



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0189

United States Copyright Claims Board

AlKashif M. Marshall

CLAIMANT

v.

Niki Minaj/Cash Money

RESPONDENTS

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that the amended claim presented in your December 12, 2022 Request to Amend Pleadings (Request) 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 **February 16, 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. There is no additional filing fee for a second amended claim. If you amend your 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 a second amended claim. 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.

Improper Pleading Form

The Board claim form is a standardized form, available on [eCCB](#), where claimants must enter all relevant allegations. [37 C.F.R. § 222.2\(a\)\(1\)](#). Allegations in support of the claim must be made through the standard form. [37 C.F.R. § 222.5\(a\)](#). The November 10, 2022 noncompliance order included instructions on how to submit an amended claim using the standard form, and gave notice that the Board would dismiss your claim unless you filed an amended claim by December 12, 2022. Instead of amending the claim, on the due date, you submitted the Request, quoting and responding to issues raised in the noncompliance order.

The legislative history of the CASE Act indicates that “[i]f the parties are proceeding *pro se*, their papers and assertions are construed liberally in favor of adjudicating applicable claims and defenses,” and that “the Act requires that the parties have a meaningful opportunity to be heard.” H.R. Rep. No. 116-252, at 22 (2019). You are proceeding *pro se* (without an attorney), and accordingly, to provide you further opportunity for resolution on the merits, the Board will treat your Request to Amend Pleadings as a timely amendment that supplements the original claim, and will consider the two filings together as an amended claim.

However, if you file a second amended claim, it must include all of your factual allegations in the claim form, not in a separate document, following the instructions in this order on how to submit the second amended claim. If you do not properly use the claim form with a second amended claim, it will be found noncompliant.

Copyright Infringement – Substantial Similarity

The allegations in the original claim and the additional assertions in your Request, considered together and construed liberally, do not fully resolve the issues raised in the November 10, 2022 noncompliance order. You still have not provided enough facts to identify substantial similarities between the copyrightable elements in your work and the respondents’ allegedly infringing work. Your assertions of similarity in your original claim were not sufficient, as the noncompliance order explained, and your Request does not add any facts to those allegations.

As noted in the noncompliance order,

Your claim states that the “chorus of [‘Super Freaky Girl’] is a duplicate of my chorus” in “Kissing.” In particular, you describe your work as “[s]pelling out the 7 letter word ‘Kissing’ . . . dragging (Long Sing) the 5th letter ‘I’ . . . and finishing up with the last two letters.” You allege that the respondents “took a 5 letter word [F-R-E-A-K] and turned it into a 7 letter word by repeating the 1st two letters twice just so that it has 7 letters and then they also dragged out (Long Sing) the 5th letter in the word ‘e’ closing it out with the last two letters.” These allegations are not sufficient to establish that your work and the infringing work are substantially similar.

Your Request repeats your allegations that both your work and the respondents’ work spell out a word (K-I-S-S-I-N-G and F-R-E-A-K, respectively) and sustain one letter for a longer duration than the others. That allegation does not identify similarities that relate to copyrightable expression. Copyright law does not protect everything contained in a copyrighted work. It protects original elements of expression, but it does not protect ideas. 17 U.S.C. § 102(b). Spelling out the letters of a word, and extending the duration of one of the letters

in a vocal performance, are uncopyrightable ideas found in multiple popular recordings. Copyright does not entitle someone who uses those ideas to prevent others from doing the same.

Your Request also reiterates your assertion that the respondents' chorus repeats the first two letters of F-R-E-A-K in order to mimic the seven letters of K-I-S-S-I-N-G. In the Request, you ask, "Why would someone turn a 5 letter word into a 7 letter word if they are not trying to copy it?" However, your claim included a hyperlink to a music video of the allegedly infringing work "Super Freaky Girl" on YouTube, which contradicts your assertion. When the chorus of "Super Freaky Girl" spells out F-R-E-A-K, only the first letter is heard twice; the vocalist pauses after the second letter without repetition or echo. For the same reason, your contentions in the Request that both works have "the same Dragged out 5th letter," and that "Kiss 'i' ng & FfRf 'e' ak both has the extension of the 5th letter," are also incorrect. If Nicki Minaj "turned" a word into a six-letter word by repeating or echoing the first letter (F-F-R-E-A-K), then she extended the fourth of those letters, not the fifth.

Your claim and your Request both highlight ways that the two works are not similar other than through unprotectable ideas. To correct this issue, if you submit a second amended claim, it must include more specific allegations that identify copyrightable elements in your work that are substantially similar to elements of the allegedly infringing work.

Final Amendment

Your amended claim does not resolve all of the issues raised in the November 10, 2022 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the "**Documentation**" page. Please include only documents that are directly related to your claim.
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

January 17, 2023