



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0408

January 30, 2024

Kenneth Rucker

CLAIMANT

v.

James H Dillard, Unknown

RESPONDENTS

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **February 29, 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.

Respondent—Clarity

Your claim included an “Unknown” respondent. Additionally, you stated that “I would highly need the CCB staff attorneys to give me information about obtaining a subpoena under 17 USC 512 (h), which may help me obtain information from an online service provider to identify the other respondent on this claim.” The Board sent the requested information via email on December 21, 2023. In a return email, you indicated “would like to drop the unknown respondent and to proceed forward with just the one respondent on file, James Dillard.” You may remove the unknown respondent by clicking “edit” button in the Respondent section of your amended claim should you file one.

Misrepresentation — Clarity

You are 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, which involves false statements made to an online service provider related to a copyright-protected work posted online. In other words, under Section 512, a copyright owner may notify an OSP in a takedown notice that someone posted infringing content on that OSP’s system or network and demand that the infringing material be taken down.

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). In your claim, it is unclear which takedown notice(s) contain a misrepresentation, which notices were sent by you and which were sent by the respondent, and if the content of the notices sent by both parties comply with section 512.

Misrepresentation requires that, within a takedown notice or counternotice (here, likely a takedown notice), the respondent knowingly made a false statement of fact important to the online service provider’s decision to take down your material. In your claim, you answered “yes” to the questions regarding where the misrepresentation took place. It does not make sense that you are alleging a misrepresentation in your own counternotice. In addition, your claim describes the content of the takedown notice as “[t]he content was criticism of James Dillard and it showcased his hypocrisy with using edited footage of his videos.” Your description of the content of the takedown describes what you believe is in the *content of the videos themselves* but does not describe the content of the copyright takedown notice. Further, you do not identify if one or all of the notices contained a misrepresentation.

If you submit an amended claim, you must provide additional clarifying facts to show that a respondent sent a takedown notice or counter-notice to an online service provider that included a false or incorrect statement of fact (that material or activity was infringing, or was removed by mistake or misidentification), and show or explain why the statement was false or incorrect. If respondent sent multiple takedown notices, for each one where you claim there was a misrepresentation, you must make clear the false statements made in each. You should quote the false statements and describe in detail why they were false. You may also attach to your amended claim each copyright takedown or counter-notice that you believe contains a misrepresentation. If you attach supplemental documents to your amended claim, each document must be clearly labeled. More information is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

Counternotice Description

Your claim also does not provide enough facts about the counternotices you sent. Once the content is taken

down by an OSP, the person or company that posted the content may request that it be reposted by sending a counternotice to the OSP. Typically, the counternotice states that the content was removed or disabled by mistake or misidentification and asks that the content be reposted. In your claim, you describe the content of the counternotice as “Every counter notice contained the fair use language laws and it was accepted by YouTube. None of his takedown notices actually worked, it took a false copyright claim for infringement and legal documents that he sent to YouTube that labeled my content as a ‘community violation.’” These statements about the counternotice(s) appear to be about YouTube community guidelines unrelated to copyright, with no evident connection to a DMCA takedown notice or counternotice. Further, you answered “yes” to “Misrepresentation occurred in the counternotice” but it is unclear what you mean by that statement. You must clarify if you made a misrepresentation in your counternotice and/or if the respondent also sent you a counternotice that contained a misrepresentation.

To correct these issues, you must (1) describe the content of the copyright counternotices not you sent (2) indicate if the respondent sent any counternotices and if there were any misrepresentations in the counternotice(s), and (3) describe the content of the counternotices. You may also attach to your claim each copyright counternotice notice that you sent YouTube. If you attach supplemental documents to your amended claim, each document must be clearly labeled.

Improper Relief

The “Description of harm suffered and relief sought” section of the claim indicates that you are seeking relief that the Board is not authorized to award. Specifically, you request that the respondent stop sending privacy notices and “false claims for infringement,” dismissal of Claim 23-CCB-0266, dismissal of federal claims, a formal apology, and removal of the respondent from YouTube. The CCB does not have the power to order the dismissal of federal claims, to have a party removed from YouTube, or to require a party to issue an apology. Further, the CCB cannot issue relief which requires an infringer to stop engaging in wrongful activities. It can, however, include in its final determination a requirement that a party stop or modify certain activities but only if that party has agreed to do so.

Misrepresentation claims brought before the Board must allege some provable harm or damage, such as a financial loss or other harm for which monetary relief can be given. Additionally, you selected “Yes” to the “smaller claims” option in the claim form. The smaller claims option is for claimants who wish to seek a maximum of \$5,000 in a proceeding. 17 U.S.C. § 1506(z). Your claim should identify some financial loss up to \$5,000 or harm or other provable injury you suffered *because of the alleged misrepresentation*. In order to seek damages above \$5,000, you must change your selection to the question “Would you like to proceed as a “smaller claim” proceeding (including the \$5,000 monetary limit) instead of the standard CCB small claims proceeding?” to “no.” Please review the discussions at pages 10-11 of the chapter on [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information about the kinds of relief that the Board can grant. Additional information is also available in the [Damages](#) 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. 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