



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0242

United States Copyright Claims Board

Cade Martin Photography, Inc

CLAIMANT

v.

Nina McLemore, Inc.

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 **January 13, 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.

Issue – Permissible Claim

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act.

17 U.S.C. § 1504(c)(1)-(3). You checked the box stating your claim was one of copyright infringement. However, the facts described in the “Describe the infringement” section of the claim appear to describe a breach of contract dispute, not a copyright infringement. A “breach of contract” is a violation of any of the agreed-upon terms and conditions of a binding contract. When a party to a contract does not fulfill an obligation stated in the contract, such as payment, it is typically considered a breach of contract. The Board cannot consider claims for breach of contract. 17 U.S.C. § 1504(d)(1).

In your claim, you state that you photographed items from the respondent's 2022 collection and the respondent “did not pay the invoice for the services or license fee.” You further allege that the respondent continued to “reproduce, publish, and distribute copies of Claimant's works” after receiving a formal demand for payment and a cease and desist letter. Those allegations appear to be consistent with a breach of contract claim, where the respondent has failed to meet their payment obligations set forth in a services contract or licensing agreement.

The Board may only hear infringement claims against a licensee of a work if the claim is based on a licensee failing to satisfy a “condition precedent” of a license from the copyright owner or if the licensee’s use of the work went beyond the scope of the uses permitted under the license. 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 makes monthly payments to the author, the payments may be a “condition precedent” to the licensee’s right to publish. If a copyright license depends on the licensee first satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim. If you can state facts that identify such a condition precedent actually set forth in your agreement with the respondent, the Board may be able to hear your claim.

If you submit an amended claim, it must include allegations that state or show that any agreement with the respondent required the respondents to satisfy a condition precedent, and that they did not satisfy it. Please provide more details and background regarding any agreement between you and the respondent in your amended claim, including a clear, detailed statement regarding any conditions precedent included in that agreement. If the respondent engaged in reproduction, distribution, public performances, or public displays of your works, or adapted the works, in ways that went beyond the scope of the uses permitted under your agreement, you should describe those uses and explain why they were beyond the scope of your agreement. You may also choose to include the agreement, or correspondence that plays a significant role in your allegations, as supplemental documentation in support of your claim.

- 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 believe you actually have a claim that can be heard by the Board. For more information about what is required to support a claim of copyright infringement, please refer to the CCB Handbook chapter on [Starting an Infringement Claim](#)

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney
December 14, 2022