



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-410

January 4, 2024

HAZAEEL J DOMINGUEZ

CLAIMANT

v.

ASHLEY C BURBACH, GERALD BURBACH

RESPONDENTS

## 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 **February 5, 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.

### Misrepresentation — Elements

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
  - a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider’s decision to take down or repost the

content,

5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim does not describe a copyright takedown notice or counternotice, does not list the dates of the takedown notice or counternotice, does not state a specific copyright-related misrepresentation in the counternotice, and does not specify how each respondent made a misrepresentation. More information is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

## **Takedown Notice**

To support your claim of misrepresentation, you must provide additional facts about your takedown notice. The DMCA notice and takedown process allows copyright holders to get user-uploaded material that infringes their copyrights taken down off of websites. A copyright owner can provide a takedown notice to an online service provider, notifying them that someone posted infringing content on the service provider's system or network and demanding it be taken down. In your claim, you describe your takedown notice as "HATE SPEECH, HARASSMENT, AND PERSONAL ATTACK VIDEOS." Your description of the content of the takedown describes what you believe is in the content of the videos themselves but does not describe the **copyright takedown notice** sent under Section 512. Further, you have not included the date that the takedown notice was sent. To correct this issue, you must describe the content of your takedown notice(s) including the allegedly infringing content that you requested be removed and include the date the takedown notice(s) were sent. You may also attach the copyright takedown notice you sent YouTube to your claim.

## **Misrepresentation**

To violate section 512(f), a statement must misrepresent "that material or activity is infringing, or . . . that material or activity was removed or disabled by mistake or misidentification." 17 U.S.C. § 512(f)(1)-(2). In your claim, you describe the content of the counternotice as "false identity" and describe the misrepresentation as "GERALD BURBACH DID NOT SEND THE VIDEOS. THE VIDEOS WERE CREATED BY AND POSTED BY ASHLEY CHERYL BURBACH." These allegations about misrepresentations appear to be about false statements unrelated to copyright, with no evident connection to a DMCA takedown notice or counter-notice.

To support your claim of misrepresentation, you must provide additional facts to show that the counter-notice included a false or incorrect statement of fact "that material or activity is not infringing" or "that material or activity was removed by mistake or misidentification," and that shows or explains why the statement was false or incorrect. If you submit an amended claim, you must state facts in support of each element of the claim, including allegations that describe a false or incorrect statement of fact by the respondent that would violate section 512(f), and indicating what words were false or incorrect and how they were false or incorrect.

## **Proper Respondent**

Your claim is also not compliant because it provides conflicting information about which entity or individual made a misrepresentation in a takedown notice or counter-notice to an online service provider. A misrepresentation claim must allege that the respondent sent a takedown notice or counternotice and made a misrepresentation in that document.. In your claim, you name ASHLEY C BURBACH and GERALD BURBACH as the respondents; however, when asked to identify the sender of the counternotice you only name GERALD BURBACH. If you believe that ASHLEY C BURBACH was responsible for *sending* the counternotice, you must include additional factual allegations that explain in what way this respondent made a misrepresentation in your amended claim. If ASHLEY C BURBACH did not send the counternotice, you must remove them as a respondent. You can only have two respondents in a misrepresentation claim if you can show that they were *both* responsible for making the misrepresentation.

### Supplemental Documentation

The files uploaded as a supplemental document in support of your claim appear to be html formatting in text file format or .txt documents. If you file an amended claim, please ensure that any supplemental documents you choose to file are fully functional. Information about adding supplemental documents to a claim is available on page 11 of the [Starting a Misrepresentation 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](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