



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0125

United States Copyright Claims Board

Marcus Richert

CLAIMANT

v.

Ozy Media, Inc.

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 **November 23, 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. 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.

Permissible Claim

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.

17 U.S.C. § 1504(c)(1)-(3). The Board cannot consider claims for breach of contract. 17 U.S.C. § 1504(d)(1).

You checked the box stating your claim was one of copyright infringement. However, the facts described in the “Describe the infringement” section of the claim appear to describe a breach of contract dispute, not a copyright infringement dispute.

Violation of a term in a copyright license can result in an infringement claim only if (1) the respondent used your work outside the scope of what you gave the respondent permission to do, (2) the license was terminated, but the respondent continued to use your work in an unlawful way or (3) the copyright license depended on what is known as a “condition precedent” in the agreement, and the respondent failed to satisfy it.

A “condition precedent” is an obligation that the respondent must do or a requirement that must happen in order for the respondent to use the work. A failure to fulfill terms in an existing contract, such as failure to make payment, is considered a breach of contract—and does not give rise to a copyright infringement claim—unless the contract made payment a “condition precedent” to the copyright license by clearly stating that permission to use the work is not effective unless payment is received.

The “Describe the infringement” section of your claim alleges that the respondent “copied and posted Mr. Richert’s copyrighted photographs to its commercial website without proper license or permission from Mr. Richert. Mr. Richert makes the images available for use under a Creative Commons 2.0 license, but Ozy Media followed none of the published terms.” Without more detail, including what terms were not followed, those allegations seem consistent with a breach of contract claim, rather than a copyright infringement claim, because they do not appear to describe use beyond the scope of the license, a terminated license, or a condition precedent within the license. Your general allegation of use “without proper license or permission” does not provide enough specific detail about how that use went beyond the scope of the license, which license terms were violated, or how a condition precedent was not satisfied.

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. 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. The Board may be able to hear your claim if you amend it to state facts that identify how the respondent (1) used your work unlawfully outside of what your Creative Commons license gave the respondent permission to do, (2) continued to use your work after you affirmatively terminated the license, or after it expired, or (3) failed to satisfy a condition precedent in the license, such that the respondent did not actually have the right to use your work. You may also choose to include a copy of the Creative Commons license, or correspondence that plays a significant role in your allegations, as supplemental documentation in support of your 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

October 24, 2022