



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0388

November 27, 2023

Kimberly Marasco

CLAIMANT

v.

Taylor Swift Productions, 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 **December 27, 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.

### Work Infringed- Registration Information

The “Works infringed” section of your claim states that the allegedly infringed work “Fallen from Grace” was registered as “TXu2061218.” However, a Board search of Copyright Office records showed that that registration number corresponds to “Dealing with a Chronic Illness: Vestibular Neuritis.” It appears that “TXU002200550” is the correct registration number for “Fallen from Grace.” To address this issue, you must include the correct registration number and information for the allegedly infringed work.

### 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 enough facts about how the respondent had access to your work and how the respondent's work is substantially similar to the creative expression in your work. Please provide more details and background regarding this element in your amended claim.

### **Access**

Your claim does not provide facts about how the respondent had access to your work. "Access" means a reasonable opportunity to view or hear your work before the alleged infringement took place. In your claim, you state that you submitted the work "to hundreds of literary agents including Jack Antonoff who works with Taylor Swift." However, you did not state any facts that detail how Jack Antonoff is connected with Taylor Swift Productions, Inc or how Taylor Swift Productions, Inc had access to your work. 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 allegations of facts showing that your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent's work that the respondent could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work 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 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 work and the respondent's allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

In your claim, you have attached a [supplementary document](#) that compares Taylor Swift's lyrics and themes to the poems and themes in your work. However, the allegations of similarity in the claim appear to relate only to ideas, broad themes, individual words and phrases, and names. Copyright does not protect ideas although it may protect the way ideas are expressed. Further, copyright law does not protect stock characters, settings, or events that are common to a particular subject matter or medium because they are commonplace and lack originality. None of the similarities that you identify in the claim appear to relate to similarities in copyrightable expression. The Taylor Swift lyrics quoted in the claim do not appear to have any similarity to any copyright-protected expression that you quote or discuss from your allegedly infringed work.

A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302

and 308 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

Your allegations indicate that respondent's works did not copy or use any of your specific expression included in your poems. For example, in "Example 3" in your supplementary document you state that your poem discusses "how an invisible power (which I refer to in my poem as the wind) is leading us to certain places and fulfilling purposes." You further state "I describe how the wind has power." This is an idea unprotected by copyright. Taylor Swift's use of commonplace subjects including willows bending in the wind in her song lyrics do not infringe on any specific expression in your work. The passages, as quoted in the supplementary document, do not appear to have any protectable expression in common. Additionally, you have included a comparison of an Instagram picture of yourself and an Instagram picture of Taylor Swift and it is unclear if your photograph was included in your registered work. Holding a "70s style" telephone for a picture is likewise not a copyrightable expression.

You have not identified any other original elements of expression in your allegedly infringed works as substantially similar to any aspect of the allegedly infringing work. If there are such areas of substantial similarity, you must provide specific allegations that detail the similarity. If you submit an amended claim, your description should include more specific allegations, identifying which particular elements in the respondent's work copied from which specific copyrightable subject matter in your works. More information about what to include in the "Describe the infringement" section is available at pages 14-15 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

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