



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0158

June 12, 2023

Joseph R Tomelleri

CLAIMANT

v.

Thinglink, Inc.

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 **July 12, 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.

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 provide enough facts about how the respondent had access to the allegedly infringing work and how the two works are substantially similar.

Access

Your claim does not provide facts about how the respondent had access to your works. “Access” means a

reasonable opportunity to view or hear your works 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 works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or was available to the public or respondent; or (c) are so strikingly similar to the respondent's works that the respondent could not have created them independently.

Alternatively, you can upload copies of your works and the allegedly infringing work if those images demonstrate that the works are so strikingly similar that they could not have created their works independently. You must make allegations regarding access for each work you claim was infringed. Although you have included supplemental documents with your claim, it is unclear if the uploaded images are of copies of the allegedly infringing work or copies of your registered work and copies of the allegedly infringing work. If you file an amended claim, please label the supplemental documents clearly, so that the Board can accurately compare the allegedly infringed works to the alleged infringements.

Substantial Similarity

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

Your claim states that your works are hand-drawn scientific illustrations. You separately filed two documents, each which have a thinglink.com header or a thinglink.com url. Although the supplemental documents filed with the claim include a screenshot of what could be the allegedly infringing uses ([Exhibit A](#)) and images that could be your registered works— [Exhibit B](#) with sub-headers "Tomelleri" and "image as published"—since both refer to thinglink.com the claim does not clearly identify which images are the registered works. If Exhibit B, which describes the images as "Image as published," are, in fact, your registered works, the access and substantial similarity issues in this compliance order could be rectified through proper labeling of that exhibit.

As currently drafted, because of the unclear labeling, your claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must fix the labeling issue or include more factual allegations that support the element of substantial similarity. That would mean providing more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. Again, 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. 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