



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0271
September 12, 2023

Thigz LLC

CLAIMANT

v.

Secret Hit 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 **October 12, 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. For example, in the original claim, you name the claimant first as Thigz LLC and elsewhere as Thrigz LLC. You can clarify the spelling in an amended claim. 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.

Copyright Infringement – Elements

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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondent’s alleged infringing activity, access to your work, and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

Infringing Activity

Your claim does not present enough facts to clearly state how the respondent violated your exclusive rights in the allegedly infringed 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.

You identify the claimant’s work as a sound recording titled “Peldio” by a recording artist named Thrigz. The “Describe the infringement” section of your claim alleges that “the original Beat in our sound recording was used to create a copy of the original work.” You state that the infringement occurred through online distribution of an “infringing track,” including on YouTube, Spotify, and Apple Music. However, your claim does not provide the title of the alleged “infringing track” or name the artist that performed it. You do not indicate whether you allege that the beat in the sound recording was copied by sampling rather than by creating a new performance. You also do not describe how the respondent Secret Hit LLC took part in any infringing activity. If you file an amended claim, state the facts related to the alleged infringing activity clearly, including the title and artist of the infringing track, how it “used” elements of “Peldio,” the actual activities that you allege violated your rights, and what role the respondent played in the infringing acts.

Access

Your claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to hear your work before the alleged infringement took place. Your claim does not state allegations about where or how “Peldio” was available before the alleged infringement so that the respondent had an opportunity to hear it. You allege that “the original track was taken down prior to the infringement,” without stating where it was up in the first place.

To address this issue, you must file an amended claim that alleges facts that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include allegations of facts showing that, before the alleged infringement, your work (a) was sent directly to the respondent, or to a close associate of the respondent; (b) was widely disseminated or was available to the public; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing work 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 facts that explain the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental materials submitted with the claim, you must provide specific allegations about how your work and the allegedly infringing work are substantially similar.

Your allegation that “the original Beat in our sound recording was used to create a copy of the original work” does not show or explain how the beat was used. You do not provide enough information describing or showing your work, or stating how it is substantially similar to the respondent’s allegedly infringing use of the work. No allegations in the “Describe the infringement” section of the claim describe your work or the allegedly infringing work, or state or show how they 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.

In addition, to bring a claim of copyright infringement of a sound recording, the allegedly infringing work must contain actual sounds recorded in the allegedly infringed sound recording. If you maintain the allegations that the infringing activity is the creation of a derivative work based on your sound recording, your amended claim must allege facts that show that the respondent rearranged, remixed, or in other ways reproduced and altered the actual sounds embodied in your sound recording, because for sound recordings, the right to prepare derivative works is limited to such acts. *See* 17 U.S.C. § 114(b) (the exclusive rights to make copies and derivative works of a sound recording “do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording”).

If you submit an amended claim, 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 the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. As explained above, 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