



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0200

September 5, 2023

Todd M. Schultz

CLAIMANT

v.

Michael C. Thompson

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. You have not resolved all of the compliance issues raised in the noncompliance order issued on July 10, 2023, and additional issues explained below also must be resolved for the claim to go forward. Read each section below carefully before you proceed.

On August 7, 2023, shortly after filing your amended claim, you submitted a [request for leave to amend](#) the claim (“Request”), specifying certain corrections you wish to make in your noninfringement claim. However, as discussed in this order, the amended claim would remain noncompliant even with the proposed corrections. The Board therefore denies your Request pursuant to 37 C.F.R. § 222.12(d). If you choose to file a second amended claim, you may include any corrections or make any additional amendments you feel are necessary.

If you wish to proceed with this claim, you must file a second amended claim by **October 5, 2023**. 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.

Copyright Registration

The Board cannot hear your copyright infringement claim because you did not submit a complete application to register the copyright before filing the claim. As explained in the noncompliance order issued July 10, 2023:

The Board can only hear a copyright infringement claim if, *before the claim was filed*, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright

Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a); 37 C.F.R. § 221.1(a). [Emphasis added.]

In your claim, you describe the allegedly infringed work as a “Livestream from YouTube Channel” titled, “I Guess YouTube Is My Only Choice Right Now To Get My Message Across.” You state that the work is not registered and you provide 1-12663915611 as the service request number for a pending application. A Board search of Copyright Office records indicates that the application is not complete. The required registration fee was not paid to the Copyright Office, and the required deposit copy of the allegedly infringed work has not been received.

Copyright Office records indicate that after the noncompliance order, you submitted a payment for the application with Service Request No. 1-12663915611 on July 11, 2023, and uploaded deposit copies of three videos on July 13, 2023. A copyright examiner informed you by email on July 17, 2023, that only one work could be registered with the Standard Application you had submitted. After further correspondence with the copyright examiner, the application was approved on July 25, 2023. The Copyright Office issued Registration No. PA2421779 to you for a motion picture or audiovisual work titled “This Old Hotel,” with an effective date of July 13, 2023, the date that you completed submission of the application materials.

The Board has no authority to extend the deadline for filing an application for registration such that an infringement claim with an incomplete application can proceed, even if the application is later completed. If you file a second amended claim that includes a copyright infringement claim based on that registration, it will remain noncompliant and the entire proceeding will be subject to dismissal. 17 U.S.C. § 1506(f)(1)(B). The July 13, 2023 registration cannot support this infringement claim because you had not “first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office” before you filed this claim on June 12, 2023. 17 U.S.C. § 1505(a)(1). Instead, as explained in the noncompliance order issued July 10, 2023, “you will have to refile your infringement claim as a new claim *in a new proceeding* after a complete application packet has been filed. Therefore, you should not submit a new claim until after you have submitted the fee and deposit[.]” (Emphasis added.) Now that you have submitted the required fee and deposit for your copyright application, you may refile the infringement claim as a new claim *in a new proceeding*.

You have also filed a claim for a declaration of noninfringement and a claim of misrepresentation under 17 U.S.C. § 512. As discussed below, you can continue to pursue either or both of those claims in this proceeding, omitting the infringement claim, if you can state facts in a second amended claim that fully comply with the CASE Act and the Board’s regulations for the claim or claims that you maintain. Alternatively, now that your application for registration has been completed and approved, if you choose to start a new proceeding with an infringement claim based on Registration No. PA2421779, you may also include your other claims in that proceeding if you can state enough facts to make the claims compliant.

Noninfringement Claim – Clarity

Your amended claim raises a claim for a declaration of noninfringement, and your Request sought certain corrections to the allegations of that noninfringement claim. However, even with those corrections, the facts alleged would be not be clear enough for the Board and the respondent to understand them. If you raise the

noninfringement claim in a second amended claim, it must include facts that clarify three aspects of this claim: (1) which work the respondent says you infringed; (2) how the respondent made the accusation of infringement; and (3) whether any claim at issue in this proceeding has been litigated in the civil suit mentioned in your allegations. The corrections proposed in your Request would resolve the first two issues, if they are accurate, but additional amendments would be needed to resolve the third issue, as discussed below.

I. Which work the respondent says you infringed

Your amended claim identified the work that the respondent says you infringed as “This Old Hotel,” which is your registered work. Your Request proposes to instead identify the work the respondent says you infringed as a motion picture or audiovisual work titled “TRUE SHAMANISM: demonic possession + how to be a gangstalker.” If the respondent accused you of infringing that work, and the information about that work stated in the Request is correct, then you must include that information in the “Work(s) respondent says you have infringed” section of your second amended claim. *See* 37 C.F.R. § 222.2I(8)(ii)(A)-(D).

