



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0156
July 25, 2024

DaShay L Hall, Sr, Late Night Crew LLC

CLAIMANTS

v.

Mark Avington

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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.

Improper Claim Form

The Board claim form is a standardized form, available on [eCCB](#), where claimants must enter all relevant allegations. [37 C.F.R. § 222.2\(a\)\(1\)](#). Allegations in support of the claim must be made through the standard form. [37 C.F.R. § 222.5\(a\)](#). On July 16, 2024, you filed a document titled “Amended” which appears to be the amendments you wished to make to your claim (July 16 Filing). Submitting this type of filing is not an acceptable way to plead a claim before the Board.

Despite the foregoing, the Board has reviewed your July 16 Filing and determined that your misrepresentation claim is still noncompliant for the reasons below. If you file an amended claim, you must use the Board’s claim form and amend your claim using the instructions below. All supplemental documents that you wish to include in your claim, must be attached to the amended claim form.

Misrepresentation—Reliance By Online Service Provider

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.

17 U.S.C. § 512(f). The information provided in your claim and in the “Amended” document 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 original claim, filed on May 21, 2024 (Original Claim) you have provided several counternotices dated May 8, 2024, May 9, 2024, May 10, 2024, and May 18, 2024. . The proximity of the dates of the counternotices suggests that the OSP had not reinstated the material at the time you filed your Original Claim. In your July 16 Filing, you state that “[d]ue to the Respondent's misrepresentations, the OSP reposted the infringing content on June 3, 2024 even with a[n] open CCB case.”

“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, ten to 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.

It appears as though you filed your CCB claim before the OSP restored the allegedly infringing material. Because you have filed a misrepresentation claim that does not appear to relate to a material misrepresentation that was important to an online service provider’s decision to repost the content, your claim remains noncompliant. You may want to consider amending your claim of misrepresentation to a claim of copyright infringement if you have a valid copyright infringement claim the CCB can hear. 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.

Final Amendment

Your July 16 Filing resolved none of the compliance issues raised in the June 27, 2024 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