



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0103
April 2, 2024

Richard Gideons

CLAIMANT

v.

Chris Buechner

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 **May 2, 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.

Copyright Registration

The Board can only hear a copyright infringement claim if, *before* the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a).

You filed this claim on March 28, 2024, at 2:50 PM, alleging infringement of works titled “2 Many” and “Sober Skull.” It appears that the deposit for “2 Many” was delivered to the Copyright Office at 4:14 PM the same day, *after* this claim was filed. The term “deposit” refers to the copy or copies of a work that must be submitted to the Copyright Office with an application for registration. Information about the deposit requirement for registration is available in [Chapter 1500](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

In the “Works infringed” section of the claim, you state that the Copyright Office has not registered “2 Many” and you provide 1-13641281091 as the service request number for a pending application for registration of the work. Copyright Office records indicate that the application was filed on March 27, 2024, before you submitted this claim, but that the Office did not receive the deposit of “2 Many” until 4:14 PM on March 28, 2024.

Because “2 Many” was neither registered nor subject to a complete pending application before this claim was filed, the Board cannot hear your claim for infringement of that work in *this* proceeding. Instead, now that a complete application has been filed, you would need to refile your “2 Many” infringement claim in a *new* proceeding.

If you believe the above statements regarding your “2 Many” application are in error, you may submit an amended claim that shows that a complete application with the required deposit was submitted before you filed this claim on March 28, 2024. Otherwise, if you file an amended claim in this proceeding, you must remove “2 Many” and the corresponding allegations from the “Works infringed” and “Describe the infringement” sections of the amended claim.

Impermissible Claim – Breach of Contract

The Board is only authorized to hear certain kinds of copyright disputes, such as copyright infringement claims. However, your allegations about Respondent’s use of “Sober Skull” appear to describe a dispute over a “breach of contract,” which is a violation of any of the agreed-upon terms and conditions of a binding agreement, rather than a copyright infringement dispute. In the “Describe the infringement” section, you allege:

Respondent contacted Claimant to create the Sober Skull artwork for Respondent to market himself and sell at his shows, as well as on his website as merchandise. Claimant and Respondent agreed that Respondent would pay Claimant for the rights to the Sober Skull artwork, however, after Claimant delivered the artwork, Respondent quit responding to Claimant and never fully paid for the artwork. Since then, Respondent has continuously sold the infringing merchandise at his concerts and on his website.

You appear to allege that Respondent had a license or agreement allowing him to use “Sober Skull,” and that he would pay for those rights, but failed to pay in full. Even if there was no written contract in place, there may have been an implied license, especially if you provided Respondent with your work with the understanding that he could use the work in the way that he did. A license does not need to be in writing. It may be agreed to orally, or even implied based on the conduct of the parties’ conduct. A typical example of an implied license is when a person (the licensee) requests the creation of a work, the creator (the licensor) makes that particular work and delivers it to the licensee who requested it, and the licensor intends that the licensee-requestor copy and distribute his work. If Respondent did have a license to use the work, the Board could only hear your infringement claim if you amend the claim to also state facts indicating that he failed to satisfy a “*condition precedent*” of the agreement, or that his use of the work went beyond the *scope* of the uses permitted under the license, both of which are further explained below.

A. Condition Precedent

Your claim can proceed if you state facts in an amended claim that indicate that a “condition precedent” had to occur before the license could take effect, and that it did not occur. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, the payments may be a “condition precedent” to the licensee’s right to publish. If a copyright license depends on the licensee **first** satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective, and the licensor may raise a copyright infringement claim.

You have not alleged that full payment, or any other requirement, was a condition that Respondent had to meet before he could use the work. If there were terms that Respondent had to satisfy first, your amended claim should provide those terms, including any specific conditional wording. To show that full payment or any other term of use was a “condition precedent” to a license, your amended claim must include enough details about the term stated to show that it had to be satisfied before the license would take effect. You may also include the agreement, or correspondence that plays a significant role in your allegations, as supplemental documentation in support of your claim.

B. Scope

Your “Sober Skull” infringement claim could also proceed if you present facts in an amended claim that indicate that, even if a license existed, Respondent exceeded its scope by using your work in a way that the license would not allow. To support a contention that the use of your work exceeded the scope of a license, you must provide more details in an amended claim to indicate how the use went beyond what the license permitted. As stated above, you may include the agreement or significant correspondence as supplemental documents.

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