



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0233

August 21, 2024

Jennifer Simpson

CLAIMANT

v.

Patrick Thims

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 **September 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. 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.

Access

Your claim does not provide enough facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place.

In the “Works infringed” section of the claim, you describe your allegedly infringed literary work as a wellness journal titled *Surround Yourself With Happiness Journal*. A [supplemental document](#) filed with the claim appears to be a copy of a takedown notice you sent to Spotify dated June 11, 2024, that indicated that your journal could be found on jensimpsondesign.com and on Etsy. You allege that the respondent is selling your journal on sandysiren.co. In the “Describe the infringement” section of the claim, you add: “They also stole our product photos and description as well as our Meta ads.” Your filings indicate that your journal may be generally available on your website and Etsy, and advertised on Meta. However, you do not state facts that indicate how the respondent personally had access to the journal in the first place.

To address this issue in an amended claim, you must include facts that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how your journal (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available

to the 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 work and the respondent's allegedly infringing work, if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

Substantial Similarity

Your claim also does not include enough facts to indicate how any allegedly infringing work is substantially similar to original, expressive elements of your journal that copyright protects. If the similarities between the works are not readily apparent from supplemental documents submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are substantially similar.

Copyright protection only extends to the specific creative expression in a work that is original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313.4 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Not all elements of a creative work are protected by copyright. For example, copyright law does not protect ideas, facts, systems, or methods of operation. Copyright can only protect the particular way that such things are expressed. "Blank forms . . . which are designed for recording information and do not in themselves convey information" also are not copyrightable. 37 C.F.R. § 202.1(c). The Copyright Office's [Circular 33](#) ("Works Not Protected by Copyright") lists diaries, date books, and schedulers as examples of those unprotected blank forms. Section 313.4(G) of the *Compendium* adds that copyright does not protect "any functional layout, coloring, or design that facilitates the use of a form," and that "the Office cannot register the words, short phrases, or other *de minimis* text that appears in the headings for a blank form."

Not all similarities are infringing. When two works only share similarities in unprotectable elements they are not "substantially similar" under copyright law. You allege that the respondent "took our digital journal and started selling it as their own." However, it is unclear when you say "took," whether you are alleging that they are selling an identical copy, and your claim also does not describe any particular similarities in copyrightable expression, rather than in unprotectable elements of your journal. No other allegations in the "Describe the infringement" section describe your work or the allegedly infringing work, or state how they are substantially similar. In addition, you have not provided a copy of either 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.

To address this issue in an amended claim, include more factual allegations or information that identifies substantial similarities between the works. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, and the extent to which the respondent's work is similar to your work.

Alternatively, you may upload documents or files that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, as stated above, they must be clearly labeled and identified so they can be properly compared to each other. More 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.

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