



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0303
December 2, 2024

James A. Colwell

CLAIMANT

v.

Jordan Mcfadden

RESPONDENT

ORDER FINDING BAD-FAITH CONDUCT AND A PATTERN OF BAD-FAITH CONDUCT AND DISMISSING CLAIM

On October 10, 2024, Claimant James A. Colwell (Claimant) filed this claim before the Copyright Claims Board (Board), alleging that respondent Jordan Mcfadden (Respondent) made a misrepresentation to an online service provider (OSP) in violation of 17 U.S.C. § 512(f). Claim (Dkt. 1). Claimant alleged in the claim form that he had sent a takedown notice to the OSP, X Corp. a/k/a Twitter, on October 3, 2024, and that the misrepresentation had occurred in a counter-notice that Respondent sent to Twitter on October 4, 2024. *Id.* The Claim included a copy of an October 10, 2024 email from Twitter to Claimant, labeled [Xcorp email 10-10-2024.pdf](#). In that email Twitter told Claimant, discussing the post on Respondent’s @WorldWalkerUni Twitter account that Claimant had reported as infringing a week earlier: “We will cease disabling access to the materials within 10 business days of the date we originally forwarded the user’s counter-notice to you.”

The Claim clearly did not state a claim upon which relief could be granted. A misrepresentation in a counter-notice only violates Section 512(f) of the Copyright Act if the OSP has relied on it to restore the allegedly infringing content. Twitter’s October 10, 2024 email told Claimant that it had not restored Respondent’s post and indicated that it would not restore it until, at earliest, October 18, 2024, ten business days after the October 4, 2024 counter-notice. Thus, at the time Claimant filed the Claim, just hours after he received that email, the @WorldWalkerUni post was still disabled. Twitter had not relied on the counter-notice to restore access to the allegedly infringing post. The Board therefore issued an Order to Amend Noncompliant Claim on October 21, 2024. (Dkt. 3).

The Board issued an Order to Show Cause Regarding a Pattern of Bad-Faith Conduct (Order to Show Cause) that same day. (Dkt. 4). Claimant had filed six other Section 512(f) claims earlier in 2024 and in those proceedings, the Board repeatedly informed him that such claims must be based on an OSP reinstating content in reliance on a misrepresentation. *See id.* at 2 (discussing *Colwell v. Bowman*, Claim No. 24-CCB-0073, and *Colwell v. Mcfadden*, Claim No. 24-CCB-0257). Claimant had acknowledged that requirement, in a response to an order to show cause in one of those proceedings, stating: “It has to be *the OSP restoring his content* based on wrongful information in his counter notice for it to count as misrepresentation.” *Id.* (emphasis added) (quoting Response to Order to Show Cause, *Colwell v. Mcfadden*, Claim No. 24-CCB-0257 (Sept. 12, 2024)). Despite that knowledge, Claimant kept raising misrepresentation claims about posts on Twitter and other social media sites that had not been reinstated. In fact,

Claimant's recent filings lead the Board to the conclusion that his statements professing ignorance and suggesting he would not make the same mistakes in the future in response to the Order to Show Cause in Claim No. 24-CCB-0257 were not made in good faith. The Board ordered Claimant to explain why filing this claim with full knowledge that he was not filing a valid claim did not constitute both bad-faith conduct and, along with his conduct in other proceedings, a pattern of bad-faith conduct. *Id.* at 1 (citing under 37 C.F.R. §§ 232.3-232.4).

Claimant filed his Response to the Order to Show Cause ("Response") in two parts, the first on October 21, 2024, and the second the next day. (Dkt. 5-6). His Response emphasized that there have been times—although, importantly, not this one—when his takedown notices were met with counter-notices that OSPs relied on to restore allegedly infringing posts. But the Order to Show Cause focused on two claims of misrepresentation that Claimant brought when there was apparently no such OSP reliance: Claim No. 24-CCB-0257 (his second claim against Respondent), and this claim (his third). The Response reiterated that both claims related to takedown notices and counter-notices about the same allegedly infringing work, posted by Respondent via different Twitter accounts:

I filed about Jordan Mcfadden due to his insistence on reposting content that Twitter (X Corp) had in fact removed on his at the time account. The content he posted was videos and video experts from my Youtube channel that were part of the registered copyrighted work: PAu 4-213-935. . . . I struck these videos down and requested they be removed: August 28, 2024. I had X Corp respond to me about removed content on October 10th that a Counter notification had already been filed on.

Response (Dkt. 5). But the Response did not show that on August 28, 2024, when Claimant filed Claim No. 24-CCB-0257, Twitter had restored Respondent's allegedly infringing @CreateMyUnivers post in reliance on Respondent's August 28, 2024 counter-notice. The Response also did not show that on October 10, 2024, when Claimant filed this claim, Twitter had restored the allegedly infringing @WorldWalkerUni post in reliance on Respondent's October 4, 2024 counter-notice. Claimant does not contend that Twitter ever restored the offending post in this case. Instead, he stated in this Claim that Twitter suspended the @CreateMyUnivers account, and that *Respondent*, not Twitter, had reposted the same allegedly infringing video through a different account.

