



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0375  
March 4, 2024

James H. Dillard, II

CLAIMANT

v.

David McDowell

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 **April 3, 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 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Your claim correctly listed the service request number for an application for registration for a group of unpublished photographs. 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 VAu001516282 and the January 24, 2024 effective date of registration.

### Allegedly Infringed Work

If you submit an amended claim, it must provide more information to clarify which work is the allegedly infringed work. In the “Works infringed” section of the claim, you list a photograph titled “Look up to the sky,” and you describe the work as: “Black Male, Brown Skin, Sunglasses, Black Shirt, Highlighted Background.” Several of the photographs in the deposit copy you submitted with your application for registration appear to fit that

description. The list of titles you submitted with the application did not include “Look up to the sky,” though some of the titles are close, such as “Look Up 2” and “Black Shirt Look Up.” If the allegedly infringed work is one of the registered works, your amended claim should specify the title listed with your application for registration. You may also upload a clearly labeled and identified copy of the photograph as a supplemental document.

### **Legal or Beneficial Ownership**

Your claim presents unclear information about your status as a legal or beneficial owner of the allegedly infringed work. To bring an 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. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

The claim identifies you as the author of the work, and Copyright Office records list you as both the author and the copyright owner of all of the photographs registered. However, in correspondence with the Copyright Office while the application was pending, you indicated that you were not the photographer of all of the photographs, and that instead, “a large portion of the photos” were from a photoshoot by photographer Robert Morales. You identified some of the photographs as “works made for hire,” but that appears to be incorrect.

“Work made for hire” has a special meaning under the law; whether a work is a “work made for hire” is determined by facts in existence at the time the work is created. There are only two situations in which a work made for hire is produced: (1) when the work is created by an employee as part of the employee’s regular duties or (2) when a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. For a specially ordered or commissioned work made for hire, the parties must agree in writing that the work will be considered a “work made for hire” and the work must fall within one of nine specific categories. See pages 2 and 3 of [Circular 30](#) for more information. When a work is produced under these conditions, the employer or the party ordering or commissioning the work is considered the author and copyright owner.

It does not appear that either “work made for hire” situation (summarized in 1 and 2 above) applies. You provided the Copyright Office copies of your LinkedIn communications with Mr. Morales, which indicate that the photoshoot was a one-time event and that he was not your legal employee. Photographs are not one of the types of works that are eligible to be considered a work made for hire, even if they are specially ordered or commissioned, and it does not appear that you had an express written agreement with Mr. Morales ordering or commissioning the work as a work made for hire. It appears that after the photoshoot, you asked Mr. Morales to sign a “work for hire contract and copyright transfer” for his photographs, and that he did not sign it. You informed the Copyright

Office that instead, Mr. Morales replied, “You can do whatever you want with them.” That message would not make you an owner of his photographs or give you an exclusive license to use them.

If you submit an amended claim, you must include more information that indicates that you are a legal or beneficial owner of the photograph at issue in this claim, and shows or explains how you gained ownership of it. For example, you should state if it was you or Mr. Morales who took the photograph, and if Mr. Morales is the photographer, you must describe facts that show that he conveyed the copyright to you or gave you an exclusive license to use the photograph.

More information about authorship and works made for hire is available in [Circular 30: Works Made for Hire](#) and in Section 506 of [Chapter 500](#) of the *Compendium of Copyright Office Practices, Third Edition*.

### **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 substantially similar.

In the “Describe the infringement” section, you state that the respondent “uploaded my image onto a video shorts that he used on his channel.” A supplemental document filed with the claim appears to be a counter-notice that the respondent sent to YouTube, which described the image used as your “public YT channel profile picture.” However, you have not clearly described the allegedly infringing work, and it is not clear which particular photograph registered by the Copyright Office, if any, is that profile picture. In addition, the claim does not include either work as a supplemental document. 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 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.

### **Relief Requested**

The “Description of harm suffered and relief sought” section of the claim indicates that you may be seeking forms of relief that the Board cannot grant. It states:

Misrepresentation, Harassment, Defamation and Threats. He collaborated with Damon Lovell, Kenneth Rucker and Marquis Platt / Edwards in harassing my subscribers and I by weaponizing my own photos against me by spreading misinformation. This caused depression, anxiety, stress and fear since they also doxxed me as well and displayed my home address and family members online. The copyright infringement is just part of their attacks.

In a copyright infringement claim, the Board can only grant relief for damages caused by the infringement and not for other causes of action such as harassment, defamation, and threats. If you file an amended claim, the relief requested must be limited to forms of relief the Board can grant. More information is available in the [Damages](#) chapter of the CCB Handbook.

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.

Copyright Claims Attorney