



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0026

February 10, 2023

Dan Walden

CLAIMANT

v.

The Georgia Gazette, LLC

RESPONDENT

## ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **March 13, 2023**. 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.

### Impermissible Claims

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act.

You checked the boxes stating your claim was one of copyright infringement and misrepresentation. In your claim, however, you include allegations that about a trademark dispute and potential relief for defamation. When you submit an amended claim, please include only allegations and documents that pertain or relate to a copyright claim the Board can hear.

Please review the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended claim if you believe you actually have a claim under copyright law that can be heard by the CCB. For more information about what is required to support a

claim of infringement, noninfringement, or misrepresentation please refer to the CCB Handbook:

- [Starting an Infringement Claim](#)
- [Starting a Noninfringement Claim](#)
- [Starting a Misrepresentation Claim](#)

## **Registration**

In your claim, you state that your work has been registered by the Copyright Office, and you provide “Va2269246,” as the registration number. However it appears that the registration at issue is “VA0002269245.” When you file an amended claim, please correct the registration number for the work.

## **Copyright Infringement Claim – Clarity**

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 copyright infringement claim must provide enough information for the respondent to understand what its allegedly infringing acts were. However, the current allegations in the claim are unclear. Your claim alleges that the “Copyright and trademark with permission picture name information belongs to me as I am on tv.” However, there is no specific or clear information in your claim about The Georgia Gazette, LLC and what it allegedly did to infringe the copyright in your work. In your amended claim, you will need to include additional and detailed factual information about how The Georgia Gazette, LLC used your work without your permission.

## **Copyright Infringement Claim – Access**

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that 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 public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

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.

### **Copyright Infringement Claim – Substantial Similarity**

Your claim also does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing work. 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 similar. You do not provide any information describing or showing your work or the allegedly infringing work. No allegations in the "Describe the infringement" field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. If you submit an amended claim, it must include factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work 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.

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.

### **Misrepresentation Claim**

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Misrepresentation under copyright law has a very specific meaning in copyright law dealing with false statements made to an online service provider related to the posting of a copyright-protected work. Your claim must make enough factual allegations to support each "element" of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
  - a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement 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 takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider's decision to take down or repost the

content,

5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it does not describe a misrepresentation in a takedown notice or counter-notice sent by the respondent to an online service provider. Your claim asserts that you sent a takedown notice to The Georgia Gazette, LLC on January 18, 2023 and that no one sent counter-notices, which contradicts the basis for the claim. A misrepresentation claim must allege a misrepresentation made by the respondent, and it must have taken place in a takedown notice or counter-notice sent by the respondent to an online service provider. If you submit an amended claim that includes a misrepresentation claim, you must state facts in support of each element of the claim, including allegations that describe a false or incorrect statement of fact by the respondent in a takedown notice or counter-notice to an online service provider that would violate section 512(f). In addition, your claim must indicate what words were false or incorrect, and how they were false or incorrect. In the alternative, you may delete the misrepresentation claim altogether and re-submit only the copyright infringement claim.

More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation 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 supplementary 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](mailto: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