



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0089

March 27, 2023

Aesthetic Associates, Inc., PS and William Portuese

CLAIMANTS

v.

Quizlet, Inc

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 **April 26, 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 and Beneficial Ownership

You filed a copyright infringement claim on behalf of two claimants, Aesthetic Associates, Inc., PS and William Portuese. The claim does not present facts that indicate that Mr. Portuese is a proper claimant in this case.

To bring a copyright infringement claim before the Board, each claimant must be a “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.

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. If it is not readily apparent from supplemental materials submitted with the claim, you

must provide some specific allegations about how each claimant owns, or has an exclusive license to use, the exclusive rights at issue.

Your claim identifies the allegedly infringed work as a “deviated septum diagram” registered with the Copyright Office, and names Mr. Portuese individually as the author of the work. However, the registration certificate for the work (which the claim includes as a [supplemental document](#)) does not list Mr. Portuese as the author. Instead, it identifies Aesthetic Associates as the claimed copyright owner and author of the work as a “work made for hire.”

For legal purposes, the author of a “work made for hire” is not the individual who actually created the work. Instead, the party that employed or commissioned the individual to create the work is considered both the author and the copyright owner. More information about authorship and works made for hire is available in [Circular 30: Works Made for Hire](#).

Because the registration certificate indicates that the copyright is owned by Aesthetic Associates, and not by Mr. Portuese personally, it appears to contradict his basis to bring a claim as a legal or beneficial owner.

To correct this issue, if you file an amended claim that names both Aesthetic Associates and Mr. Portuese as claimants, you must include allegations that explain the discrepancy with the registration certificate and detail how Mr. Portuese is the legal author of the deviated septum diagram, or obtained legal or beneficial ownership of exclusive rights in the diagram. You can do this by adding facts to the “Describe the infringement” section that explain his ownership at the time of the infringement, or by submitting additional supplemental documents that demonstrate his rights. For example, if the copyright registration is in error because the work was not “made for hire” but rather, Mr. Portuese created the diagram and assigned the copyright to Aesthetic Associates, while he has retained the right to receive royalties for use of the work, then he would still be a beneficial owner.

Alternatively, if Mr. Portuese is not a legal or beneficial owner of exclusive rights for the diagram, the amended claim should remove him as a claimant, at which point the claim—barring any other changes to the claim—may be found compliant and proceed.

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 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