



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0143
May 25, 2023

Stefanie Poteet

CLAIMANT

v.

US Bowling Corporation

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 **June 26, 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. 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.

Registration Number

A copyright infringement claim before the Board must include the registration number and the effective date of registration for the allegedly infringed works, if they have been registered. 37 C.F.R. § 222.2(c)(7)(ii)(C)-(D). In your claim, filed on April 17, 2023, you stated that the allegedly infringed works had not been registered, and you provided a service request number for a pending application for registration. Copyright Office records show that your application was approved on May 12, 2023, with an effective date of registration of April 2, 2023. If you file an amended claim, please include the registration number VAu001497400, and the April 2, 2023 effective date.

Copyright Infringement – Elements

An infringement 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, 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 claim does not present clear facts to support the elements of a copyright infringement claim related to the respondent's infringing activity, access to your works, and substantial similarity, as discussed below.

Infringing Activity

Your claim does not present enough facts to clearly state how the respondent is responsible for each allegedly unauthorized use of your exclusive rights in the allegedly infringed works.

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 allege infringement of four photographs, titled "Ball and Pins," "Bedrock Bowl," "Space Age Bowl," and "Surf Bowl." You allege that infringing acts occurred in at least two places: on the respondent's website and on HGTV. On the website, you allege that all four photographs appeared in a black-and-white collage, and that "Ball and Pins" and "Space Age Bowl" also appeared in a color collage. You allege that the respondent copied all four photographs and altered them, or had them altered, cropping the images and converting them from color to black-and-white for the collage containing all four works, as well as cropping "Ball and Pins" and "Space Age Bowl" for the color collage. You also allege that the respondent overlaid its watermark on both collages on its website. On HGTV, you allege that "Ball and Pins," "Space Age Bowl," and "Surf Bowl" appeared on "masking graphics" in in-home bowling alleys that appeared in a 2021 episode of the HGTV television series "Rock the Block."

Your claim does not include enough information or clarity about how acts committed by the respondent relate to the allegedly infringing use on HGTV. You allege that allegedly infringing masking graphics were depicted in a bowling alley shown in the program. However, the claim does not describe any role that the respondent may have had in that use. Your allegations do not indicate any relationship that the respondent has with HGTV or with the allegedly infringing acts on "Rock the Block." To resolve this issue, if you file an amended claim, include more specific allegations about how the respondent engaged in specific acts related to the masking graphics that violated your rights.

Access

Your claim provides only speculative facts about how the respondent had access to your photographs. "Access" means a reasonable opportunity to view your works before the alleged infringement took place. In the "Describe the infringement" section of the claim, you assert, "Respondent may have encountered Claimants' photographs online (e.g. on Flickr), but Claimant does not yet know with certainty." However, you have not clearly

identified how or where the photographs were available to the respondent before the alleged infringement commenced.

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 photographs (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or were available to the public or respondent; or (c) are so strikingly similar to the respondent's works that they could not have been created independently. **Alternatively**, you can upload copies of your photographs and the allegedly infringing works if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your photographs and the respondent's allegedly infringing works. If it is not readily apparent from supplemental materials submitted with the claim, you must provide some specific allegations about how your works and the allegedly infringing works are identical or substantially similar.

You allege that the respondent copied your photographs and "altered them or had them altered" by changing them to black and white, cropping, adding a watermark, and perhaps "augment[ing] the skies and clouds" or "remov[ing] palm trees." However, your allegations about dissimilarities between the works do not describe how they are substantially similar. You indicate that your photographs are in color and that some include skies, clouds, or palm trees, but no other allegations in the "Describe the infringement" section describe your works. You do not identify which parts of the photographs remained in the altered copies that allegedly appeared on the respondent's website or on HGTV. In addition, you have not provided images of your photographs or the allegedly infringing uses as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works were taken by the respondent in the allegedly infringing works, or 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.

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