



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0270
January 26, 2023

United States Copyright Claims Board

Yvette Bell
CLAIMANT

v.

First Book Library
RESPONDENT

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **February 27, 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. 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.

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 present clear facts to support the elements of a copyright infringement claim related to the respondent’s infringing activity, access to your work, and substantial similarity, as discussed further below.

Copyright Infringement – Infringing Activity

Your claim does not present enough facts to clearly state how the respondent used any exclusive rights you have in the allegedly infringed work without permission. Your only factual allegation related to copyright infringement is that the respondent “stole [your] manuscript and sold it to vendors.” Without more specifics, that bare allegation does not provide sufficient details for the respondent to understand what its allegedly infringing acts were.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, publicly perform, 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. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

If you submit an amended claim, you must include facts in the claim form that more fully explain how the respondent infringed your work. Because you alleged that the respondent “stole the manuscript and sold it to vendors,” it seems possible that your claim is that the respondent stole the manuscript, made multiple unauthorized copies of it, and sold those copies to various vendors. If that is what you claim, your amended claim should state those allegations more clearly. The claim must provide enough information to enable the respondent to understand the claim and respond to it.

Copyright Infringement – Access

Your claim does not provide 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. Your claim does not include allegations about how the respondent had an opportunity to see your work before the alleged infringement.

To address this issue, you must file an 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.

Copyright Infringement – Substantial Similarity

Your 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 claim states that your work, titled “He’s A Friend Of Mine,” is a “spiritual written book of encouragement for healing and prosperity of living.” Copyright Office registration records indicate that it is a six-page collection of poems. However, you do not provide enough information regarding how the respondent’s allegedly infringing work is substantially similar to the original elements of your work. No allegations in the “Describe the

infringement” field of the claim describe the contents of your work, or state or show how it is identical or substantially similar to the allegedly infringing work. You allege that the respondent “stole [your] manuscript and sold it to vendors,” but you do not state how much of your work, or describe which elements of your work, is used in the respondent’s work. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. 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.

Misrepresentation – Clarity

You are also bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider 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 online service provider’s decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your allegations do not support any of those elements. Your misrepresentation claim is not compliant because it does not assert that the respondent made a misrepresentation in a takedown notice or counter-notice to an online service provider. You allege that “copyright” sent, and received, takedown notices, which is impossible because “copyright” cannot send notices, and you allege that no one sent any counter-notice.

A section 512(f) claim also must provide the words in the notice or counter-notice that you allege were a misrepresentation, and an explanation of the alleged misrepresentation. [37 C.F.R. §§ 222.2\(c\)\(9\)\(vi\)-\(vii\)](#). In the

“Words that make up the misrepresentation and explanation of the misrepresentation” section, you state only “I was requesting 70% for punitive (sic) damages for infringement of my intellectual property.” That appears to reflect your position about due compensation, not any false statement made by the respondent. Without information about a specific statement in a takedown notice by the respondent that you contend was false or incorrect, and that was important to an online service provider’s decision to take down the content, your misrepresentation claim cannot proceed. If you maintain the misrepresentation claim in an amended claim, you must provide the words used in a takedown notice sent by the respondent that made up the misrepresentation, and explain what made those words false or incorrect.

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 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.