



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0085

United States Copyright Claims Board

Jarhid A. Brown

CLAIMANT

v.

Finneas B. O'Connell and Billie E. Eilish

RESPONDENTS

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 **November 21, 2022**. 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 extra 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.

Expert Witness

Your claim includes a thirty-page “Preliminary Expert Witness Report” as a supplemental document, and quotes from the report in the “Describe the infringement section,” without leave of the Board. That is not permitted.

“An expert witness may be used in a proceeding only with leave of the Board. The use of expert witnesses in proceedings before the Board is highly disfavored and requests shall be rarely granted.” [37 C.F.R. § 225.4\(b\)](#). The Board permits expert witness testimony “only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert.” [37 C.F.R. § 225.4\(b\)\(1\)](#); 17 U.S.C. § 1506(o)(2). “Any expert testimony that is introduced in any way without the Board’s express permission shall be stricken by the Board and shall not be considered in the Board’s determination.” [37 C.F.R. § 225.4\(b\)\(4\)](#).

You may not introduce an expert report unless you first receive permission from the Board, and permission cannot be granted if you do not comply with the procedures for requesting an expert witness. [37 C.F.R. § 225.4\(b\)\(2\)](#). Filing an expert report without authorization is inappropriate, and requesting leave to permit an expert witness is premature at this time. To address this issue, you must file an amended claim that does not include, quote, or cite any unapproved expert report or testimony. If you file an amended claim and the proceeding reaches the active phase, the Board will provide additional information about requesting permission to use an expert witness.

Copyright Infringement – Infringed Work

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 identical or substantially similar to your work.

Your claim does not provide clear enough facts about the allegedly infringed work and how the respondents used your exclusive rights in the work. You allege that the respondents “released a derivative work entitled ‘ilomilo’” that infringes your work entitled “Heart/The Beat,” which is registered with the Copyright Office with Registration Number SR0000904137. That registration covers the sound recording that was deposited with your copyright registration, not any underlying musical composition. Nevertheless, your allegations appear to relate to the infringement of a musical composition. You assert that the type of work infringed is “Musical (such as the underlying musical composition),” and in the “Describe the infringement” section of your claim, you allege that the respondents’ work uses musical elements of a composition (“the core melodic and rhythmic theme of my song”), not that it incorporates sounds from the registered sound recording. It is unclear if you are raising a claim of infringement of the registered sound recording, a musical composition, or both.

If you are alleging infringement of only the sound recording covered by the registration, you must amend your claim to clearly indicate that you are not claiming infringement of any musical composition or other underlying works. In addition, if you maintain the allegations that the infringing activity is the creation of a derivative work based on your sound recording, your amended claim must allege facts that show that the respondents rearranged, remixed, or in other ways reproduced and altered the actual sounds embodied in your sound recording, because for sound recordings, the right to prepare derivative works is limited to such acts. See 17 U.S.C. § 114(b).

If you are alleging infringement of a musical composition, you must show that the musical composition is separately registered, or that you applied to register the copyright before filing this claim with the Board on July 31, 2022. 17 U.S.C. § 1505(a). You must also show that you are named as the claimant in that registration or application, or that you are the legal or beneficial owner of the copyright in the musical composition. 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work.

If the musical composition has been separately registered, please add the registration or application number to the “Works infringed” section of the amended claim and detail how you obtained legal or beneficial ownership of copyright in that particular registration. In addition, if your claim is based on infringement of a musical composition, either the registration must have been issued or the application must have been delivered to the Copyright Office before you filed your claim on July 31, 2022. If the work was neither registered nor subject to a pending application at that time, this claim cannot be successfully amended and cannot proceed. Instead, you would need to apply to register the copyright for the allegedly infringed composition before you could refile your claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Copyright Infringement – Access

Your claim does not provide enough facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work. Please provide more details and background regarding this element in your amended claim. 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. 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.

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 that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

October 20, 2022