



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0103

United States Copyright Claims Board

Richard Kray

CLAIMANT

v.

Jordan S. Garrett, Luke Taylor,
Matthew Helderman, and Grady Craig

RESPONDENTS

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 **October 27, 2022**. 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 extra 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.

Improper Pleading Form

The Board claim form is a standardized form, available on [eCCB](#), where claimants must enter all relevant allegations. [37 C.F.R. § 222.2\(a\)\(1\)](#). Allegations in support of the claim must be made through the standard form. [37 C.F.R. § 222.5\(a\)](#). You submitted, as supplemental material, a document styled as a “Copyright Complaint,” which appears to be patterned on a complaint that might be filed in federal court. Submitting a complaint is not an acceptable way to plead a claim before the Board.

Your “Copyright Complaint” document also is different from your claim form submissions in significant ways. It raises allegations not just against the respondents but also against other corporate entities, and ten unnamed “Doe Defendants.” Such allegations are not appropriate before the Board, where claims must specify “[t]he names of the respondents.” [37 C.F.R. § 222.2\(c\)\(5\)](#). A “Statutory Damages” section in your “Copyright Complaint” document seems to indicate that you are seeking \$360,000 in statutory damages for copyright infringement. It appears that you may be seeking a larger damages award than the Board can grant for this type of claim. The most that respondents can be ordered to pay in damages (actual or statutory) in a Board proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). The “Copyright Complaint” document also concludes with a “Prayer for Relief” for relief that identifies several forms of relief that are different from the relief sought in the claim form, including some forms of relief that the Board cannot grant.

To address this issue, you may file an amended claim that includes all of your factual allegations, without a separate “complaint,” and that clearly states the relief sought. Please review the discussions at pages 6 and 15 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook, and under the “What” tab on the [Claimant Information](#) page of [ccb.gov](#), for more information about the kinds of relief that the Board can grant.

Impermissible Claims

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 about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act (DMCA).

17 U.S.C. § 1504(c)(1)-(3). You checked the box stating your claim was one of copyright infringement. In the “Describe the infringement” section of the claim, however, you appear to list several other types of possible claims: “Breach of a Non-Disclosure Agreement. Paragraph 5, Misappropriation of Registered Copyrighted Material, Unlawful Acquisition, Misrepresentation, Passive Use.” Of those possible claims, only the allegation related to copyright infringement (“Misappropriation of Registered Copyright Material”) appears to be the kind of claim that the Board could hear.

Misrepresentation under copyright law has a very specific meaning, about false statements made to an online service provider related to a copyright-protected work posted online. See 17 U.S.C. § 512(f). The allegations about misrepresentations discussed in your “Copyright Complaint” appear to be about false statements unrelated to copyright, with no evident connection to a DMCA takedown notice or counter-notice. The Board cannot hear that type of claim. The Board also cannot consider a claim for a breach of contract. 17 U.S.C. § 1504(d)(1). Your references to “Unlawful Acquisition” and “Passive Use” also do not clearly describe any dispute, beyond a copyright infringement claim, that the Board could decide.

Please review [Circular 1: Copyright Basics](#) and the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended claim if you can state facts to support a claim under copyright law that can be heard by the Board. For more information about what is required to support a claim of infringement, noninfringement, or misrepresentation please refer to the CCB Handbook:

- [Starting an Infringement Claim](#)
- [Starting a Noninfringement Claim](#)
- [Starting a Misrepresentation Claim](#)

Copyright Infringement – Infringing Activity

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 copyright infringement claim does not present enough facts to clearly state how the respondents used your exclusive rights in the allegedly infringed works without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, publicly perform, 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.

Your “Copyright Complaint” and other supplemental documents filed with the claim indicate that your dispute with the respondents concerns their alleged failure to return copies of certain copyrighted works to you. That is not a relevant infringing act that would provide a basis to hold any respondent liable for infringement. Your claim does not indicate that the respondents copied, distributed, performed, displayed, or prepared derivative works based on your allegedly infringed works. To the contrary, an exhibit filed with the claim appears to be a letter dated September 3, 2020, in which respondent Matthew Helderman stated that his company Buffalo 8 “expressly acknowledges and agrees that it shall not and has no intention of using” any aspect of your materials, “at any time in the future, present, or otherwise.” Your claim and your supporting documentation do not describe or show any infringing activity by any respondent.

If you submit an amended claim, you must more fully explain how each respondent infringed each of your allegedly infringed works. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe (1) acts infringing your copyrights in each of your works, specifying the infringing works and how the respondents engaged in the infringing activity, and (2) the infringing acts of each respondent, specifying the allegedly infringed and infringing works for each respondent. You should be as detailed as possible, setting forth what each respondent did in relation to each work you allege was infringed. If you cannot state facts to support an infringement claim about any particular works, or against any named respondents, you must omit them in the amended claim.

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 supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

September 27, 2022