



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0320  
November 5, 2024

Villalobos O Body

CLAIMANT

v.

Joeph Torrence

RESPONDENT

## ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **December 5, 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 copyright infringement claim 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, 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 provide enough facts about how your work was infringed, how the respondent had access to your work, and how the respondent’s work is similar to your work. Please provide more details and background regarding these elements in your amended claim.

## **Infringing Activity — Clarity**

Your 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 your claim, you must provide specific allegations about how your photograph was used by the respondent. In your claim you state that the respondent “used my copyrighted photo as a thumbnail image without requesting permission.” However, it is not clear from the information included in your claim whether the allegedly infringed photograph appears in the posted video or was used as the thumbnail for the video or in what other ways, if any, the photograph was used and the context of the use. In your amended claim, you must clearly allege how the respondent used your work. 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.

## **Access**

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. You do not include any information about how the respondent had access to your work.

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 how 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 respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work if those images 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 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.

Your claim states that your work is “a copyrighted photo” titled “Jaguar Wright at Sheen Magazine Awards 2024.” However, you do not provide any information describing or showing your work. No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. Further, as noted above, it is unclear how your photograph was used in the allegedly infringing work and you have not provided a copy of your work or the allegedly infringed work 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 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 portions of your work were taken by the respondent in the allegedly infringing work, and how your work was used in the context of their 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. 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.

## **Noninfringement Claim**

A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of the respondent's copyrighted work. 17 U.S.C. § 1504(c)(2). If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. The claim must identify the party that accused you of infringement and must describe your allegedly infringing activity, the reasons why you believe no infringement occurred, and the reasons why you believe there is an actual controversy about the requested declaration. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v). Your noninfringement claim does not clearly state facts that meet those requirements. In fact, the information you have included with the noninfringement claim appears to assert another claim of copyright infringement against the respondent.

To assert a claim of infringement about another work, you should include the relevant allegations in the copyright infringement section of your claim. The claim for allows you to add multiple works in the "Work infringed" section of the claim and you can describe each instance of infringement in the "Describe the infringement section of the claim." You should make sure that, if you add more infringement allegations to your copyright claim, you address all four of the elements of copyright infringement noted above.

If you are, instead, asserting a claim of noninfringement, you must specifically describe an actual dispute between you and the respondent over whether your activities infringed the respondent's copyright, and why you believe that you did not infringe. You must provide enough information in your claim for the respondent to understand the claim and respond to it. More information about the elements required to assert a claim of copyright infringement is available in the [Starting a Noninfringement Claim](#) chapter of the CCB Handbook.

## **Misrepresentation**

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each "element" of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either

- a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
  3. The respondent knew the misrepresentation was false or incorrect,
  4. The misrepresentation was important to the online service provider's decision to take down or repost the content,
  5. The online service provider relied on the misrepresentation, and
  6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it provides conflicting information about which entity or individual made a misrepresentation in a takedown notice or counter-notice to an online service provider.

In your claim you name the respondent, Joesph Torrence, as both the sender of the takedown notice and the counter-notice. A copyright owner can provide a takedown notice to an online service provider, notifying them that someone posted infringing content on the service provider's system or network and demanding it be taken down. Once the content is taken down, the person or company that posted the content may get it reposted by sending a counter-notice to the service provider. Typically, the counter-notice states that the content was removed or disabled by mistake or misidentification and asks that the content be reposted. It is unlikely that the respondent was both the sender of the takedown notice and the counternotice.

In your amended claim you must clarify who sent the original takedown notice and who sent the counter-notice. You should also include both the notice and the counter-notice as supplemental documents. More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook. Make sure that any amended misrepresentation claim satisfies *each* element of that claim including a false statement made by the respondent that the online service provider relied on to take action.

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](mailto: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.

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