



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0266

April 18, 2024

James H Dillard, II

CLAIMANT

v.

Damon Lovell, Kenneth Rucker,
Marquis Edwards

RESPONDENTS

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **May 20, 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. 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.

Legal or Beneficial Ownership

Your amended claim still presents unclear information about your status as a legal or beneficial owner of the allegedly infringed works. You identify yourself as the author and owner of the allegedly infringed photographs, which you describe as “works made for hire,” but your filings do not support that description.

It appears that the photograph was part of a photoshoot by photographer Robert Morales. In a supplemental document filed with the amended claim, labeled “Ownership.docx,” you state:

In late November 2011, prior to the photoshoot with Mr. Morales, a “work made for hire” agreement was established. This agreement was made before the photoshoot took place, outlining the specific terms and conditions under which the work was commissioned. I took an active role in the planning and execution of the photoshoot, providing direction on wardrobe, props, and overall creative direction, including angles, poses, lighting, and background settings to align with my vision for the project.

Upon completion of the photoshoot, I remunerated Mr. Morales in cash as per our agreement. Additionally, I received documentation from Mr. Morales on the same day, confirming the transaction and

the terms of our agreement. Unfortunately, the original documentation has been misplaced over the course of 11 years, and I have been attempting to retrieve a copy from Mr. Morales for my records.

You have not presented facts that indicate that the photographs qualify as a work made for hire. There are only two situations in which a work made for hire is produced. The first situation is when the work is created by an employee as part of the employee's regular duties. The allegations in "Ownership.docx," indicate that Mr. Morales was not your legal employee.

The second situation where a work made for hire can be produced is where it is a certain type of work allowed to be a work made for hire under the law, and it is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. Said in another way, for a specially ordered or commissioned work to be a work made for hire, the parties must agree in writing that the work will be considered a "work made for hire" and the work must fall within one of nine specific categories. See pages 2 and 3 of [Circular 30](#) for more information. You describe the photographs as "commissioned" works, but you do not have written documentation saying the parties considered it a work made for hire, and such a work can only count as works made for hire if it is "commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas." 17 U.S.C. § 101. The photographs do not appear to fall into any of those nine categories. As a result, it does not appear that copyright law would treat the photograph as a work made for hire.

If you submit a second amended claim, you must include more information that indicates that you are a legal or beneficial owner of the photographs at issue in this claim and shows or explains how you gained ownership of the works. To show that the photographs were a work made for hire, you must describe facts that show that (1) Mr. Morales was your employee, and that he took the photograph in the course of his regular duties; or (2) the photographs fit one of the nine categories of works listed above that can be considered works made for hire under copyright law and the parties agreed in writing that the works would specifically be considered by the parties as works made for hire.

Alternatively, you may present facts that indicate that Mr. Morales assigned, transferred, or conveyed the copyright to you, or gave you an exclusive license to use the photographs. However, if you present such facts, you must also show or explain why you were still seeking a transfer agreement after the photoshoot. As discussed in the March 5, 2024 Order to Amend Noncompliant Claim, Copyright Office records indicate "that after the photoshoot, you asked Mr. Morales to sign a 'work for hire contract and copyright transfer' for his photographs, and that he did not sign it."

Works Infringed—Clarity

Your claim includes unclear allegations about how many and which of your works were allegedly infringed. If it is not readily apparent from the claim and supplemental materials the number or type of works at issue, you must provide additional information about which of your works were infringed and how they were infringed by the

respondents. There are two issues with some of the works that you have listed in your claim.

(1) Missing Allegations

You have included over 20 works in the “Works infringed” section of the claim. However, over half of the works including: “black shit james,” “12 Years a Dusty,” “sideview black shirt,” “Party Rocka Flyer,” “DJ tech,” “Greysshirt,” “Misogynoir : In all it's glory | #manosphere #bwe,” “BathSelfie,” “Red Photo,” “Sideviewblackshirt,” “Party Rocka Flyer,” “DJ tech,” “Greysshirt,” “Misogynoir, Bath Selfie,” “Red Photo,” “Blackshirtgreybackground,” “White Shirt Actual,” and “Nesto Culture : DJ Torch Exposes Weak Men who abandon their kids” do not have any corresponding allegations in the “Describe the infringement” section of the claim. Nothing in the “Describe the infringement” section of the claim specifies which respondent infringed the works or how these works were allegedly infringed.

If you want to include these works in the claim, you must more fully explain how the respondents infringed each of your allegedly infringed works. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe (1) acts infringing your copyrights in each work, specifying the infringing works and how the respondents engaged in the infringing activity, and (2) the infringing acts of each respondent, specifying the allegedly infringed and infringing works for each respondent. You should be as detailed as possible, setting forth what each respondent did in relation to each work you allege was infringed. If you cannot state facts to support an infringement claim about any particular works, or against any named respondents, you must omit them in the amended claim.

(2) Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). Either the registration must have been issued or the application must have been delivered to the Copyright Office before you filed your original claim on August 10, 2023.

In your amended claim, you have included several motion picture/audiovisual works that were not included with your original claim. A Board search of Copyright Office records indicates that the application for these works “1-13668582762” was received by the Copyright Office on April 1, 2024. Because these works were neither registered nor subject to a pending application when you filed your original claim on August 10, 2023, they cannot be included with this claim. Your amended claim must only include works where the registration was issued or the application was delivered to the Copyright Office before you filed your original claim on August 10, 2023. If, on the other hand, you would like to include all of these works in the same proceeding, you would need refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the March 5, 2024, Order to Amend Noncompliant Claim. **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 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