



COPYRIGHT CLAIMS BOARD

Docket number: 243-CCB-0161
July 2, 2024

Mark Urmos

CLAIMANT

v.

Ghassan's Restaurant

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 **August 1, 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.

License

You must clarify facts about a potential license between you and the respondent. Facts asserted in the amended claim suggest that the allegedly infringed works may have been created for the respondent to use, and that you may have granted the respondent an *express license* (orally or in writing) or an *implied license* (by your actions) to use your works. The June 10, 2024 noncompliance order raised this issue and directed you to “[p]rovide more information about how the works were created and made available” to the respondent. Your amended claim does not include this information.

You allege infringement of a group of photographs registered with the collective title “Ghassan’s Restaurant Food Photos” (Reg. No. VA0002356812) and of a pictorial or graphic work registered with the title “Ghassan’s Food Truck Design” (Reg. No. VA0002357576). A demand letter filed with the amended claim indicates that you “operate[] a business that provides creative marketing services,” and that before May 9, 2023, the Restaurant was using your works on “its website, food truck and menu boards.” You allege that the Restaurant continues to use

your works on its food truck and in in-store photography displays, among other places. The food truck design appears to have been designed for the Restaurant to use on a food truck, and the photographs within the registration, which are mostly close-ups of food, seem to have been staged for use marketing the Restaurant. The facts presented in the amended claim suggest that at some point before May 9, 2023, your works may have been specifically created for the Restaurant's use, as per a contract or agreement between you and the Restaurant.

I. Elements of an Implied License

If you had a written license with the Restaurant, you should provide it or describe it as noted below. However, a license does not need to be in writing. It may be agreed to orally, or even implied based on the actions of the parties. A typical example of an implied license is when a person (the licensee) requests the creation of a work, the creator (the licensor) makes that particular work and delivers it to the licensee who requested it, and the licensor intends that the licensee-requestor copy and distribute that work.

For your claim to proceed, you must provide more facts detailing any discussions and negotiations about your work on the food truck design and photographs, and how they could be used. To clarify whether your actions created an implied license, your second amended claim must state facts that indicate whether or not:

- the Restaurant requested the creation of the food truck design and photographs;
- you created the food truck design and photographs and delivered them to the Restaurant; and
- you intended that the Restaurant would copy and distribute those works as they did.

If the facts alleged indicate that the Restaurant had a license to use the works, whether express or implied, the Board may only hear your infringement claim if it also states facts indicating that the Restaurant failed to satisfy a “*condition precedent*” of the license, or that its use of the works went beyond the *scope* of the uses permitted under the license, both of which are explained below. As you will see below, a condition precedent is different than an argument that the Restaurant did not satisfy a term of your agreement, for instance, a failure to pay you what you were owed for your work.

II. Condition Precedent

Your claim can proceed if you state facts in a second amended claim that indicate that a “condition precedent” had to occur before the license could take effect, and that it did not occur. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee takes certain actions (an example might be a clear agreement that the license only lasts as long as the licensee makes monthly payments to the author), then the payments may be a “condition precedent” to the licensee’s right to publish. Or, if a photographer allows a website to use his photograph “only if” the website credits the photographer by name, that credit could be a condition precedent. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it before using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim.

You have not alleged that, in any writing or communications with the Restaurant before it used the works, you set a condition for it to satisfy first. If such communications existed, your second amended claim should provide the terms you imposed, including any specific conditional wording. In order to show that any term of use was a “condition precedent” to a license, your second amended claim must include enough details about the term stated to show that it had to be satisfied before the license would take effect.

III. Scope of a License

Your claim could also proceed if you present facts in a second amended claim that indicate that, even if a license existed, the Restaurant exceeded its scope by using your works in a way that the license would not allow. To support a contention that the use of your works exceeded the scope of an implied license, you must provide more details in a second amended claim to indicate how the use went beyond the scope of the express license or the implied license formed when you created and delivered the allegedly infringed works on request of the Restaurant.

Final Amendment

Your amended claim resolved some, but not all, of the issues raised in the June 10, 2024 noncompliance order. **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 supplementary 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