



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0147
May 29, 2024

Axelsson Fun Factory LLC

CLAIMANT

v.

Walmart 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 **June 28, 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.

Allegedly Infringed Work – Clarity

Your copyright infringement claim does not clearly identify the works that were allegedly infringed. In the “Works infringed” section of the claim, you state that the title of the allegedly infringed works is “Marketing photos for Rain Cloud December 2022,” and you provide Registration No. VA 2-334-548, which is the copyright registration number for a group of thirty-two photographs. You allege that the infringing images “are my registered copyrighted photos of my product.” While a supplemental document filed with the claim shows several product photographs on the respondent’s website, it is not clear which of your photographs, or how many, you allege are infringed. If you file an amended claim, you must specify which particular works are at issue.

Access

Your claim does not provide facts about how the respondent had access to your allegedly infringed works. “Access” means a reasonable opportunity to view or copy the works before the alleged infringement took place. In one of the supplemental documents attached to your claim, you contend that the respondent “is acting as an agent of Bilot,” but you have not stated or shown how either the respondent or Bilot had access to your works before the alleged infringement.

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 works on the respondent's website that they could not have been created 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. Your claim includes a supplemental document showing several photographs on the respondent's website, but it does not clearly identify which of those photographs are allegedly infringing works, and you have not uploaded copies of your works. 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.

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 the claim, you must provide some specific allegations about how the allegedly infringing works are identical or substantially similar to your works.

As discussed above, you identify your works as a group of thirty-two marketing photographs, and a supplemental document shows some photographs on the respondent's website. However, you do not provide enough information describing or showing your works. The allegations in the "Describe the infringement" section of the claim do not describe how your works and the allegedly infringing works are identical or substantially similar. In addition, you have not provided copies of your works as supplemental documents, or clearly identified the allegedly infringing works. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more details and background regarding substantial similarity, including a clear, detailed statement regarding which portions of your works were taken by the respondent in the allegedly infringing works, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Harm Suffered

Your claim must include a statement of the harm you suffered as a result of the alleged infringement. 37 C.F.R. § 222.2(c)(10). In the "Description of harm suffered and relief sought" section, you allege harms to your brand and reputation due to a Chinese counterfeiter's sale of unlicensed knockoffs, but you do not describe harms based on the allegedly infringing use of the photographs themselves. To address this issue, your amended claim must identify some harm attributable to the alleged infringement of the photographs.

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