



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0093
April 7, 2023

Maxime Sebrechts

CLAIMANT

v.

DMG Media

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 **May 8, 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.

Foreign Respondent

The Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). In your claim, you provide an address for the respondent in the United States. However, it appears that respondent is a company based in the United Kingdom, which indicates that the Board cannot hear the claim. To the extent that you believe that DMG Media is its own entity, which resides in the United States, in your amended claim, you must provide additional information in the “Describe the infringement section of the claim” about the location of the respondent, including (1) what kind of entity it is (e.g., corporation, partnership, limited liability company), (2) where the respondent is based, (3) and why it should not be considered an entity “residing outside of the United States.”

Copyright Infringement Claim – 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 present clear facts to support the elements of a copyright infringement claim regarding access and substantial similarity, as discussed below.

Access

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work 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 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 it independently.

Alternatively, you can upload copies of your photograph and the allegedly infringing article with the photograph if those attachments demonstrate that the works are so strikingly similar that they could not have been created independently. In your claim, you uploaded a supplemental document that appears to be your work, but you did not upload a copy of the allegedly infringing work. You have supplied a link to show where the alleged infringement occurred, but the Board cannot use links to review images in a claim as the information on links often disappears. Therefore, supplemental material such as images should be attached to the claim itself.

Substantial Similarity

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

Your claim states that your work is a “Selfie of Max Sebrechts.” You have included a supplementary document which appears to be your work, however, it does not appear that you provided a copy of the allegedly infringed work as a supplemental document. As a result, the claim does not provide enough information to enable the

respondent to understand the claim and respond to it. As referenced above, in part because hyperlinks can lead to material that is no longer available online, the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation. If you submit a second 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 of the work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. Attach any supplemental materials that you want the Board to consider by uploading them as part of the claim rather than referring to them only with hyperlinks. 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.

Copyright Infringement Claim – Improper Relief Sought

The “Description of harm suffered and relief sought” section of the claim indicates that you are seeking above \$30,000 in damages for copyright infringement. As described below, it appears that you may be seeking a larger damages award than the Board can grant for this type of claim.

The CCB can grant only certain types of relief. If you seek damages, you can seek either (1) actual damages and the profits of the infringer attributable to the infringement, or (2) statutory damages, but not both, for your claim of infringement. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue or licensing fees you experienced. An award can also include any additional profits the infringing respondent made from the infringement. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss. Statutory damages are not necessarily higher than actual damages, but they are useful when the amount of actual damages or profits caused by the infringement is hard to prove.

The most that respondents can be ordered to pay in damages (actual or statutory) in a Board proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). The maximum amount of statutory damages available from the Board is \$15,000 for each work that was infringed. 17 U.S.C. § 1504(e)(1)(A)(ii)(I). However, if your work was (1) unpublished and the copyright was registered after the infringement started, or (2) published and the copyright was registered both after the infringement started and more than three months after the publication of your work, the maximum statutory damages is \$7,500 per work. 17 U.S.C. § 1504(e)(1)(A)(ii)(II); 17 U.S.C. § 412(1).

In your claim, you assert that the work was registered more than three months after the alleged infringement. Based on those stated facts, it does not appear that the Board may award you more than \$7,500 in statutory damages if you elect statutory damages. You do not need to choose between actual and statutory damages at this time. However, you must amend your description of relief to be within the \$30,000 cap allowed by the statute.

Issue – Misrepresentation Claim – No misrepresentation

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Your claim must make enough factual allegations to support each “element” of the

claim. Misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider related to a copyright-protected work posted online. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement 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 takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider's decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your misrepresentation claim does not assert that the respondent made a misrepresentation in a counter-notice to an online service provider. Instead, you allege that *you* sent a takedown notice to DMG Media, and no counter-notice was sent. In the section of the claim form that asks you to provide the words of the misrepresentation and explain why it was false, you stated: "The "Selfie of Max Sebrechts" copyrighted selfie picture has been shared by Jazmyn Jones who didn't get permission to do so. The incident was personal and entirely irrelevant to the rigging claims, which already have been proven to be false. The picture was shared by Jazmyn to Heather Lee O'Keefe, who contacted Ben Ashford and falsely used the works to support her false claim of rigging." Your allegations about the conduct included in the article do not identify the sort of misrepresentation that could violate section 512(f) because they do not concern false statements that were made in a takedown notice or counter-notice, and they do not concern false statements made by the respondent to an online service provider.

Your allegations are not sufficient to state a misrepresentation claim. If you submit an amended claim that includes a misrepresentation claim, you must state facts in support of each element of the claim, including allegations that describe a false or incorrect statement of fact by the respondent in a takedown notice or counter-notice to an online service provider that would violate section 512(f), and indicating what words were false or incorrect, and how they were false or incorrect.

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, 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