



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0201
August 26, 2024

Michelle Shocked

CLAIMANT

v.

Dan Hodgson

RESPONDENT

ORDER FINDING BAD-FAITH CONDUCT AND A PATTERN OF BAD-FAITH CONDUCT AND DISMISSING CLAIM

On July 6, 2024, Claimant Michelle Shocked (Claimant) filed this copyright infringement claim before the Copyright Claims Board (Board), which alleges that respondent Dan Hodgson (Respondent) posted a YouTube video in June containing two of Claimant’s songs without authorization. Claim (Dkt. 1). The Claim provided a clearly invalid mailing address for Respondent: the address of YouTube’s office in San Bruno, California. In a supplemental document filed with the Claim, labeled [Dan Hodgson DMCA.docx](#), Claimant quoted correspondence including Claimant’s June 18, 2024 takedown notice to YouTube; Respondent’s June 21, 2024 email to Claimant, described by Claimant as “an email from the UK-based uploader” of the video; and Respondent’s June 26, 2024 counter-notice to YouTube, which included a mailing address for Respondent in Prudhoe, Northumberland, United Kingdom. Claim (attachment at Items 2, 6 & 9).

On July 11, 2024, the Board ordered Shocked to show cause why filing the Claim with an invalid address did not constitute bad-faith conduct under 37 C.F.R. § 232.3 and, along with the conduct documented in *Shocked v. Redstone*, Claim No. 24-CCB-0074, a pattern of bad-faith conduct under 37 C.F.R. § 232.4. Order to Show Cause (“OSC”; Dkt. 3). On the same date, the Board issued a noncompliance order that set forth the discrepancies in the Respondent address information provided in the Claim, stated that YouTube’s address could not be used instead of Respondent’s actual address, and directed Claimant not to file an amended claim unless Respondent was an individual or entity residing in the United States. (Dkt. 2).

On July 31, 2024, Claimant filed a response to the OSC. Response (Dkt. 6). On August 12, 2024, Claimant filed an amended claim that again provided YouTube’s San Bruno address as if it were Respondent’s mailing address, and added “c/o YouTube” to Respondent’s name in the claim form. Amended Claim (Dkt. 8). On August 15, 2024, the Board held a conference regarding Claimant’s conduct, providing Claimant an opportunity to explain her conduct described in the OSC.

I. Claimant’s Bad-Faith Conduct in This Proceeding

Claims before the Board “asserted against a person or entity residing outside the United States” are categorically prohibited. 17 U.S.C. § 1504(d)(4). The eCCB online filing system specifically informs filers of this prohibition in a notice that states, “the CCB cannot hear claims . . . [w]ith foreign respondents,” and explains that the consequences

of such a claim include “potential limits on filing future claims.” eCCB requires a United States address for respondents, including a United States state or district and zip code. When the Claim was submitted, an additional notice in the “Respondent” section of the claim form on eCCB warned Claimant that claims cannot be filed against respondents residing outside of the United States.

Claimant has seen those warnings repeatedly, as this is the sixteenth claim Claimant has filed on eCCB. The Board directly notified Claimant of this specific prohibition several other times before she filed this Claim. In two orders in an earlier proceeding filed by Claimant against a YouTube user with a foreign address, the Board instructed Claimant: “The Board cannot hear a claim asserted against a person or entity residing outside the United States.” Order to Amend Noncompliant Claim, *Shocked v. Zhang*, Claim No. 23-CCB-0135 (May 2, 2023); Second Order to Amend Noncompliant Claim, *id.* (June 26, 2023). Board staff reiterated the point in a series of emails to Claimant discussing another proceeding: *Shocked v. LANDR, Inc.*, Claim No. 23-CCB-0399. On April 23, 2024, Claimant was informed: “The CCB can only hear claims against corporations or other business entities residing in the United States. *See* 17 U.S.C. § 1504(d)(4). Unless you can demonstrate how LANDR resides in the United States, your claim may not go forward.” On April 25, 2024, Board staff again explained to Claimant: “if LANDR is not a United States resident, the CCB is barred from hearing the claim, regardless of whether or not LANDR would choose to participate. The CCB would not have jurisdiction over a Canadian company.”

