



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0341

November 1, 2023

James P. Thomas

CLAIMANT

v.

Hays High Athletic Booster Club

RESPONDENT

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 **December 1, 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.

Allegedly Infringed Works – Clarity

You have brought a copyright infringement claim before the Board, listing five allegedly infringed works that have been registered by the Copyright Office. Your claim does not provide enough information about each work.

For each work at issue, the claim must include the “work of authorship” category, or a brief description of the nature of the work. 37 C.F.R. § 222.2(c)(7)(ii)(E). *See* 17 U.S.C. § 102(a) (listing categories of works of authorship). In the “Works infringed” section of the claim, you identify three of the allegedly infringed works as software and the other two as pictorial, graphic, or sculptural works. You also provide this description for each of the five works:

Fundraising software that produces 3 or 4 football team combinations weekly. The 3 or 4 team combination scores produce the highest and lowest total scores each week with prizes paid to winning ticket holders with the highest and lowest 3 or 4 team total scores.

However, Copyright Office registration records indicate that some or all of the allegedly infringed works are not software.

- Registration No. TX0001609974 issued in 1985 for a work titled “Football sweepstakes, Football fundraiser, or Electronic football.” In the application for registration for that work, you: named yourself as both the author and copyright claimant; identified the type of work as “computer files”; stated that

the work was first published in 1984; and indicated that the basis for the claim for registration was “New matter: additional text.” It appears that the 1985 registration covers only certain new text added after publication of the 1984 work. A registration for a new version of a computer program covers the new material that the author contributed to that version, but it does not cover earlier versions of the program contained in the source code, such as previously published source code. More information is available in Section 323.01 of the *Compendium of U.S. Copyright Office Practices, Second Edition* (1984), <https://www.copyright.gov/history/comp/compendium-two.pdf>, and in [Circular 61](#) (“Copyright Registration of Computer Programs”). It is not apparent from the registration records if the “additional text” that was registered is programming code, display text, or something else; it is also not clear which preexisting work the “additional text” was added to.

- Registration No. TX0004173365 issued in 1999 for a textual work titled “Football sweepstakes,” and describes the work registered as a “[s]heet + card.” In the “Works infringed” section of the claim, you describe the registered work as a pictorial, graphic, or sculptural work. Those descriptions suggest that the registered work may be a graphic display of text printed on a sheet and card and not, for example, software to generate such a display.
- Registration No. TX0006604226 issued in 2007 for a textual work titled “Football sweepstakes; Football fundraiser electronic football.” The title suggests that this work may be an updated version of the “additional text” work registered in 1985, but the 2007 registration does not specifically refer to the 1985 registration or clarify the relation between the works. It is not clear from the registration records if the registration covers software or other textual material.
- Registration No. TX0006857822 issued in 2008 for a work titled “FOOTBALL SWEEPSTAKES or FOOTBALL FUNDRAISER.” Your application for that registration identified you as the author of “text, compilation, editing, [and] artwork” in that work. Copyright Office records show that the deposit copies of the work submitted with the application are not software or computer code; instead, they appear to be sample sweepstakes tickets with instructions on how to play a sweepstakes game called “Football Frenzy ’08.” Additional records reflect that a copyright examiner noted that you “authorized removing the claim in the ‘computer program[.]’”
- Registration No. VAu001187305 was issued in 2014 for visual material titled “2015 Football Frenzy,” specifically, “text” and “2-D artwork.” The deposit copy submitted to the Copyright Office for the registration is not computer code, but another sample sweepstakes ticket with instructions on how to play a sweepstakes game called “2015 Football Frenzy.”

If you file an amended claim, you must clarify the nature of each of the allegedly infringed works in the “Works infringed” section. For example, your amended claim should not describe any registered work as “software” if the work is a graphic artwork with text, such as a sample sweepstakes ticket.

Infringing Activity – Clarity

Your copyright infringement claim does not present enough facts to clearly state how the respondent used any exclusive rights you have in the allegedly infringed works without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless

they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

In the “Wrongful activities” section of the claim, you state that the respondent “made unauthorized use of my copyrighted work entitled Football Frenzy, football sweepstakes or electronic football.” In the “Description of harm suffered and relief sought” section, you further state, “I sent emails to Hays High School advertising our Football Frenzy fundraiser to help their athletic booster club raise money. My company, Green Bee Fundraising offered Hays High School booster club the 3 or 4 team football fundraiser that included their own website for participants to view their online teams, team scores and online results each week to show winners. In return, Hays Athletic Booster Club copies and develops what I have copyrighted and does the fundraiser on their own.” You appear to allege that the respondent infringed your copyright by “solicit[ing] people to buy tickets or chances online that contain 3 NFL football teams each week for the 2023-2024 NFL regular football season,” and “advertising that they pay prizes based on the total scores of the 3 team combinations each week. High and low 3 teams combination scores win prizes.”

Those allegations are not specific or clear enough to describe how the respondent copied, distributed, or made other use of any particular work that would constitute copyright infringement. Your allegations appear to describe the respondent learning about your fundraising program and then running a similar program. However, you do not clearly describe how the respondent reproduced, distributed, or made derivative works based on any of your works without authorization.

If you file an amended claim, it must include allegations that state or show how the respondent engaged in a clearly described infringing use of each of your allegedly infringed works. You must identify particular infringing acts by the respondent using the specified works. For example, if the respondent copied your sample sweepstakes tickets, you must provide details about how and what it copied. Alternatively, you can attach your allegedly infringed works and the respondent’s allegedly infringing work as supplemental documents, which are clearly labeled, if those documents would show the infringing activity.

Substantial Similarity

Your claim does not include enough facts that explain the similarities between your works and any allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

A copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect “any idea, procedure, process, system, method of operation, [or] concept”; it only protects original elements of expression. 17 U.S.C. § 102(b).

The allegations in the “Describe the infringement” section of the claim do not sufficiently describe what portions of each of your works were used in an allegedly infringing work, or state or show how the respondent’s work is identical or substantially similar to material in your works that copyright protects. Your allegations that the respondent “solicited people to buy tickets or chances online that contain 3 NFL football teams each week for the 2023-2024 NFL regular football season,” and “advertises that they pay prizes based on the total scores of the 3 team combinations each week,” appear to describe ideas, procedures, processes, systems, methods of operation, or concepts involved in sweepstakes based on the results of NFL games. Those allegations do not appear to describe the unauthorized use of any specific, protectible expressive material.

A supplemental document filed with the claim appears to be a copy of a cease-and-desist letter addressed to the respondent, dated September 6, 2023, in which you stated:

It has come to my attention that you have made an unauthorized use of my copyrighted work entitled Football Frenzy (the “Work”) in the preparation of a work derived therefrom. I have reserved all rights in the Work, first published in 1985, and have registered copyright therein. Your work entitled Football Frenzy is essentially identical to the Work and clearly used the Work as its basis.

However, that description is also not clear enough to indicate what the allegedly infringing work is, or how it is similar to any of your works. In addition, while you include several supplemental documents that appear similar to your registered sweepstakes tickets, the supplemental documents do not seem to include the works named in the “Works infringed” section, and it is not clear if those documents include a copy of any allegedly infringing work. As a result, you do not provide enough information to enable the respondent and the Board to understand the nature of the claim.

If you submit an amended claim, it must include factual allegations that indicate that the respondent’s work is substantially similar to protectible matter in your works. Please provide more information 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 work, 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.

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