



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0353

November 1, 2023

Edward Caldeira

CLAIMANT

v.

NOVO Marble 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 **December 1, 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.

### Copyright Infringement – Elements

You have raised a claim of copyright infringement. Your claim must make enough factual allegations to support each “element” of the claim. 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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

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. Your allegations do not provide clear facts to support the elements related to the respondent’s access to your work and substantial similarity, as discussed below.

### Access

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

In the “Describe the infringement” section of the claim, you allege: “The respondent found a sample of my work online. I publish a partial representation of my work as a sample which I use to license my work to paying customers.” Your allegations do not provide enough information about where your work was available to the respondent before the alleged infringement. Generally stating that a work is available somewhere online is not enough to show that it was so widely distributed that the respondent’s access to it is reasonably possible. *See Walker v. Kemp*, 587 F. Supp. 3d 232, 240-41 (E.D. Pa. 2022) (“[T]he mere fact that [Plaintiff’s] work was posted on the internet prior to the creation of [Defendants’] work is insufficient by itself to demonstrate wide dissemination.”) (quotations omitted).

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 they could not have been created independently.

Alternatively, you can upload copies of your work and the allegedly infringing work if those images 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 claim also does not include enough facts that explain the similarities between your work and the allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

In the “Works infringed” section, you identify your work as a literary work titled “Construction QA/QC Plan.” In the “Describe the infringement” section, you allege that “[t]he respondent copied large portions of my copyrighted text” and “then added my copyrighted text to his construction QA/QC plan and submitted it as his own to his customer.” However, you do not provide information in the claim clearly describing or showing your work, or stating how it is substantially similar to the respondent’s allegedly infringing construction QA/QC plan. 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, 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 construction QA/QC plan, 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.

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](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