



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0248

August 24, 2023

The American Bv, wilco agten

CLAIMANT

v.

The Good Ones, Inc., John H Fiorentino

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 **September 25, 2023**. 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 Claim– Respondent Clarity

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Your claim must make enough factual allegations to support each “element” of the claim. 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. 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 is 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 a misrepresentation made by the respondent. In your claim, you name The Good Ones, Inc. and John H Fiorentino as the respondents; however, when asked to identify the sender of the notice you only list “The respondent.”

Because the role of each respondent is unclear and the claim does not specify how both respondents made a misrepresentation, your claim cannot proceed.

If you believe that both of the named respondents were responsible for *sending* the notice, you may file an amended claim that includes factual allegations that explain in what way the named respondents made a misrepresentation. If only one of the respondents made the misrepresentation, you must remove the other party and assert an amended claim only against that respondent. A proper respondent for a claim before the Board is an individual or entity that resides in the United States and is not a state or governmental entity.

Furthermore, you should explain how you know which respondent made the alleged misrepresentation. In your claim, you appear to have attached the takedown notice at issue, but there is nothing in that takedown notice—which says it comes from moonpals.com—that suggests it came from either respondent, so you should make clear why you believe the respondents listed in any amended claim you file are responsible for the misrepresentation.

More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

### **Misrepresentation Claim– Harm**

Your claim also includes two separate claimants, The American Bv and wilco agten. In the “Description of harm suffered and relief sought” section of the claim, you state that “This is the second time this respondent has made this claim. 3 month ago he made the exact same claim which he retracted a month later. Now he has gone and did it again.” However, you do not specify how *each claimant* was harmed by a false or incorrect statement to an online service provider. It appears as though The American Bv may be the name of your Amazon seller account, but it is unclear if The American Bv is a separate legal entity. Even though you may be the owner of The American Bv, the law considers LLCs and corporations to be separate legal entities from the individuals who own them. Because the role of each claimant is unclear and the claim does not specify how each claimant has been harmed, your claim cannot proceed.

To correct this issue, you can either (1) amend the claim to eliminate one claimant or (2) provide additional information about how each claimant was harmed by a false or incorrect statement to an online service provider. It may also be helpful to include additional information in the “Description of harm suffered and relief sought” section of the claim that explains the relationship between The American Bv and wilco agten.

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