



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0415

January 19, 2024

Jon Glaser

CLAIMANT

v.

Marc Billings and BlackDove

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 **February 19, 2024**. 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

Your claim must make enough factual allegations to support each “element” of the claim. 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. 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 claim does not provide clear facts to support the elements of the claim related to each respondent’s role in the alleged infringing activity, access to your work, and substantial similarity, as described below. In addition, your identification of the type of work for your work must be clarified. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

Infringing Activity

For each respondent you name as an alleged infringer, you must state allegations regarding that respondent's allegedly infringing activity.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a "derivative work," which is a work based on the original work. Someone who does one of those activities without the copyright owner's permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You have named two respondents, Marc Billings and BlackDove. Each respondent's role in the alleged infringement is not clear. You assert that "BlackDove.Com is infringing on my work," and that your image is being used on the website, though you have asked for its removal. However, your claim does not provide enough facts about how either respondent used one of your exclusive rights in the work without permission, or is responsible for the alleged infringement on BlackDove.Com. If you choose to leave these respondents in any amended claim you file, you must provide more details and background regarding how *each of them* engaged in infringing activity.

In addition, if you file an amended claim with BlackDove as a respondent, please confirm that you provide the entity's full name (for example, BlackDove Inc., BlackDove Corporation, or BlackDove LLC), as the case may be.

Access

Your claim does not provide facts that indicate how the respondents had access to your work. "Access" means a reasonable opportunity to hear your work before the alleged infringement took place. Your claim does not clearly state allegations about where or how your work was available before the alleged infringement so that the respondents had an opportunity to see it. You allege that "[t]he image has been available for usage on his site since an initial notice by me of my intentions to no longer participate in September 2020." However, the claim does not indicate how the respondents would have had access to the image to post it on the website in the first place. You also allege, "I discovered the image was still being used after I disclosed that I no longer was interested in participating in the website (September 2020)." These allegations may suggest that you gave permission to use the work on the website at some point, and perhaps that you uploaded or otherwise provided it to the website yourself, but it is not clearly stated in the 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 respondents or a close associate of the respondents; (b) was widely disseminated or was available to the public or respondents; or (c) is so strikingly similar to the work that appeared on the respondents' website that they could not have created it independently. If you provided a copy of the work to the respondents, or had any other relationship or agreement with them related to using the work on the website, you may also describe that relationship or agreement, and how it ended or terminated. If you gave permission to use the work on the website, but then withdrew that permission, describe when and how that permission was both given and withdrawn.

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. You included an image file with your claim, labeled [Endless Clouds.jpg](#), which appears to be a copy of your work, but you have not provided a copy of the allegedly infringing work. 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. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how your work and the allegedly infringing work are similar.

In the “Works infringed” section of the claim, you describe your work as “a photograph that was converted into a moving image” titled “Endless Clouds,” and the supplemental document filed with the claim appears to be a copy of your work. However, the claim does not clearly describe the allegedly infringing work or include it as a supplemental document. It is not clear whether the allegedly infringing image on the website is the photograph that was registered with the Copyright Office, “a moving image” that the photograph “was converted into,” or some other image. As a result, the claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit an amended claim, it must include more factual 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 your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Clarity – Allegedly Infringed Work

In the “Works infringed” section, you describe the allegedly infringed work as a photograph that has been registered by the Copyright Office with Registration No. VA0001901946. That registration issued for a group of photographs, including one titled “Endless Clouds.” However, in the “Works infringed” section, you also state that the photograph “was converted into a moving image” at some point, and you selected “Motion picture and audiovisual” as the “Type of work.” That selection is confusing and appears to contradict your other allegations. If you file an amended claim, select “Pictorial, graphic or sculptural” from the “Type of work” drop-down menu to indicate that your work is a photograph.

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