



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0403

January 11, 2024

Sheri C. Johnson

CLAIMANTS

v.

300 ENT

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 **February 12, 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 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.

### Substantial Similarity

Your amended claim still does not present enough facts that indicate that the allegedly infringing work includes material that is identical or substantially similar to material from your registered work that copyright protects. In a second amended claim, you will need to show how the respondent directly duplicated, rearranged, remixed, or otherwise altered the actual sounds fixed in the recording of you chanting “ha.”

You identify the allegedly infringed work as a sound recording titled “Sweet and Sour,” which the Copyright Office registered with Registration No. SRu1060674. As the December 20, 2023 Order to Amend Noncompliant Claim (“December 20 Order”) explained, that copyright registration covers the “sound recording, performance, [and] lyrics” of the work as embodied in a specific recording; but as a matter of law, it does not protect the copyright in the underlying musical composition, which is distinct from the copyright in a particular recording of that composition. A *musical composition* copyright may protect elements of the composition such as the melody, rhythm, or harmony. A *sound recording* copyright, by contrast, protects the actual sounds recorded in the allegedly

infringed sound recording. The exclusive rights to make copies and derivative works of a sound recording “do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording.” 17 U.S.C. § 114(b). A recent decision by the United States District Court for the Northern District of Illinois, available at <https://www.govinfo.gov/content/pkg/USCOURTS-ilnd-19-cv-02321/pdf/USCOURTS-ilnd-19-cv-02321-3.pdf>, explains this distinction well:

Critically, the copyright in the sound recording covers the recording itself, but not the underlying music, lyrics, words, or other underlying content embodied in the recording. . . . Conversely, the copyright in the musical composition covers the underlying musical work, and not a particular recording of that work. . . . This distinction in the types of copyrights is important because the exclusive rights for a sound recording copyright are significantly more limited than those of a musical composition. . . . [T]he rights in sound recordings are limited to direct duplication of the actual sounds affixed in the recording, in other words, copying of the actual recording itself.

*Richardson v. Kharbouch*, No. 19 CV 02321, slip op. at 16-17, 2024 WL 50374 (N.D. Ill. Jan. 4, 2024) (citations omitted). As a result, “evidence that there is a similarity in the sounds or melodies between [two recordings] is not relevant to the issue in this case of alleged sound recording infringement: whether there was duplication or sampling of the actual sound recording.” *Id.* at 26 (citations omitted). “Evidence that the infringing work merely contains the same underlying musical composition, such as the same generic [notes] or lyrics, would not establish sound recording infringement, even if the author of such work deliberately set out to imitate the composition and sounds of the copyrighted recording.” *Id.* at 19 (citations omitted). More information on copyrightable expression in sound recordings, and how it is distinct from the copyrightable expression in musical compositions, is available in [Circular 56A: Copyright Registration of Musical Compositions and Sound Recordings](#). Information on sampling, remixes, and other ways that existing sound recordings may be incorporated into new works is available in [Sampling, Interpolations, Beat Stores and More: An Introduction to Musicians Using Preexisting Music](#).

You allege that the respondent infringed by creating “a derivative work,” that is, a work based on your sound recording. If you maintain those allegations, then as stated in the December 20 Order, “your amended claim must allege facts that show that the respondent rearranged, remixed, or in other ways reproduced and altered the actual sounds embodied in your sound recording, because for sound recordings, the right to prepare derivative works is limited to such acts.” *See* 17 U.S.C. § 114(b) (“The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality.”).

As the December 20 Order explained:

The mp4 file uploaded with your claim appears to include a snippet of the allegedly infringing Gunna recording, in which a “ha” sound is repeated eight times, and a snippet of your allegedly infringed work, in which a “ha” sound is repeated six times. However, the sounds do not appear to be identical or substantially similar. If you submit an amended claim based on this use, to support the element of substantial similarity you must include more factual allegations that describe or show how the allegedly infringing work includes reproduced or altered sounds from your work that make up a substantial part of the creative expression of your work.

