



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0162
July 19, 2023

Timur Sajachmetov

CLAIMANT

v.

TENTHOUSAND PROJECTS, LLC,
Surfaces, LLC

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 **August 18, 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.

Registration

A copyright infringement claim before the Board must include the registration number and the effective date of registration for the allegedly infringing work, if it has been registered. 37 C.F.R. § 222.2(c)(7)(ii)(C)-(D). In your claim, filed on May 9, 2023, you stated that the allegedly infringed work has not been registered, and you provided a service request number for a pending application for registration. Copyright Office records show that your application was approved on May 25, 2023, with an effective date of registration of April 28, 2023. If you file an amended claim, please include the registration number SR0000961493 and the April 28, 2023, effective date.

Clarity – Infringing Activity

Your claim does not present facts that clearly state how the respondent used any of your exclusive rights in the work without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly 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.

In the “Describe the infringement” section of the claim, you allege that the respondents have “improperly claimed ownership of my Work without proper clearance” and that respondents “never reached out to clear My Work prior to releasing ‘Good Day,’ which is customary and the industry standard.” However, you also state that respondents appear to have obtained your work through the website Looperman.com, and you quote Looperman’s terms of service, which allow anyone to use the music appearing on that website in their own works for free. The terms, as stated by you, also allow those using works found on Looperman.com to claim ownership of their own parts of their works, but not the loops taken from Looperman.com. Your claim goes on to state that your issue with respondents is that they “improperly claimed ownership of my Work” and did not “clear my Work” prior to releasing theirs. These allegations do not establish what *infringing* activities the respondents engaged in while using your work. Rather, they suggest that respondents had a license to use your works, but perhaps did not fulfill certain terms of that license.

You also do not provide information about the relationship between yourself and Looperman.com, and whether you posted the allegedly infringed work there. If the appearance of your work on Looperman.com was unauthorized or respondents were otherwise not allowed to use your work, you must make that clear in an amended claim. Alternatively, if you posted your work on Looperman.com and made it available according to the terms of the license offered by Looperman, you will need to provide allegations to support a copyright infringement, rather than breach of contract, claim.

The Board is only authorized to resolve certain types of copyright disputes. 17 U.S.C. § 1504(c)(1)-(3). This authorization does not extend to resolving breach of contract claims involving copyright protected works. A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. As a general rule, an infringement claim may be asserted 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 your reference to the Looperman terms and conditions. These terms and conditions constitute the agreement through which copyright owners provide content, including musical compositions and sound recordings, and users can access, download, and incorporate uploaded content into new productions. Accordingly, if you provided your work to Looperman, end users are able to access and use the work according to the terms and conditions set forth by Looperman. You will need to state facts that identify a condition precedent included in these terms and conditions that the respondents did not satisfy, detail how the respondents used your work beyond what was permitted by the terms and conditions, or describe how the agreement was no longer in

effect at the time of the alleged infringement. If you submit an amended claim, it should also include allegations that clearly state the relevant sections of the Looperman.com terms and conditions.

Furthermore, with respect to Surfaces, LLC (“Surfaces”), you state that the members of Surfaces, Forrest Frank and Colin Padalecki, performed in the allegedly infringing work “Good Day,” but you do not provide facts about how they used your work specifically. With respect to TENTHousand PROJECTS, LLC (“TENTHousand PROJECTS”), you allege that they “released” “Good Day,” but do not provide particular facts that relate to infringing activities that constitute a distribution, reproduction, or adaptation of the work. You also do not provide information about the relationship between yourself and Looperman.com, and whether you posted the allegedly infringed Work there.

If you submit an amended claim, you must include facts in the claim form that more fully explain where and how the respondent infringed your work. You should provide allegations that support Surface’s use of your work as well as additional detail regarding TENTHousand PROJECT’s allegedly infringing activities. The claim must provide enough information to enable the respondent to understand the claim and respond to it.

Substantial Similarity

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

Your claim describes your work, “Bossa Nova Guitar,” as “both a Sound Recording and a Musical Composition.” However, you do not provide enough information describing or showing your work or the respondent’s allegedly infringing work. The allegations in the “Describe the infringement” section states that the allegedly infringing work “Good Day” “contains the unauthorized use of my Original Master Recording and Original Musical Composition entitled ‘Bossa Nova Guitar,’” but you do not clearly describe the allegedly infringing work, and you do not provide any more specific information about how your work and the respondent’s work are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by each of the respondents in the allegedly infringing work, or documents 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.

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