



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0409
December 22, 2023

Small Island Boutique Ltd (Silver Rain Silver)
and Yu Liu

CLAIMANTS

v.

Etsy

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 **January 22, 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.

Proper Respondent

You are seeking a declaration of noninfringement under 17 U.S.C. § 1504(c)(2). A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of the respondent's copyrighted work. 17 U.S.C. § 1504(c)(2). If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. To proceed with such a claim, there must be an "actual controversy" between the parties. 28 U.S.C. § 2201(a); see 17 U.S.C. § 1504(c)(2) (a "claim for a declaration of noninfringement" must be "consistent with" 28 U.S.C. § 2201). The claim must identify the party that accused you of infringement and must describe your allegedly infringing activity, the reasons why you believe no infringement occurred, and the reasons why you believe there is an actual controversy about the requested declaration. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v). More information about what is required to support a claim for a declaration of noninfringement is available in the [Starting a Noninfringement Claim](#) chapter of the CCB Handbook.

Your claim is noncompliant because the entity named as a respondent, Etsy, is not a proper respondent for this claim.

You allege that you had a listing on Etsy’s online marketplace for a ring you designed until Creaddict LLC, a French entity, sent Etsy a takedown notice that asserted that the listing infringed on Creaddict’s copyright. You further allege that you sent Etsy a counter-notice, but that Etsy “refused to accept” it and “refused to process” it. Documents filed with the claim include copies of two emails from Etsy’s legal department, both dated December 14, 2023. The [first email](#), with the subject line, “We’ve removed some of your listings due to IP infringement reports,” stated: “CREADDICT recently let us know that they believe some of your listings infringe their intellectual property (IP).” The [second email](#), with the subject line “Your Etsy counter notice,” stated: “Based on the report of alleged infringement, we’re unable to process your counter notice.”

Those allegations and documents do not support a noninfringement claim against Etsy because they describe a dispute over whether you infringed a copyright claimed not by Etsy but by Creaddict. It does not appear that Etsy’s legal rights are at stake in that dispute between you and Creaddict, so your claim against Etsy does not present an actual controversy that the Board can resolve. Your allegations do not describe a dispute between you and Etsy that could support a declaration of noninfringement.

You contend that “Etsy determined that I’m violating their intellectual property rules.” In the “Describe dispute with respondent” section, you state: “I asked Etsy why they didn’t follow the law and accept my counter DMCA, Etsy could not give me an answer, meaning they agree that I’m infringing. I understand that online service providers can not be the respondents usually but since Etsy refused to process my [counter-notice] . . . they are equally claiming that I’m infringing.” However, the documents filed with the claim do not appear to support those contentions. Declining to process your counter-notice does not, without more, mean that Etsy determined or claimed that you are an infringer.

Moreover, the Board cannot hear a noninfringement claim against Etsy if it has not claimed to own the copyright. Only the copyright owner can be a proper respondent for your claim because only a copyright owner could bring a claim for infringement against you. See, for example, *Shabani v. Moctezuma*, No. 16-cv-03862, 2017 U.S. Dist. LEXIS 8359, *6 (N.D. Cal. Jan. 20, 2017) (“Plaintiff does not allege that Defendant owns any of the copyrighted material in question and the true copyright owners are not parties to this litigation. Since Defendant does not have standing to sue Plaintiff for copyright infringement under the Copyright Act, Plaintiff cannot allege facts sufficient to show that there is a ‘real and reasonable apprehension’ that he may be sued for copyright infringement by Defendant.”). If an actual controversy the Board could consider exists over whether you infringed the copyright, the controversy is between you and Creaddict, not Etsy.

If you raise your noninfringement claim in an amended claim, it must specifically describe an actual dispute between you and the respondent over whether your activities infringed the respondent’s copyright. This claim may not proceed against Etsy unless, in an amended claim, you can state facts that indicate that it claims an ownership interest in the copyright or that it controls the copyright.

An amended claim may name a different respondent. However, the Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). You list Creaddict as “in Paris,

France,” and you describe the takedown notice as “filed from France.” That information indicates that the Board cannot hear a claim against Creaddict. You should only amend your claim if you are raising it against an individual or entity residing in the United States. If you name Creaddict as a respondent, your amended claim must state facts that indicate that it actually resides in the United States.

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