



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0234

August 15, 2023

Noor Nahas

CLAIMANT

v.

Hivelocity, Louis Gualtieri, Jr

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 **September 14, 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.

### Impermissible Claim – Breach of Contract

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act (DMCA).

17 U.S.C. § 1504(c)(1)-(3). In your claim, you allege that you had “signed a contract to divide profits based on work produced for the project” with Louis Gualtieri, Jr aka Melissa (“Gualtieri”). As drafted, this claim does not appear to be the kind of claim that the Board could hear. The facts described in the “Describe the infringement” section of your claim appear to describe a breach of contract dispute, not a copyright infringement. A “breach of contract” is a violation of any of the agreed-upon terms and conditions of a binding contract. When a party to a contract does not fulfill an obligation stated in the contract, such as payment, it is typically considered a breach of contract. The Board is not authorized to hear claims for breach of contract. 17 U.S.C. § 1504(d)(1).

The allegations included in the claim appear to be consistent with a breach of contract claim, where Gualtieri

has failed to meet the payment obligations set forth in a contract, license, or other written or oral agreement. Generally, a copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement and can sue only for breach of contract. A claim for nonpayment might be viable in state court but not before the Board.

The Board may only hear infringement claims against a licensee of a work if the claim is based on a licensee failing to satisfy a “condition precedent” of a license from the copyright owner, or if the licensee’s use of the work went beyond the scope of the uses permitted under the license. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, then the payments may be a “condition precedent” to the licensee’s right to publish. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it before using the work, then the license is not effective and the licensor may raise a copyright infringement claim. The Board notes, however, that it is unclear whether Gualtieri is a licensee or a co-owner of a copyright protected work, as you state that you were a “partner” with Gualtieri.

If you can state facts that identify such a condition precedent included in your written or oral agreement with Gualtieri, or that he used your work beyond what was permitted by your agreement, the Board may be able to hear your claim. If you submit an amended claim, it must include allegations that state or show that any agreement with the respondent required it to satisfy a condition precedent, and that it did not satisfy that condition, or how the respondent used your work beyond what was permitted by your agreement. Please provide more details and background regarding your agreement with Gualtieri including a clear, detailed statement regarding any conditions precedent included in that agreement. In addition, if the respondent engaged in reproduction, distribution, or public displays of your work, or adapted the work, in ways that went beyond the scope of the uses permitted under your agreement, you should describe those uses and explain why they were beyond the scope of your agreement. You may also include the agreement, or correspondence that plays a significant role in your allegations, as supplemental documentation in support of your claim.

Please review [Circular 1: Copyright Basics](#) and the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended claim if you can state facts to support a claim under copyright law that can be heard by the Board. For more information about what is required to support a claim of infringement, please refer to the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### **Impermissible Claim – Relief Enforcement**

The Board cannot enforce a judgment of a foreign court. In your claim, you state that “I opened a small claims case against Melissa in Canada, which I won and she was found liable for lost work and violation of the contract signed between us...” You have also included the judgment as a supplementary document. It is unclear how the Canadian judgement relates to the current claim. If you include the Canadian judgment in your amended claim, you

must include additional information in the “Describe the infringement” section of the claim about how that judgment is relevant your current allegations.

### **Infringing Activities – Clarity**

Your claim does not present enough facts to clearly state how each respondent used any exclusive rights you have in the allegedly infringed work without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly (display/perform) 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.

As noted above, the allegations in the “Describe the infringement” section of the claim state that you were a contractual partner with Gualtieri. While there are references to lack of payment to you, your allegations do not appear to describe any infringing activity under copyright law, and do not offer enough detail about how Gualtieri used your work in a way that would infringe any of your exclusive rights.

Further, the claim does not include any facts that support a copyright infringement claim against Hivelocity. All of your allegations concern Gualtieri. You do not describe any actions in which Hivelocity participated that would constitute infringement. You do not suggest that Hivelocity copied, distributed, performed, or prepared derivative works based on your allegedly infringed works, or participated in any such infringing activity. If you submit an amended claim, you must more fully explain how *each* respondent infringed each of your allegedly infringed works.

To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe (1) the actions that allegedly infringe your copyright in “NBRP Server Rules,” and specify and how *each* of the respondents infringed the work. You should be as detailed as possible when setting forth what each respondent did in relation to the work you allege was infringed. If you cannot state facts to support an infringement claim against any named respondents, you must omit them in the amended claim.

### **Supplemental Documentation**

You uploaded additional filings on July 12, 2023, that seem to include supplemental information related to your claim. These filings will not be reviewed by the Board or considered a part of your claim unless you upload them with your amended claim using the instructions below. Please make sure that any attachments to your amended claim are relevant to the claim and are clearly labeled.

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