



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0159

United States Copyright Claims Board

WhiteForest

v.

Lolcow LLC

CLAIMANT

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 **November 28, 2022**. 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 extra 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.

Misrepresentation Claim – False Statement

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under section 512(f) of the Copyright Act, as added by the Digital Millennium Copyright Act (“DMCA”). Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a DMCA 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 DMCA takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider’s decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because your allegations appear to contradict the basis for the claim. You allege that after you sent Google a takedown notice, Joshua Moon sent a counter-notice that stated, “Claimant has submitted a takedown request regarding user generated content.” Your claim’s explanation of that statement is: “This is true but they have not removed the content, have been aware of it for months, and personally featured it on the sites front page.” Your assertion that the statement in the counter-notice was “true” contradicts your claim because it indicates that the counter-notice did not contain a misrepresentation.

To violate section 512(f), a statement must misrepresent “that material or activity is infringing, or . . . that material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f)(1)-(2). To support your claim of misrepresentation, you must provide additional facts to show that the counter-notice included a false or incorrect statement of fact “that material or activity was removed by mistake or misidentification,” and that shows or explains why the statement was false or incorrect. If you submit an amended claim, you must state facts in support of each element of the claim, including allegations that describe a false or incorrect statement of fact by the respondent that would violate section 512(f), and indicating what words were false or incorrect and how they were false or incorrect.

Clarity

Your claim does not state enough facts to clearly state how the named respondent made a misrepresentation in connection with a DMCA takedown notice or counter-notice. It is not clear from your allegations that the respondent sent the counter-notice, or why the respondent may be responsible for the counter-notice. You allege that Joshua Moon sent the counter-notice, without explaining his relationship to the respondent, or to the website that you allege hosted and featured the “content.” If you submit an amended claim, you must include facts that more fully state or describe that relationship and show why you have named the proper respondent.

In addition, it is not clear how the video filed as a supplement to your claim supports or relates to the alleged misrepresentation. If you submit an amended claim, please include only supplemental materials that directly pertain or relate to the claim, and provide an explanation of their relevance. Although not required, you may want to include copies of any key documents that you consider helpful to your claim, for example, correspondence related to the claim such as the takedown notice and counter-notice.

Relief Sought

The “Description of harm suffered and relief sought” section of your claim states that “the relief sought is that [respondent] no longer retain safe harbor protection.” Removal of safe harbor protection is not an available remedy for a violation of section 512(f). Moreover, Section 512(f) claims do not depend on any “safe harbors,” such as the protections from copyright infringement claims available to online service providers under 17 U.S.C. §§ 512(a)-(d). If you request relief in an amended claim, please be sure that it is a kind of relief that the Board can grant. Information about the relief that the Board may grant on a section 512(f) claim is available at pages 10-11 of the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

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 supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

October 27, 2022