



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0208

August 9, 2024

Deborah L Miller

CLAIMANT

v.

Jeremy Hauk

RESPONDENT

## SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **September 9, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended 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.

### Copyright Infringement—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.

As noted in the Board’s July 24, 2024, Order of to Amend Noncompliant Claim, your claim does not provide

enough facts about how the respondent had access to your work and how your work and the respondent's work are substantially similar. Please provide more details and background regarding these elements in your amended claim.

### **Access**

Your claim does not provide 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 your claim, you allege that the respondent has used your photograph on their YouTube channel without seeking your permission, but you do not state facts that indicate how the respondent had access to the photograph 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 work (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 photograph appearing in respondent's YouTube channel 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 photograph appearing in the respondent's YouTube channel and your photograph are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental materials, 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 that explain the similarities between your work and the allegedly infringing work. If it is 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 similar.

You identify the allegedly infringed work as a photograph and you allege that the respondent "he displayed my copyrighted photo without my consent" during a livestream and "made the same copyright photo smaller placed it in the corner of a video he made about me and the strike he ended up with from YouTube." You also allege that the respondent "took the same photo that already had 2 videos removed from YouTube and decided that he was going to draw a mustache on it and place tear drops on my face." It appears that you are alleging that the respondent used an identical copy of your photograph, however, you do not include clear information describing the photograph or how it was used. 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 that the allegedly infringed work and the allegedly infringing work are identified and 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.

## Relief Requested

Your claim must describe the harm you suffered as a result of the respondent's alleged infringement and the relief you are seeking. 37 C.F.R. § 222.2(c)(10). In the "Description of harm suffered and relief sought" section of the claim, however, you only describe harms caused by acts other than the alleged infringement, such as the loss of employment, emotional distress, and reputational damage. In particular, you allege that you lost your job based on someone contacting your employer after seeing a photograph.

The Board is only authorized to grant certain kinds of relief and that relief must be directly related to the copyright infringement, such as lost license fees or sales caused by the infringement and profits of the respondent attributable to the infringement, or statutory damages under the Copyright Act. Unlike a federal court, the Board cannot order a respondent to stop or modify activities (sometimes called an "injunction") *unless* the respondent notifies the Board that, if found liable for infringement, they will stop or modify the activity. Respondents may decide to agree to stop or modify their infringing activity because, if they are found liable, the Board may consider that agreement when it decides how much to award as damages. If you file an amended claim seeking relief, you must revise the relief requested to forms that the Board has the authority to provide. More information about the types of relief available for an infringement claim is available at pages 6-7 and 16-17 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

## Final Amendment

Your amended claim resolved none of the compliance issues raised in the July 24, 2024, Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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](mailto: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