



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0133

United States Copyright Claims Board

Leslie Fradkin

CLAIMANT

v.

Spirit Music Group

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 **November 11, 2022**. 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 extra 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 – Ownership

Your claim is based on infringement of three different works: a sound recording entitled “Where Have All the Heroes Gone,” a musical composition with the same title, and a musical composition entitled “I’ll Be There Tonight.” Your claim does not make clear that you are a copyright owner entitled to raise an infringement claim about the sound recording for “Where Have All the Heroes Gone.”

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.

In the “Works infringed” section of your claim, you identify yourself as an author or co-author of the two allegedly infringed compositions, yet you list RRO Entertainment LLC as the author of the sound recording. In addition, Copyright Office records for Registration Number SR0000781668 cited in your claim, for the *Rehearsals For Retirement* album that includes the “Where Have All the Heroes Gone” recording, list RRO Entertainment, not you, as the copyright claimant. These facts raise legal issues about your status as a legal or beneficial owner of the sound recording. You cannot assert infringement of the sound recording unless you are its legal or beneficial owner, or you have an exclusive license to use the exclusive rights at issue in the claim.

If you file an amended claim, and you maintain the allegations of infringement of the sound recording, you must include specific allegations about how you own it, or how you have 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 your ownership in exclusive rights in the work at the time of the infringement, or by submitting supplemental documents that demonstrate your rights. Alternatively, you can remove the sound recording as a claimed infringed work and allegations of infringement of that work. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Improper Pleading Form

The Board claim form is a standardized form, available on [eCCB](#), where claimants must enter all relevant allegations. [37 C.F.R. § 222.2\(a\)\(1\)](#). Allegations in support of the claim must be made through the standard form. [37 C.F.R. § 222.5\(a\)](#). You submitted, as supplemental material, a document styled as a “Spirit Music Complaint,” which appears to be patterned on a complaint that might be filed in federal court. Submitting a complaint is not an acceptable way to plead a claim before the Board.

Your “Spirit Music Complaint” document also is different from your claim form submissions in significant ways. The “complaint” appears to assert infringement of not three works but four, adding allegations related to infringement of the sound recording of “I’ll Be There Tonight.” It includes many allegations and exhibits that do not appear in the claim form. It refers to several exhibits that are neither included in the “complaint” nor in any supplemental documentation filed with the claim. The “Spirit Music Complaint” document also concludes with a prayer for relief that requests different forms of relief than the relief sought in the claim form, including damages related to the sound recording of “I’ll Be There Tonight,” and seems to request \$30,000 in damages for each allegedly infringed work. The most that a respondent can be ordered to pay in damages in a Board proceeding is \$30,000 total. 17 U.S.C. § 1504(e)(1)(D).

To address these issues, you may file an amended claim that includes all of your factual allegations in the claim form, without a separate “complaint,” in which the relief sought is clearly limited to relief that the Board can grant. Please review the discussions at pages 6 and 15 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook, and under the “What” tab on the [Claimant Information](#) page of ccb.gov, for more information about the kinds of relief that the Board can grant. Note that you may attach evidence as supplemental documentation, but you may not use attachments to make additional allegations.

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 that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

October 12, 2022