



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0095

March 26, 2024

Kevin Garbes

CLAIMANT

v.

David Levy

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 25, 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.

Misrepresentation

This proceeding raises 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 a section 512(f) misrepresentation claim are:

1. The respondent sent an OSP either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement 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 takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). The claim must include the words in the takedown notice or counter-notice that you allege were a misrepresentation and an explanation of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(vi)-(vii). A counter-notice only violates section 512(f) if the respondent knowingly misrepresents that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f). Your claim does not show that the respondent made that kind of knowingly false or incorrect statement of fact.

You allege that you sent a takedown notice to Amazon.com on March 14, 2024, reporting “that the respondent’s product featured a copy of my original design,” and that “respondent’s infringing listing” was removed from the Amazon marketplace.

A [supplemental document](#) filed with the claim appears to be the respondent’s March 19, 2024 counter-notice, which states, “I have a good faith belief that the material identified in the Notice of Infringement was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.” To explain the alleged misrepresentation, you “assert that this is not true. The respondent intentionally copied my design and knows that his listing was not removed as a result of mistake or misidentification.” Another [supplemental document](#) appears to show a comparison of your product and the respondent’s allegedly infringing product. Both products are onesies with very similar short phrases on the front, in a similar layout or format, using the same typefaces. Your onesie reads: “CUTE SMART & FUNNY JUST LIKE MY UNCLE,” and the respondent’s onesie reads: “SMART CUTE & FUNNY JUST LIKE MY UNCLE.” However, copyright protects neither short phrases nor typefaces. Therefore, it does not appear that the similarities between the products are in material that copyright protects.

To be infringing, the respondent’s work would have to be substantially similar to copyright-protected elements in your allegedly infringed work. A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. The similarities between the two onesies do not relate to copyrightable expression. Copyright law does not protect short phrases such as slogans, catchphrases, and other short expressions; the general format or layout of text, unless it is arranged in a sufficiently creative manner; or typeface, or the arrangement of typographic lettering. See Sections 313.3(D)-(E) and 313.4(C) of the *Compendium*.

As a result, it is not apparent that the respondent falsely claimed that the Amazon listing “was removed or disabled by mistake or misidentification,” as section 512(f) requires. You do not appear to be able to make a claim that the respondent made a knowingly false statement that your March 14, 2024 takedown notice was incorrect. Instead, it appears that the respondent’s assertion that your notice of infringement was mistaken, or misidentified respondent’s onesie as infringing, would not be a false statement that would violate section 512(f).

If you submit an amended claim, you must show or explain why that statement was false or incorrect, and how it was false or incorrect, including why the elements of your work that were allegedly copied would be protected by copyright.

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