



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0167  
June 12, 2023

Nucleus Medical Media

CLAIMANT

v.

Foot & Ankle Center of Washington

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 **July 12, 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.

### 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 indicate anywhere that your work was available before the alleged infringement, and you state that you have “[n]o information on how they acquired our image.”

To address this issue, if you file an amended claim, you must include 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. Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar that they could not have been created independently.

## 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 documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

The "Works infringed" section of your claim describes your work as an image, titled "Foot Pronation," that compares two images of the right foot and ankle, one in a normal position and the other showing pronation. You allege that infringement occurred on the respondent's footankle.com website. You filed two supplemental documents that appear to be screenshots of allegedly infringing uses on that website.

However, you do not provide enough information describing or depicting your work. No allegations in the "Describe the infringement" section of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. It appears that the supplemental documents attached to your claim include copies of the respondent's allegedly infringing works, but that you have not provided a copy of your own work. Instead, a spreadsheet filed with the claim lists hyperlinks: to a page on your nucleusmedicalmedia.com website, to several allegedly infringing pages on footankle.com, and to pages on a third website that purports to compare the images. Yet hyperlinks can lead to material that is no longer available online, and the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as a supplemental document. As a result, the claim does not include a copy of your work to compare with the allegedly infringing images, and does not provide enough information to enable the respondent to understand and evaluate the claim to respond to it.

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

Attach any supplemental materials that you want the Board to consider by uploading them as part of the claim rather than referring to them only with hyperlinks. 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.

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](mailto: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