In the amended claim, you allege that in your “Sweet and Sour” recording, “I created adlib sound chants (SOUND RECORDINGS) ‘hot hot hot hot’ pronounced ‘ha ha ha ha ha’ recited at 1 second intervals repeatedly as my signature.” You allege that Gunna used “my signature sound ‘ha ha ha ha’ (breath chants of the word HOT) in the exact way I created them in my sound recording and musical performance in my song titled ‘Trust Me.’” You further allege that “the sounds are not similar nor ‘strikingly similar’, they are identical. And were purposely used to pay tribute to me[.]”

However, without more, bare assertions that the sounds “are identical” do not show that Gunna’s recording “FUCKUMEAN” contains reproduced or altered sounds that appeared in your “Sweet and Sour” recording. Although you allege that your recording includes repeated chants of the “ha” sound in your own voice, and that “ha” is chanted in the same way in Gunna’s recording, your allegations do not clearly assert, indicate, or show that the Gunna recording incorporated or remixed any part of the actual vocal track containing your voice chanting “ha.” To support a sound recording infringement claim based on that chant, your second amended claim should explain how the respondent’s work duplicated or remixed the specific sound recording of your voice.

The allegations in your amended claim suggest that the “FUCKUMEAN” recording includes vocal chants by someone trying to imitate your “ha” chants. Conceivably, such allegations might have been enough to support an infringement claim, if you had obtained a copyright registration for the *musical composition* performed in your sound recording. However, your allegations that Gunna intentionally imitated or simulated your vocal chants to pay tribute to you do not suffice for a *sound recording* infringement claim. Because “the Copyright Act expressly states that the rights in a sound recording do not extend to works that have been independently recorded and simulate or imitate the sounds of a protected sound recording . . . [m]ere imitation of a recorded performance would not constitute a copyright infringement even where one performer deliberately sets out to simulate another’s performance as exactly as possible.” *Richardson*, slip op. at 18 (internal quotation, quotation marks, and citation omitted).

Your allegations, and the mp4 file submitted with the amended claim, still do not sufficiently describe what portions of your recording were used in the allegedly infringing work, and do not state or show how the respondent’s work is identical or substantially similar to material in your work that copyright protects. To correct this issue in a second amended claim, you must include specific allegations that show how a particular part or parts of “the actual sounds fixed in your sound recording were recaptured in the Gunna recording or, if applicable, “rearranged, remixed, or otherwise altered in sequence or quality” in the Gunna recording. 17 U.S.C. § 114(a)-(b). If you contend that the Gunna recording sampled, remixed, or otherwise altered a particular section of the vocal track containing your “adlib sound chants,” you must identify the particular section of your vocal track used, describe how it was used, and identify where in the Gunna recording those recaptured or altered sounds appear.

## **Pending Litigation**

The Board cannot hear “any claim or counterclaim . . . that is pending before a court of competent jurisdiction, unless that court has granted a stay to permit that claim or counterclaim to proceed before the Copyright Claims

Board.” 17 U.S.C. § 1504(d)(2). In correspondence with the Board on December 29, 2023, you indicated that this dispute remains pending before a court of competent jurisdiction, and you have not indicated that the court has granted a stay to permit your claims to proceed before the Board. In particular, you sent the Board a copy of a complaint that you apparently filed in the United States District Court for the Northern District of Georgia, against the respondent in this proceeding and another entity, in which you alleged that Gunna’s song “FUKUMEAN” infringes your copyright in the song “Trust Me” by using your “signature adlibs.” It appears that the same infringement claim you raised before the Board is still pending in court.

If you do not submit a second amended claim that states facts that the dispute is not still pending in court, or that the court where the matter is pending has granted a stay to permit your claims to proceed before the Board, then the Board will dismiss your claim without prejudice.

### **Final Amendment**

Your amended claim resolved some, but not all, of the compliance issues raised in the December 20, 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](mailto: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