



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0297

October 18, 2024

Dario E Ortiz de la Hoz

CLAIMANT

v.

Ranphys D Ortiz De Leon and
RR Entertainment Music Corporation

RESPONDENTS

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 **November 18, 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 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 infringement claim does not provide enough facts or clarity about the element of use without permission, as detailed below. Please provide more details and background regarding that element in your amended claim.

Infringing Activity – Clarity

Your claim does not present facts that clearly state how the respondents lacked permission to use your exclusive rights in the allegedly infringed works.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform 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.

You list several sound recordings in the “Works infringed” section of the claim. In the “Describe the infringement” section of your claim, you allege that the respondents “have engaged in the unauthorized distribution and public performance of my music.” You indicate that one of the respondents, Ranphys D Ortiz De Leon (Ranphys Ortiz) was authorized to administer your sound recordings at some point, but that you sought to revoke that authorization:

I originally granted Ranphys Ortiz power of attorney in 2008; however, in 2015, I personally notified him that I no longer wished for him to represent me. Despite this notification and my subsequent formal cease and desist letter, as well as the revocation of power served through the Superior Court of NJ on 9/24/2024, they continue to publicly perform and distribute my music on platforms such as Facebook, YouTube, TikTok, and Instagram without my permission.

It is not clear from the claim what rights were given to Ranphys Ortiz in the power of attorney, or that revoking that power of attorney terminated Ranphys Ortiz’s authority to distribute your sound recordings. Also, it is not clear if RR Entertainment Music Corporation had, or continues to have, any rights to distribute the works. To address these issues, your amended claim must include more clear facts that indicate that each respondent had no authority to distribute or publicly perform your works at the time of the alleged infringing acts.

Misrepresentation – Elements

You are also bringing a claim of misrepresentation in connection with a counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law that only applies to 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 OSP decided to repost the content based on the misrepresentation, and
5. You were harmed as a result of the OSP’s decision to repost the content.

Your misrepresentation claim does not present facts that indicate that an OSP decided to restore allegedly infringing content based on any misrepresentation by a respondent, or that you were harmed by that decision, as detailed below. Please provide more details and background regarding those elements in your amended claim.

Misrepresentation - Reliance by Online Service Provider

Your claim does not present any information that indicates that any OSP relied on a misrepresentation in a counter-notice to restore allegedly infringing material. You state that you sent takedown notices to YouTube, Instagram, TuneCore, and Apple Music. You do not allege that the respondents sent counter-notices to Instagram, TuneCore, or Apple Music. You state that Ranphys Ortiz sent counter-notices to YouTube and that the counter-notices contained misrepresentations.

However, those allegations do not support the elements of a section 512(f) misrepresentation claim. A misrepresentation in a counter-notice only violates section 512(f) of the Copyright Act if it falsely states “that material or activity was removed or disabled by mistake or misidentification”—*and* the OSP then relies on that misrepresentation to restore the allegedly infringing material or activity. 17 U.S.C. § 512(f)(2). You do not present such facts. You allege that Ranphys Ortiz falsely claimed that RR Entertainment Music Corporation owns the copyright for the sound recordings in the allegedly infringing videos, but you do not allege that YouTube relied on that claim to restore the videos.

In your claim, you stated that the counter-notices at issue were sent on October 2, 3, 4, and 6, 2024. You filed your claim on October 6, 2024. The proximity of those dates suggests that the YouTube may not have reinstated the videos at the time you filed your claim, and there is no allegation in your claim that it did repost the content. “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 not less than ten or more than 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.

If YouTube had restored the allegedly infringing videos by the time you filed this claim on October 6, 2024, your amended claim must state facts about that restoration. Otherwise, this misrepresentation claim cannot move forward, and you must omit it from any amended claim.

In addition, if you file an amended claim that omits the misrepresentation claim but keeps the infringement claim, then to support the “substantial similarity” element of the infringement claim, you must move or restate certain facts currently alleged in the misrepresentation section. Your misrepresentation section includes allegations that:

- “complete albums [were] distributed to multiple streaming sites” by the respondents, including the album “De Dhario Primero al legendario Sandro de America... Tributo” distributed to Apple; and
- “entire videos” posted to YouTube infringe your works, including at least one recording from every other work listed in the “Works infringed” section.

Without such allegations in an amended *infringement* claim that state or show how the respondents made unauthorized use of specific materials that are substantially similar to each of your works listed in the “Works infringed” section, your infringement claim will not be compliant. You must include the above allegations in the infringement portion of your claim if you decide to remove the misrepresentation portion of your claim.

Misrepresentation – Relief Sought

If you file an amended claim that does not omit the misrepresentation claim, and states facts about the restoration of the respondents’ videos discussed above, the amended claim must also address certain issues with the “Description of harm suffered and relief sought” section of the misrepresentation claim.

You have not alleged that you were harmed by any such restoration. In the “Description of harm suffered and relief sought” section, the harms alleged do not appear to be a result of any restoration of the YouTube videos. Instead, that section alleges harms based on the removal of the recordings and your inability to repost them. To address this issue in an amended claim, state facts that indicate how you have been harmed by a YouTube or another OSP relying on the allegedly false statements to restore the allegedly infringing works.

In addition, your request for relief includes a request for a declaration of noninfringement: “I seek a formal declaration that my original works do not infringe upon the rights of the respondent, to safeguard my ownership and prevent future disputes.” If you file an amended claim, do not include that request in any misrepresentation or infringement claim. A claim for a declaration of noninfringement is a *separate type of claim* that may be raised if a respondent has accused you of copyright infringement, but it is not a form of relief that can be granted in a misrepresentation claim. More information is available in the [Starting a Noninfringement 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. 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.

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