



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0179

June 28, 2024

ALP Supply, Inc.

CLAIMANT

v.

Overland Concrete Supplies Co.

RESPONDENT

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 **July 29, 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. For example, the name you entered for the respondent is almost identical to the name of one of the claimants, and if the respondent's name is incorrect, you should correct it in the amended claim.

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 Claim – Clarity

You are bringing a claim of copyright infringement. Your claim does not include enough facts that explain the similarities between your works and the allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your works and the allegedly infringing works are similar.

You allege that you discovered material on the respondent's website that infringes your copyright in your 2012 catalog. You assert generally that "Respondent has misappropriated a significant amount of material from Claimant's catalog pages." However, no allegations in the "Describe the infringement" section describe your works or the allegedly infringing works, or state or show how they are identical or substantially similar. In addition, you have not provided copies of your works or the allegedly infringing works as supplemental documents. Documents filed with the claim include more than 100 hyperlinks to sites where you allege that infringed and infringing material appeared. However, when reviewing claims, the Board will not take into account material that is solely referred to

in hyperlinks and not uploaded as supplemental documents, in part because hyperlinks can lead to material that is no longer available online. In fact, that is true in this case as it appears that the links to the respondent's website do not lead to active pages. As a result, the claim does not provide enough information to enable the Board to assess the claim. The extent of any similarity between the material in your catalog and the respondent's website is not apparent.

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 in the claim form regarding which elements of your works were taken by the respondents in the allegedly infringing works, or documents that are sufficient to show the similarities. While the Board does not require voluminous documentation showing 100 or more infringements at this stage of the proceeding, the "Describe the infringement" section of the amended claim should include enough information about the allegedly infringing acts to indicate that expressive material was taken and that substantially similar material was used. You may choose to include a representative sample of supporting documents showing such similarity. If you do this, please clearly label the documents so that you can refer to them in the claim form and it can be understood by both the Board and the respondent.

Misrepresentation Claim – Reliance by Online Service Provider

You are also 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.

The information provided in your claim indicates that the alleged misrepresentation could not have been a factor in any decision by the OSP to repost the content because the OSP had not reposted the material at issue at the time you filed your claim. Your claim indicates that you sent a takedown notice to Amazon Web Services (the OSP) on April 29, 2024, and that it received a counter-notice sent on May 30, 2024. You filed your claim on June

13, 2024. The proximity of the latter two dates suggests that the OSP had not reinstated the material at the time you filed your claim, and there is no allegation in your claim that the OSP did restore it. You also do not allege that you were harmed by any restoration; instead, the “Description of harm suffered and relief sought” section of your misrepresentation claim restates the harms you attribute to the alleged infringement.

If the OSP had restored the allegedly infringing material by the time you filed your initial claim on June 13, 2024, your amended claim must state facts about that restoration, including a statement of how it harmed you. However, if the OSP had not restored the allegedly infringing material in reliance on the counter-notice, your misrepresentation claim cannot move forward, and you must remove it from the amended claim in order to proceed with your infringement claim.

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.