



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0388  
December 15, 2023

Kimberly Marasco

CLAIMANT

v.

Taylor Swift Productions, Inc

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 **January 16, 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.

### Works Infringed — Clarity

To bring an infringement claim, you must provide for each work at issue in the claim the title, author, registration, and work of authorship category. 37 C.F.R. § 222.2(c)(7). In the “Works infringed” section of the claim you allege that one work, “Fallen from Grace,” has been infringed. However, in the “Describe the infringement” section of your claim you list two works “Fallen from Grace” and “Dealing with a Chronic Illness: Vestibular Neuritis.” It appears from your claim that you are alleging that the respondent infringed multiple works. Please clarify which works are subject to your claim by listing each one separately. If you are alleging more than one work has been infringed you should provide the title, author, registration number, and work of authorship category for each work that is involved in the “Works Infringed” section of the claim.

### 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 had access to your work and how the respondent’s work is substantially similar to the creative expression in your work. Please provide more details and background regarding this element in your amended claim.

### **Access**

Your amended 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. In your claim, you state that:

“Kimberly Marasco's manuscripts were submitted to hundreds of literary agencies on QueryTracker.net username Kam290, before being sent to Outskirts Press for publishing where it was then sent to Amazon KDP and made available to the public at large to download for free with hundreds of downloads. Taylor Swift Productions, Inc. had access to these works on the Amazon KDP website.”

Because the connection between (1) the literary submissions and subsequent “Amazon KDP” publication and (2) the respondent is unclear, you have not shown that the respondent had access to your work.

In order to correct the issue, you must include additional facts in the text of the “Describe the infringement” section of that states (1) that the respondent had access to these works on the “Amazon KDP website” and (2) that you know the respondents received the manuscripts from the publication on the “Amazon KDP website.” 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 how 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 respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

### **Substantial Similarity**

Your amended 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 documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

In the "Describe the infringement" section of the amended claim you compare Taylor Swift's lyrics to your poems. Specifically, you compare specific words and themes in your poems to specific words and themes in Taylor Swift lyrics. However, the copyrightable expression you described in the "Describe the infringement" section of the claim is too general for copyright protection.

Copyright does not protect ideas although it may protect the way ideas are expressed. Additionally, copyright law does not protect names, titles, short phrases or slogans. 37 C.F.R. 202.1. None of the similarities that you identify in the claim appear to relate to similarities in copyrightable expression. "It is the expression of the ideas, not the general concepts, that are to be examined particularly, because ideas themselves and general concepts are not copyrightable." *Black v. Gosdin*, 740 F. Supp. 1288, 1291 (M.D. Tenn. 1990).

The test for substantial similarity has two steps. "[T]he first step requires identifying which aspects of the artist's work, if any, are protectible by copyright, [and] the second involves determining whether the allegedly infringing work is "substantially similar" to protectible elements of the artist's work." *Kobus v. Mariol*, 328 F.3d 848, 855 (6th Cir. 2003) (internal citations omitted).

The examples you have provided have not satisfied this first step. For example, in your claim you state that:

"Should've known I'd be the first to leave/...So I stole the keys/That was the last time you ever saw me.' Which is eerily similar to my poem, Time (2017), I wrote: 'You thought I'd never leave, guess it took you by surprise when I got up and took the keys.'"

The idea of stealing or grabbing keys and leaving is not protected by copyright. "The essence of the first step is to filter out the unoriginal, unprotectible elements—elements that were not independently created by the inventor, and that possess no minimal degree of creativity." *Id.* Here, the premise of leaving with keys is unoriginal.

In order to satisfy this element, you must (1) describe or show similarities your work and the allegedly infringing works are protectable by copyright and (2) that there are substantial similarities between the protectable elements in your works and the protectable elements in the Taylor Swift lyrics. For more information about what is protected by copyright please review "[Works Not Protected by Copyright](#)."

As a result, the claim still does not provide enough information to enable the respondent to understand the claim and respond to it. You may upload a copy of the allegedly infringing works, along with copies of your work, to make it easier to compare the works and see any expressive similarities. Please note that if you do file the respondents' works with the second amended claim, you must add specific allegations identifying main points in each example that are substantially similar and pointing the Board and respondents to those similarities within the attachments so that the Board and respondents can easily compare the actual works to your descriptions. 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.

## Final Amendment

Your amended claim did not resolve the compliance issues raised in the November 27, 2023, 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](mailto: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