



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0109

April 27, 2023

Zachary S. White

CLAIMANT

v.

Black 17 Media

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 **May 29, 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\(c\)\(2\)](#). 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.

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). If the Copyright Office has registered the work, the claim must include the registration number; if it is not yet registered, the claim must include the service request number for a pending application to register the copyright. [37 C.F.R. § 222.2\(c\)\(7\)\(ii\)\(C\)-\(D\)](#).

In the “Works infringed” section of your amended claim, you list four allegedly infringed works, titled “Roads,” “Resuscitate,” “Mondkult,” and “Angkar,” which you identify as sound recordings. You state that the Copyright Office registered all four works, and you provide 872035542484 as their registration number. However, that is not a valid number for a Copyright Office registration. Other statements in that section indicate that it is a UPC number instead. That does not suffice.

For each work, you state: “If need be I can provide screenshots that prove this work is copyright (under Spinnup and UMG in 2021)[.]” But to address this issue, if you file a second amended claim, what you must do is include valid registration numbers for the allegedly infringed works or valid service request numbers for pending applications to register the works. Either the registrations must have been issued or the applications must have been delivered to the Copyright Office before you filed your claim on March 13, 2023.

If your works were neither registered nor subject to pending applications 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 works before you could refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Infringing Activity

Your claim does not present enough facts to clearly state how the respondent, Black 17 Media, engaged in any infringing activity. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, publicly display, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. Someone who does any of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

In the “Describe the infringement” section of the claim, you indicate that the alleged infringement involves unauthorized derivative works and that “many of the songs released on black 17 media are altered samples of these two songs in particular.” However, your amended claim lists four allegedly infringed works, not two, and it does not identify any particular recordings as infringing works. In the “Wrongful activities” section of the claim, you list Spotify, Distrokid, and Black 17 Media as entities liable for infringement, but you do not state any facts about any of them that would support liability, and you have not named Spotify or Distrokid as respondents.

You do not offer enough detail about Black 17 Media using your works in a way that would infringe any exclusive rights. If you file an amended claim, it must include clear allegations about how the respondent infringed on your exclusive rights. You must include allegations that describe acts of infringement for each allegedly infringed work. You must also name or describe particular works by the respondent that you allege infringed your rights, and state facts that explain or show how the respondent’s works infringed your rights in each of your allegedly infringed works.

Access

Your claim does not provide facts about how the third-party YouTube users had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place.

Your claim does not explain or state facts that indicate how the respondent had any access to the allegedly infringed works. Please provide more details and background regarding this element in your amended claim. To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just

hypothetically or theoretically possible. Acceptable allegations of access may include that your works (a) were sent directly to the respondent, or to a close associate of the respondent; (b) were widely disseminated or were available to the public or the respondent; or (c) are so strikingly similar to the respondent's works that they could not have been created independently.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your works and the allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your works and the allegedly infringing works are similar.

The "Describe the infringement" section of your claim alleges that "many of the songs released on black 17 media are altered samples" of your works, but you do not describe any specific content from your works that appears in any of the respondent's works. You do not provide clear information describing or showing any allegedly infringing works. The allegations in the "Describe the infringement" field of the claim do not describe your works or any allegedly infringing works, or state or show how they are identical or substantially similar. In addition, your claim does not provide copies of any allegedly infringing works as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, include more specific allegations that support the element of substantial similarity, for example, by identifying particular allegedly infringing videos with specific segments that are similar to copyrightable expression in your works, and describing how they are similar. The allegedly infringing works must be substantially similar to copyright-protected elements in the allegedly infringed works. Your description should help the respondent and the Board understand the similarities you see between the allegedly infringing works and the protectable aspects of your recordings.

Final Amendment

The amended claim resolves the compliance issues raised in the March 1, 2023 Order to Amend Noncompliant Claim. However, the amended claim raises additional issues, explained above, that must be resolved for the claim to go forward. **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