



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0127
June 23, 2023

Corey Logan

CLAIMANT

v.

Gamble Huff Music Publishing LLC, Gamble-Huff
Entertainment, Kenneth Gamble, and Leon Huff

RESPONDENTS

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. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **July 24, 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.

Permissible Claim

The Board is only authorized to resolve certain types of copyright disputes. 17 U.S.C. § 1504(c)(1)-(3). As was the case with your original claim, you checked the boxes on the claim form to state that your claims are for copyright infringement and misrepresentation under 17 U.S.C. § 512, which are types of claims that the Board can address. However, your allegations still appear to describe a fraud or breach of contract dispute, not a copyright infringement or a section 512 misrepresentation.

In the “Description of harm suffered and relief sought” section of the amended claim, you again raise allegations of “fraudulent concealment” and “fraudulent inducement.” Apart from a particular kind of misrepresentation claim discussed below, the Board cannot address such claims. 17 U.S.C. § 1504(d)(1).

Again, your allegations also appear to relate to possible claims of breach of contract, claims that the Board cannot consider. *Id.* A breach of contract is a violation of any of the agreed-upon terms and conditions of a

binding contract. In the “Describe the infringement” section of the amended claim, you refer to a “breach of contract” and “trade secret violation,” and you allege that the respondents “lured me into a recording, production and songwriting agreement promising to market, promote and enable me to earn a living from my talents, which all turned out to be false promises and lies.” Among the documents that you uploaded with your amended claim is an undated letter or draft letter written by your counsel at Parker Stanbury LLP and addressed to two of the respondents, asserting that they breached a contract promising to pay you \$94,000 over a seven-year period, and demanding payment of that amount and the return of unspecified work product and master recordings. In another [letter](#) from your counsel to the respondents, the principal demand appears to be “the immediate return of the master recordings for the above-referenced compilation of works to Mr. Logan.” The Board has no authority to award such relief.

While it is not clear from the allegations in your amended claim, the facts stated again suggest that your works may have been specifically created for the respondents’ use, as per an agreement between you and the respondents. “Generally, a copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement and can sue only for breach of contract.” *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1121 (9th Cir. 1999) (internal quotation marks omitted); *Lowe v. Loud Records*, No. 01-1797, 2003 U.S. Dist. LEXIS 21234, *8 (E.D. Pa. Nov. 20, 2003). If a party to a contract does not fulfill an obligation stated in the contract, such as marketing, promotion, or payment, it is typically considered a breach of contract.

Another [document](#) that you again uploaded with your amended claim appears to be the final page of a written agreement. Paragraph 31 of the agreement grants an exclusive license of certain rights in musical compositions to the other contracting party. However, the relationship between that party and the respondents is not clear. If the respondents are parties to or beneficiaries of the agreement, and in particular of that grant of rights, it is likely that a failure by the respondents to comply with the terms of the agreement would constitute a breach of contract rather than an act of infringement. As explained in the Order to Amend Noncompliant Claim issued on May 3, 2023:

As a general rule, an infringement claim may be asserted 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, then 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 before using the work, 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 included in your agreement that the respondents did not satisfy, or that the respondents used your work beyond what was by permitted by your agreement, or that the agreement was no longer in effect at the time of the alleged infringement, the Board may be able to hear your claim.

If you submit a second amended claim, it should include allegations that clearly state the relevant terms of your agreement with the respondents and show that the agreement required them to satisfy a condition precedent, and that they did not satisfy that condition; or describe how the respondents used your work beyond what your

agreement permitted; or explain how the agreement was no longer in effect. Please provide more details and background regarding your agreement with the respondents sufficient to understand the nature of the obligations that the respondents failed to satisfy, including a clear, detailed statement regarding any condition precedent included in that agreement. In addition, if the respondents engaged in reproduction, distribution, or public performances of your works, or adapted or licensed your 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. It may also be helpful to include the agreement, or correspondence that plays a significant role in your allegations, as supplemental documentation in support of your claim.

Please review [Circular 1: Copyright Basics](#) and 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 a second amended claim if you can state facts to support a claim under copyright law that can be heard by the Board. For more information about what is required to support a claim of infringement or misrepresentation, please refer to the CCB Handbook chapters on [Starting an Infringement Claim](#) and [Starting a Misrepresentation Claim](#).

Copyright Infringement – Infringing Activity

Your claim still does not present enough facts to clearly state how the respondents used any exclusive rights you have in the allegedly infringed works without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform 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.

You list twelve sound recordings in the “Works infringed” section of the amended claim. In the “Describe the infringement” section, you make identical allegations to those in the original claim that the respondents lured you into a recording, production, and songwriting agreement and falsely promised to market and promote you. However, those allegations do not appear to describe any infringing activity. “[T]he source of the copyright owner’s complaint must be grounded in a right protected by the Copyright Act, such as unlawful reproduction or distribution.” *Krist v. Pearson Educ., Inc.*, 419 F. Supp. 3d 904, 913 (E.D. Pa. 2019) (quoting *Storage Tech Corp. v. Custom Hardware Eng’g & Consulting, Inc.*, 421 F.3d 1307, 1316 (Fed. Cir. 2005)).

You do not offer any details about the respondents using your works in a way that would infringe any exclusive rights. Your claim does not contain allegations that, without permission, the respondents copied, distributed, or performed your sound recordings, or prepared any derivative work based on the sound recordings. Instead, your “Describe the infringement” section appears to allege a failure to promote or market you or your works, which is not an infringing use of the recordings. A supplemental document attached to the claim appears to be a copy of a 2022 letter from your counsel addressed to the respondents, demanding the return of master recordings of the allegedly infringed works. However, a failure to return a copy of a work is not an infringing act that would provide

a basis to hold any respondent liable for infringement. Moreover, another [letter](#) uploaded with the amended claim, from the respondents' counsel to yours, asserted that they do not know you, do not recognize your name or the names of your allegedly infringed works, do not believe they ever worked with you, and are not aware of any contract you had with them. You have not provided factual information rebutting those assertions.

