



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0289

October 8, 2024

David T. McCreery

CLAIMANT

v.

662 Pacific Street, LLC, Berlin Rosen, LLC,
and The Brodsky Organization, LLC

RESPONDENTS

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. Your claim cannot move forward unless it is amended.

If you wish to proceed with this claim, you must file an amended claim by **November 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.

Respondent Address

A claim before the Board must include the mailing address of each respondent, unless the Board gives you permission to file it without the address after you certify that the address is unknown, and that you have a good-faith belief that the statute of limitations is likely to expire within 30 days. 37 C.F.R. § 222.2(c)(6).

The address you provide in the claim for respondent Berlin Rosen LLC is not its mailing address. You instead provided the address of CT Corporation, which is an agent for service of process. You have not been given permission to file a claim without including Berlin Rosen LLC's mailing address. If you file an amended claim, it must include each respondent's mailing address, not the address of a third-party service agent.

In the alternative, if the address is unknown and you have a good-faith belief that the statute of limitations is about to expire, you may submit a certification of those matters that describes the basis for that belief, as described above. If you submit such a certification, you must still provide Berlin Rosen LLC's mailing address to the Board by November 29, 2024, or the claim may be dismissed. 37 C.F.R. § 222.2(f).

Proper Respondent

You are raising a claim of copyright infringement. You have not presented enough facts to indicate why one respondent, 662 Pacific Street, LLC (662 Pacific), may be liable for the alleged infringement. To support an infringement claim against 662 Pacific, you must present more facts in an amended claim that indicate why that respondent could be held liable for the infringement.

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 allege that you published a photograph on Instagram titled “Dior Exhibit at Brooklyn Museum,” and that “Respondent(s)” downloaded it “and reposted it on their Instagram account @plankroadbklyn.” Your claim does not present facts to clearly state how 662 Pacific used your exclusive rights in the photograph without permission. You do not include any allegations about 662 Pacific’s role in the alleged infringement at all. For example, you do not allege that 662 Pacific owns or operates the @plankroadbklyn account, or that it posted the photograph on Instagram. Your claim does not state or show that 662 Pacific copied, distributed, or displayed your photograph, or prepared a derivative work based on your photograph, which would be required to support a claim of direct infringement against 662 Pacific.

A copyright infringement claim may also be raised against a “secondary infringer” who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. To support a claim of secondary infringement against 662 Pacific, your amended claim must include additional facts about how it acted in relation to directly infringing activities by another party. In particular, a secondary infringement claim must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement:

- A **vicarious liability** claim must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity and received a direct financial benefit from the infringement.
- A **contributory liability** claim must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

If you intend to assert a claim of secondary infringement against 662 Pacific, your amended claim must include more facts that support either vicarious or contributory liability. If you want the Board to find 662 Pacific *vicariously liable* for a third party’s use of your photograph, your amended claim must include allegations of facts showing that it was able to control or supervise that use, and that it profited directly from that use. Alternatively, if you want the Board to find 662 Pacific *contributorily liable* for a third party’s use of your photographs, your amended claim must include allegations of fact showing that 662 Pacific knew, or had reason to know, that uses of the photograph would be infringing, and that it facilitated that infringing conduct by inducing, causing, or materially contributing to that use.

More information about vicarious and contributory liability is available at page 21 of the [Starting an Infringement Claim](#) 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. 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