



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0173

United States Copyright Claims Board

William Grecia

CLAIMANT

v.

Apple Inc.

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 **December 7, 2022**. 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 – Infringing Activity

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

Your claim alleges that the respondent Apple Inc. (“Apple”) is an online service provider that did not “expeditiously remove or disable access to” allegedly infringing material after you sent it a takedown notice (“Copyright owner contacted Apple Inc, the distributor of the infringing content, and Apple responded but did not comply to the DMCA takedown request”). A supplemental document filed with the claim appears to be a copy of [an email dated September 9, 2022](#), in which Apple informed representatives of PNC Bank, N.A. (“PNC”) of your contention that its “PNC Mobile Banking” app infringed your copyright. However, your claim does not present enough facts to state clearly how PNC, the alleged primary infringer, violated any exclusive rights that you have in the allegedly infringed work.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You assert that “PNC is willfully infringing said registered copyright, [and] did not independently create the infringing icon.” However, your allegations do not appear to describe PNC’s allegedly infringing activity with any specificity, and do not offer enough detail about its alleged acts using your work in a way that would infringe any exclusive rights. If you submit an amended claim, you must more fully explain how PNC infringed your allegedly infringed work, and how any acts by the respondent would make it responsible for that infringement. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how PNC engaged in the infringing activity, and what respondent did or failed to do in connection with the alleged infringement. You should be as detailed as possible.

Copyright Infringement – Access

Your claim does not provide enough facts about how PNC had access to your work. “Access” means a reasonable opportunity to view or hear your work. The “Describe the infringement” section of your claim alleges that “the infringing developer’s representative” received a copy of your work, and you submit supplemental documentation and links to documentation that appear to be copies of [March 2020 emails](#) between your representative and an attorney for Early Warning Services (apparently “the infringing developer’s representative”). Those materials do not clearly indicate or show the work allegedly sent to that attorney, and your claim does not explain or state facts that indicate how any access to the allegedly infringed work by Early Warning Services would show that PNC had access to the work. To the extent that your claim

contends that Apple is an infringer as an online service provider that failed to take down an infringement by PNC, it is unclear how the documents you attach to your claim show that PNC had access to your work.

Please provide more details and background regarding this element in your amended claim. 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 PNC or a close associate of PNC; (b) was widely disseminated or was available to the public or PNC; or (c) is so strikingly similar to PNC's work that PNC could not have created it independently.

Copyright Infringement – 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 materials that are submitted with the claim, you must provide some specific allegations about how the allegedly infringing work is similar to the original elements of expression in your work.

Your claim describes your allegedly infringed work is an "Application Icon." You do not provide any other information describing or depicting your work, or state or show how it is identical or substantially similar to the allegedly infringing work. Nor have you provided a copy of your work as a supplemental document. Also, while your claim includes a link to a Dropbox file that you describe as an "unauthorized derivative icon work," you have not provided a copy of the allegedly infringing work as a supplemental document with the claim. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

A valid copyright only extends to copyrightable subject matter. Copyright law does not protect ideas. 17 U.S.C. § 102(b); *see also* Section 313.3(A) of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Rather, it protects original elements of expression. Therefore, you cannot allege that because you have obtained a copyright registration for a depiction of a QR code, you can then claim copyright infringement against anyone who also uses a depiction of any QR code. Familiar symbols or designs are not subject to copyright. [37 C.F.R. § 202.1\(a\)](#). An alleged infringer must have copied your original elements of expression.

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 elements of expression in your work were taken by PNC in the allegedly infringing work, or copies or other 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.

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 that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

November 7, 2022