II. How the respondent accused you of infringement

A noninfringement claim asks the Board to find that your actions do not amount to an infringement of the respondent’s copyrighted work. 17 U.S.C. § 1504I(2). If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe. You must have been accused of copyright infringement to proceed, so the claim must describe the reasons why you believe there is an actual dispute about the declaration you are seeking. 37 C.F.R. § 222.2I(8)(v).

While your Request names the respondent as the “party asserting infringement,” you have not clearly described how the respondent accused you of an infringing act. The amended claim states that you made a YouTube livestream video that included “sound clips” from one of the respondent’s videos for purposes of “commentary and criticism” about the respondent’s conduct. You assert, “I have been in a civil suit with Mr. Thompson and was using clips from one of his videos to demonstrate, criticize and provide useful commentary on his past claims[.]” You have not described any point when the respondent alleged that your use of those sound clips was not allowed.

However, allegations proposed in your Request, combined with information in a supplemental document you filed, would be sufficient if they are accurate. Your Request indicates that the respondent has asserted that your YouTube livestream video titled “New Space – Old Business” infringed his work “TRUE SHAMANISM: demonic possession + how to be a gangstalker.” You allege in the amended claim that YouTube “struck” your video, and a supplemental document filed with the amended claim, labeled “[Screenshot of Upheld YouTube Copyright Strike](#),” appears to show a YouTube copyright strike notice informing you that the respondent had made that accusation in a takedown notice to YouTube on August 3, 2023. If those are the facts, your second amended claim should include the same supplemental document, and state the Request’s proposed amendments in the “Work(s) respondent says you have infringed” section. For further clarity, you may include specific allegations about the respondent’s accusation of infringement in the “Describe dispute with respondent(s)” section.

III. Current litigation

The Board cannot hear a claim that is also pending in a court of competent jurisdiction unless that court has granted a stay to let that claim proceed before the Board. 17 U.S.C. § 1504(d)(2). If your claims against the respondent are currently in litigation in federal court, you cannot raise the same claims before the Board.

Your allegations indicate that you are the plaintiff in a lawsuit currently pending against the respondent. You allege: “I have been in a civil suit with Mr. Thompson” and “Mr. Thompson is attempting to intimidate me as a plaintiff in a lawsuit to which he is a defendant.” You also allege that you made a video that “contained clips that might be deemed evidence in our trial. . . . I was merely commenting and attempting to demonstrate that Mr. Thompson has more or less admitted to the actions I claim in my civil suit.” Those allegations indicate that the dispute remains pending in court, and do not indicate that the court has granted a stay to permit your claims to proceed before the Board.

However, your amended claim does not clearly describe the types of claims at issue in the pending lawsuit. It is not clear if the litigation raises the same claims at issue in this action. You allege, “I filed a lawsuit on May 5th against him for cyberharassment and cyberstalking and included copyright infringement of over 1000 videos/ clips I owned (which were not registered).” It is not clear from your allegations if your infringement claim before the Board involves any video or clip where the infringement of that video or clip is also in dispute in the court action. Your allegations also do not make clear if the issues in the lawsuit include any infringement accusation by the respondent that is at issue in your noninfringement claim before the Board, or any statements at issue in your misrepresentation claim before the Board.

If you file a second amended claim, include facts that indicate that the claims you maintain here are not part of the lawsuit. Unless you submit a second amended claim that provides facts showing that your dispute with the respondent in court does not include any claim in this proceeding, or that any aspect of the dispute still pending in court has been stayed to permit your claims before the Board to proceed, the Board must dismiss this proceeding without prejudice.

Misrepresentation Claim

Your amended claim does not stated facts that support a claim of misrepresentation under 17 U.S.C. § 512(f): As explained in the noncompliance order issued July 10, 2023, “[t]hat kind of misrepresentation has a very specific meaning under copyright law that involves false statements made to an online service provider related to a copyright-protected work posted online by others,” and your allegations do not describe such a statement by the respondent. As the order further explained:

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are:

1. The respondent sent an OSP either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,

2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP's decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

You allege that you filed a takedown notice to YouTube on June 12, 2023, and that no one sent a counternotice. If you continue to allege misrepresentation in a second amended claim, you must identify a false statement that the respondent made in a takedown notice or counternotice to an online service provider. You must provide facts that indicate that the respondent misrepresented “that material or activity is infringing, or . . . that material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f)(1)-(2).

The supplemental document filed with your claim appears to be a screenshot showing that the claimant issued a takedown notice to YouTube on August 3, 2023, seeking removal of the “New Space – Old Business” video discussed in your Request. If the takedown notice falsely claimed that your video was infringing, and you were harmed by YouTube relying on the takedown notice to strike the video, you may state such facts in support of your misrepresentation claim in a second amended claim.

Final Amendment

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. 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