



# COPYRIGHT CLAIMS BOARD

Docket number: 25-CCB-0128  
April 29, 2025

Sandra Cuestas

CLAIMANT

v.

DiGiAnnounce

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 **May 29, 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 brought a copyright infringement claim before the Board. 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 work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide sufficient information about how the copyrightable expression in the respondent’s work is substantially similar to the copyrightable expression your work. Please provide more details and background regarding this element in your amended claim.

## Substantial Similarity

Your claim does not include sufficient facts that show the similarities between the copyrightable expression in your work and the copyrightable expression in the respondent's allegedly infringing work. If it is not readily apparent from the information included in your claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar. If you cannot do this, based on the below explanation, you should not file an amended claim.

Your claim states that your work is a photograph created by “using real, physical props arranged in a flat-lay scene and photographed in a 3D medium.” You further state that the respondent “used AI to generate a derivative work that closely imitates my original layout, props, and styling—mimicking the overall look and feel of my announcement in a way that is unmistakably based on my copyrighted work.” You separately included your work and screenshots of the respondent's work as supplementary documents. It appears from the information included in your claim, that you are claiming infringement of the unprotectable elements of your work. Even if the respondent was influenced by the overall look of your arrangement, that does not mean that respondent infringed the copyright in the work, especially here, where your copyright is in the photograph of the arrangement. Copyright protection does not extend to the idea underlying the work; only the expression of the idea by the artist is protected. *See* 17 U.S.C. § 102(b). In your claim, you have not included any allegations that respondent actually copied your photograph, just that they used similar props and styling to create their own image. The use of similar physical props including carrots, flowers, and rabbits is not protected by copyright.

As a result, the claim is not a complaint copyright claim for the Board. You should not submit an amended claim if it will not overcome the above-stated principles of copyright law. If you do submit an amended claim, it must include specific 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 work were taken by the respondent in the allegedly infringing work, or additional documents that are sufficient to show the similarities in the copyrightable expression. More 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.

## Misrepresentation Claim—No Reliance

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 (OSP) 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 misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,

3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP's decision to repost the content, and
5. You were harmed as a result of the OSP's decision to repost the content.

17 U.S.C. § 512(f). The information provided in your claim indicates that the alleged misrepresentation could not have been a factor in any decision by the OSP to repost the content because the OSP had not reposted the material at issue at the time you filed your claim.

In your claim, you stated that the counter-notice at issue was sent on April 8, 2025, and you filed your claim on April 9, 2025. The proximity of these dates suggests that the OSP may not have reinstated the material at the time you filed your claim, and there is no allegation in your claim that the OSP did repost the content. “Safe harbor” provisions in section 512 of the Copyright Act protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material not less than ten or more than fourteen business days after receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. More information is available on the Copyright Office’s [section 512](#) page. If the OSP had restored the allegedly infringing material prior to the filing of your initial claim on April 9, 2025, your amended claim must state facts about that restoration.

Because you have filed a misrepresentation claim that does not appear to relate to a material misrepresentation that was important to an OSP's decision to repost the content, we have not reviewed the remainder of your misrepresentation claim to determine whether it complies in other respects with the legal and formal requirements for a claim before the Board. If you submit an amended claim that resolves this issue, the Board will engage in a full compliance review, so you should review the [CCB Handbook](#) and make sure the rest of your amended claim is compliant.

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 Board