



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0338

October 25, 2023

Todd M Schultz

CLAIMANT

v.

Michael C Thompson

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 **November 24, 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.

### Current Litigation

The Board cannot hear a claim that is also pending or that has been finally adjudicated by a court of competent jurisdiction unless that court has granted a stay allowing that claim to proceed before the Board. 17 U.S.C. § 1504(d)(2). If your claims against the respondent are currently in litigation or have been finally adjudicated in a court of competent jurisdiction, you cannot raise the same claims before the Board.

Your allegations indicate that you are the plaintiff in a lawsuit currently pending in a state court against the respondent. In your noninfringement claim, you allege: “We are currently engaged in a harassment and IIED lawsuit. My copyright claims have been dismissed in this action and will not be pursued in state court.” It is unclear from your statements whether the copyright infringement, noninfringement, and misrepresentation allegations detailed in your claim have been previously decided or are currently pending. The statement that your “copyright claims have been dismissed in this action and will not be pursued in state court” raised the possibility that your claims have already been adjudicated, although the Board notes that a state court would not have jurisdiction over a copyright claim. If you file an amended claim, you should detail the procedural history of the copyright claims in

your pending litigation with the respondent. You should explain if the claims you maintain before the Board are a part of the pending court proceeding or have already been dismissed by the court. You should also upload, as additional documentation, and orders issued by the court that dismissed any copyright claims that you asserted. Unless you submit an amended claim that provides facts showing (1) that the claims you have asserted in this proceeding are not being asserted in the pending state court proceeding (or that they have been stayed by the state court to permit your claims before the Board to proceed), and (2) that the court has not already ruled on the merits of those claims, the Board must dismiss this proceeding without prejudice.

### **Copyright Infringement– Elements**

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about how the respondent had access to your work and how the respondent’s works are substantially similar to your works. Please provide more details and background regarding these elements in your amended claim.

### **Access**

Your claim does not provide facts about how the respondent had access to your works. “Access” means a reasonable opportunity to view or hear your works before the alleged infringement took place. To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that your works (a) were sent directly to the respondent or a close associate of the respondent; (b) were widely disseminated or was available to the public or respondent; or (c) are so strikingly similar to the respondent’s works that the respondent could not have created it independently.

Alternatively, you can upload copies of your works and the allegedly infringing works if they demonstrate that the works are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly

compared to each other.

### **Substantial Similarity**

Your claim also does not include enough facts that explain the similarities between your works and the respondent's allegedly infringing works. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your works the allegedly infringing works are similar.

Your claim states that your works are documentary style videos and that the respondent used "clips" of your works in the allegedly infringing works. However, you do not provide enough information describing or depicting your works. No allegations in the "Describe the infringement" field of the claim describe your works or the allegedly infringing works, or state or show how they are identical or substantially similar. You have uploaded, as additional documentation, a video (labelled "a todd michael schultz production (3).mp4") which, in the opening credits of the video, is entitled "Hollywood stories: the tapes." That is also the title of the first of the two works that you alleged have been infringed by the respondent.. You have also uploaded six screen shots, but your claim does not appear to describe them and their relevance to your claim is unclear. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works were taken by the respondent in the allegedly infringing work(s) and the extent to which the allegedly infringing work(s) are similar to the works that you allege have been infringed. Alternatively, you may upload or documents or videos that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other. More information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### **Copyright Infringement – Online Service Provider**

In your responses to questions on the claim form, you allege that the respondent is an online service provider ("OSP") and that you sent the respondent a takedown notice to take down third-party material. An OSP is a provider of online services to store (and make available), refer to, provide access to, or link to material that is available online. While you assert the YouTube (which is an online service provider) is "responsible for the infringements described," you have not named YouTube as a respondent. OSPs include content-sharing websites and internet search engines, among other services. The allegations in your claim do not indicate that the only named respondent, Michael C. Thompson, acted as an OSP in relation to infringing material posted by a third party.

Under the CASE Act, when a copyright infringement claim is raised against an OSP for storing, or referring or linking to, infringing material, the Board must find the claim noncompliant unless the claimant affirms that:

1. the claimant sent a takedown notice to the OSP as required by section 512 of the Copyright Act, and
2. the OSP failed to remove or disable access to the material expeditiously when it received the takedown notice.

