



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0245

United States Copyright Claims Board

Say It Visually, Inc.

CLAIMANT

v.

Jorge Roque and America's Real Estate Brokers

RESPONDENTS

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 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. 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.

Copyright Infringement – Access

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. The elements 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, and
4. The respondent’s work is identical or substantially similar to your work.

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.

Your claim does not provide facts about how the respondents had access to your works. “Access” means a reasonable opportunity to view or hear the work before the infringement took place. Your claim does not address this element of copyright infringement. You allege that “access controls” protect your works and that the respondents “appear” to have circumvented those controls, but that is not the same thing as addressing how the respondents would have had known about your work, and you do not provide information that would show how the respondents actually did circumvent your security and gain access to your works as alleged. 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 that work independently.

Copyright Infringement – Substantial Similarity

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

Your claim identifies the allegedly infringed works as five “explainer” videos, and alleges that the respondents posted copies on YouTube. However, you do not provide any detailed information describing or depicting your works, or stating how they are identical or substantially similar to the allegedly infringing works. You have provided supplemental documents that appear to be screenshots of the allegedly infringing videos on YouTube, but you have not provided copies of your works as supplemental documents. As a result, the claim does not provide enough information to enable the respondents to understand the claim and respond to it. If you submit an amended claim, it must include 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 or features of your work the respondents used in the allegedly infringing work, or documents that are sufficient to show the similarities.

Although not required, you may want to include copies of any key documents that you consider helpful to your claim, in addition to the certificates of registration, Copyright Office filing notices, and YouTube screenshots filed with the claim. For example, you may want to add

copies of your works and the allegedly infringing works so that they can be compared by the respondents and the Board, or correspondence related to the claim such as a cease-and-desist letter, takedown notice, or counter-notice.

Impermissible Claims

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f).

17 U.S.C. § 1504(c)(1)-(3). The “Describe the infringement” section of your claim includes allegations that the respondents violated provisions of the Digital Millennium Copyright Act that prohibit circumvention of access controls and distribution of false copyright management information, citing 17 U.S.C. §§ 1201, 1202, and 1203(c)(3)(B). Claims of circumvention under section 1201 of Title 17, and claims of misattribution of copyright management information under sections 1202 and 1203, are not subject to determination by the Board. 17 U.S.C. § 1504(d)). If you file an amended claim, you may include factual background, but you must omit the specific allegations that the respondent violated sections 1201, 1202, and 1203.

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 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 16, 2022