



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0253

September 3, 2024

Jeff Adams

CLAIMANT

v.

Charmagne Mckinney

RESPONDENT

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 **October 3, 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.

You have raised both a copyright infringement claim and a misrepresentation claim in this proceeding. The infringement claim appears to be compliant, so if you submit only that claim as it is currently drafted, the claim will likely be found compliant. If you cannot properly amend the misrepresentation claim, you should remove that claim, and submit only the infringement claim as it is currently drafted in your amended claim.

Misrepresentation Claim – Harm

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 (OSP) related to a copyright-protected work posted online.

Your claim must make enough factual allegations to support each “element” of the claim. The elements of misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,

4. The misrepresentation was important to the OSP's decision to repost the content, and

5. You were harmed as a result of the OSP's decision to repost the content.

17 U.S.C. § 512(f). More information is available on the Copyright Office's [section 512](#) page.

You allege that you sent takedown notices to YouTube that asked it to remove allegedly infringing videos from the respondent's YouTube channel, and that the respondent sent YouTube counter-notices seeking to have the videos restored. You do not allege that you were harmed by the OSP (YouTube) reposting or deciding to repost the videos. You do not allege that YouTube has in fact reposted or decided to repost them. Instead, you allege that "[d]ue to the counter[-]notices] I was required to seek legal action which costs me time and money," and that you were harmed by harassment and public criticism after you took legal action.

Misrepresentation Claim – Reliance by Online Service Provider

As discussed above, a misrepresentation in a counter-notice only violates section 512 of the Copyright Act if the OSP relies on it to restore the allegedly infringing content. "Safe harbor" provisions in section 512 protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material, ten to fourteen business days after receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. Information provided in your claim indicates that the alleged misrepresentations may not have been a factor in any decision by the OSP to repost the videos, and it is not apparent that the OSP had reposted the videos at issue at the time you filed this claim.

You indicate that you sent takedown notices to YouTube (the OSP) and that it received counter-notices sent on August 10, 2024. You filed an earlier infringement claim against the respondent (*Adams v. McKinney*, Claim No. 24-CCB-0238) on August 15, 2024. On August 27, 2024, you filed a request to withdraw that claim and it was dismissed. You filed this claim the next morning, August 28, 2024. The proximity of those dates suggests that the OSP may not have reinstated the videos at the time you filed this claim, and there is no allegation in your claim that the OSP did restore it. Instead, supplemental documents show that on August 10, 2024, YouTube told you that the videos might be reinstated after ten business days if you did not notify YouTube of a legal claim you had brought against the alleged infringer: "You have 10 US business days to reply to this counter notification. . . . After 10 US business days, if we don't get a response from you, the content at issue may be reinstated to YouTube." Allegations in this proceeding suggest that you notified YouTube about the earlier proceeding when it was filed four business days later, and you do not suggest that YouTube restored the videos in the brief time between the two proceedings.

If YouTube had restored the allegedly infringing videos by the time you filed this claim on August 28, 2024, your amended claim must state facts about that restoration and how it harmed you. However, if YouTube did not restore the videos in reliance on the respondent's counter-notices, this misrepresentation claim cannot move forward, and you could only pursue your infringement claim if you file an amended claim that omits the misrepresentation claim.

Copyright Infringement – Harm

Your infringement claim must describe the harm that you have suffered as a result of the alleged infringement and the relief you are seeking. 37 C.F.R. § 222.2(c)(10). The “Description of harm suffered and relief sought” section of your infringement claim complies with the Board’s requirements, so you are not required to amend it.

However, the Board wants you to know that some of the harms you identify in that section and in supplemental documents, such as harassment, defamation, and reputational damage, would not be the basis of any damages award that the Board may grant on this infringement claim. You attribute those harms to the alleged *infringer*, but any relief awarded on this claim must be directly related to the alleged *infringement*, such as lost license fees or sales caused by the infringement, profits of the respondent attributable to the infringement, or statutory damages under the Copyright Act. More information about the types of relief available for an infringement claim is available at pages 6-7 and 16-17 of 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. 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.

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