



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0303

October 21, 2024

James A. Colwell

CLAIMANT

v.

Jordan Mcfadden

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 **November 20, 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. 17 U.S.C. § 1506(f)(1)(B). **However, you should not submit an amended misrepresentation claim if you know that it cannot be properly amended.**

To make your amended claim compliant, you must resolve the issue identified below, if truthfully possible. 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 of the OSP’s decision to repost the content.

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 misrepresentation in a counter-notice only violates section 512 of the Copyright Act if the OSP relies on it to restore the allegedly infringing content. Information 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.

You state that you sent X Corp. (the OSP, a/k/a Twitter) a takedown notice on August 28, 2024, related to content posted on the respondent’s previous account (“@CreateMyUnivers”), and that X Corp. removed that content the next day, permanently suspended that account on September 30, 2024, and “they have not re-instated this content.” Your previous, dismissed misrepresentation claims before the Board against the same respondent (Claim Nos. 24-CCB-0130 and 24-CCB-0257) involved takedown notices and counter-notices about earlier posts on the @CreateMyUnivers account. You state that the respondent “is using an alternative account to repost removed content that he was suspended by X Corp[.] for using on a new account.” Allegations that the respondent has reposted previously removed content do not support a claim that *X Corp.* has reposted it due to a misrepresentation in a counter-notice.

You state that you sent a takedown notice to X Corp. on October 3, 2024, related to content posted on the respondent’s new account (“@WorldwalkerUni”), and that it received a counter-notice from the respondent on October 4, 2024. You filed this claim on October 10, 2024. The proximity of the counter-notice and the claim 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. Instead, you describe X Corp. “[t]elling me they *will* reinstate previously removed and suspended content when posted on a new account by Jordan Mcfadden” (emphasis added). An [email](#) from Twitter Support that you submitted with the claim, dated October 10, 2024, explained that your earlier (dismissed) misrepresentation claim against the respondent before the Board was not evidence of an infringement claim against the respondent, and stated, “We *will* cease disabling access to the materials within 10 business days of the date we originally forwarded the user’s counter-notice to you” (emphasis added). Allegations that X Corp. declared its intent to repost previously removed content at a later time period, in compliance with the safe harbor provisions of section 512, do not support a claim that X Corp. *has* reposted it.

If the OSP had restored the allegedly infringing material before you filed this claim on October 10, 2024, your amended claim must state facts about that restoration. However, if the OSP had not restored the allegedly infringing material in reliance on the October 4, 2024 counter-notice, this misrepresentation claim cannot move forward and you may not submit an amended 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.

Copyright Claims Attorney