



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0305
September 22, 2023

Floatsup, LLC

CLAIMANT

v.

Amazon.com, Inc.

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 **October 23, 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.

Misrepresentation – Elements

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 a misrepresentation claim are that:

1. The respondent sent an OSP 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 OSP’s decision to take down or repost the content,

5. The OSP relied on the misrepresentation either
 - a. when removing or disabling access to the online content or activity, or
 - b. when restoring, or restoring access to, the online content or activity, and
6. You were harmed as a result.

17 U.S.C. § 512(f).

Your claim is not compliant because it provides conflicting information about which entity or individual made a misrepresentation in a takedown notice or counter-notice to an OSP. A misrepresentation claim must allege a misrepresentation made by the respondent to an OSP. You state that you sent a takedown notice to Amazon.com, Inc. (Amazon) and that a non-party sent Amazon a counter-notice. However, you name Amazon as the respondent. Amazon is not liable under section 512(f) for any misrepresentation in a counter-notice that it *received*.

If you believe that Amazon was responsible for *sending* the counter-notice, you may file an amended claim that includes factual allegations that explain in what way Amazon made a misrepresentation in the counter-notice, and that indicate that an OSP (other than Amazon) received the misrepresentation, and relied on it when restoring, or restoring access to, the allegedly infringing content or activity.

If a different person or entity made the misrepresentation, then Amazon would not be a proper respondent. You must remove Amazon as a respondent and either assert an amended misrepresentation claim against the proper respondent when you submit an amended claim, or you can submit a new claim against the proper respondent. A proper respondent for a claim before the Board is an individual or entity that resides in the United States and is not a state or governmental entity. 17 U.S.C. § 1504(d)(3)-(4). A supplemental document filed with the claim appears to show that the counter-notice was sent by a person or entity with a mailing address in China. If a foreign resident sent the counter-notice then that person or entity cannot be a proper respondent.

Claimant's counsel should have known better than to file a misrepresentation claim against an OSP that *received* the counter-notice, as opposed to *sent* it. That is especially true where the proper respondent, if any, is not a United States resident. If this claimant or firm issues a similarly noncompliant claim in the future, an Order to Show Cause will be issued to show why the claimant and its counsel should not be found in bad faith.

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 Attorney