



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0312

September 29, 2023

Todd Deetsch

CLAIMANT

v.

Lumia Products Co LLC; Peter Lei

RESPONDENTS

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 **October 30, 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.

Statute of Limitations

It appears that your copyright infringement claim may be barred based on allegations that show that you knew about all of the alleged infringing activities more than three years ago, and a lack of clarity about whether the infringing activity is continuing or when it ended. A “statute of limitations” is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, both in federal court and the Board, is three years after the claim “accrues.” 17 U.S.C. §§ 507(b) & 1504(b)(1). A claim for copyright infringement accrues when the infringing act occurs, or when the claimant discovers, or reasonably should have discovered, the infringement. *Starz Entertainment LLC v. MGM Domestic TV Distrib., LLC*, 39 F.4th 1236, 1239-41 (9th Cir. 2022). A proceeding before the Board cannot be commenced more than three years after the claim accrued. 17 U.S.C. § 1504(b)(1).

You state in your claim that you have been attempting to file enforcement actions since 2019, and that the ending date of the infringement is “unknown.” If the alleged infringement ended prior to September 18, 2020, your claim will be barred by the statute of limitations. In your amended claim, you will need to clarify whether respondent’s infringing activity occurred within the past three years.

Further, unless you are asking that the statute be tolled (to the extent that any time is remaining) during the pendency of the CCB proceeding, the Board has no authority to toll or change the statute of limitations. *See* section 1504(b)(2). It is not clear what you are asking for with respect to the statute of limitations so that you need to clarify that issue.

Copyright Infringement – Elements

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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

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 amended claim.

Access

Your claim does not provide any 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. 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. Alternatively, you can upload copies of your work and the allegedly infringing work 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 provide enough clarity about the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

In the “Works infringed” section of your claim you state that “[p]laintiff’s Works/Images were unlawfully copied on various websites . . . [and] onto packaging” for the respondent’s CPAP Pillow product. However, you do not provide information clearly describing or showing your work, or stating how it is substantially similar or

identical to the respondent's allegedly infringing use of the work. In addition, you have not provided a copy of your work or the allegedly infringing 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, include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing video, 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

In your claim, you request \$125,000 in damages. This is not an amount that the Board can award in damages.. A claimant may choose to seek either (1) actual damages and the respondent's profits from the infringement, or (2) statutory damages within a set range. *Id.* § 1504(e)(1)(A). The Board cannot award punitive damages. 17 U.S.C. § 1504(e)(1)(D). The most that respondent can be ordered to pay in damages in a single Board proceeding is \$30,000. The maximum amount of a statutory damages award available from the Board is \$15,000 for each work that was infringed. *Id.* § 1504(e)(1)(A)(ii)(I). In addition, if the copyright was registered after the infringement started and more than three months after publication, the maximum statutory damages award is \$7,500 per work. *Id.* § 1504(e)(1)(A)(ii)(II); 17 U.S.C. § 412(1). More information about the damages the Board may award in a copyright infringement claim is available in the [Damages](#) chapter and at pages 6 and 16-17 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You allege that the infringement began in 2019. The certificates of registration for the allegedly infringed works state that December 23, 2022, is the effective date of registration and that the works were published in 2008. Therefore, if you seek statutory damages, it appears that the maximum statutory damages award allowed will be \$7,500.

You also seek relief for "loss of time and money" spent attempting to file legal action against the respondents since 2019. The Board is only able to grant relief for actual damages related to the proven harm or loss you suffered directly related to the infringing activity or to the respondent's profits.

You are not required to choose between actual or statutory damages at this point. 17 U.S.C. § 1504(e)(1)(B). You are not required to request damages at all. *Id.* § 1504(c)(1) & (e)(1)(B)(ii). If you file an amended claim, you may include a request for damages without giving a specific amount. If you include a request for a specific amount of damages, it cannot be more than the Board can grant or based on grounds that the Board cannot consider.

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