



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0077

March 28, 2023

Nancy C. Ramirez Garcia

CLAIMANT

v.

Theo Hernandez

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 27, 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.

Copyright 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 work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). For each allegedly infringed work, the claim must include the title and author(s) of the work as well as, if the copyright for the work is registered, the work's registration number and effective date of registration. [37 C.F.R. § 222.2\(c\)\(7\)\(ii\)\(A\)-\(C\)](#).

Your claim lists fourteen allegedly infringed works. You claim that one of the works is a sound recording by the author Rafael Santiago Zapata Macias titled “Alma de Guerrero,” and that it was registered effective February 16, 2021, with Registration No. SRu1-480-705. However, “Alma de Guerrero” does not appear to be registered. Copyright Office records do not reveal a registration with that number or for a work with that title.

If you file an amended claim, you must provide the registration number for the work or the service request number for the application to register the work. Either the registration must have been issued or the application must have been delivered to the Copyright Office before you filed your claim on February 17, 2023. If “Alma de

Guerrero” was neither registered nor subject to a pending application at that time, your claim for infringement of that work cannot be successfully amended and cannot proceed. Your amended claim would need to omit that work from the list of allegedly infringed works. If it is not yet registered or subject to a pending application, you would need to apply to register the copyright for “Alma de Guerrero” before you could refile a new claim alleging infringement of that work. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Type of Work

An infringement claim must also provide a brief description of the nature or “type of work” of each allegedly infringed work. [37 C.F.R. § 222.2\(c\)\(7\)\(ii\)\(E\)](#). Your claim describes all fourteen allegedly infringed works as “sound recordings.” The Copyright Office assigns “SR” registration numbers for sound recordings, such as the registrations for two of the allegedly infringed works, “Cantos de Ayer” (Registration No. SRu 1-489-209) and “Cuida de Mi” (Registration No. SRu 1-501-146). However, eleven of the allegedly infringed works were assigned “PA” (“performing arts”) registration numbers: Registration Nos. PA 1-705-470, PA 1-705-478, and PA 1-705-481 (the “PA works”). The registration certificates for the eleven PA works indicate that they are not for sound recordings but for the music and lyrics in musical compositions.

Sound recordings and musical compositions are considered separate works for copyright purposes. See 17 U.S.C. § 102 (listing “musical works” and “sound recordings” as two separate categories of “works of authorship”). A registration for a musical composition covers the music and lyrics (if any) embodied in that composition, but it does not cover a recorded performance of that composition. Information about these two types of work is available in [Circular 56A: Copyright Registration of Musical Compositions and Sound Recordings](#).

To address this issue, if you file an amended claim, your description of the type of work must be accurate. For example, for the eleven PA works, you may describe the type of work as “music and lyrics,” “musical work,” or “musical composition,” rather than “sound recordings.”

Authorship

Your claim includes confusing allegations about the authorship of the allegedly infringed works. The claim must name the author (or authors) of each allegedly infringed work. [37 C.F.R. § 222.2\(c\)\(7\)\(ii\)\(B\)](#). Copyright Office registration records for the eleven PA works and the two sound recordings contradict the author names listed in your claim for those works.

Registration records list both you and Kerux Christian Ministry, Inc. as the authors of all eleven PA works. The claim, however, identifies you as the sole author of two of the PA works, “Alma Mia” and “El Mañana Será Mejor,” without mentioning Kerux Christian Ministry. For another PA work, “Coros Para Recordar,” your claim states that the author is “Public Domain.” For each of the other eight PA works, your claim lists someone other than you as the sole author. The authorship information in the claim is inconsistent with the information listed in the registration records for all eleven PA works.

The registration records for the two sound recordings (“Cantos de Ayer” and “Cuida de Mi”) are also inconsistent with the claim. Those records list you personally as the author, but the claim states that the author of both works is “Public Domain.”

If you submit an amended claim, you must clarify these issues so that the Board and the respondent can understand them. The “Works infringed” section must identify your allegedly infringed works and must clarify who the author of each allegedly infringed work is. If you are an author of the works listed in the “Works infringed” section, as the registration certificates suggest, then you must list yourself as an author of each work in that section. If you are not an author of those works, then the “Describe the infringement” section of your amended claim must explain the authorship discrepancy with the registration certificates, and explain how you are the legal or beneficial owner of the copyrights in those works. For example, if the authors of the musical works assigned or transferred their copyrights to you, you must state that in your amended claim. More information about authorship and ownership is available on page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Access

You allege that the claimant “uploaded the songs to his YouTube channel.” However, your claim does not provide facts about how the respondent had access to your works. “Access” means a reasonable opportunity to view or hear your works before the alleged infringement took place.

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 works (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.

Substantial Similarity

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

Your claim alleges that the infringed works are sound recordings, although the registration certificates indicate that most of them are musical works. In either case, you do not provide enough information describing or showing your works. No allegations in the “Describe the infringement” field of the claim describe your works or the allegedly infringing works, or state or show how they are identical or substantially similar. You do not describe how much of your works, or which elements of your works, are used in the respondent’s YouTube channel. In addition, you have not provided a copy of your works or the allegedly infringed works 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 identifying which particular elements 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.

Relief Requested

Your claim seeks a remedy for infringement that the Board cannot grant. The “Description of harm suffered and relief sought” section of your claim indicates that you are seeking a “[f]ormal certification of Nancy Ramirez as sole owner of master recordings so that YouTube will pull Theo Hernandez’s infringing content.” The Board cannot issue such a certification.

The Board is only authorized to grant certain kinds of relief. It can award monetary damages. 17 U.S.C. § 1504(e)(1). The Board can also order respondents to stop or modify their activities (sometimes called an “injunction”) if they notify the Board that, if found liable for infringement, they will stop or modify their activities. 17 U.S.C. § 1504(e)(2). The Board cannot issue a declaration of ownership of a copyright, separate from a determination of a permissible claim such as infringement. 17 U.S.C. § 1504(d)(1). And unlike a federal court, the Board cannot issue an injunction to obligate a third party, such as YouTube, to modify its activities. Please review the discussions at pages 6 and 15 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook, and under the “What” tab on the [Claimant Information](#) page of [ccb.gov](#), for more information about the kinds of relief that the Board can grant.

Ownership is a “threshold question” for the Board to resolve in an infringement claim, because the claimant must establish ownership of a valid copyright, and unauthorized copying by the respondent. See *Topolos v. Caldewey*, 698 F.2d 991, 994 (9th Cir. 1983). However, “[a] determination of ownership of a copyrighted work for purposes of resolving a matter before the Copyright Claims Board may not be relied upon, and shall not have any preclusive effect, in any other action or proceeding before any court or tribunal, including the Copyright Claims Board.” 17 U.S.C. § 1504(a)(2).

To address this issue, if you file an amended claim, you must remove the request for a formal certification of ownership from the “Description of harm suffered and relief sought” section.

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 supplementary 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