



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0201
February 7, 2024

Andrea B. Cregger

CLAIMANT

v.

www.oneirphotography.com

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 **March 8, 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.

Contact Information

Your claim must include the name and mailing addresses of the respondent. 37 C.F.R. §§ 222.2(c)(5)-(6). The name and address you provide in the “Respondent” section appear incorrect.

Your claim lists the respondent’s name as www.oneirphotography.com. That seems to be a typo, as several supplemental documents filed with the claim, such as [IMG_9606.PNG](#), refer instead to Oneiro Photography. If you file an amended claim, include the actual name of the respondent entity in the “Respondent” section.

The street address you provide for the respondent, “On location DMV SC & CA, Myrtle Beach, SC 29577,” is facially invalid. If you file an amended claim, please be certain that the address you provide is an actual address at which the respondent can receive mail.

Copyright Registration

You have raised a claim of copyright infringement before the Board. The claim must include the copyright registration number and effective date of registration for the allegedly infringed work or, if it has not yet been

registered, the service request number for a pending application to register the copyright. 37 C.F.R. §§ 221.1(b) & 222.2(c)(7)(ii)(C)-(D). Your claim correctly listed the service request number for an application for registration of the allegedly infringed work. That registration has since issued. If you submit an amended claim, state in the “Works infringed” section that the copyright has been registered, and include the registration number VAu001516484 and the June 12, 2023 effective date of registration.

Allegedly Infringed Work

If you submit an amended claim, it must clarify certain discrepancies between the work identified in the registration and your description of the allegedly infringed work in the “Works infringed” section of the claim.

The “Works infringed” section lists a single allegedly infringed work titled “Beach Photoshoot,” which is one of the ten photographs covered by Registration Number VAu001516484. However, the “Describe the infringement” section alleges infringement of multiple photographs: “My *photographs* are being used for advertising without my permission.” (Emphasis added.) Supplemental documents filed with the claim appear to show use by Oneiro Photography of several photographs included in the registration.

The claim must include the title of each allegedly infringed work at issue. 37 C.F.R. § 222.2(c)(7)(ii)(A). To raise a claim of infringement of more than one work, list each allegedly infringed work in separate entries in the “Works infringed” section when you file the amended claim.

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 claim does not provide clear facts to support the elements of the claim related to ownership, access to your work, and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

Legal or Beneficial Ownership

The claim does not present clear facts that indicate that you personally are a proper claimant to bring this infringement claim, rather than Ethereal Co LC (Ethereal), the copyright owner identified in the registration. If you submit an amended claim, it must clarify the discrepancy.

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

When you submitted your claim, you certified that you were the legal or beneficial owner of rights in the allegedly infringed work. However, the Copyright Office registered the work under Ethereal’s name. The Certificate of Registration for VAu001516484 does not list you as an author or copyright claimant of the registered pictorial works. Instead, it lists Ethereal as the author and copyright claimant of the works, which are identified as works made for hire. The “Works infringed” section of the claim also lists Ethereal as the author and describes the work as a “styled photoshoot by Ethereal Co LC.” For legal purposes, the author of a “work made for hire” is not the individual who actually created the work. Instead, the party that employed or commissioned the individual to create the work is considered both the author and the copyright owner of the work.

If information in the claim identifying the claimant or the author of the work is inaccurate, you may correct that information in an amended claim. For example, if Ethereal is the owner and author of the registered works as “works made for hire,” the amended claim should name Ethereal as the claimant instead of Andrea B. Cregger.

However, if you personally are the copyright owner, you must include specific allegations about how you own, or have an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how you owned exclusive rights in the work at the time of the infringement, or by submitting supplemental documents. For example, you may describe your relationship with Ethereal and state how you obtained legal or beneficial ownership of copyright, such as by assignment or exclusive license. If you include copies of an assignment or license as a supplemental document, they must be clearly labeled and identified.

Access

Your claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place. Your claim does not clearly state allegations about where or how the allegedly infringed photographs were available before the alleged infringement so that the respondent had an opportunity to see them.

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 they could not have been created 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. Image files included with your claim appear to show certain allegedly infringing photographs used by Oneiro Photography, but you have not clearly indicated which of those photographs are allegedly infringed works within the VAu001516484 registration. In addition, you have not included copies of your works that you allege were infringed. If you include copies of your works and respondent's works 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 allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how your work and the allegedly infringing work are similar.

In the "Describe the infringement" section, you state that "[m]y photographs are being used for advertising without my permission is using our photos," but you do not clearly describe the extent of that use. The claim does not clearly describe the allegedly infringed works or include them as supplemental documents, and does not clearly identify which works used by respondent are the allegedly infringing works. As a result, the claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit an amended claim, it must include more factual 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 of your works or portions of 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, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Online Service Provider

In response to questions in the claim form, you indicate that the respondent is an online service provider (OSP) and that your infringement claim is based on its "storage of or referral or linking to infringing material posted by others," but that you did not send it the "takedown notice" required by Section 512 of the Copyright Act. If your answers are correct, your claim cannot move forward, because you can only bring an infringement claim against an OSP if it failed to take down third-party material in response to a takedown notice.

Special rules apply to infringement claims brought against OSPs, which provide online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. Section 512 of the Copyright Act provides what are known as “safe harbors,” which shield certain OSPs from paying damages for copyright infringement claims if, among other things, the OSP takes steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. An infringement claim against an OSP that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures. An infringement claim against an OSP eligible for a section 512 safe harbor cannot be compliant unless you affirm that you sent the OSP a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G).

Your infringement claim is not compliant because you affirm that it is based on the respondent’s actions as an OSP, but that you did not send the OSP a proper takedown notice. Your claim also does not include any facts that support your allegations that the respondent is an OSP notified about third-party material; instead, your allegations relate to its own use of allegedly infringing photographs. Because you have not stated facts that suggest the respondent is an OSP, you may want to reconsider whether your answer should be “yes” to the question, “Are any of the respondents online service providers?” Your infringement claim cannot proceed unless you file an amended claim that either (1) removes the allegation that the respondent is an OSP, or (2) alleges that it is an OSP that did not comply with a takedown notice you sent, and states facts in support of those allegations that would make it liable as an OSP, despite the Section 512 safe harbor. Please review the [section 512 page](#) and pages 19-21 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook for additional information about what is required for an infringement claim against an OSP protected by a section 512 safe harbor.

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