



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0058

United States Copyright Claims Board

Michelle Shocked

CLAIMANTS

v.

James Billington

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **November 17, 2022**. 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 extra 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.

Copyright Infringement Claim – Copyright Ownership

Your amended claim remains non-compliant because the registration raises legal issues about your ownership of the allegedly infringed work. To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement[.]” 17 U.S.C. § 1504(c)(1).

As the September 21, 2022 [Order to Amend Noncompliant Claim](#) explained, because you are not listed as an author or named copyright owner of the allegedly infringed work “The Texas Campfire Tapes” on the copyright registration identified in your claim (“SR0000096727”), you must specify how you are the copyright owner. Copyright Office records for that registration identify Mercury Records as the claimed copyright owner, and as the author of the sound recording and photograph given their claimed status as an “employer for hire.” For legal purposes, the author of a “work made for hire” may not be the individual who actually created the work. In certain circumstances, the party that employed the individual is considered both the author and the copyright owner of the work. More information about authorship and works made for hire is available in [Circular 30: Works Made for Hire](#).

The registration lists the registered work as a sound recording. In the “Works infringed” section, you describe the works as a “sound recording embodying . . . copyright controlled compositions by Michelle Shocked.” It is unclear if you are alleging infringement of the sound recordings and the musical compositions, or both.

When recording a song, you may be creating two works that are protected by copyright: a musical work and a sound recording. A sound recording and the music, lyrics, words, or other content included in the recording are separate copyright-protected works. A musical work is a song’s underlying composition along with any accompanying lyrics. Musical works are usually created by a songwriter or composer. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are typically created by the performer and the producer of the recording. If the sound recording qualifies as a work made for hire, the employer would be considered the author for copyright ownership purposes. More information about musical compositions and sound recordings is available in [What Musicians Should Know about Copyright](#).

If you are alleging infringement of the sound recording, you must show you are the legal or beneficial owner of the copyright in the sound recording. When amending your claim, you must provide some specific allegations about how you own the copyright in the registered work or that you own the exclusive rights at issue or have an exclusive license to distribute copies of the work and publicly display the work.

You can do this either by adding facts to the “Describe the infringement” section explaining your ownership in exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may describe your relationship with Mercury Records and detail how you obtained legal or beneficial ownership of the copyright. When amending your claim, you should also correct the effective date of the registration, which is listed as July 15, 1988 in the registration record.

If you are alleging infringement of underlying musical works, you must show that their copyrights are registered, or subject to a pending application for registration, and that you are the legal or beneficial owner of the copyright in the musical works. In that case, add the registration or application numbers to the “Works infringed” section of your second amended claim and detail how you obtained legal or beneficial ownership of copyright in those particular works. You must have had a registration or pending application for registration as of July 15, 2022, the date you

filed your claim in this proceeding. 17 U.S.C. 1505(a).

The “Describe the infringement” section of the claim also mentions an “unauthorized display of the copyright protected artwork.” In your second amended claim, to clarify the basis for your infringement claim, please confirm in the “Describe the infringement” section if you are referencing the photograph covered by the SR0000096727 registration, and detail how you obtained legal or beneficial ownership of the copyright.

More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Copyright Infringement Claim – Clarity

Your amended claim remains non-compliant because your claim does not make clear enough factual allegations about the wrongful activities that you accuse each respondent of doing. In your amended claim, you allege that the respondent engaged in “unauthorized distribution of a counterfeit product on an online third-party marketplace, advertised as ‘used.’” It is unclear if you are alleging if the respondent is selling a used copy, or a pirated copy, of the allegedly infringed work. If you submit an amended claim, you must include facts in the claim form that more fully explain how the respondent infringed your work.

Final Amendment

Your amended claim resolves some, but not all, of the issues raised in the September 22, 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 claim flow 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney
October 18, 2022