



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0205
July 25, 2024

Katherine Estes

CLAIMANT

v.

Joe Vitale

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **August 26, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

To make your second 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 amended 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.

Substantial Similarity

Your claim, as amended, still does not include enough facts that explain or show the similarities between your work and the respondent's allegedly infringing works. Your amended claim includes a supplemental document labeled [history llc.pdf](#), which appears to be some or all of your allegedly infringed work. You allege that the respondent infringed the work in "up to 20 videos on YouTube." You do not provide the allegedly infringing videos or describe them in any detail. A supplemental document labeled [Hill House Review! BLAH!.url](#) includes a link to a YouTube video that may be an allegedly infringing video, but as stated in the July 12, 2024 noncompliance order, "when reviewing claims, the Board will not take into account material that is solely referred to in URLs and not uploaded along with the claim, in part because URLs can lead to material that is no longer available." The URL you provide leads to a video marked as "members-only content," so the Board cannot even determine if it is one of the allegedly infringing works. Because you have not provided any allegedly infringing videos or described them in any detail, the Board does not have enough information to evaluate the claim.

You identify your work as a literary work titled “History Tour of The Haunted Hill House LLC.” You allege that the respondent infringes your copyright in YouTube videos in which “he shares a written version of the tour on live video and he is telling people the history of our home,” and that the videos “discuss our location[]’s History” and are “slandering our location.” However, you do not describe whether your literary work is used in the respondent’s videos and, if it is, how much of the work, or which elements of the work, are used in those videos. As stated in the July 12, 2024 noncompliance order:

Your allegations in the “Describe the infringement” section do not describe or show how the videos are substantially similar to copyrightable material in your work. When you state that the respondent “shares a written version of the tour,” it is not clear if you mean that his videos repeat or display text from your literary work or from some other written description. Your allegations that the respondent discusses the history of your home and location do not describe copyright infringement because historical facts are not copyrightable.

To address this issue in a second amended claim, it must include more factual allegations or information that identifies substantial similarities in copyrightable expression between your work and the respondent’s allegedly infringing videos. Please provide more details and background regarding this element in your second amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing works, and the extent to which the respondent’s works are similar to the work that you allege was infringed.

Alternatively, you may upload documents or videos that are sufficient to show the similarities. 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. In addition, if you upload the allegedly infringing video as a supplemental document (instead of just providing a URL, which is not sufficient), you must clearly indicate where in the video the allegedly infringing content appears, for example, by stating the start and end times of the allegedly infringing section or sections. 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.

Online Service Provider

In response to questions in the claim form, you still assert that the respondent is an online service provider (OSP) and that you sent the respondent a takedown notice to take down third-party material. OSPs include content-sharing websites and internet search engines, among other services. However, other allegations in the amended claim suggest that the respondent is not an OSP, and that he did not act as an OSP in relation to infringing material posted by a third party. As further detailed below, if you file an amended claim, you can address this issue by answering “No” to the claim form question, “Are any of the respondents online service providers?”

Special rules apply to infringement claims brought against OSPs, which provide online services to store (and make available), refer to, provide access to, or link to material that is available online. Please visit the [section 512](#) page and the discussion at pages 18-19 of the CCB Handbook chapter on [Starting an Infringement Claim](#) for more information about what section 512 of the Copyright Act requires for an infringement claim against an OSP.

Factual allegations in your claim suggest that the respondent did not act as an OSP in relation to infringing material posted by a third party. You allege that he committed infringement by sharing videos on YouTube and that you “have reported it to youtube many times.” Those allegations indicate that the respondent personally posted the allegedly infringing material, while YouTube is the OSP that stored the material. If this is accurate, then you can address this issue by answering “No” to the question asking if the respondent is an OSP and leaving the remaining information in place. Alternatively, if the respondent is an OSP, and you seek to hold him directly liable for his own actions and not for failing to take down material posted by a third party, then you must answer “No” to the question, “Are you bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others?”

Final Amendment

Your amended claim does not resolve the issues raised in the July 12, 2024 noncompliance order. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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 supplementary 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