



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0341
December 13, 2023

James P. Thomas

CLAIMANT

v.

Hays High Athletic Booster Club

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 **January 12, 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 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.

Allegedly Infringed Works – Clarity

As explained in the November 1, 2023 Order to Amend Noncompliant Claim (November 1 Order), you have provided unclear information about your allegedly infringed works. You list five works in the “Works infringed” section of the claim, identifying three of them as software and two as pictorial, graphic, or sculptural works.

However, you also describe each work as:

Fundraising software that produces 3 or 4 football team combinations weekly. The 3 or 4 team combination scores produce the highest and lowest total scores each week with prizes paid to winning ticket holders with the highest and lowest 3 or 4 team total scores.

Describing all five works as “fundraising software” is contradicted by your listing of two of the works as pictorial, graphic, or sculptural works. In addition, Copyright Office records indicate that at least one work that you identify as “software” and “fundraising software” is not a software work at all. As stated in the November 1 Order:

Registration No. TX0006857822 issued in 2008 for a work titled “FOOTBALL SWEEPSTAKES or FOOTBALL FUNDRAISER.” Your application for that registration identified you as the author of “text,

compilation, editing, [and] artwork” in that work. Copyright Office records show that the deposit copies of the work submitted with the application are not software or computer code; instead, they appear to be sample sweepstakes tickets with instructions on how to play a sweepstakes game called “Football Frenzy ’08.” Additional records reflect that a copyright examiner noted that you “authorized removing the claim in the ‘computer program[.]’”

Because the identification of that work as a computer program was apparently removed during the registration process with your authorization, your description of that work as software in the amended claim appears incorrect. It appears that Registration No. TX0006857822 covers the sample sweepstakes tickets included in the deposits, not any software used to generate those tickets.

If you file a second amended claim, you must clarify the nature of each of the allegedly infringed works in the “Works infringed” section. For example, you should not describe any work as “software” if the registered work is a graphic artwork with text, such as a sample sweepstakes ticket. In addition, if you identify a work as a “pictorial, graphic, or sculptural work,” yet also describe the work as “software,” include an explanation that clarifies why both categories are appropriate descriptions of the same work.

Infringing Activity – Clarity

Your amended claim still does not clearly describe any acts of copyright infringement. As stated in the November 1 Order:

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

In the “Wrongful activities” section of the claim, you state that the respondent “made unauthorized use of my copyrighted work entitled Football Frenzy, football sweepstakes or electronic football.” In the “Description of harm suffered and relief sought” section, you further state, “I sent emails to Hays High School advertising our Football Frenzy fundraiser to help their athletic booster club raise money. My company, Green Bee Fundraising offered Hays High School booster club the 3 or 4 team football fundraiser that included their own website for participants to view their online teams, team scores and online results each week to show winners. In return, Hays Athletic Booster Club copies and develops what I have copyrighted and does the fundraiser on their own.” You appear to allege that the respondent infringed your copyright by “solicit[ing] people to buy tickets or chances online that contain 3 NFL football teams each week for the 2023-2024 NFL regular football season,” and “advertising that they pay prizes based on the total scores of the 3 team combinations each week. High and low 3 teams combination scores win prizes.”

Those allegations are not specific or clear enough to describe how the respondent copied, distributed, or made other use of any particular work that would constitute copyright infringement. Your allegations appear to describe the respondent learning about your fundraising program and then running a similar program. However, you do not clearly describe how the respondent reproduced, distributed, or made derivative works based on any of your works without authorization.

Your amended claim repeats the same allegations. You assert generally, without offering details or support, that “Hays Athletic Booster Club has made unauthorized use of my copyrighted work entitled Football Frenzy, football sweepstakes or electronic football.” However, you still have not clearly described any infringing act.

You allege that you advertised a fundraising program to the respondent and offered a website through which it could run your program. A supplemental document filed with the amended claim, labeled “Green Bee football rules.docx,” appears to be a copy of the “Official Game Rules” for your fundraising program, which indicates that participants must register on www.footballsweeps.com, where sweepstakes ticket numbers, score results, and prizes are posted. However, your allegations indicate that the respondent is operating a similar program through its own website, www.hayshighindians.com/frenzy. Your allegations do not clearly describe the respondent using your software, your website, or any particular copyright-protected work.

If you file a second amended claim, it must state or show how the respondent engaged in a clearly described infringing use of each of your allegedly infringed works. If you are alleging that the respondent infringed works of software, you must identify particular infringing acts by the respondent using that specific computer code, not just allegations that the respondent operated a fundraising sweepstakes similar to your fundraising program, as ideas and processes are not copyrightable. If you are alleging that the respondent copied your sample sweepstakes tickets, you must provide details about how and what it copied.

Alternatively, you can attach your allegedly infringed works and the respondent’s allegedly infringing works as supplemental documents, which are clearly labeled, if those documents would show the infringing activity. The supplemental documents uploaded with your amended claim appear to include your “Official Game Rules” and a winners list from your program, as well as copies of the respondent’s game rules and winners list. However, as the November 1 Order stated, “the supplemental documents do not seem to include the works named in the ‘Works infringed’ section.” You have not identified any copyright registration that covers your game rules or your winners list, and those documents do not show that the respondent infringed any of the allegedly infringed registered works.

Substantial Similarity

Your amended claim also does not clearly describe or show substantial similarities between any of the five allegedly infringed works and any of the respondent’s works. As the November 1 Order stated:

Your claim does not include enough facts that explain the similarities between your works and any allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

A 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, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect “any idea, procedure, process, system, method of operation, [or] concept”; it only protects original elements of expression. 17 U.S.C. § 102(b).

The allegations in the “Describe the infringement” section of the claim do not sufficiently describe what portions of each of your works were used in an allegedly infringing work, or state or show how the respondent’s work is identical or substantially similar to material in your works that copyright protects.

Your allegations appear to describe the respondent using the idea, concept, process, or method of operation for your fundraising sweepstakes program, rather than using any particular work protected by copyright that you own.

“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). You do not clearly describe or show the respondent infringing on any of the five works in the “Works infringed” section with a substantially similar work.

If you submit an amended claim, it must include factual allegations that indicate that the respondent’s works are substantially similar to protectible matter in your registered works. Please provide more information regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works were taken by the respondent in the allegedly infringing work, or documents 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, as discussed above.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the December 1, 2023 Order to Amend Noncompliant Claim. **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 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