



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0059

March 12, 2024

Frederick A. Delk

CLAIMANT

v.

HarperCollins Publisher and Charles M. Blow

RESPONDENTS

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 11, 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 claim of copyright infringement 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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondents’ infringing activity, access to your work, and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

Infringing Activity

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 display 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. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You identify the allegedly infringed work as a book titled “Black Paper: Black American Homeland, Super Majority Black Region Of States, Great Reverse Migration.” Documents filed with the claim indicate that you published a work with that title in 2012. However, the copyright registration listed in the claim, registration number TX0009337265, covers only “revised and additional text” in a version of the work first published in 2023. In your application for that registration, you stated: “The original work was created in 2012 and published on my website and YouTube videos and it has undergone changes in title and updated annually. Nonetheless, I chose to publish[] the most current version of ‘The Black Paper: Black American Homeland’ with Ingramspark in 2023.” Copyright Office records also include a copy of your November 28, 2023 email to the registration specialist examining your application, in which you affirmed that “[t]he previously published material should be excluded from the claim.” Your registration specifically excludes the “previous version.”

You allege that the respondents infringed your copyright by publishing a book by Charles M. Blow (Blow) titled “The Devil You Know,” which you allege “involves the unauthorized reproduction and use of substantial portions of my work.” However, your claim does not include enough information to identify any part of your registered work that the respondents allegedly used without permission. In the “Infringement dates” section of the claim, you allege that the infringement began in 2021. You list TX0009071674 as the registration number for “The Devil You Know.” That registration issued in 2021, and the registration certificate indicates that the respondents’ book was published in 2021, two years before the material covered by your registration.

If you file an amended claim, it must identify specific material covered by your registration, in the revised and additional text first published in 2023, that you allege the respondents infringed, and it must state facts that reasonably indicate how they might have infringed that material by publishing “The Devil You Know” in 2021. Alternatively, if you have a different, older work—for which the registration or application for registration existed when you filed your claim—that you believe the respondents infringed, you may list that registration in the “Works infringed” section of the amended claim.

Access

Your claim does not provide facts about how the respondents had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place.

Your claim does not include any details about where or how your work was available to the respondents before you allege the infringement began in 2021. In your application for registration, you indicated that the original 2012 version of your work was published on your website and on YouTube, and that Ingram Spark published the 2023 version. Your claim does not include those details, however, and it does not include specific allegations about where or how the “revised and original text” covered by the registration was available before the alleged infringement so that the respondents had an opportunity to see it.

You allege: “My interactions with Blow on Twitter, where I shared a vast amount of conceptualization and vision from my work, suggest that Blow had access to my content and was influenced by it in the creation of his book.” However, it is not apparent that in 2021, Blow had any knowledge of your book or of the content covered by your registration. A document included with the claim, labeled “Black American Homeland Tweets 2015-2020.docx,” shows copies of dozens of tweets that seem to be from your Twitter accounts between 2015 and January 2021, including at least ten tweets tagging or replying to Blow’s Twitter account @CharlesMBlow. You allege, and show in another [document](#), that Blow replied to one of your 2015 tweets. While your 2015 Twitter exchange may have referred to ideas or concepts expressed in your book, you did not mention your book. Other than Blow’s 2015 reply, you have not shown that either respondent engaged with you on Twitter or anywhere else, and you have not identified any content covered by your 2023 registration that appeared in any of your tweets. You have not presented facts that make it reasonably likely that, before the alleged infringement began, the respondents had access to your “revised and original text” first published in 2023.

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that your registered work (a) was sent directly to a respondent or a close associate of a respondent; (b) was widely disseminated or was available to the public or respondents; or (c) is so strikingly similar to the respondents’ work that they could not have created it independently.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your registered work and the respondent’s allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

Your allegations do not identify similarities that relate to copyrightable expression. You allege that Blow’s book reproduces “original ideas and concepts” from your work, and “incorporates elements and themes that closely resemble those” in your work, “including discussions about Black American empowerment, predominant

population and political control over states, Electoral College Votes and the strategy of the Great Black Reverse Migration to the Southern states.” You further allege that you have “shared a vast amount of conceptualization and vision” from your work on Twitter. However, a valid copyright only extends to copyrightable subject matter, and copyright law does not protect ideas, concepts, or theories. See Section 313.3(A) of the *Compendium*. It only protects original elements of expression. Writing a book that advocates a political theory or strategy, for example, would not give the author the right to prevent others from exploring or advocating that theory or strategy in their own works. Instead, what copyright may protect is the particular way that the author’s writings express that theory or strategy or, in other words, the actual way in which the book is written.

You also assert that there are “similarities between [your] promotion of the Black Paper: Black American Homeland and Blow’s book content.” However, your copyright registration does not appear to cover promotional materials such as YouTube or Twitter posts. To support the element of substantial similarity, you must identify similarities between the respondents’ work and protected elements that appear in your work, not in promotional materials separate from the work itself.

The “Describe the work” section of the claim provides a general description of a political strategy advocated in your book, but you have not provided information describing or showing the “revised and original text” covered by your registration. You allege that “Blow’s book incorporates elements and themes that closely resemble those found in Delk’s work,” but you do not state or show how any of their content is identical or substantially similar. In addition, while your supplemental documents show the cover of your work and of the allegedly infringing work, you have not provided a copy of the content of either work as supplemental documents. As a result, the claim does not provide enough information to enable the respondents to understand the claim and respond to it.

If you submit an amended claim, it must include allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which elements of expression in your work were taken by the respondents in the allegedly infringing work, or copies or other documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Relief Requested

The Board is only authorized to grant certain kinds of relief. Unlike a federal court, the Board cannot order respondents to stop or modify their activities (sometimes called an “injunction”) unless the respondent notifies the Board that, if found liable for infringement, they will stop or modify the activity.

The “Describe the harm suffered and the relief sought” section of your claim includes a “request that the CCB issue an injunction prohibiting further distribution, sale, or reproduction of ‘The Devil You Know’ until the infringing material is removed or properly licensed.” That is not relief that the Board can order, so if you file an amended claim, you should omit any request for an injunction.

Supplemental Documents

It is not clear how some of the supplemental documents filed with your claim support or relate to your infringement claim. One document provides hyperlinks to YouTube videos that you state you produced in 2013 and 2014, and another provides a hyperlink to a website where you indicate a professor summarizes some of your ideas. In part because hyperlinks can lead to material that is no longer available online, the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation. When you submit an amended claim, please include only documents that directly pertain or relate to the claim, and provide an explanation of their relevance if it is not clear.

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.