



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0329

October 31, 2024

Happy Birds LLC dba IMbesharam.com

CLAIMANT

v.

LT DIGITAL PRIVATE LIMITED

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 2, 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). If you cannot truthfully correct the errors below, you should not file an amended claim. 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

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 of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). 17 U.S.C. § 1504(c)(1)-(3). Your allegations relate instead to trademark infringement, which is beyond the scope of the Board.

In the “Works infringed” section of the claim, you list a work titled “Fleshlight Trademark.” In the “Describe the work” field of that section, you state only: “Trademark.” In the “Description of harm suffered and relief sought” section, the only alleged harms you identify are associated with trademark infringement, for example, “Consumer Deception,” “Financial Loss for Customers,” “Damage to Brand Reputation,” and “Disruption of Fair Competition.” All of your allegations in the “Describe the infringement” section implicate trademark rights, not a copyright dispute, including the following:

- The respondent’s website is “misusing the trademarked keyword ‘Fleshlight’ without authorization from the Fleshlight Trademark Owner” and “exploiting this keyword to divert traffic under false pretenses, either by not offering genuine Fleshlight products or by promoting counterfeit items.”
- “Allowing these unauthorized and deceptive websites to remain in search results poses significant risks. It not only misleads consumers into purchasing counterfeit or non-authentic products but also potentially results in financial loss for customers and damages the reputation of the Fleshlight brand. It is crucial to address this issue promptly to prevent further harm to both the consumers and the brand’s integrity.”
- Respondents “don’t have actual Fleshlights on sale, they have a collection named ‘Fleshlight’ tho,” and “their whole FAQ is about Fleshlights.”

You also allege that you “have received explicit authorization from the Fleshlight Trademark Owner to submit DMCA takedown requests on their behalf,” and that you are “submitting a DMCA complaint against [the] lovetreats.in website that is misusing the trademarked keyword ‘Fleshlight’ without authorization from the Fleshlight Trademark Owner.” The DMCA (Digital Millennium Copyright Act) establishes a framework for takedown notices issued by copyright owners claiming infringement of copyrighted works, not by trademark owners claiming misuse of trademarks. More information is available on the Copyright Office’s [Section 512](#) page.

You seem to be seeking to enforce trademark rights in connection with a “Fleshlight” word mark. The Board cannot hear an infringement claim based on those rights. Unauthorized use of that word mark would not be an infringement of copyright, because copyright does not protect individual words or short phrases. 37 C.F.R. § 202.1(a).

Your allegations are not material to any dispute the Board can hear or any relief the Board can provide. If you submit an amended claim, make sure that your allegations relate to a type of copyright dispute that the Board can hear. If your intent is to submit a claim of trademark infringement rather than (or in addition to) a copyright infringement claim, you should not file an amended claim, but instead should consider filing a claim in federal court.

Foreign Respondent

The Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). The claim must include the respondent’s mailing address. 37 C.F.R. § 222.2(c)(6).

In the claim form, you list “No.16, 4th Cross Ramaiah Layout Flower Garden, KA 560043, Babusapalya Bangalore, IN 00000” as the respondent’s address. However, Babusapalya and Bangalore are in the state of Karnataka (KA) in India, not Indiana (IN); and 00000 is not a valid United States zip code, but 560043 is a postal code for Bangalore. Allegations in the claim also indicate that the respondent is a competitor of yours in India. You allege: “As the sole authorized distributor of Fleshlight products in India, our website is the only legitimate source for genuine Fleshlight toys in the region.” In the “Where the allegedly infringing acts occurred” section of the claim, you list three website domain names; all three include “.in,” which is the country code top-level domain for India. Because the respondent appears to be a foreign resident based on this information, the Board may not have jurisdiction to hear your claim.

If you file an amended claim, it must include additional information to address these discrepancies and show that the respondent resides in the United States. You must correct the address in the “Respondent” section, or

provide additional information in the “Describe the infringement” section of the claim detailing why you believe that the address you supplied is correct. **You should only amend the claim if you are raising it against an individual or entity residing in the United States.**

Because you appear to be raising a claim of trademark infringement that the Board cannot hear, and because the respondent appears to be a foreign resident, we have not reviewed the remainder of your 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 the Board may hear, with a valid address for the respondent within the United States, then the Board will engage in a full compliance review, so you should review the [CCB Handbook](#), including the [Starting an Infringement Claim](#) chapter, and make sure the rest of your amended claim is compliant.

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.