



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0063

March 19, 2024

Nadine Hokayem

CLAIMANT

v.

Alex Brecher

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 **April 18, 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. There is no additional filing fee for an amended claim. If you file a second amended 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 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

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, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). As stated in the March 12, 2024 Order to Amend Noncompliant Claim (March 12 Order): “You must have obtained, or submitted a complete application for, registration of the copyright before you filed this claim on February 27, 2024.”

In your amended claim, you state that the allegedly infringed work has not been registered by the Copyright Office, and you list 1-13581590241 as the service request number for an application to register the work. Copyright Office records show that your application was submitted on March 4, 2024, after this claim was filed.

It appears that this claim cannot be successfully amended and cannot proceed if your work was neither registered nor subject to a pending application on February 27, 2024. You should only file a second amended claim

if you can state facts that would support a copyright infringement claim before the Board, including a registration or application for registration completed before the claim was filed. Instead, to raise an infringement claim based on your March 4, 2024 application, you would need to refile your claim in a new proceeding.

If you correct the registration issue in a second amended claim or by refiling the claim in a new proceeding, you will also need to address the other issues raised below.

Legal or Beneficial Ownership

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. 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.

In the “Works infringed” section of the amended claim, you list yourself as the author of the allegedly infringed work, and your pending copyright application lists you as the author and copyright claimant (owner). Supplemental documents filed with the amended claim include records of takedown notices directed to Shopify that list you as the copyright owner. However, other supplemental documents include what appear to be other takedown notices addressed to Wall-Mart and eBay, in which you described yourself as “authorized to act as a non-exclusive copyright agent on behalf of Nutri-Patch,” and described Nutri-Patch as the copyright owner. Those documents leave it unclear if you, rather than Nutri-Patch, are a proper claimant for this infringement claim.

To address this issue, in a second amended claim or in a new proceeding, you must include allegations that indicate how you are a legal or beneficial owner of the copyright for the allegedly infringed work. Alternatively, if you are not a legal or beneficial owner and Nutri-Patch is, then any amended claim must remove you as the claimant and name Nutri-Patch as the claimant instead. In any event, your amended claim must clarify what rights both you and Nutri-Patch have with respect to the work.

Substantial Similarity

Your amended 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 submitted with the claim, you must provide specific allegations about how your work and the allegedly infringing work are substantially similar.

Your allegations do not provide enough information describing or showing your allegedly infringed work or the allegedly infringing work. In the “Works infringed” section, you identify your work as a literary work titled “Nutri-Patch® website, images, text, video and registered brand name.” You allege that “[m]y product images, text, and

video, and registered brand name are being used to sell products online,” and that “[t]he infringing work has been taken from my online store and is used to sell products.” However, no allegations in the “Describe the infringement” section describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided copies of your work or the allegedly infringing 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.

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 works were taken by the respondent in the allegedly infringing works, 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.

Final Amendment

Your amended claim does not resolve all of the compliance issues raised in the March 12 Order, and it raises further issues, discussed above, that also must be resolved for the claim to go forward. **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). Alternatively, you may refile the claim in a new proceeding.

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