



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0038

United States Copyright Claims Board

Elton J White S

CLAIMANT

v.

Jay Rowe

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 6, 2022**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the CCB 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.

Copyright Infringement Claim – Respondent Information

When you filed the claim, you did not provide an address for the respondent but stated that you would provide the address later. Subsequently, you sent us an email providing us with the address. When you file your amended claim, please enter the address you provided to the Board in the “Respondent” section of the claim form.

Copyright Infringement Claim – Clarity

You have brought a copyright infringement claim before the CCB. Your claim must make enough factual allegations to support each “element” of the claim. 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 identical or substantially similar to your work.

Your claim does not present enough facts to clearly state how the respondent used any of your exclusive rights in the work without permission. For example, for the rights you allege the respondent has infringed, you selected “publicly perform the work through digital audio transmission” from the dropdown menu on the claim form. However, the factual allegations in your claim do not refer to any digital audio transmissions made by the respondent. Based upon the allegations in your claim, it appears that you may have selected the wrong type of right infringed. A digital audio transmission is a transmission in a digital format of a sound recording. Your description of the infringement does not refer to any public performances by the respondent of sound recordings by means of digital audio transmissions. When you amend your claim, you should consider whether the respondent was responsible for making such transmissions. If so, you should describe those acts. If not, you should refer to the discussion at page 3 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook and confirm which of those six wrongful activities the respondent engaged in to infringe your copyright. Think carefully about which options in the claim form actually apply in your case. When you file an amended claim, select only the wrongful activities that apply for this respondent. You will need to add detailed factual allegations about each wrongful activity that you allege in the “Describe the Infringement” field of the claim form. The claim must provide enough information for the respondent to understand what their allegedly infringing acts were.

Your claim does not provide facts about how the respondent had “access” to your work. “Access” means a reasonable opportunity to view or hear your work. Please provide more details and background regarding this element in your amended claim.

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

Your claim also does not explain the similarities between your work and the respondent’s allegedly infringing work. Although you listed the type of work infringed as a sound recording and submitted a registration for a sound recording, your allegations of infringement reference the “feel of the groove” of your “musical composition.” It is also unclear whether you are referring to the changing rhythmic pattern of the song, specific notes, lyrics, or something else, and using the term “feel of the groove” makes it unclear whether you are referring to the underlying composition or the sound recording, or both, or whether the groove is based in whole or in part on preexisting music, or is completely original. When alleging substantial similarity, the infringing work must be substantially similar to the copyright protected elements in the

original work. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work.

More 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.

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. If your claim included 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 CCB is unable to provide legal advice. We can only provide legal information and assistance concerning CCB procedures and requirements. You may also refer to the [Compliance Review](#) chapter of the Copyright Claims Board Handbook for more assistance.

Copyright Claims Attorney

September 6, 2022