



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0177
July 2, 2024

James H Dillard, II

CLAIMANT

v.

Damon Lovell and Kenneth Rucker

RESPONDENTS

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **August 1, 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. 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.

Misrepresentation Claim – Reliance by Online Service Provider

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 (OSP) 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 misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to repost the content, and
5. You were harmed as a result.

17 U.S.C. § 512(f). “Safe harbor” provisions in section 512 of the Copyright Act protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material, ten to fourteen business days after

receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. More information is available on the Copyright Office's [section 512](#) page.

A claim of misrepresentation in a counter-notice must present facts that indicate that the OSP restored allegedly infringing material because it relied on the counter-notice. Your claim indicates that the respondents sent several counter-notices to YouTube in response to your takedown notices about their videos, but it does not appear that YouTube restored all of those videos before you filed this claim.

Your [Exhibit E](#) and [Exhibit I](#) indicate that YouTube reinstated one video for a few weeks in December 2023 based on Damon Lovell's November 18, 2023 counter-notice. [Exhibit C](#) and [Exhibit G](#) indicate that it reinstated another video on January 17, 2024, based on Mr. Lovell's January 1, 2024 counter-notice, and that it may have left the video up until April 17, 2024. However, you do not clearly describe which of the allegedly infringing videos were reinstated, or when. Your claim and exhibits do not indicate that any of the respondents' other counter-notices led to any reinstatement. The file names for two exhibits include the word "REINSTATED," but neither of those exhibits seem to show any reinstatement.

Several claim exhibits instead show that when YouTube received other counter-notices from the respondents, you notified YouTube of your then-pending claim against them (*Dillard v. Lovell, Rucker, and Edwards*, No. 23-CCB-0266), and YouTube informed you that it was *not* reinstating their videos. [Exhibit 0](#) shows that after YouTube received Damon Lovell's December 13, 2023 counter-notice and your December 17, 2023 notification about that claim before the Board, it informed you on December 21, 2023: "The content will not be reinstated based on this counter notification." On other occasions, YouTube told you: "The content at issue won't be reinstated while legal action is in progress. Also, copyright strikes associated with the original copyright removal request won't be reapplied while legal action is unresolved." See [Exhibit J](#) (December 11, 2023 notice that YouTube was not restoring video identified in Damon Lovell's December 9, 2023 counter-notice); [Exhibit K](#) (November 29, 2023 notice that YouTube was not restoring video identified in Kenneth Rucker's November 15, 2023 counter-notice); [Exhibit L](#) (December 31, 2023 notice that YouTube was not restoring video identified in Damon Lovell's December 21, 2023 counter-notice). This information provided in your claim indicates that the alleged false statements in those counter-notices were not a factor in any decision by YouTube to restore those videos. There is no allegation in your claim that YouTube ever restored them.

You allege that false statements by the respondents led to either "the reinstatement of the content *or at the very least the removal of the strike imposed on the respondents' channels.*" A counter-notice that led YouTube to remove a "copyright strike," but did not lead it to reinstate allegedly infringing material, is not a basis for a misrepresentation claim.

If YouTube had restored each of the allegedly infringing videos by the time you filed this claim on June 12, 2024, your amended claim must state facts about those restorations. However, if YouTube had not restored any of the allegedly infringing videos in reliance on the respondents' counter-notices, your misrepresentation claim cannot be based on those counter-notices, and you must remove them from the amended claim in order to proceed.

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