



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0251
September 12, 2023

Troi Torain

CLAIMANT

v.

Amos Vershima Ajo

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. Your copyright infringement claim is still not compliant because it relies on an application for registration for the allegedly infringed work that was filed after the claim. Without a timely application or registration, this claim cannot proceed. Additional issues identified below must also be addressed for the claim to move forward *in a new proceeding*.

If you wish to proceed with *this* proceeding, you must file a second amended claim by **October 12, 2023** that is based on a registration issued *before* you filed your July 25, 2023 claim or an application for registration filed *before* the claim. 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 amended 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 Registration

You filed your claim on July 25, 2023, alleging copyright infringement of a sound recording titled “Is Damon Dash A Player Hater? (Choke No Joke Interview).” The claim was not compliant because it did not identify a previously issued registration or a pending application for registration for the sound recording, and instead relied on a registration for a different work. As the noncompliance order issued August 8, 2023 explained:

The Board can only hear a copyright infringement claim if, *before* the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). . .

... The Board cannot hear this claim unless the work was registered, or a complete application to register the copyright was submitted to the Copyright Office, before the claim was filed on July 25, 2023.

Your amended claim provides Service Request number 1-12868349641 for an application to register the sound recording. Copyright Office records indicate that the application was filed on August 10, 2023, and Registration Number PAu004191922 issued for that work on August 29, 2023. While you may file a new infringement claim based on that registration in a new proceeding, the August application and registration are too late to support an amendment of the claim filed on July 25, 2023. As the August 8, 2023 noncompliance order further explained:

If your work was neither registered nor subject to a complete pending application at that time, this claim cannot be successfully amended and cannot proceed. Instead, you will have to refile your infringement claim as a new claim *in a new proceeding* after a complete application packet is filed. You should not submit a new claim until after you submit the application, deposit, and fee.

(Emphasis added.)

It does not appear that the sound recording had been registered or that you had completed an application for registration of the work before you filed this claim on July 25, 2023. If you file a second amended claim in *this proceeding*, it will be dismissed unless you list a Service Request number for an application for registration of the sound recording that was completed before that date, or a Registration Number issued for the sound recording based on an application completed before that date.

Alternatively, now that the work has been registered, you may refile your infringement claim as a new claim *in a new proceeding*, listing the Registration Number in the “Works infringed” section. If you file a new claim, you must also address the issues of access and substantial similarity addressed below or the new claim will also be found noncompliant.

Access

Your claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to hear your work before the alleged infringement took place. Your claim does not include allegations about where or how “Is Damon Dash A Player Hater? (Choke No Joke Interview)” was available before the alleged infringement so that the respondent had an opportunity to hear it. You allege that “the copyrighted work was taken without permission” without stating where it was taken *from* or indicating why it is reasonable that the respondent would have found it there.

To address this issue, you must file an amended claim (if you have resolved the registration issue described above), or a new claim in a new proceeding, with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that, before the alleged infringement, your work (a) was sent directly to the respondent, or to a close associate of the respondent; (b) was widely disseminated or was available to the public; 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 work if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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 facts that explain the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental materials submitted with the claim, you must provide specific allegations about how your work and the allegedly infringing work are substantially similar.

You do not provide enough information describing or showing your work, or stating how it is substantially similar to the respondent's allegedly infringing use of the work. No allegations in the "Describe the infringement" section 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 infringing work as supplemental documents. As a result, you do not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, or refile the claim in a new proceeding, include more factual allegations that support the element of substantial similarity, 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. As explained above, 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.

Final Amendment

You have not resolved the issues raised in the August 8, 2023 noncompliance order, and additional issues discussed above must also be addressed for the claim to move forward. You may refile the claim *in a new proceeding*, addressing the issues raised in this order.

Alternatively, this is your third and final opportunity to submit a compliant claim *in this proceeding*. If you file a second amended claim in this proceeding that remains noncompliant, the entire proceeding will be dismissed. 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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.

Copyright Claims Attorney