



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0013
March 5, 2024

kodi films nc, micheal mercaldi

CLAIMANTS

v.

dean c jones

RESPONDENT

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is amended.

If you wish to proceed with this claim, you must file an amended claim by **April 4, 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. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your 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.

Claimant Information — Clarity

In your claim you have provided several names for the claimant “kodi films nc.” The “Describe the infringement” section of the claim lists the entity as “Kodi Films NC” and the supplemental contract lists the entity as “Kodii Films LLC.” It is unclear if this is a typo or if these are all separate entities. In your amended claim, please ensure that the correct name (including capitalization) is given in the “Claimant information” and “Describe the Infringement.” sections of the claim. For clarity, the Board will refer to the claimant as “Kodi Films” in this order.

Copyright Infringement—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 provide enough facts about ownership of the work and how the respondent used one of your exclusive rights without permission. Please provide more details and background regarding this element in your amended claim.

Legal and Beneficial Ownership

Your claim provides conflicting facts about Kodi Films' status as a legal or beneficial owner of the allegedly infringed work. 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.

The claim does not present facts that indicate that Kodi Films is a proper claimant. In your claim, you list "The Black Archives (aka) Tales of Legend (aka) Hellspawn" (PAu004202861) as the allegedly infringed work. A review of the certificate of registration for the work shows that "Micheal Mercaldi" (the other claimant) is named as the author and copyright claimant (owner) of the work. The certificate also refers to Kodi Films as the organization to contact for rights and permissions, but it does not state that Kodi Films has any ownership interest in the copyright. 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.

To correct this issue, your amended claim must include specific allegations about how Kodi Films owns, or has an exclusive license to use, the exclusive rights at issue. You can do this by adding facts to the "Describe the infringement" section explaining how the claimant was the owner of exclusive rights in the work at the time of the infringement. For example, you may describe the relationship between Kodi Films and Michael Mercaldi or state how the claimant obtained legal or beneficial ownership of the copyright. Alternatively, you can submit supplemental documents that show your ownership of the copyright and in the claim, explain their relevance. Alternatively, if Micheal Mercaldi is the sole legal or beneficial owner, the claim should be amended to remove Kodi Films as a claimant. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Infringing Activity — Clarity

Your claim also does not present enough facts to clearly state how the respondent used any exclusive rights that you have in the allegedly infringed work without permission. Copyright law grants exclusive rights to copyright

owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense.

Adverse Infringement

In your claim, you state that “[i]nfringement occurred on 03/22 when Dean C Jones “filed a copyright” for Black Archives AKA Tales of Legend using story lines and characters created and written by Michael Mercaldi.” Registering a copyright does not constitute an act of copyright infringement, even if the person who registered the copyright does not own the copyright. Please review the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended claim if you can state facts to support a claim under copyright law that can be heard by the Board.

Secondary Infringement

A copyright infringement claim may be raised against a “secondary infringer” who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. Some facts in your claim suggest that you may wish to bring a claim of secondary infringement to hold the respondent liable for activities by third parties. To support a claim of secondary infringement, you must provide additional facts about how the respondent acted with relation to these third-party activities.

Secondary infringement claims must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement.

- A **vicarious liability claim** must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity and received a direct financial benefit from the infringement.
- A **contributory liability claim** must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

A secondary infringement claim, whether based on vicarious or contributory liability, must allege some underlying direct infringement by a third party. If you intend to assert a claim of secondary infringement, then your amended claim must include more facts that support that claim.

It appears as though you may be trying to allege contributory liability. In your claim, you state that the respondent “continued to sign a contract with Adler & associates without Michael Mercaldi’s Knowledge, allowing Adler to publicly display online.” However, your claim does not explicitly state that (1) Adler publicly displayed the work online and (2) the respondent’s actions resulted in the display of your work online by Adler. If you want the Board to find Dean C Jones contributorily liable for third-party display of the work, your amended claim must include allegations that allege some underlying direct infringement by Adler and (2) include everything that Jones did that enabled Adler to do so.

Additionally, you have also included an unsigned “Film Shopping Agreement” between Dean Jones and Kodii Films as a supplementary document. The agreement includes language that may be relevant to your claim,

but the claim does not provide sufficient information to understand (1) whether (and if so, how) the agreement, which is unsigned, is a binding agreement between respondent and Kodi Films NC and (2) the extent to which the actions that Jones is alleged to have engaged would be permitted under the agreement. If it is a binding contract, it appears to give the respondent the right to “alter, rewrite, produce, redirect, edit, represent, and enter into any sales agency, distribution company licensing and or completion agreement.” Further the contract states that “only DJ/APS has the right to license the ‘Property,’” In your amended claim, you must include additional information indicating if the agreement was signed (or, if it was not signed, is nevertheless an enforceable agreement) and if so,, what the relationship is between the agreement and Jones’ conduct with Adler, including whether that conduct violated the terms of the contract.

To submit an 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.