Claimant acknowledged that Respondent is not located in the United States. In a document filed with the claim, Claimant identified Respondent as “the UK-based uploader” and quoted the counter-notice listing Respondent’s United Kingdom address. Claim (attachment at Items 6 & 9). Claimant characterized this case as “involving transnational copyright infringement activity,” and contended that “delivering notice of the claim to Hodgson in the UK complied with” Rule 4 of the Federal Rules of Civil Procedure. Response at 1, 2. (Those rules govern civil actions in the United States district courts, but not proceedings before the Board. Fed. R. Civ. P. 1; 37 C.F.R. § 222.1.) While Claimant also called Respondent “a purported foreign actor” and asserted, “[t]his isn’t the first time YouTube concealed the identity of a US-based channel owner,” she offered no evidence that Respondent resides anywhere other than the address stated in his counter-notice. Response at 3.

The Board finds that Claimant submitted the Claim and Amended Claim with an obviously inaccurate domestic address for a foreign respondent, despite the knowledge that claims against foreign residents are prohibited, and despite prior warnings not to use YouTube’s address to circumvent this prohibition. Before submitting the claim, Claimant certified under penalty of perjury that the information provided in the claim was accurate and truthful to the best of her knowledge. *See* 37 C.F.R. § 222.2(c)(12). Nevertheless, the Claim listed YouTube’s mailing address as Respondent’s street address. Claimant had listed YouTube’s address in at least four other Board proceedings and in an action in federal court. *See* OSC at 1-2. Entering a California state code and zip code for Respondent means that Claimant must have both ignored the warnings on eCCB and entered a U.S. address to evade the technological barriers to entering a foreign address. Despite the many warnings in this proceeding and others, Claimant doubled

down, and filed her Amended Claim that again attributed obviously inaccurate domestic address information to an admittedly foreign respondent.

In her Amended Claim, Claimant asserted that jurisdiction was proper because Respondent consented to it:

In order to obtain his YouTube account, Hodgson consented to US jurisdiction, and thus is not exempt from CCB jurisdictional liability simply because he resides [allegedly] in the UK. Hodgson consented to jurisdiction specified by YouTube in the YouTube user agreement, and further contracted with them to act as his copyright infringement agency, by hiring them to distribute in the US on his behalf.

Amended Claim (“Description of harm suffered and relief sought” section).

Claimant’s Response similarly contended that it was proper to treat YouTube’s address as Respondent’s address because, Claimant asserted, Respondent:

- used YouTube “as an agent to conduct the infringing activities in the United States on his behalf,”
- in his YouTube user agreement, consented “to indemnify YouTube for copyright infringement claims” and “to appear in Federal court in Santa Clara, California and be subject to its jurisdiction,”
- in his counter-notice, consented “to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district in which YouTube is located,” and agreed to “accept service of process from the claimant,” and
- “waived any claim that service was improper and appeared in the case.”

Response at 1-2.

None of those asserted facts justify Claimant’s baseless pursuit of a foreign respondent in this proceeding, or the submission of YouTube’s address instead of the United Kingdom address stated in Respondent’s counter-notice. With an exception that does not apply here, all claims before the Board must include “the mailing address(es) of the respondent(s).” 37 C.F.R. § 222.2(c)(6). Calling YouTube Respondent’s “agent,” or adding “c/o YouTube” to his name in the claim form, does not make its address a valid address for Respondent. It is clear that YouTube is not Respondent’s agent and there is no reason to imagine that mail or service sent to YouTube would actually reach Respondent. Claimant did not contend or show that YouTube agreed to accept mail for him or to accept service of process on his behalf. In the counter-notice Respondent agreed to accept service from Claimant, but the counter-notice did not make YouTube his intermediary or designated service agent.

The YouTube user agreement is not relevant to Claimant’s conduct in this proceeding. She did not bring this claim against YouTube, so it does not matter that Respondent agreed to indemnify YouTube from infringement claims, and it does not make true Claimant’s contention “that YouTube was Respondent’s agent conducting the infringement on his behalf.” Response at 2.

It also does not matter that Respondent consented to the jurisdiction of a federal district court in California. *See id.* at 1-2. The Board is not a federal court; it “is an alternative forum to Federal court.” 37 C.F.R. § 220.2; *see also* 17 U.S.C. §§ 1504(a), 1506(a)(2), 1507(b)(1), 1508, & 1509. A foreign resident cannot consent to be a respondent in a Board proceeding because the CASE Act specifically prohibits claims “asserted against a person or entity residing outside of the United States.” 17 U.S.C. § 1504(d)(4). Respondent gave no such consent. As the Board’s May 2, 2023 noncompliance order in *Zhang* informed Claimant, “even if the respondent consented to be sued in a federal court in California, that would not give the Board a basis to hear a claim against a foreign resident.” And, of course,

none of this matters in terms of Claimant's submission of an obviously false address for Respondent in the Claim filing.

