations that detail the similarity. To address this issue in a second amended claim, it must include more specific factual allegations that identify how different particular elements in *Oddbird* copied from specific copyrightable subject matter in *Little Gray*. Alternatively (or in addition), you may upload documents that are sufficient to show the similarities. The Board suggests that you include complete copies of each of the works at issue as supplemental documents so that the Board may determine whether there is a plausible claim that the two works are substantially similar in expression. However, if all of the alleged similarities are already in your Direct Comparisons document, you should not expect that the outcome will change in the next compliance round.

## Final Amendment

The Copyright Claims Officers have found that your amended claim does not resolve the substantial similarity issue raised in the June 14, 2024 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

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](mailto: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 Board