



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0096

March 26, 2024

Nadine Hokayem

CLAIMANT

v.

Alex Brecher

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 **April 25, 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.

Misrepresentation – Clarity

This proceeding raises a claim 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, which involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online.

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are:

1. The respondent 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. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). The claim must include the words in the takedown notice or counter-notice that you allege were a misrepresentation and an explanation of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(vi)-(vii). A counter-notice only violates section 512(f) if the respondent misrepresents that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f).

Your claim does not provide enough information to show that the respondent made that kind of false or incorrect statement of fact. You allege that you sent takedown notices to Shopify on February 27, 2024 and March 18, 2024, and you include three takedown notices as exhibits to the claim, which indicate that your original works appeared on Shopify. You also allege that the respondent, a Shopify merchant, sent one or more counter-notices on March 20, 2024, and you include three counter-notices as exhibits. In the “Words that made up the misrepresentation and explanation of the misrepresentation” section of the claim, you state that the counter-notices stated that “the content in question was removed because of a mistake or misidentification of the content that needed to be removed.” However, your claim does not include information that indicates why that statement was false or incorrect. If you submit an amended claim, you must show or explain why that statement was false or incorrect, and how it was false or incorrect.

In addition, you do not clearly indicate how many allegedly false counter-notices are at issue. Your claim does not include information or exhibits that indicate which of your works were at issue in the alleged March 18, 2024 takedown notice, and the counter-notices you provided as exhibits appear to include only takedown notices issued on February 27, 2024. Meanwhile, two of the takedown notices and two corresponding counter-notices that you provide as exhibits seem to relate to the same product (“B12 Vitamin Patches”). If you file an amended claim, include allegations that clarify the number of allegedly false counter-notices you claim the respondent submitted, and when, and which of your copyright-protected works was at issue in each counter-notice; and clearly label and identify any supplemental documents you provide as exhibits.

You also do not provide enough information about the alleged infringement that was the subject of your takedown notices. You state that “[m]y original product images, text, video, and registered brand name are being used to sell products on [the respondent’s] site,” but you do not include enough details describing or showing what the allegedly infringing material was. If you submit an amended claim in this proceeding, provide additional facts that describe the respondent’s alleged infringing activity, for example, by specifically identifying which of your copyright-protected works appeared on the respondent’s Shopify page, and describing or showing how they appeared. Brand names are not protected by copyright and so allegations regarding such names cannot be brought before the Board.

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