



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0042
March 14, 2024

Anna M Sanchez

CLAIMANT

v.

St Vincent De Paul Society and alphagraphics
services

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 **April 15, 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 — Registration

The Board can only hear a copyright infringement claim if, *before* the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted works or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering “a completed application, a deposit, and the required fee” to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a).

The “Works infringed” section of your claim states that the Copyright Office has not registered either of the allegedly infringed works, and provides a Service Request numbers “1-13519113091” and “1-13518943311” for the pending applications for registration. However, a Board search of Copyright Office records for the applications found that the Copyright Office has not yet received deposit copies of your works. If the deposits were not delivered to the Copyright Office before the claim was filed, the Board cannot hear the claim. The term “deposit” refers to the copy or copies of a work that must be submitted to the Copyright Office with an application for registration. Information about the deposit requirement for registration is available in [Chapter 1500](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. The Board cannot hear this claim unless a deposit copy

of the work was delivered to the Copyright Office before your initial claim was filed.

To address this issue, if you file a second amended claim, please include the registration number for each work, or a Service Request number for pending applications for registration with evidence that you submitted deposit copies of your works for that application *before* you filed your claim with the Board on February 15, 2024. However, it appears that copies of the works were not submitted to accompany your applications and fees before you filed this claim, so it cannot be successfully amended and cannot proceed. Instead, you will need to refile your claim before the Board as a new claim.

Because you have filed a copyright infringement claim that does not appear to be based on works covered by a registration or complete pending application for registration, we have not reviewed the remainder of your claim to determine whether it complies in other respects with the legal and formal requirements for a claim before the Board. If you submit an amended claim that resolves the registration issue, the Board will engage in a full compliance review, so you should review the [CCB Handbook](#) and make sure the rest of your amended claim is compliant.

Noninfringement Claim — Clarity

A claim for a declaration of noninfringement asks the Board to find that **your** actions do not amount to an infringement of the respondents' 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. 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 respondent's copyrights. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v).

Your noninfringement claim does not clearly state facts that meet those requirements. Your description of the allegedly infringing activity is: "my works were used illegally without my permission." Additionally, you have listed the same two works in your infringement claim in the "Works infringed" section and in your noninfringement claim in the "Work(s) respondent says you have infringed" section, which indicates that you are not alleging a claim of noninfringement. If you file an amended claim and it includes a noninfringement claim, it must specifically describe an actual dispute between you and the respondents over whether **your** activities infringed the respondents' copyright, and why you believe that you did not infringe. You must provide enough information in your claim for the respondent to understand the claim and respond to it. Alternatively, if you cannot provide details that meet these requirements, you may delete the noninfringement claim from your amended filing. For more information about bringing a noninfringement claim, please consult the CCB Handbook chapter entitled "[Starting a Noninfringement Claim](#)."

Misrepresentation Claim — Elements

You are bringing 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. An online service provider (OSP) is a provider of online services to store (and make available), refer to, provide access to, or link to material that is available online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider 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 online service provider’s decision to take down or repost the content;
5. The online service provider relied on the misrepresentation; and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your allegations do not support any of those elements. You allege that you sent a takedown notice to one of the respondents on October 15, 2021, and that the respondent sent a counter-notice. In your claim, you appear to describe an exchange of emails between yourself and one of the respondents, not a DMCA takedown notice or counter-notice to an OSP. You must allege that takedown and/or counter-notices were sent to the service hosting the allegedly infringing material, and cannot base your misrepresentation claim on correspondence between the parties involved in this claim.

In addition, to support your claim of misrepresentation, you must provide additional facts to show that the counter-notice included a false or incorrect statement of fact “that material or activity is infringing, or . . . that material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f)(1)-(2). Your claim does not provide information about the respondent making statements that violate section 512(f). If you submit an amended claim to support your claim of misrepresentation, you must provide additional facts to show that a takedown notice or counter-notice, sent to an OSP by a respondent, included a false or incorrect statement and show or explain why the statement was false or incorrect.

For more information about bringing a noninfringement claim, please consult the CCB Handbook chapter entitled “[Starting a Misrepresentation Claim.](#)”

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