17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G). Please visit the [section 512 page](#) on the Copyright Office website and the discussion at pages 19-21 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about online service providers and what section 512 of the Copyright Act requires for an infringement claim against an OSP.

You allege that the respondent “used many of the clips contained in this copyright on one of his YouTube Channels.” Such allegations and documents indicate that the respondent personally posted the allegedly infringing material, while YouTube is the OSP that stored the material. If this is accurate, then you can make your claim compliant by answering “No” to the question of whether the respondent is an OSP and leaving the remaining information in place.

### **Noninfringement – Infringement Accusations**

A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of the respondent’s copyrighted work. 17 U.S.C. § 1504(c)(2). If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. The claim must:

1. identify the party that accused you of infringement,
2. describe your allegedly infringing activity,
3. the reasons why you believe no infringement occurred,
4. and the reasons why you believe there is an actual controversy about the requested declaration.

37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v).

Your noninfringement claim does not clearly state facts that meet every requirement. In your claim, you do not state that the respondent has accused you of infringement or the reasons why you believe there is an actual controversy about the requested declaration. In your claim you state that “I reacted to a video by Mr. Thompson whose title included the term ‘how to be a gang stalker,’” and you appear to allege that you included some audio from respondent’s video. However, you have not made any allegations that the respondent has alleged that you have infringed any of his copyrights. You must have been accused of copyright infringement in order to proceed with a noninfringement claim; the claim must describe the reasons why you believe there is an actual dispute between the respondent and you about whether you have engaged in copyright infringement.. 37 C.F.R. § 222.2(c)(8)(v).

If you keep your noninfringement claim if you file an amended claim, it must specifically describe an actual

dispute between you and the respondent over whether your activities infringed the respondent's copyright, and why you believe that you did not infringe. You must provide enough information in your claim for the respondent to understand the claim and respond to it. For more information about what is required to support a claim of infringement, please refer to the [Starting a Noninfringement Claim](#) chapter of the CCB Handbook.

### **Misrepresentation Claim – No Copyright Misrepresentation**

You are also 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 that involves false statements made to an online service provider related to a copyright-protected work posted online by others. To violate section 512(f), a statement must misrepresent “that material or activity is infringing, or . . . that material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f)(1)-(2).

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider 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 online service provider's decision to take down or repost the content;
5. The online service provider relied on the misrepresentation; and
6. You were harmed as a result.

17 U.S.C. § 512(f). You allege that respondent sent a takedown notice to YouTube on June 1, 2023, and that you sent a counter-notice. In your claim, you do not describe the content of the takedown and counter-notice and while you allege that the takedown notice included a misrepresentation, you do not provide the words that you allege were a misrepresentation or otherwise describe the misrepresentation.

A section 512(f) claim must provide the words in the 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). In the “Words that make up the misrepresentation and explanation of the misrepresentation” section, you indicate that you believe this is a fair use but do not specify any false statements made by the respondent.

Without information about a specific statement in a counter-notice by the respondent that you contend was false or incorrect, and that was important to an online service provider's decision to restore the content, your

misrepresentation claim cannot proceed. If you maintain the misrepresentation claim in an amended claim, you must provide the words used in the takedown notice and counter-notice sent by the respondent that made up the misrepresentation, and explain what made those words false or incorrect.

In your misrepresentation claim, you also answer “Yes” to the statement that a “misrepresentation occurred in the counter-notice.” The Board assumes that you answered “Yes” in error because you also allege that *you* sent the counter-notice. If you file an amended claim that asserts misrepresentation, you should correct that response if it is incorrect.

You must also allege that the online service provider relied on a misrepresentation in the takedown notice and that you were harmed as a result. Typically, the harm suffered due to a representation in a takedown notice would occur because the online service provider has removed access to your material. See the CCB Handbook chapter on [Starting a Misrepresentation Claim](#) at p. 4 (“To win a misrepresentation claim, you must show that the misrepresentation was material enough to have caused the online service provider to remove or repost the work. A misrepresentation isn’t important or significant if the service provider wouldn’t have relied on it or used it as the basis to remove or repost the content in question.”). You have not alleged that YouTube removed access to your video; nor have you alleged any harm resulting from such a removal of access.

More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation 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](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