



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0094
June 26, 2023

Chesley K. Nelson, Mi, Hollis L. Nelson, Ms

CLAIMANT

v.

Kindle Direct Publishers of Amazon,
Kindle Direct Publishing

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. 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 **July 26, 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.

Claimant Information

The claim must include the claimant's mailing address. 37 C.F.R. § 222.2(c)(2). Your claim includes conflicting mailing addresses for Hollis Nelson. You may correct this issue by filing an amended claim that states the correct mailing addresses of all of the claimants.

Authorized Representative

One of the claimants, Hollis L. Nelson, has registered for eCCB as a "Self Represented Party." As mentioned by the Copyright Claims Attorney during calls on April 27, 2023, and June 13, 2023, while a self-represented claimant may be given permission by other claimants to file the claim on their behalf, each individual claimant needs to represent themselves or have an attorney or law student represent them for the rest of the proceedings. 17 U.S.C. § 1506(a)(d). In the claim form, Hollis L. Nelson is still listed as the "authorized representative" for Chesley K. Nelson. In your amended claim, you will need to correct the authorized representative information for Chesley K. Nelson to indicate whether they will have representation for the rest of the proceeding or will be representing

themselves. If Hollis L. Nelson is an attorney or law student, she must change her user role in eCCB and provide additional information about her qualifications. If she is not an attorney or law student, she is not eligible to represent Chesley K. Nelson.

Legal or Beneficial Ownership

Your claim is made on behalf to two claimants – Chesley K. Nelson, Mi, and Hollis L. Nelson, Ms. However, the only person alleged to be the author of the allegedly infringed work is Chesley K. Nelson, and the copyright registration for the work (Reg. No. TX0009185877), identifies Chesley Kameko Nelson as the only author and claimant (copyright owner) of the work “My Dancing Tap Shoes.”

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. More information about legal and beneficial ownership is available at page 4 of the [**Starting an Infringement Claim**](#) chapter of the CCB Handbook.

As noted above and detailed by the Copyright Claims Attorney on April 27, 2023, Hollis L. Nelson cannot list herself as a claimant merely to represent her daughter in this claim. In order for her to be a claimant, the amended claim must include specific allegations about how she, Hollis Nelson, owns or has an exclusive license to use the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how she was the owner of exclusive rights in the work at the time of the infringement or by submitting supplemental documents. If the information in the claim identifying the claimant or the authors of the work is inaccurate, you may correct that information in an amended claim.

Respondent Clarity

The allegations in your amended claim remain unclear because they appear to list the same respondent twice. As noted in the Board’s April 3, 2023, Order to Amend Noncompliant Claim, when you submit an amended claim, you must remove the duplicate information. If you are alleging “Kindle Direct Publishers of Amazon” and “Kindle Direct Publishing” are separate legal entities, your claim must make enough factual allegations to support each “element” of copyright infringement *for each respondent*, including how each respondent obtained access to your work and what each respondent did with your work. 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.

Work Infringed

In the claim, you identify the allegedly infringed work as a book titled “My Dancing Tap Shoes.” You list the

same work and registration (“tx9185877”) four times. As mentioned in the Board’s Order to Amend Noncompliant Claim and by the Copyright Claims Attorney on April 27, 2023, it is unclear from the allegations included in the claim if the listed works are all the same work or are derivatives of the original registration listed in your claim. A Board search of Copyright Office records indicate that a physical hardback copy was deposited during the registration process. If all of the listed works contain the same copyrighted material as the work that was deposited, your amended claim must list the work once and specify that clearly in the “Describe the work” field in the claim.

Copyright Infringement Claim – Elements

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. 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 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not present clear facts to support the elements of a copyright infringement claim regarding several of these elements, as discussed below.

Access

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 before the alleged infringement took place. 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. Alternatively, you can upload copies of your works and the allegedly infringing works if they demonstrate that the works are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Substantial Similarity

Lastly, your claim does not include enough facts that explain the similarities between your work and the respondent’s allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your claim states that your work is a literary work that is currently for sale online. However, you do not provide enough information, in the “Describe the infringement” field or elsewhere in the claim, describing or depicting your work or the respondent’s allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must include additional factual allegations that support the element of substantial similarity. 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, or documents that are sufficient to show the similarities. If your understanding is that the respondents are selling exact copies of your entire book, an allegation that that is what they are doing will be sufficient. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

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

Final Amendment

Your amended claim did not resolve the compliance issues raised in the April 3, 2023, 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