



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0160

November 12, 2024

PerfectPinz LLC

CLAIMANT

v.

K9King, LLC

RESPONDENT

ORDER TO AMEND NONCOMPLIANT COUNTERCLAIM

On June 13, 2024, the Copyright Claims Board (“Board”) found the amended claim (“Claim”) compliant and directed claimant PerfectPinz LLC (“Claimant”) to serve the respondent K9King, LLC (“Respondent” or “you”). On October 9, 2024, you filed a response to the Claim, in which you raised a counterclaim of misrepresentation under 17 U.S.C. § 512(f) against Claimant.

Your response to the Claim is complete and does not need to be changed. However, the Board finds that the counterclaim does not comply with the requirements of the CASE Act and related regulations. To proceed with the counterclaim, you must submit an amended counterclaim by **December 12, 2024**. If no amended counterclaim is filed, the Board must dismiss the counterclaim without prejudice, and the proceeding will continue with Claimant’s claim. If you file an amended counterclaim, it will be reviewed for compliance and the parties will be notified if it is found compliant or noncompliant. 17 U.S.C. § 1506(f)(2).

If you file an amended counterclaim, 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 counterclaim before you file again. You do not need to provide a legal argument in your counterclaim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your counterclaim. There is no character limit, so please be as detailed as possible.

Pleading Form

The Board counterclaim form is a standardized form, available on eCCB, where counterclaimants must enter all relevant allegations. 37 C.F.R. § 222.9(b). Allegations in support of the counterclaim must be made through the standard form. 37 C.F.R. § 222.5(a). Supplemental documents may be attached to the counterclaim as well to provide evidence, but not as a substitute for adequately filling out the counterclaim form.

Your response to most of the questions in the counterclaim form is simply “See attached brief,” referring the supplemental [document](#) you submitted styled as “K9King, LLC’s Non-infringement Response,” which appears to be patterned on a formal legal brief or memorandum that might be filed in federal court. Submitting a separate brief is not an acceptable way to plead a counterclaim before the Board.

If you file an amended counterclaim, include a statement of the relevant facts in the counterclaim form. If a full recitation of the facts does not fit well in the counterclaim form, you may also attach a separate document that is limited to a recitation of the relevant facts and is not in the form of a pleading or “complaint.”

Misrepresentation

You have raised a counterclaim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law that involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online. Your counterclaim must make enough factual allegations to support each “element” of misrepresentation under section 512(f). The elements of the counterclaim are:

1. Claimant sent an OSP either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. Claimant made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. Claimant knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content, and
5. You were harmed as a result of the OSP’s decision.

17 U.S.C. § 512(f).

Your allegations do not describe a violation of section 512(f). The misrepresentation counterclaim is not compliant because it does not describe any statement, or any false statement, made to an OSP. You do not provide information about how Claimant made a misrepresentation in a takedown notice or counter-notice to an OSP about an allegedly infringing work. In a section of your supplemental brief with the heading “Fraud, Misrepresentation, and Unclean Hands,” you assert that Claimant has made various false statements to you, not to an OSP. In the same section, citing 17 U.S.C. § 506(e), you speculate that Claimant may have made false representations to the Copyright Office, but as you note, section 506(e) provides for criminal liability; the Board cannot hear such claims. *See* 17 U.S.C. § 1504(c)-(d). In the counterclaim form, you assert that the misrepresentation occurred in a counter-notice, but you have not described any counter-notice sent by Claimant. Instead, it appears that you sent the only counter-notices that either party has mentioned, including the three counter-notices filed as supplemental documents with the Claim. These allegations suggest that your counterclaim cannot proceed.

A misrepresentation that violates section 512(f) must be a false statement made to an OSP about the posting of a copyright-protected work. A misrepresentation counterclaim must allege that Claimant made a false or incorrect statement in a takedown notice or counter-notice *to an OSP*. In addition, the counterclaim must present facts that indicate that the OSP has relied on the Claimant’s false statement, and that as a result, the OSP removed or restored the allegedly infringing material. It also must provide the specific words in the takedown notice or counter-notice that you allege were false, and explain the alleged misrepresentation.

Your allegations do not support a counterclaim under section 512(f). Instead, your allegations contradict the basis for the counterclaim. You may not submit an amended misrepresentation counterclaim unless you state facts in support of each element of the counterclaim.

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 [Counterclaims](#) and [Misrepresentation](#) chapters of the CCB Handbook for more assistance.

Copyright Claims Board