X Corp suspended Jordan Mcfadden's previous account of @CreateMyUnivers . . . An account I have filed about in previous eccb reports. His account (CreateMyUnivers) was permanently suspended from X Corp September 30, 2024. Jordan Mcfadden is using an alternative account to repost removed content that he was suspended by X Corp for using on a new account. X Corp has previously removed the content that was reported via report filed: August 28, 2024. *And, they have not re-instated this content.*

Claim (emphasis added). As Claimant acknowledged before even filing this claim, a misrepresentation claim cannot be based on the uploader reposting infringing content; "[i]t has to be the OSP restoring his content . . . for it to count as misrepresentation." Response to Order to Show Cause, Claim No. 24-CCB-0257 (Sept. 12, 2024).

The Response is also filled with misinformation. For example, Claimant contended that, in this Claim, "I had provided an email from Twitter showing that they would be reinstating content *10 days from the initial counter claim (August 28th)*. And, *I said that said content was thereby restored.*" Response (Dkt. 6) (emphasis added). That mischaracterizes both the Twitter email supplied with the Claim and the Claim itself. The October 10, 2024 email from Twitter supplied as [Xcorp email 10-10-2024.pdf](#), which stated, "[w]e will cease disabling access to the materials within 10 business days of the date we originally forwarded the user's counter-notice to you," was

referring to Respondent's October 4, 2024 counter-notice. It could not have been referring to the August 28, 2024 counter-notice as Claimant indicated, as that was issued more than ten business days earlier; and because in the meantime, according to the Claim, the account at issue in that counter-notice had been "permanently suspended." Moreover, Claimant did not allege in the Claim that the allegedly infringing video "was thereby restored" by Twitter at any point. Instead, he specifically alleged, "they have not re-instated this content."

The Order to Show Cause explained that this Claim and Claim No. 24-CCB-0257 did not appear to meet the "minimal standards" of conduct required of parties submitting materials and advocating positions in Board proceedings. Positions may not be taken "for any improper purpose," and all factual contentions must have or be likely to have evidentiary support. *See* Order to Show Cause at 3 (quoting 37 C.F.R. § 232.2(a) & (c)). The prevarications and obfuscations in the Response also fall far short of those standards.

On November 12, 2024, the Board held a conference regarding Claimant's conduct, giving Claimant another opportunity to explain why his conduct in this proceeding and in 24-CCB-0257 does not constitute bad-faith conduct. (*See* Dkt. 8). His explanations at the conference did not justify his actions.

The Board finds that Claimant submitted the misrepresentation claims in this proceeding and in Claim No. 24-CCB-0257 with full knowledge that the claims could not prevail, despite prior warnings from the Board that such claims would be improper. Therefore, the Board finds that the actions of James A. Colwell in these proceedings constitute bad-faith conduct, as defined in the Board's regulations: "Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an active proceeding." 37 C.F.R. § 220.1(c). Under this standard, the Board finds that Claimant did not have a reasonable basis in law or in fact to file multiple claims under section 512(f) about allegedly infringing posts that the OSP had not restored, despite multiple, clear warnings against such claims in conferences and in written orders. Claimant's pattern of filing claims that he knows are without merit is established. 37 C.F.R. § 232.4(d).

The Order to Show Cause warned: "If the Board determines that Claimant engaged in bad-faith conduct in this proceeding and in Claim No. 24-CCB-0257, penalties for Claimant would include the dismissal of this proceeding, the dismissal of Claimant's other pending claim, *Colwell v. Abring*, Claim No. 24-CCB-0105, if it is not yet an active proceeding (if it is an active proceeding, it shall be dismissed if the respondent consents to dismissal); and a ban on filing new Board proceedings for a one-year period." *Id.* at 4. Those penalties are mandatory under 37 C.F.R. § 232.4(d).

Accordingly, the Board dismisses this claim without prejudice and closes case 24-CCB-0303. The Board finds that Claimant engaged in bad-faith conduct in filing and pursuing both this claim and Claim No. 24-CCB-0257, and therefore, the Board must bar him from its proceedings for a period of 12 months. Based on the foregoing, the Board determines that Claimant James A. Colwell is barred from initiating any claims before the Board for the 12-month period beginning today, December 2, 2024, through December 1, 2025. The Board will also dismiss his

pending, active proceeding, *Cobwell v. Abring*, Claim No. 24-CCB-0105, if the respondent provides written consent to dismissal. 17 U.S.C. § 1506(y)(3); 37 C.F.R. § 232.4(d). The Board will contact the respondent in that proceeding to determine whether he wishes to move forward or have the case dismissed without prejudice.

Copyright Claims Board