



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0164

United States Copyright Claims Board

Langston M. Childs

CLAIMANT

v.

Daniel Cotton

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 **January 5, 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. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional 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.

Clarity – Work Infringed

Your claim includes unclear or confusing allegations about the registration, author, title, and type of the allegedly infringed work.

Registration

As supplemental documentation, you uploaded a copy of Certificate of Registration number SRu 1-232-585, which is for an unpublished collection entitled “CHARISMA GO HAM Beats.” You are listed as author and copyright claimant in the registration record. However, in the “Infringement claim: Works infringed” section of your claim, you state that the registration number is SRu0001000232000585. This appears to be a typographical error. If you amend the claim, you should enter the correct registration number in the “Registration number” space under “Infringement claim: Works infringed.”

Author

Your claim does not identify you as the author of the allegedly infringed work. In the “Works infringed” section, you state that the author of the work is “MONTANA OF 300.” Your claim identifies a video available on YouTube, titled “Montana of 300 - Busta Rhymes,” as where “the infringement of rights is found.” This suggests that Montana of 300 may be the creator of the allegedly *infringing* work rather than the creator of the work that you allege has been *infringed*. Moreover, the Board notes that in the claim that you filed in *Childs v Bradford*, No. 22-CCB-0104, you alleged that “MONTANA OF 300” is the alias of Walter A. Bradford, whom you named as a respondent in that proceeding. Those allegations appear to be inconsistent with a claim that you are author of the work that has been infringed. If you amend the claim, you should clarify who is the author of the work that you claim is infringed. If you identify “MONTANA OF 300” as the author, you should explain your relationship with “MONTANA OF 300.”

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. If “Montana of 300” is the author of the allegedly infringed work, you must allege how you obtained the rights to the work.

More information about authorship and ownership is available on page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Title

In the section of the claim discussing where the alleged infringing acts occurred, you seem to suggest that a work titled “Busta Rhymes Instrumental” available on SoundCloud is the allegedly infringed work. However, in the “Works infringed” section, you state that the title of the infringed work is “Angel With An Uzi.” Because there is no title list in the unpublished collection registration, the Board is unable to confirm from the registration record whether either title is among the works covered by the SRu 1-232-585 registration. It appears possible that instead of identifying the work that was *infringed* in the “Works infringed” section, you have identified the *infringing* work. If you amend your claim, you must clarify whether the *infringed* work is either “Busta Rhymes Instrumental” or “Angel with an Uzi” and confirm whether that work was among the works registered under the registration number you provide.

Type of Work

It is also not clear whether the work that you claim was infringed is a musical composition, sound recording, or both. In your claim, you identify the “type of work” as a “sound recording” but under “Describe the work,” you state that it is a “composition.”

When a song is recorded, there may be two works created that are protected by copyright: a musical composition (also known as a musical work) and a sound recording. These works are subject to different rules and are commonly owned and licensed separately. A musical composition is the underlying composition along with any accompanying lyrics. Musical compositions are usually created by a songwriter or composer. The SRu 1-232-585 registration covers sound recordings, but *not* any underlying musical compositions. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are usually created by the performer and the producer of the recording. For example, Aretha Franklin’s recording of “Respect” includes two works protected by copyright: the *musical composition* of “Respect” written by Otis Redding and the *recording* of that musical composition performed by Aretha Franklin. A beat is an instrumental or drum track often created in a studio as a background for a recording. The term “beat” may refer to the music (composition), the sound recording, or both.

If you are alleging infringement only of a sound recording, you may amend your claim, but you should delete the reference to “Composition” that currently appears under “Describe the work.” You may not assert a claim of infringement of a musical composition based on registration number SRu 1-232-585. If you wish to assert such a claim, you must have had a copyright registration or pending application for registration filed for the musical composition before you filed your claim on September 22, 2022. 17 U.S.C. § 1505(a). If you did not have a copyright registration or pending application for registration of the musical composition filed before you filed your claim, you cannot successfully maintain a claim for infringement of that composition in this proceeding. You would need to apply to register the copyright for that work before you could refile a new claim for infringement of that work. For more information about registration, please refer to the Copyright Office [Registration Portal](#). If you did have a copyright registration or pending application to register an allegedly infringed composition before you filed your claim, you may amend the claim and provide the copyright registration or application information in the “Infringement claim: Works infringed” section of the claim.

Clarity – Infringing Activity

Your copyright infringement claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about any infringing activity by the respondent. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense.

The “Describe the infringement” section of your claim states, “the uploading and distribution of copyrighted works is copyright infringement” but does not actually allege any facts relating to uploading or distribution of your work – or any other act of infringement -- by the respondent. You also selected as wrongful activities “create a derivative work,” “. . . publicly perform the work through digital audio transmission,” “reproduce the work,” and “distribute the work.” However, your claim contains no allegations that describe actions taken by the respondent that relate to public performance, reproduction, or distribution of your work.

Your claim includes a link to a YouTube page (for “Montana of 300 - Busta Rhymes”) where you assert the “infringement of rights is found,” and a link to a SoundCloud page (for “Busta Rhymes Instrumental”) that you say the “specific work came from.” Without further explanation, those statements do not allege sufficient facts to understand how the respondent may have infringed your rights.

To address this issue in an amended claim, please provide more details and background regarding the alleged infringement. You must state facts that describe acts by respondent that constitute copyright infringement.

Copyright Infringement – Access

Further, your claim does not provide facts about how the respondent had “access” to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. 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 work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Copyright Infringement – Substantial Similarity

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

As described above, it is unclear what works are at issue in your claim. If you are alleging that the work “Busta Rhymes” by Montana of 300 has infringed your work, and if the links in your claim to “Busta Rhymes Instrumental” on SoundCloud and to “Montana Of 300 - Busta Rhymes” on YouTube are links to your work and to the allegedly infringing work, you may be able to allege substantial similarity between the two works. However, if you wish to include the alleged infringed work and the allegedly infringing work with the claim, you should do so by uploading files of those works as supplemental documentation to the claim, rather than merely referring to links to material available on the internet.

If you amend your claim, you will need to more clearly identify which work you allege has been infringed, which work is the allegedly infringing work, and how your work was used in the infringing work. The allegations in the “Describe the infringement” field of the claim do not clearly identify or describe your work, or state or show how the respondent’s work is identical or substantially similar to your work. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent, or copies or other documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled so they can be properly compared to each other.

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
December 6, 2022