



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0256

August 29, 2023

Lions Financial

CLAIMANT

v.

Higbee & Associates

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 **September 28, 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.

Proper Respondent

Your claim is noncompliant because the entity named as a respondent, the law firm Higbee & Associates, is not a proper respondent for this claim.

You are seeking a declaration of noninfringement under 17 U.S.C. § 1504(c)(2). The claim asks the Board to find that your actions do not infringe the respondent's copyright. To proceed with such a claim, there must be an "actual controversy" between the parties. 28 U.S.C. § 2201(a); see 17 U.S.C. § 1504(c)(2) (a "claim for a declaration of noninfringement" must be "consistent with" 28 U.S.C. § 2201). However, your allegations describe a dispute over whether you infringed a copyright owned by the respondent's client RM Media Ltd. ("RM"), not by the respondent itself. It does not appear that the respondent's legal rights are at stake in that dispute between you and RM, so your claim against the respondent does not present an actual controversy that the Board can resolve.

Supplemental documents filed with the claim indicate that Higbee & Associates, acting on behalf of RM, has sent you correspondence accusing you of copyright infringement, but the documents do not indicate that the law firm is the copyright owner. You allege that the parties asserting infringement against you are RM, Nick Youngson ("CEO and founder" of RM), and Mathew K. Higbee (of Higbee & Associates). You describe the work that the

respondent says you have infringed as a “photo of the word valuation written on a typewriter” with copyright Registration No. VAu1301124. A [supplemental document](#) filed with the claim appears to be a letter dated June 23, 2023, in which Mr. Higbee threatened to file suit against you on RM’s behalf, including a “sample” complaint for the proposed lawsuit, *RM Media Ltd. v. Lions Financial, LLC*, asserting infringement of that copyright.

If an actual controversy exists over whether you infringed the copyright, the controversy is between you and RM, not its law firm. Only the copyright owner can be a proper respondent for your claim because only a copyright owner could bring a claim for infringement against you. See, for example, *Shabani v. Moctezuma*, No. 16-cv-03862, 2017 U.S. Dist. LEXIS 8359, *6 (N.D. Cal. Jan. 20, 2017) (“Plaintiff does not allege that Defendant owns any of the copyrighted material in question and the true copyright owners are not parties to this litigation. Since Defendant does not have standing to sue Plaintiff for copyright infringement under the Copyright Act, Plaintiff cannot allege facts sufficient to show that there is a ‘real and reasonable apprehension’ that he may be sued for copyright infringement by Defendant.”).

A claim must be brought against a party with adverse legal interests to yours. While Higbee & Associates may represent a copyright owner with interests adverse to yours, you have not alleged that the law firm itself has the stake in the copyright needed for your claim against it to continue. Several courts have dismissed claims seeking declarations of noninfringement under 28 U.S.C. § 2201 against Mr. Higbee and his law firm, in cases where they represented the copyright interests of Mr. Youngson and RM, on essentially these grounds:

Here, no case of actual controversy exists because the Higbee Defendants possess no adverse legal interests against the Plaintiff. As detailed in the Complaint, the Higbee Defendants are merely agents of the copyright holders, Youngson and RM Media, Ltd. . . . They have no ownership or control over the copyright and lack standing to recover from the Plaintiff for violations of the copyright or breaches of any related licenses. A declaratory judgment regarding the Plaintiff’s infringement or non-infringement of the copyright therefore would not clarify the legal relationship between the parties because it would only determine the scope of a legal right to which the Higbee Defendants have no claim.

Meyer, Suozzi, English & Klein, P.C. v. Higbee, No. 18-cv-03353, 2019 U.S. Dist. LEXIS 80414, *7 (E.D.N.Y. May 13, 2019). See also *Lisa Coppola, LLC v. Higbee*, No. 19-cv-00678, 2020 U.S. Dist. LEXIS 41536, *25-29 (W.D.N.Y. Mar. 10, 2020) (“The Higbee Defendants . . . have no legal interest in the copyrights at issue and thus no legal interest adverse to [the accused infringer].”). This claim may not proceed against Higbee & Associates unless, in an amended claim, you can state facts that indicate that it has an ownership interest in the copyright or that it controls the copyright.

An amended claim may name a different respondent. However, the Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). The Certificate of Registration for Registration No. VAu1301124 names Mr. Youngson as the copyright claimant, states that he is a citizen of the United Kingdom, and lists his address in Liverpool, United Kingdom. A [supplemental document](#) filed with your claim indicates that RM is a company registered in England and Wales, and lists its address in Knowsley Village, England. See also *Meyer*, 2019 U.S. Dist. LEXIS 80414, *2 (“Youngson is a photographer who resides in the United Kingdom. RM Media, Ltd. is a foreign business entity that operates in the United Kingdom.”). That information

indicates that the Board cannot hear a claim against Mr. Youngson or RM. You should only amend your claim if you are raising it against an individual or entity residing in the United States. If you name Mr. Youngson or RM as a respondent, your amended claim must state facts that indicate that the respondent actually resides in the United States.

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