



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0135

June 26, 2023

Michelle Shocked

CLAIMANT

v.

Jincheng Zhang

RESPONDENT

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 **July 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. There is no additional filing fee for an amended claim. If you file a second amended 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 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.

Respondent Address

The Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). The claim must include the respondent's address. 37 C.F.R. § 222.2(c)(6).

In the amended claim, as in the original claim, you list 901 Cherry Avenue, San Bruno, CA 94066 as the respondent's address. However, as explained in the noncompliance order issued on May 2, 2023, other information you have submitted to the Board appears to contradict the accuracy of the San Bruno address. In the original claim, you alleged that the respondent made a misrepresentation in a counter-notice sent to YouTube and you appeared to quote the full counter-notice, including an address for the respondent in China. In addition, you listed the San Bruno address as YouTube's address in a separate proceeding pending before the Board, *Michelle Shocked v. Carol H. Chen and YouTube (Google LLC)*, 23-CCB-0148. Those filings indicate that the San Bruno address you provided for the respondent is really YouTube's address and that the respondent may be a resident of China. As a result, the Board may not be able hear this claim.

In the “Where the alleged infringing acts occurred” section of the amended claim, you state that the respondent posted the allegedly infringing work on a particular YouTube channel, and that the channel’s “Details” page states that its location is in the United States, as shown in a [supplemental document](#) filed with the amended claim. You further stated your intent to seek a subpoena under 17 U.S.C. § 512(h), “requesting YouTube to produce documentation confirming that the Respondent is operating this channel within the United States, and that the business activity concerning to this channel is within the United States.”

If you file a second amended claim, you must include a mailing address for the respondent other than YouTube’s San Bruno address, or include allegations that explain why you believe that the address is correct. If the San Bruno address provided is incorrect but the respondent in fact resides in the United States, you should also correct the address in the “Respondent” section. However, if the respondent resides in China, the Board cannot hear the claim and you should not file a second amended claim.

Copyright Infringement – Elements

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 hear your work before the infringing activity took place, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

More 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. Your amended claim does not provide clear facts to support the elements related to the respondent’s access to your work and substantial similarity, as described below. Please provide more details and background regarding these elements in your second amended claim.

Access

Your amended claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to hear your work before the alleged infringement took place. The allegedly infringed work is a musical composition titled “5 A.M. in Amsterdam.” Your amended claim does not state allegations about where or how the work was available before the alleged infringement so that the respondent had an opportunity to hear it. 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 work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing work. 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 similar.

You allege that the respondent "created an unauthorized derivative work of my musical work" and uploaded it to a YouTube channel without a license. However, you do not provide enough information describing your work or the allegedly infringing work. No allegations in the "Describe the infringement" field of the amended claim describe either work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. As a result, the amended claim does not provide enough information to enable the respondent to understand the claim and respond to it.

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

Final Amendment

The amended claim does not resolve the compliance issues raised in the noncompliance order issued on May 2, 2023, and further issues explained above also must be resolved for the claim to go forward.

This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed. 17 U.S.C. § 1506(f)(1)(B).

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 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