



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0410

February 28, 2024

HAZAEEL J DOMINGUEZ

CLAIMANT

v.

GERALD BURBACH

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **March 29, 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 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.

Misrepresentation — Elements

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a 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 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 does not describe your takedown notice in relation to anything regarding copyright, does not specify if there was an infringement by the respondent and any details regarding that infringement, and asks for relief that the Board cannot grant. More information is available in the Starting a Misrepresentation Claim chapter of the CCB Handbook.

Content of Takedown Notice

To support your claim of misrepresentation, you must provide additional facts about your takedown notice. The DMCA notice and takedown process allows copyright holders to get user-uploaded material that infringes their copyrights taken down from websites. A copyright owner can provide a takedown notice to an online service provider, notifying them that someone posted infringing content on the service provider's system or network and demanding it be taken down.

In your claim, you describe your takedown notice as "HATE SPEECH, HARASSMENT, AND PERSONAL ATTACK VIDEOS." You have also included several links to videos on YouTube. Your description of the content of the takedown characterizes the content of the videos themselves but does not describe your takedown notice's relationship to copyright infringement, as required under Section 512. To correct this issue, you must describe the content of your takedown notice(s) including the allegedly infringing content that you requested be removed and include the date the takedown notice(s) were sent. You may also attach the copyright takedown notice you sent YouTube to your claim.

Misrepresentation — Clarity

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). In your claim, you state that the counternotice "disputes my copyright claim but also includes serious personal accusations against me." You also state that counternotice contains an allegation that the respondent "is the creator of the video and images, which I firmly believe and claim to be my own."

If the misrepresentation made by the respondent is based on a counternotice that denies infringement, your claim must include some detail as to why there was an infringement. Copyright infringement occurs when a copyrighted work is reproduced, distributed, publicly performed or displayed, or made into a derivative work without permission of the copyright owner, if the use does not qualify for an exception, such as fair use.

To correct this issue, you must provide additional facts to explain what work the respondent infringed and how it was infringed. You must describe your work or the allegedly infringing work, and state or show how they are identical or substantially similar. In part because hyperlinks can lead to material that is no longer available online, the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation.

You also suggest in your claim that you own the material posted by respondent simply because you are *in* the video, or because it “depict[s] a crime scene involving me.” Please note that you cannot claim copyright ownership over material just because you are the subject of the material. The material must, in some way, actually be your creative expression.

Relief

Misrepresentation claims brought before the Board must allege some provable harm or damage, such as a financial loss or other harm for which **monetary relief** can be given. In your claim, you seek relief including “removal of infringing content, public retraction and apology, injunction against further misuse, monitoring for future infringements, legal recognition of rights” that the Board cannot grant. The Board also does not issue injunctions against further action by a respondent.

Monetary awards granted by the Board for claims of misrepresentation cannot exceed \$30,000. Your claim should identify some financial loss or harm or other provable injury you suffered *because of the alleged misrepresentation*. Please review the discussions at pages 10-11 of the chapter on [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information about the kinds of relief that the Board can grant.

Please amend the “Description of harm suffered and relief sought” section of your amended claim to describe the financial harm or loss you are seeking, and how it relates to the misrepresentation identified in your claim. When amending your claim, please note that monetary awards granted by the CCB for claims of misrepresentation cannot exceed \$30,000.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the February 26, 2024 Order to Amend Noncompliant Claim. **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