



COPYRIGHT CLAIMS BOARD

Docket number: 25-CCB-0031

March 3, 2025

Villalobos O Body

CLAIMANT

v.

Trena S Llyod

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 **April 2, 2025**. 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.

Access

Your infringement claim still does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or copy your work before the alleged infringement took place.

You allege infringement of a photographic image titled “Jaguar Wright at The Sheen Magazine Awards 2024.” You list the service request number of a pending Copyright Office application to register the work. You assert that the respondent displayed the image as part of a YouTube thumbnail for several YouTube videos. However, you do not describe or show how the respondent had a reasonable opportunity to view or copy your photograph. To address this issue, you must file a second amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing thumbnail images if they demonstrate that your photograph and the photograph used in the respondent's video are so strikingly similar that they could not have been created independently. Your amended claim includes a [screenshot](#) showing several thumbnail images on the respondent's YouTube page. However, those thumbnails do not include the image you submitted as a deposit with your application to register the copyright, so they do not indicate that the respondent used the photograph you identify as infringed. 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.

Substantial Similarity

Your amended claim also does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are substantially similar.

Your amended claim does not provide detailed information describing how the allegedly infringing thumbnail images are substantially similar to your work. For example, you do not indicate how much of your photograph appeared in the allegedly infringing thumbnail. You also have not provided a copy of your photograph as a supplemental document, or copies of thumbnail images posted by the respondent that match your photograph. As a result, the claim still does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit a second amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your second amended claim, including a clear, detailed statement regarding how much of your work was taken by the respondent in the allegedly infringing works, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other. As noted above in the discussion of access, the thumbnails of respondent's video that were uploaded with the amended claim do not include the image you submitted as a deposit with your application to register the copyright. 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.

Noninfringement Claim – Actual Controversy

A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of the respondent's copyrighted work. 17 U.S.C. § 1504(c)(2). If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. To proceed with such a claim, there must be an "actual controversy" between the parties over whether *you* infringed *the respondent's* copyright. 28 U.S.C. § 2201(a); *see* 17 U.S.C. § 1504(c)(2). The claim must identify the party that accused you of infringement and must describe your allegedly infringing activity, the reasons why you believe no

infringement occurred, and the reasons why you believe there is an “actual controversy” about the requested declaration. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v).

Your noninfringement claim does not state facts that meet those requirements. Instead, your allegations in the noninfringement claim contend that *the respondent* infringed *your work*, not that *you* were accused of infringement. Your noninfringement allegations simply restate points raised in your infringement allegations.

- In the “Describe the allegedly infringing activity” field of the claim, you state, “The alleged infringing activity involves the unauthorized use of my copyrighted image in four separate instances by a YouTube content creator.” In the “Describe dispute with respondent(s)” field, you state, “The dispute with the respondents centers around their repeated unauthorized use of my copyrighted image in four separate instances on the YouTube platform.” A noninfringement claim should describe allegedly infringing activity by *you*, not infringement of your work by the respondent.
- The allegedly infringed work named in the “Work(s) respondent says you have infringed” field of the claim is the same work that you list as infringed in your copyright infringement claim. To raise a noninfringement claim, the work listed in that field should be the respondent’s work, not your work.

Infringement claims and noninfringement claims are very different types of claims. A noninfringement claim is not another place to raise your allegations that your copyright was infringed. If the respondent has not accused you of infringement, you must omit the noninfringement claim from any amended claim that you choose to submit. Your noninfringement claim can only go forward if you present facts in a second amended claim that indicate that there is an actual controversy between you and the respondent over whether *your* acts infringed *the respondent’s* copyright. If you amend the claim again without presenting such facts, you must remove the noninfringement claim, or the entire proceeding will be dismissed.

Misrepresentation

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, 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 restore the content, and
5. You were harmed as a result of the OSP’s decision to repost the content.

17 U.S.C. § 512(f). A misrepresentation in a counter-notice only violates section 512 of the Copyright Act if the OSP relies on it to restore the allegedly infringing content.

There is no allegation in the amended claim that the OSP (YouTube) restored the content. Without such an allegation, your misrepresentation claim cannot go forward. Moreover, you present information that suggests that

YouTube would not have restored the content based on the alleged misrepresentations by the time that the claim was filed. “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. You state that you sent a takedown notice to YouTube on January 14, 2025, requesting removal of the allegedly infringing images, and that the respondent sent a counter-notice to YouTube on January 21, 2025. You filed this claim before the Board four days later, on January 25, 2025. The proximity of these dates suggests that YouTube would not have reinstated the material at the time you filed your claim, less than ten business days after the counter-notice.

Your amended claim includes a [copy](#) of your email correspondence with YouTube about your takedown notice before the date you allege a counter-notice was sent, but you have not included any notification from YouTube regarding a counter-notice, and the correspondence you have included does not show anything about whether YouTube restored the allegedly infringing images before you filed the claim on January 25, 2025. If YouTube had restored the images before that date, your second amended claim must state facts about that restoration. However, if the respondent’s works were not restored in reliance on the counter-notice by that date, this misrepresentation claim cannot move forward, and you must omit the misrepresentation claim from any amended claim that you choose to submit, or the entire proceeding will be dismissed.

In addition, if your second amended claim presents facts that indicate that YouTube restored the allegedly infringing images before you filed this claim on January 25, 2025, your misrepresentation claim must also include the words in the counter-notice that you claim were false, along with an explanation of why those words were false. 37 C.F.R. § 222.2(c)(9)(vi)-(vii). In the “Words that made up the misrepresentation and explanation of the misrepresentation” section of the amended claim, you do not quote any false statement by the respondent or explain what made it false; instead, you seem to quote from an OSP’s notice describing the legal effect of a counter-notice. If you keep the misrepresentation claim in your second amended claim, include a copy of the counter-notice or quote from the allegedly false part of the counter-notice, and explain why it was false.

Final Amendment

Your amended claim does not resolve the compliance issues raised in the January 29, 2025 Order to Amend Noncompliant Claim. Those issues, also discussed in this order, must be resolved for the claim to move forward. **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 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 Board