Claimant's assertions that Respondent "waived any claim that service was improper and appeared in the case" are wrong and irrelevant to Claimant's actions. Response at 2. Agreeing to accept service would not mean agreeing to accept improper service, and Respondent has neither been served nor appeared in this proceeding. Until a claim is found compliant, there is no opportunity for service or a respondent's appearance, *see* 17 U.S.C. § 1506(f)-(i), and this claim was never found compliant.

Claimant argued that pursuing Respondent in this proceeding did not constitute bad faith because, after the counter-notice, YouTube would restore the video unless Claimant took legal action within ten business days. Her contention that YouTube therefore "required that this CCB case be commenced" is incorrect. Response at 3. Claimant chose not to take such legal action by filing suit in court. Instead, she brought a proceeding before the Board, where she knew claims against foreign residents are not allowed.

Therefore, the Board finds that the actions of Michelle Shocked in this proceeding constitute bad-faith conduct, as defined in the Board's regulations: "Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an active proceeding." 37 C.F.R. § 220.1(c). Under this standard, the Board finds that Claimant did not have a reasonable basis in law or in fact to file a claim and an amended claim against a respondent residing outside the United States despite multiple, clear warnings and technological barriers to deter such a filing, and to intentionally and falsely use YouTube's address for Respondent despite being previously warned against such actions.

II. Claimant's Bad-Faith Conduct in Other Proceedings

The Board issued a Finding of Bad Faith against Claimant in *Shocked v. Redstone*, Claim No. 24-CCB-0074, on April 24, 2024. Claimant corresponded with the respondent in that proceeding before filing the claim, proposing not to enforce any determination against him if he agreed to participate in the proceeding, evidently seeking to engineer a fraudulent determination for later use in proceedings against YouTube: "If you agree to participate, I can offer you immunity. My real focus is YouTube" As detailed in that finding, it was "a scheme that would use the Board's time and resources to litigate a claim where no genuine legal dispute exists, and for an improper purpose."

Such bad-faith conduct is not tolerated. The OSC in this proceeding warned: "If the Board determines that Claimant engaged in bad-faith conduct in this proceeding, within 12 months of the April 24, 2024 Bad-faith Finding [in *Redstone*], penalties for Claimant would include the dismissal of this proceeding, the dismissal of Claimant's active proceedings (if the respondents consent to dismissal), and a ban on filing new Board proceedings for a one-year period." OSC at 2. Those penalties are mandatory under 37 C.F.R. § 232.4(d).

Claimant is an active Board participant, initiating sixteen proceedings in just over two years. Aside from the two specific findings of bad faith, Claimant has been cautioned in multiple proceedings about bringing copyright infringement claims without a reasonable basis. In the April 3, 2024 Final Determination in *Shocked v. Billington*, Claim No. 22-CCB-0058, the Board dismissed the claim based on the “first sale” doctrine and warned that “in any future filings, Shocked should consider whether she is attempting to stretch copyright law too far.” In the August 22, 2024 Final Determination in *Shocked v. Law Rocks*, Claim No. 23-CCB-0024, the Board found that Claimant had proceeded with the infringement claim despite the contrary advice of experienced copyright counsel, and “despite a total lack of factual support,” as she had clearly granted the respondent an implied license for the only allegedly wrongful use.

Claimant’s Response does not dispute or address the bad-faith finding in *Redstone*, does not counter the evidence of bad faith in this proceeding, and does not explain why the Board should not find a pattern of bad-faith conduct. The Board finds that her conduct before the Board, including the conduct exhibited in this proceeding and in *Redstone*, constitute a pattern of bad-faith conduct under section 232.4(d). Accordingly, the Board dismisses the claim without prejudice and closes case 24-CCB-0201.

The Board also must bar from its proceedings, for a period of 12 months, any party that is found to have engaged in bad-faith conduct on more than one occasion in a 12-month period. The Board must also dismiss any pending proceedings commenced by the party that have not yet been deemed active; any pending active proceeding commenced by the party shall be dismissed only if the respondent provides written consent to dismissal. 17 U.S.C. § 1506(y)(3); 37 C.F.R. § 232.4(d).

Based on the foregoing, the Board determines that Claimant Michelle Shocked is barred from initiating any claims before the Board for the 12-month period beginning today, August 26, 2024, through August 25, 2025.

The only proceedings that Claimant has pending before the Board have been deemed active, so they are not subject to automatic dismissal. The Board will contact the respondents in those proceedings to determine whether they wish to move forward or have their cases dismissed without prejudice.

Copyright Claims Board