



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0154

United States Copyright Claims Board

Dongguan Xinmao Electronic Commerce Co., Ltd

CLAIMANT

v.

wuhanyijiaxintengdianqiyouxiangongsi

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 **December 14, 2022**. 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 a second amended claim. If you amend your 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 a second amended claim. 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.

Foreign Respondent

As the initial [Order to Amend](#) explained on October 5, 2022, the Board cannot hear a claim asserted against a person or entity residing outside the United States. 17 U.S.C. § 1504(d)(4). Your amended claim repeats an allegation, raised in your original claim, that the respondent, the “manufacturer” of the allegedly infringing products, “is located in China.” That allegation indicates that the Board cannot hear your claim. As the initial Order to Amend informed you, you should only amend your claim if you raise it against an individual or entity residing in the United States.

Respondent Address

The claim must include the respondent’s mailing address. However, instead of providing the respondent’s mailing address, your amended claim asserts that Amazon.com, Inc. is the respondent’s “designated service agent,” and you provide an address for Amazon in Seattle, Washington. You do not state a basis for asserting that the respondent has designated Amazon as its agent to accept service of legal claims. Although you allege that the respondent’s infringing activities occurred on Amazon’s website, that does not mean that Amazon is the respondent’s legal service agent or that Amazon’s address is a proper address for the respondent for purposes of this claim. Furthermore, Amazon’s address is not a substitute for the respondent’s mailing address. To address this issue, your second amended claim must include a United States mailing address *for the respondent* that is actually *the respondent’s* mailing address.

Copyright Infringement – Access

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 the 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 provide enough 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 a second 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.

The amended claim includes a supplemental document labeled [IMG_1677.jpg](#). The image in that document may be the allegedly infringed work, but it is hard to tell. The amended claim also includes a link to <https://postimg.cc/gallery/4xF4nqS>, which you describe as “screenshots of relevant infringing evidence,” and the images at that page appear to be screenshots of pages on Amazon.com offering for sale “TOPOINT Nunchucks.” Each of those screenshots shows a two-dimensional design, on the surface of the three-dimensional Nunchucks, that appears

similar to the image in IMG_1677.jpg. If you want the Board to consider those screenshots, then instead of referring to them only with hyperlinks, upload them as part of your second amended claim as supplemental documents. If you file a second amended claim that includes those screenshots, identifies them as screenshots of allegedly infringing uses, and identifies IMG_1677.jpg as your allegedly infringed work, the Board could take that information into account in determining whether your amended claim includes enough facts to support the element of access.

Copyright Infringement – Substantial Similarity

Your amended claim also 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 materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your amended claim states that your work is a "Dragon Figure About Martial Arts Safe Foam" and describes it as "the dragon pattern designed by our company." As noted above, the amended claim also includes a link to what appear to be screenshots of allegedly infringing uses. However, you do not provide more specific information describing or depicting your work. Apart from the statement referring to the dragon figure and stating that the respondent "uses the dragon pattern," no allegations in the "Describe the infringement" field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not clearly identified a copy of your allegedly infringed work as a supplemental document. As noted above, if IMG_1677.jpg is a copy of the allegedly infringed work, you should identify it in the text of your second amended claim. You should also upload, as supplemental documents, the screenshots that you linked to and identified in the amended claim as "relevant infringing evidence," if you want the Board to consider them as part of your claim. 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.

Final Amendment

If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the "**Documentation**" page. Please include only documents that are directly related to your claim.
4. Once you have completed your edits, continue to click through the claim flow 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

November 14, 2022