



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0233

## United States Copyright Claims Board

Starrcast LLC

CLAIMANT

v.

Kevin Scampoli

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. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **January 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. There is no additional filing fee for a second amended claim. If you amend your 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 issue 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 a second amended claim. 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 – Deposit

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, a deposit, and the required fee” to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). The “Works infringed” section of your amended claim states that the Copyright Office has not registered the allegedly infringed work, and provides a Service Request number (1-11905530131) for a pending application for registration of the work. However, Copyright Office records for that application indicates that a deposit copy of the work was not received before the claim was filed.

The term “deposit” refers to the copy or copies of a work that must be submitted to the Copyright Office with an application for registration. Information about the deposit requirement for registration is available in [Chapter 1500](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. The pending application for registration was filed on November 7, 2022, the day that you filed your claim before the Board. As mentioned in the November 15, 2022 [Order to Amend Noncompliant Claim](#), the Board cannot hear this claim unless a deposit copy of the work was delivered to the Copyright Office before the initial claim was filed. The registration deposit copy was not submitted until December 5, 2022, the day you filed your amended claim.

To address this issue, if you file a second amended claim, please include the registration number for the work, or a Service Request number for a pending application for registration with evidence that you submitted a deposit copy of your work for that application before you filed your claim with the Board. However, it appears that a copy of the work was not submitted to accompany your application and fee before you filed this claim on November 7, 2022, so it cannot be successfully amended and cannot proceed. Instead, now that the deposit copy has been received, you will need to refile your claim before the Board as a new claim.

#### Copyright Infringement – Ownership

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.

Your amended claim provides conflicting facts about your status as a legal or beneficial owner of the allegedly infringed work. To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 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. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

The amended claim does not present facts that indicate that Starrcast LLC is a proper claimant. When you submitted the amended claim, you certified that the claimant Starrcast LLC was the legal or beneficial owner of rights in the work identified in the infringement claim. However, the amended claim states that the authors of the work are Kevin Nash and Sean Oliver. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue.

The pending application for registration also includes conflicting information. It lists Starrcast LLC as the author of the work, but it names Steve Kaufmann as the “copyright claimant.” For purposes of copyright registration, the copyright claimant is either the work’s author or the person or organization that owns all of the rights under copyright that originally belonged to the author. Your certification in the claim that Starrcast LLC owns rights in the work is in conflict with the pending application, which states that Steve Kaufmann owns those rights. An amended claim cannot go forward if it and the application for registration have conflicting ownership or authorship information, unless it alleges how Starrcast LLC obtained the rights from the owner identified in the application.

To correct this issue, your second amended claim must include specific allegations about how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how the claimant was the owner of exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may describe the relationship between Starrcast LLC, Steve Kaufmann, Kevin Nash, and Sean Oliver, or state how the claimant obtained legal or beneficial ownership of copyright. If the information in the claim identifying the claimant or the authors of the work is inaccurate, you may correct that information in an amended claim.

### Copyright Infringement – Access

Your amended 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. Your amended claim does not include allegations about how the respondent had an opportunity to see or hear your work before the alleged infringement. To address this issue, you must file a second 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.

### Copyright Infringement – Substantial Similarity

Your amended claim also does not include facts that explain the similarities between the allegedly infringed work and the respondent’s allegedly infringing work. If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your amended claim identifies the claimant’s work as a video podcast, but it does not include any other information that describes or clearly shows that video or the allegedly infringing video, or that states or shows how they are identical or substantially similar. The “Describe the infringement” section of the amended claim alleges that the “video was altered and reuploaded to the respondent’s channel without our permission,” but you do not explain what was altered or identify similarities between the video and the altered video. You include a hyperlink to a Google Drive page that appears to contain a video file named “Kevin Nash Seduced by Dead Son.mp4,” and the amended claim does not make clear if the file is a copy of the allegedly infringed work or the respondent’s work. In addition, it does not appear that you provided a copy of the allegedly infringed work as a supplemental document. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. In part because hyperlinks can lead to material that is no longer available online, the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation.

If you submit a second amended claim, it must include 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 the work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. Attach any supplemental materials that you want the Board to consider by uploading them as part of the claim rather than referring to them only with hyperlinks. 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

Your amended claim does not resolve the compliance issue raised in the November 15, 2022 Order to Amend Noncompliant Claim. To resolve the issue, if you file a second amended claim, it must state facts that indicate that a deposit of the allegedly infringed work was submitted to the Copyright Office before you filed the infringement claim. This order identifies additional compliance issues in your amended claim that must be resolved. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim 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 your claim included 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](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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

December 22, 2022