



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0386

February 23, 2024

Anna-Maria Cousins

CLAIMANT

v.

Auxo Clothing

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 25, 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.

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). It is unclear how many works you are asserting were infringed and whether these works are registered. In the “Work infringed” section of the claim, you list three works: “Fk Valentine's Day,” “Bronze and Bone,” and “Fk Valentine's Day.” For “Bronze and Bone,” you include a registration number (Vau001511965) that corresponds to the registration of one work, “Bronze and Bone.” However, for the other two works, both titled “Fk Valentine's Day,” it appears that you may be alleging that the respondent infringed multiple designs within a group registration. A Board search of Copyright Office records shows that only one work with a similar title, “FK Valentines Day Hoodie,” was registered (“VAu001511965”) in the Group of Unpublished Works application corresponding to the service request number

you provided. Further, in the “Describe the infringement” section of the claim you state that “Auxo Clothing is reproducing about 10 different clothing and clothing fabric designs that I did not give them permission to use.”

If you are only bringing a claim for the infringement of “Bronze and Bone,” in your amended claim please remove the references to other works. If you are bringing a claim for infringement of more than one work associated with the “Fk Valentine’s Day,” registration you should provide the title, author, registration number, and work of authorship category for each design that is involved in the claim.

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).

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 works and how the works are substantially similar. Please provide more details and background regarding these elements in your amended claim.

Access

Your claim does not provide facts about how the respondent had access to your works. “Access” means a reasonable opportunity to view or hear your works 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 works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or was available to the public or respondent; or (c) are so strikingly similar to the respondent’s work that the respondent could not have created it independently. Alternatively, you can upload copies of your works and the allegedly infringing works if the images 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 claim also does not include enough facts that explain the similarities between your works and the respondent's allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide specific allegations about how your works and the allegedly infringing works are similar. Your claim states that your works are fabric designs and that the respondent is "reproducing" your work. However, 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. It appears as though you have provided only a copy of your works as supplemental documents. You have not uploaded or described the allegedly infringed 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.

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 works were taken by the respondent in the allegedly infringing works, 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.

Final Amendment

Your amended claim did not resolve the compliance issues raised in the December 7, 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. 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