



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0248

September 6, 2024

Duston Stanczyk, Eat Move Rest LLC

CLAIMANTS

v.

Charmagne Mckinney

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 **October 7, 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—Legal or Beneficial Ownership

Your claim provides unclear information about the claimant's status as a legal or beneficial owner of the allegedly infringed work. 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.

The claim does not present facts that indicate that Eat Move Rest LLC is a proper claimant. A Board search of Copyright Office Records shows Erin Stanczyk listed as author and Duston Stanczyk, an individual, listed as copyright claimant in the registration of the allegedly infringed work. However, Eat Move Rest LLC, an entity, has been named as a claimant in the proceeding. Even though a proper claimant may be the owner of Eat Move Rest

LLC, the law considers LLCs to be separate legal entities from the individuals who own them. Because the copyright claimant listed on the registration certificate is not Eat Move Rest LLC, and you have not included any additional information about the ownership of the copyright rights, your claim may not proceed.

To correct this issue, you can either (1) amend the claim to remove Eat Move Rest, such that Duston Stanczyk is the sole claimant or (2) provide additional information about how the Eat Move Rest is a copyright owner or exclusively licensed the work at issue from Erin or Duston Stanczyk. You may also choose to include supplementary documentation such as an assignment or license that explains how these rights were transferred to Eat Move Rest LLC (although if Duston Stanczyk is therefore not a copyright owner, he would need to be removed and replaced as a claimant). More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Infringing Activity — Clarity

Your claim presents unclear facts about how the respondent used the allegedly infringed work without permission. 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.

Your claim is unclear about which work you are alleging was infringed and how the respondent allegedly infringed your work. In the “Work infringed” section of the claim you list “5 Exercises That Work” (“SR 1-14189705758”) as the allegedly infringing work. You describe the work as “[a]n exercise video posted to Instagram.” However, a Board search of Copyright Office records indicates that SR 1-14189705758 corresponds to a group application for unpublished photographs. Because allegations in the “Describe the infringement” section of the claim describe your work as “content,” it is unclear if you are alleging that the respondent infringed a video or photographic screenshots of a video.

Additionally, your allegations also do not offer enough detail about how the respondent used your work (the photographs) in a way that would infringe any exclusive rights. It is unclear from the information included in your claim how the respondent is using your “content” in their video. Further, it is unclear if you are alleging that the respondent used your “content” in one video or across multiple videos.

To address these issues, you must (1) amend the Works infringed section of the claim to accurately reflect the works pending registration and (2) include facts in the “Describe the infringement” section that clarify how your work was infringed by the respondent and if it was in one or multiple videos. Please note that the pending registration you have included only covers the photographs submitted to the Copyright Office, not the underlying video. If you are alleging infringement of the video, in whole or in part, you should include a registration number or application number for the video. Either the (video) registration must have been issued or the application must have been delivered to the Copyright Office before you filed your claim on August 26, 2024. If your work was

neither registered nor subject to a pending application at that time, you cannot allege infringement of the video itself in an amended claim. Instead, you would have to file a proper application on the work and file a new infringement claim.

Misrepresentation—Reliance

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 (OSP) 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 misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to repost the content, and
5. You were harmed as a result.

17 U.S.C. § 512(f). The information provided in your claim indicates that the alleged misrepresentation could not have been a factor in any decision by the OSP to repost the content because the OSP had not reposted the material at issue at the time you filed your claim.

In your claim, you stated that the counter-notice at issue was sent on August 24, 2024, and you filed your claim on August 26, 2024. The proximity of these dates suggests that the OSP may not have reinstated the material at the time you filed your claim, and there is no allegation in your claim that the OSP did repost the content. “Safe harbor” provisions in section 512 of the Copyright Act protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material not less than ten or more than fourteen business days after receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. More information is available on the Copyright Office’s [section 512](#) page. If the OSP had restored the allegedly infringing material prior to the filing of your initial claim on August 26, 2024, your amended claim must state facts about that restoration. If the OSP did not restore the allegedly infringing material prior to your August 26, 2024 filing, **you should not file an amended misrepresentation claim.**

Because you have filed a misrepresentation claim that does not appear to relate to a material misrepresentation that was important to an OSP’s decision to repost the content, we have not reviewed the remainder of your misrepresentation claim to determine whether it complies in other respects with the legal and formal requirements for a claim before the Board. If you submit an amended claim that resolves this issue, the Board will engage in a full compliance review of this claim, so you should review the [CCB Handbook](#) and make sure the rest of your amended claim is compliant.

Copyright Claims Board— Relief

Your description in the each of the relief fields includes defamation allegations and mentions injunctive and class action relief. That is not relief that the Board can order.

In a copyright infringement claim, you can seek either (1) actual damages, and the respondent's profits from the infringement, or (2) statutory damages. You can request both in your claim, but you will need to choose before the Board issues a final determination. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue you experienced. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss. Unlike a federal court, the Board cannot order a respondent to stop or modify activities (sometimes called an "injunction") unless the respondent notifies the Board that, if found liable for infringement, they will stop or modify the activity. While you can state in your claim that you would like the respondents to agree to stop or modify their activities, you cannot demand it as part of your claim.

Additionally, misrepresentation claims brought before the Board must allege some provable harm or damage, such as a financial loss or other harm for which monetary relief can be given. Monetary awards granted by the Board for claims of misrepresentation cannot exceed \$30,000. Your claim should identify some financial loss or harm or other provable injury you suffered *because of the alleged misrepresentation*. Please review the discussions at pages 10-11 of the chapter on [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information about the kinds of relief that the Board can grant.

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.

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