



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0354

November 27, 2024

Cecilia V Walker

CLAIMANT

v.

LiLi Tile

RESPONDENT

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 **December 27, 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—Online Service Provider

Based upon your answers to the questions about online service providers, your infringement claim seems to assert that the respondent is an online service provider (OSP); that you are bringing the claim against the respondent “due to their storage of or referral or linking to infringing material posted by others”; and that it did not fail to expeditiously remove or disable access to infringing material after you sent the respondent a takedown notice as required by section 512 of the Copyright Act.

Under the CASE Act, when a claimant raises a copyright infringement claim against an OSP for storing, or referring or linking to, infringing material, the Board must find the claim noncompliant unless the claimant affirms that:

1. the claimant sent a takedown notice to the OSP as required by section 512 of the Copyright Act, and
2. the OSP failed to remove or disable access to the material expeditiously when it received the takedown notice.

17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G). In this context, an OSP is a provider of online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include

content-sharing websites and internet search engines, among other services. Please visit the section 512 page and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what section 512 of the Copyright Act requires for an infringement claim against an OSP.

In your responses to questions on the claim form, you allege that the respondent is an OSP; that you are bringing the claim against the respondent because it stored, referred, or linked to infringing material posted by others; and that you sent the respondent a takedown notice. However, you responded “No” to the question, “Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?” Your claim is not compliant because you state that you are bringing the claim against the respondent based on its actions as an OSP, while you do not allege that the respondent failed to act promptly in response to a takedown notice. You can only bring an infringement claim against an OSP if the OSP failed to take down third-party material in response to a proper takedown notice.

Other factual allegations in your claim, however, suggest that the respondent did not act as an OSP in relation to infringing material posted by a third party. You allege that “LiLi Tile had posted videos and photos of the tile they had created on Instagram, YouTube and Pinterest.” These allegations and documents attached to your claim indicate that the respondent posted the allegedly infringing material, while the social media websites that you list in your claim are the OSPs that stored or displayed the material. Your claim goes on to say that you “had issued take down requests with those websites and they have complied.” If that statement is accurate, you can make your claim compliant by answering “No” to the question of whether the respondent is an OSP and by leaving the remaining information in the “Describe the infringement” section in place.

To correct your noncompliant responses to the OSP questions in the claim form, you must provide different responses in an amended claim. If the respondent is not an OSP, as discussed above, then you must answer “No” to the question “Are any of the respondents online service providers?” If the respondent is an OSP, and you seek to hold it directly liable for its own actions and not for failing to take down material posted by a third party, then you must answer “No” to the question “Are you bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others?” Finally, if you maintain that the respondent is an OSP, that you sent it a takedown notice, and that it did not promptly redress the third party’s infringement, then you must answer “Yes” to all four OSP questions, including “Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?” and you must state facts supporting those allegations. Again, your current factual allegations do not seem to indicate that the respondent is an OSP.

Relief Over Statutory Maximum

It appears that you are seeking a larger damages award than the CCB can grant for this type of claim. In your claim you state that “I am seeking the maximum - upper limit of statutory damages of \$30,000 for the infringement.” The most that respondents can be ordered to pay in damages (actual or statutory) in a CCB

proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). However, the maximum amount of statutory damages available from the CCB is \$15,000 for each work that was infringed if the work was timely registered. 17 U.S.C. §§ 1504(e)(1)(A)(ii)(I)-(II). If you seek damages in an infringement claim, you can seek either (1) actual damages, and the respondent's profits from the infringement, or (2) statutory damages. You can request both in your claim, but you will need to choose before the Board issues a final determination. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue you experienced. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss.

To address this issue, you may file an amended claim that makes clear what you are asking for and does not allege that you are pursuing remedies from the CCB that it may not provide. For additional information please see page 6 of [Starting an Infringement Claim](#) and the [Damages](#) 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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