



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0162

September 13, 2023

Timur Sajachmetov

CLAIMANT

v.

Surfaces, LLC;
TENTHOUSAND PROJECTS, LLC

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. You have not resolved all the compliance issues raised in the noncompliance order issued on July 19, 2023, and additional issues explained below also must be resolved for the claim to go forward.

If you wish to proceed with this claim, you must file a second amended claim by **October 13, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

To make your second 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 amended 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.

Registration

In its original noncompliance order, the Board asked you to replace your pending application information with your final registration number and effective date of registration. You provided the registration number, but still answered “No” to the question “Has the work been registered by the Copyright Office?” In your amended claim, please answer “Yes” to this question and provide both the registration number and the effective date of registration.

Infringing Activity - Clarity

Your amended claim continues to be noncompliant because it appears that the use of your work in Surfaces’ “Good Day” was subject to a license from Looperman, and you do not allege that the respondents used your work outside the scope of the license. In the original noncompliance order, the Board explained that it was only

authorized to hear copyright infringement claims, and not a breach of contract claim involving copyright protected works. A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. An agreement allowing someone to use a copyright protected work according to certain terms and conditions, or a license, is a contract, and the Board is unable to hear disputes related to the failure to meet any of those terms and conditions or provide payment. The Board noted that it appeared that the work was made available on Looperman for licensing, and that you alleged that the respondents downloaded the work. Accordingly, any dispute related to the Looperman download would be a contract claim that the Board cannot hear.

In your amended claim, you include part of Looperman's terms and services, which states "All samples and loops are free to use in commercial and non-commercial projects." This is the foundational license which gives permission to end users to use a Looperman sample subject to the limitations further described in the section. You quote two further sections of the Looperman terms and conditions for the proposition that "Surfaces was made aware of their responsibility to get clearance to use my Copyright in their track 'Good Day.'" These sections, however, do not contradict the permission that Looperman grants on behalf of individuals who post their work on the website. Nor do these allegations outline eligible infringing activity related to a dispute the Board can hear.

First, you quote a limitation that anyone using a Looperman beat can only claim copyright in their new contributions and cannot claim copyright in the original download. This provision is a term of the license, which licensees must follow to use posted works. If the respondents are not following this term, any breach is part of a contract, not an infringement, claim.

Second, you quote a warning that it is the end user's responsibility "to ensure that anything downloaded is legally available for use." This statement is a disclaimer that alerts users that Looperman does not guarantee that works were lawfully put on their website. Since you uploaded the work to Looperman, you made it available subject to Looperman's license that "all samples and loops are free to use in commercial and non-commercial projects."

To bring an infringement claim that the Board could hear, an amended claim would need to allege that Surfaces LLC failed to satisfy a "condition precedent" of the license, or if the Surfaces' use of the work went beyond the scope of the uses permitted under the license. A "condition precedent" is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book "if, and only as long as" the licensee makes monthly payments to the author, then the payments may be a "condition precedent" to the licensee's right to publish. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it before using the work, then the license is not effective, and the licensor may raise a copyright infringement claim.

The Board notes that your amended claim clarifies that TENTHOUSAND PROJECTS is the distributor of "Good Day." That would be a sufficient allegation of copyright infringement only if the original creation of "Good Day" using your work was itself infringing. Accordingly, you will need to address the issue that you have not sufficiently alleged an infringement claim against the producer, Surfaces, for your claim against TENTHOUSAND PROJECTS to proceed.

Final Amendment

This is your third and final opportunity to submit a compliant claim in this proceeding. **If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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 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