



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0329

October 12, 2023

Keith F Bell

CLAIMANT

v.

Phil Beckner c/o Michael Gerity

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 13, 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.

Respondent Clarity

To assert a claim before the Board you must include each respondent's mailing address, unless the Board gives you permission to file it without the address after you certify that the address is unknown and that you have a good-faith belief that the statute of limitations is likely to expire within 30 days. You must also describe the basis for that belief. 37 C.F.R. § 222.2(c)(6). In your claim, you provide an address for the respondent in Phoenix, Arizona "c/o Michael Gerity" but it is unclear if you have provided the respondent's address or Michael Gerity's address. You must provide the respondent's address and you do not need to list any counsel or representative of the respondent in the claim.

To address this issue, your amended claim must include a mailing address for the respondent and remove Michael Gerity from the claim or state a good-faith belief that the statute of limitations is likely to expire within 30 days. The address must be a United States address of the respondent as the CCB may not hear claims against persons who reside outside the United States. 17 U.S.C. § 1504(d)(4).

Statute of Limitations

It appears that a portion of your copyright infringement claim may be barred based on your allegations that

show that you knew about the alleged infringing activities in 2015 more than three years ago. It is unclear from the allegation included in your claim if the infringing activity is continuing or when it ended. A “statute of limitations” is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, both in federal court and before the Board, is three years after the claim “accrues.” 17 U.S.C. §§ 507(b) & 1504(b)(1). A claim for copyright infringement accrues when the infringing act occurs, or when the claimant discovers, or reasonably should have discovered, the infringement. *Starz Entertainment LLC v. MGM Domestic TV Distrib., LLC*, 39 F.4th 1236, 1239-41 (9th Cir. 2022). A proceeding before the Board cannot be commenced more than three years after the claim accrued. 17 U.S.C. § 1504(b)(1).

In your claim, you allege that “sometime in November of 2015, a date after the work was copyrighted and registered, claimant discovered that respondent posted a copy of near 100 percent of WIN on November 10, 2015, on respondent’s social media account.” If the alleged infringement ended prior to November 2018, your claim will be barred by the statute of limitations. In your amended claim, you will need to clarify whether respondent’s infringing activity occurred within the past three years.

Copyright Infringement – Elements

You have brought a copyright infringement claim before the Board. Your 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 how the respondent’s 2020 tweet is substantially similar to the original elements of expression in your work. Please provide more details and background regarding this element in your amended claim.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your work and the respondent’s 2020 tweet.. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your claim states that your work is a “section of claimant’s book: Winning Isn’t Normal.” However, you do not provide enough information describing the similarities between your work and the respondent’s tweet. No

allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. 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 in the allegedly infringing work, or 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 and identified so they can be properly compared to each other.

More 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.

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. 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