



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0345

December 2, 2024

Joseph R. Tomelleri

CLAIMANT

v.

Brabusline Inc

RESPONDENT

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 **January 2, 2025**. 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 – Elements

You have raised a copyright infringement claim, alleging infringement of five illustrations. 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 works, or have been given an exclusive license to the copyright rights at issue in the works,
2. The respondent used one of your exclusive rights in the works without permission,
3. The respondent had access to your works, and
4. The respondent’s works are substantially similar to the original elements of expression in your works.

Your claim provides enough support at this stage for your allegations of infringement of three of the five allegedly infringed illustrations. However, for your illustrations titled “Golden Trout” and “Kern River Rainbow Trout,” your claim does not provide clear facts to support the elements related to the respondent’s access to your works and substantial similarity, as described below. If you file an amended claim, it must include enough details

about the elements for the Board and the respondent to understand the facts of the alleged infringement for each of those two allegedly infringed works.

Access

You allege that the respondent reproduced and displayed your works, or derivatives of your works, on its fishing lure products and on its website. However, your claim does not provide facts that indicate how the respondent had access to your “Golden Trout” and “Kern River Rainbow Trout” illustrations in the first place. “Access” means a reasonable opportunity to see or copy your work before the alleged infringement took place. You state that both illustrations were published in a work titled “Sierra Trout Guide,” but you do not state facts to indicate how that work has been distributed

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 how your works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or were available to the 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 works, if they demonstrate that the works are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental materials, they must be clearly labeled and identified so they can be properly compared to each other. The [CCB Ex B.pdf](#) document filed with your claim shows images of the five allegedly infringed illustrations, and the [CCB Ex A.pdf](#) document includes images of allegedly infringing lures that bear striking similarities to three of your allegedly infringed works, but the lures in the CCB Ex A document do not appear strikingly similar to “Golden Trout” or “Kern River Rainbow Trout.”

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between “Golden Trout” and “Kern River Rainbow Trout” and any allegedly infringing works. If it is not readily apparent from supplemental documents submitted with the claim, you must provide specific allegations about how your works and the allegedly infringing works are substantially similar.

Your claim does not provide enough information describing or showing any allegedly infringing work to indicate how it is substantially similar to either “Golden Trout” or “Kern River Rainbow Trout.” In the “Describe the infringement” section, you state that the respondent “placed the five illustrations directly on their fishing lure products,” but that general assertion is not detailed enough to state or show how any of respondent’s works are identical or substantially similar to “Golden Trout” or “Kern River Rainbow Trout.” In addition, you have not provided copies of any works substantially similar to those works as supplemental materials. As a result, the claim does not provide enough information to enable the Board to understand the similarity of those two works and any of the respondent’s works.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works were used by the respondent without authorization, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental materials, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

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.