



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0116

United States Copyright Claims Board

Jonathan Riches

CLAIMANT

v.

Heels in the Air dba Vicki Pate

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **January 9, 2023**. 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. There is no additional filing fee for a second amended claim. If you amend your claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B), [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended claim before you file a second amended claim. 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.

Works Infringed –Clarity

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your amended claim does not include enough facts that explain how your photograph was used in the allegedly infringing video. If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide specific allegations about how your photograph was used by the respondent.

You have identified the work infringed as a photograph registered with the Copyright Office; however, all of your specific allegations of infringing acts involve a video. You provide links to two websites where you allege that “the infringing acts are occurring,” which include a Twitter post with a fifteen-second video and a YouTube video, neither of which displays a still photograph. You have also attached to your amended claim a screenshot of the video from the YouTube link and a copy of a photograph. The photograph is not labeled, so it is not clear if it is a copy of the allegedly infringed work. The photograph appears to be a selfie taken in the driver’s seat of a car, and the video image appears as if it may be set in the same driver’s seat. However, it is unclear from the allegations included in the amended claim what the relationship is between the photograph and the video since the still image from the video you attach is not a copy of the photograph. If you file a second amended claim, you should attach the supplemental materials you want the Board to consider as part of the claim, rather than referring to them *only* with hyperlinks. It is not apparent from your amended claim whether the allegedly infringed photograph appears in the posted video.

In your second amended claim, you must clearly allege the relationship between the two works and the basis for your assertion that the video is “a derivative” based on your registered photograph, or otherwise infringes the copyright in the photograph. 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.

If you have claimed infringement of a photograph in error, and are actually alleging infringement of a video of yours, you will need to amend your claim again to make that clear. In addition, you must have obtained a copyright registration or submitted an application, deposit, and fee for copyright registration for the video before you filed your claim on August 26, 2022. If your work was neither registered nor subject to a pending application at that time, this claim cannot be successfully amended and cannot proceed. 17 U.S.C. § 1501(a)(1). Instead, you would need to apply to register the copyright for the allegedly infringed work before you could refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Final Amendment

Your amended claim does not resolve the issues raised in the October 12, 2022 Order to Amend. If you file a second amended claim, it must

state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

To submit a second 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 your claim included 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 claim flow 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

December 8, 2022