



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0138
July 12, 2024

JAMES CALLOWAY, LEROY O JACKSON, JR,
NELI SHIMONE SMITH

CLAIMANTS

v.

HIPGNOSIS SONGS GROUP, LLC,
RICK JAMES ENTERTAINMENT, LLC,
WIXEN MUSIC PUBLISHING INC.

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 **August 12, 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 Infringement — 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 or clarity about two of the elements as detailed below. Please provide more details and background regarding these elements in your amended claim.

Legal or Beneficial Ownership

Your claim provides unclear information about the claimants' status as a legal or beneficial owners 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.

The claim presents unclear information about the initial registration and ownership of the work. In your claim, you state that "Mary Jane Productions, Inc. registered "Big Time / L. Burgess, J. Calloway, S. Davenport" with the U.S. Copyright Office under Musical Composition Registration Certificate No. PA0000101998 dated May 6, 1981." You then state that PA 2-253077, which lists Leroy O. Jackson Jr. (pka) Leroy Burgess, James J. Calloway, and Aaron T. Davenport (pka) Sonny Davenport as authors of "Big Time," is the "true copy" of the registration for the work. Additionally, you state that "Mary Jane Productions Inc. was not authorized to be a 'copyright claimant' exercising copyright administrator rights such as registering the copyright because a copyright claimant must be an owner and not one who merely obtained a license of certain exclusive rights under the copyright." However, your claim does not provide any additional information of evidence showing that the 1981 registration was unauthorized. In your amended claim, you must provide more supporting information regarding the circumstances surrounding the 1981 registration, and why the later registration is valid. Please note that registering a copyright does not constitute an act of copyright infringement, even if the person or entity who registered the copyright does not own the copyright. The Copyright Office has more information about challenging the validity of a registration in [Section 1800](#) of Compendium (Third).

Additionally, the claim does not present facts that indicate that Neli Shimone Smith is a proper claimant. 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. To correct this issue, your amended claim must include specific allegations about how the 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 the 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 Neli Shimone Smith and the individuals listed as authors and copyright claimants or state how the Smith obtained legal or beneficial ownership of copyright such as by inheritance or transfer if that is true. 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.

Infringing Activity — Clarity

The Board is only authorized to resolve certain types of copyright disputes, including claims of copyright infringement. Your claim does not present enough facts to clearly state how the respondents used any exclusive rights you have in the allegedly infringed work without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform 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.

Your claim appears to present a claim for nonpayment of royalties and an accounting instead. In your claim, you state that “Plaintiffs have not received a single accounting statement nor payment for mechanical royalties and publishing royalties for “Big Time” from Defendants” and that the claimants are seeking “[u]npaid mechanical and publishing royalties up to \$30,000.” A dispute over an assignment of, or entitlement to, royalties raises purely state-law claims. *Durgom v. Janowiak*, 74 Cal. App. 4th 178, 186 (Cal. Ct. App. 1999); *Golden West Melodies, Inc. v. Capitol Records, Inc.*, 274 Cal. App. 2d 713, 717-18 (Cal. Ct. App. 1969). The Board cannot hear such contract claims but a claim for nonpayment might be viable in state court.

If the respondents did have a license to use the work, the Board could only hear your infringement claim if you amend the claim to also state facts indicating that they failed to satisfy a “*condition precedent*” of the agreement, or that their use of the work went beyond the *scope* of the uses permitted under the license, both of which are further explained below.

A. Condition Precedent

Your claim can proceed if you state facts in an amended claim that indicate that a “condition precedent” had to occur before the license could take effect, and that it did not occur. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, the payments may be a “condition precedent” to the licensee’s right to publish. If a copyright license depends on the licensee **first** satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective, and the licensor may raise a copyright infringement claim.

You have not alleged that full payment, or any other requirement, was a condition that the respondents had to meet before they could distribute the works. If there were terms that respondents had to satisfy first, your amended claim should provide those terms, including any specific conditional wording. To show that full payment or any other term of use was a “condition precedent” to a license, your amended claim must include enough details about the term stated to show that it had to be satisfied before the license would take effect. You may also include the agreement, or correspondence that plays a significant role in your allegations, as supplemental documents in support of your claim. If you include supplemental documents with your amended claim, they must be clearly labeled and identified so they can be properly reviewed.

B. Scope

Your infringement claim could also proceed if you present facts in an amended claim that indicate that, even if a license existed, the respondents exceeded their scope by using or continuing to use your work in a way that the license would not allow. To support a contention that respondents' use of your work exceeded the scope of a license, you must provide more details in an amended claim to indicate how the use went beyond what the license permitted. For example, you could include information supporting an allegation that the license was terminated. As stated above, you may include the agreement or significant correspondence as supplemental documents, which should be properly labeled.

Statute of Limitations

In your claim you state that “[s]ince in or around 1990, Plaintiffs have made efforts to engage legal counsel to assist them with the collection of unpaid mechanical writers’ royalties.” This raises questions about whether the statute of limitations prevents the Board from considering your infringement claim. A “statute of limitations” is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, for both federal court and the Board, is three years after the claim “accrues.” 17 U.S.C. §§ 507(b) & 1504(b)(1). Under applicable current law, a claim accrues when the infringement occurs or, if the claimant was not aware of the infringement at the time it occurred, at the time when the claimant knows or reasonably should know that an infringement occurred. In addition, you may not recover damages for acts of infringement that occurred more than three years before you filed your claim with the CCB unless you first knew and reasonably should have known about the infringements within the three years before you filed the claim. Because it is clear from your claim that you were aware of the alleged infringing activities before the three-year period, you must include allegations showing acts of infringement within the past three years in order for your claim to move forward. In your amended claim, remove claims for allegedly infringing actions before the three-year period and describe what acts of infringement occurred within three years of filing your claim with the CCB. For instance, the allegations regarding the releases in 2021 may not be barred by the statute of limitations but more clarity must be provided regarding those activities.

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