If you submit a second amended claim, it must include details that show or explain how the respondents infringed your allegedly infringed works. To address this issue, your second amended claim must include facts in the "Describe the infringement" section that describe acts infringing your copyrights, specifying how each respondent engaged in the infringing activity. You should be as detailed as possible, setting forth what each respondent did in relation to each work you allege was infringed.

Copyright Infringement – Online Service Provider

In response to questions in the claim form, you again indicate that one or more of the respondents is an online service provider ("OSP") and that your infringement claim against the OSP is based on "their storage of or referral or linking to infringing material posted by others," but that you did not send the OSP a "takedown notice" as required by section 512 of the Copyright Act. As the May 3, 2023 Order to Amend Noncompliant Claim explained, your claim cannot go forward with those responses, because you can only bring an infringement claim against an OSP if it failed to take down third-party material in response to a proper takedown notice.

Special rules apply to infringement claims brought against OSPs, which provide online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. Section 512 of the Copyright Act provides what are known as "safe harbors," which shield certain OSPs from paying damages for copyright infringement claims if, among other things, they take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about infringement through a proper takedown notice. An infringement claim against an OSP eligible for a section 512 safe harbor cannot be compliant unless you affirm that you sent the OSP a section 512 notice of infringement, and that it "failed to remove or disable access to the material expeditiously upon the provision of such notice." 17 U.S.C. § 512(f)(1)(C)(i), [37 C.F.R. § 222.2\(c\)\(7\)\(iii\)\(G\)](#).

Your infringement claim is not compliant because you affirm that it is based on at least one respondent's actions as an OSP, and that you did not send the OSP a proper takedown notice. Your claim does not include any facts that support your allegations that any of the respondents is an OSP. In the "Misrepresentation claim" section, you state that "gamble huff entertainment" and "gamble huff" are OSPs, but your allegations otherwise relate to the respondents' activities in the music business, not in the business of providing online services. Because you have not stated facts that would suggest any respondent is an OSP, you may want to reconsider whether your answer should be "yes" to the question, "Are any of the respondents online service providers?" Your infringement claim cannot proceed unless you file a second amended claim that either (1) removes the allegation that any respondent is an OSP, or (2) alleges that a particular respondent is an OSP that did not comply with a takedown notice you sent, and states facts in support of those allegations that would make that respondent liable as an OSP, despite the Section

512 safe harbor. Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an OSP protected by a section 512 safe harbor.

Misrepresentation - Elements

You are 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 OSP 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:

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). To violate section 512(f), a statement must misrepresent “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). Your misrepresentation claim, which is identical to the misrepresentation that was found noncompliant in the Order to Amend Noncompliant Claim issued May 3, 2023, does not identify or describe any misrepresentation made in connection with a takedown notice or counter-notice to an OSP related to online materials or activity. Instead, your misrepresentation allegations appear to be related to your counsel’s demand letter to the respondents seeking the return of master recordings, and their counsel’s response to your counsel, not to a third-party OSP. In addition, in response to an OSP question in the “Infringement claim” section, you stated that you did not send the OSP a takedown notice as required by section 512, which contradicts your basis for a misrepresentation claim.

To support your claim of misrepresentation, you must provide additional facts to show that the counter-notice included a statement of fact that asserted “that material or activity was removed by mistake or misidentification,” and you must show or explain why that statement was false or incorrect. Your description and explanation of the words that made up the alleged misrepresentation (“extreme denial... Cohen an Silver law firm which claimed to be representing Kenneth Gamble and Leon Huff tried to make it seem like I was delusional”) does not describe false statements made to an OSP. Those allegations do not identify the sort of misrepresentation that could violate section 512(f). If you submit a second amended claim, you must state facts in support of each

element of the claim, including allegations that describe a false or incorrect statement of fact by the respondent that would violate section 512(f), indicating what words were false or incorrect and how they were false or incorrect. If you cannot state facts to support the elements of a section 512 misrepresentation claim, you must omit it from any second amended claim.

Respondents - Clarity

Once again, your allegations do not show that each respondent is a proper respondent. You raise infringement and misrepresentation claims against Kenneth Gamble and Leon Huff individually, and against two business entities, Gamble Huff Music Publishing LLC and Gamble-Huff Entertainment. However, you do not specify which respondent should be found liable for which claim, so you do not provide enough information for the respondents to understand the allegations and respond.

The claim does not present factual allegations about activities by each respondent that would support holding each of them liable. You allege that the respondents lured you into a recording, production, and songwriting agreement, but the only agreement shown in the supporting documents appears to be a page from an agreement with “Associated Music, Inc. d/b/a Philadelphia International Records.” That is not one of the respondent business entities, and only one page of the document is provided, so its relevance is not clear. You also allege that you have suffered economic and reputational harms “as a result of dealing with these two individuals,” apparently meaning Mr. Gamble and Mr. Huff, while you do not appear to describe any harm caused by the respondent business entities. If you file a second amended claim, you must include specific allegations that would support an infringement or section 512 misrepresentation claim against each respondent named in the “Respondents” section, and clearly state which claims are being raised against each respondent.

Final Amendment

Your amended claim did not resolve all of the compliance issues raised in the May 3, 2023 Order to Amend Noncompliant Claim. **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