



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0266
March 5, 2024

James H Dillard

CLAIMANT

v.

Damon Lovell, Kenneth Rucker,
Marquis Edwards

RESPONDENTS

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 4, 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 Registration

You have raised a claim of copyright infringement before the Board. The claim must include the copyright registration number and effective date of registration for the allegedly infringed work or, if it has not yet been registered, the service request number for a pending application to register the copyright. 37 C.F.R. §§ 221.1(b) & 222.2(c)(7)(ii)(C)-(D).

Your claim correctly listed the service request number for an application for registration for a group of unpublished photographs. That registration has since issued. If you submit an amended claim, state in the “Works infringed” section that the copyright has been registered, and include the registration number VAu001516282 and the January 24, 2024 effective date of registration.

Legal or Beneficial Ownership

Your claim presents unclear information about your status as a legal or beneficial owner of the allegedly infringed work. To bring an 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 claim identifies you as the author of the work, and Copyright Office records list you as both the author and the copyright owner of all of the photographs registered. However, in correspondence with the Copyright Office while the application was pending, you indicated that you were not the photographer of all of the photographs, and that instead, “a large portion of the photos” were from a photoshoot by photographer Robert Morales. You identified some of the photographs as “works made for hire,” but that appears to be incorrect.

“Work made for hire” has a special meaning under the law; whether a work is a “work made for hire” is determined by facts in existence at the time the work is created. There are only two situations in which a work made for hire is produced: (1) when the work is created by an employee as part of the employee’s regular duties or (2) when a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. For a specially ordered or commissioned work made for hire, the parties must agree in writing that the work will be considered a “work made for hire” and the work must fall within one of nine specific categories. See pages 2 and 3 of [Circular 30](#) for more information. When a work is produced under these conditions, the employer or the party ordering or commissioning the work is considered the author and copyright owner.

It does not appear that either “work made for hire” situation (summarized in 1 and 2 above) applies. You provided the Copyright Office copies of your LinkedIn communications with Mr. Morales, which indicate that the photoshoot was a one-time event and that he was not your legal employee. Photographs are not one of the types of works that are eligible to be considered a work made for hire, even if they are specially ordered or commissioned, and it does not appear that you had an express written agreement with Mr. Morales ordering or commissioning the work as a work made for hire. It appears that after the photoshoot, you asked Mr. Morales to sign a “work for hire contract and copyright transfer” for his photographs, and that he did not sign it. You informed the Copyright Office that instead, Mr. Morales replied, “You can do whatever you want with them.” That message would not make you an owner of his photographs or give you an exclusive license to use them.

If you submit an amended claim, you must include more information that indicates that you are a legal or beneficial owner of the photograph at issue in this claim, and shows or explains how you gained ownership of it. For example, you should state if it was you or Mr. Morales who took the photograph, and if Mr. Morales is the photographer, you must describe facts that show that he conveyed the copyright to you or gave you an exclusive license to use the photograph.

More information about authorship and works made for hire is available in [Circular 30: Works Made for Hire](#) and in Section 506 of [Chapter 500](#) of the *Compendium of Copyright Office Practices, Third Edition*.

Respondent Clarity

The Board can only hear claims asserted against multiple respondents if all claims in the proceeding “arise out of the same allegedly infringing activity or continuous course of infringing activities[.]” 17 U.S.C. § 1504(c)(6). Your claim asserts that the respondents used “my photos unmodified as thumb nails, video clips and video backgrounds. The uploaders have collectively done this about 80 times so far. Usually they say disparaging things about me while the videos play.” However, you do not appear to allege that all respondents acted *together* or that your claims all arise out of the same infringing activity or activities. Your claim discusses respondents as “channel owners” but you do not give any information in your claim about how the respondents acted together.

To address this issue, your amended claim must either be raised against only one respondent (or set of respondents, if you allege that they acted together in the same course of conduct), or must include facts that indicate that the respondents jointly engaged in the same allegedly infringing activities or were parts of a chain of one continuous course of infringing activities. Alternatively, as described below, if the each respondent engaged in different activities related to different works, you must set forth facts to show what each respondent did regarding each work.

Infringing Activity

Your claim does not present enough facts to clearly state how each respondent used any exclusive rights you have in each allegedly infringed work without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display 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. Claimants are allowed to bring claims involving multiple works as long as the alleged infringement was part of the same allegedly infringing activity or continuing course of infringing activity. 17 U.S.C. § 1504(c)(6). More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You have brought a claim alleging that multiple respondents infringed nine different works. As noted above, it is unclear if you are permitted to bring a claim which includes all nine of these works and all three respondents in the same proceeding. Your submissions do not provide a basis to hold *each* respondent liable for infringement of those works. In your claim, you state that “[t]he channel owners are using my photos unmodified as thumb nails, video clips and video backgrounds. The uploaders have collectively done this about 80 times so far.” Additionally, you have included several supplementary documents that appear to show your works and the alleged infringement. However, they are not labeled clearly enough for the Board to determine which respondent personally copied, distributed, performed, or prepared derivative works based on each of your nine allegedly infringed works, or participated in any such infringing activity.

If you submit an amended claim, you must more fully explain how *each* respondent infringed each of your allegedly infringed works. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe (1) acts infringing your copyrights in each work, specifying the infringing works

and how the respondents engaged in the infringing activity, and (2) the infringing acts of each respondent, specifying the allegedly infringed and infringing works for each respondent. You should be as detailed as possible, setting forth what each respondent did in relation to each work you allege was infringed. If you cannot state facts to support an infringement claim about any particular works, or against any named respondents, you must omit them in the amended claim.

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