



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0114
May 31, 2023

Elaine McNabb, Pinwheel Crafts LLC

CLAIMANTS

v.

ETERNITY COMMERCE LIMITED

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 **June 30, 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.

Legal or Beneficial Ownership

Your claim provides conflicting facts about one of the claimant's 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. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue.

The registration included with your claim (“VA2217255”) lists only Elaine McNabb as the author and copyright claimant in the registration of the allegedly infringed work. Pinwheel Crafts LLC is not listed in that record as an author or owner of the copyright. The law considers limited liability companies to be separate legal entities from the individuals who own them. Because Pinwheel Crafts LLC is not listed on the registration certificate and you

have not included any additional information about the ownership of the copyright rights, your claim may not proceed unless the legal or beneficial ownership of “Paracord Bracelet Kit Instruction Manual” is clearly and adequately explained.

To correct this issue, you can either (1) amend the claim to remove Pinwheel Crafts LLC as a claimant or (2) provide additional information about how the copyright was transferred from or exclusively licensed by Elaine McNabb to Pinwheel Crafts. Your amended claim must include specific allegations about how each 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 each 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 Elaine McNabb and Pinwheel Crafts LLC or detail how Pinwheel Crafts LLC obtained legal or beneficial ownership of the copyright at issue. 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. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Copyright Infringement Claim – Elements

You have brought a copyright infringement claim before the Board. 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, meaning a reasonable opportunity to view or hear 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 enough facts about how the respondent had access to your work and how the two works are substantially similar.

Access

Your claim does not provide clear facts about how the respondents had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place. Your claim does not state allegations about where or how your work was available before the alleged infringement so that the respondent had an opportunity to see the work.

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 or otherwise provided to the respondents or a close associate of the respondents; (b) was widely

disseminated or were available to the public or the respondents; or (c) are so strikingly similar to the respondent's work that they could not have created their work 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 created their work independently. You must make allegations regarding access for each e work you claim were infringed.

Substantial Similarity

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

Your claim states that your work is the "design and text from Pinwheel Crafts Paracord Bracelet Kit Instruction Manual." You further state that the allegedly infringing work "was copied directly and used in Innorock's Paracord Bracelet Kit instruction manual." However, you do not provide enough information describing or depicting your work. The allegations in the "Describe the infringement" field of the claim do not sufficiently describe what portions of your work was used in 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 infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must include additional 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, they must be clearly labeled and identified so they can be properly compared to each other. 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.

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