



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0273

September 14, 2023

Martin McNeil

CLAIMANT

v.

Adam Howard

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 **October 16, 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.

### Relief Requested

The “Describe the harm suffered and the relief sought” section of your copyright infringement claim indicates that you are seeking “an award of statutory damages not exceeding \$15,000” under 17 U.S.C. § 1504(e)(1)(A)(ii)(I). As described below, it appears that you may be seeking a larger damages award than the Board can grant for this type of claim.

The most that respondents can be ordered to pay in damages (actual or statutory) in a Board proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). The maximum amount of statutory damages available from the Board is \$15,000 for each work that was infringed if the work was timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii)(I). If the work was not timely registered the maximum statutory damages is \$7,500 per work. 17 U.S.C. § 1504(e)(1)(A)(ii)(II). A work is not timely registered if it was (1) unpublished and the copyright was registered after the infringement started, or (2) published and the copyright was registered after the infringement started and more than three months after the publication of the work. 17 U.S.C. § 412(1). More information about the available forms of relief can be found in the [Damages](#) chapter and on pages 6-7 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook.

In your claim, you assert that the respondent infringed your copyright in a work that you describe as a “portrait photograph of special effects pioneer Ray Harryhausen.” You allege that you created the photograph in 2008 and that it was published under license by the *New York Times* as part of its obituary for Mr. Harryhausen in 2013.

According to your claim, the respondent published derivative copies of the photograph on Instagram and Pinterest on March 15, 2021, on Deviant Art on April 1, 2021, on Flickr on June 24, 2022, on Behance on September 17, 2022, and on the respondent’s own website at some point in 2022. You state that you obtained a copyright registration for a group of photographs that includes the allegedly infringed work with an effective date of registration of October 28, 2021—after some of the allegedly infringing publications, but before others.

Based on those stated facts, it does not appear that the Board may award you more than \$7,500 total in statutory damages. You contend that the 2021 registration satisfies “the ‘timely registration’ requirements laid down in 17 U.S.C. § 412(2) and 17 U.S.C. § 1505” because the “registration predat[es] the respondent’s 2022 publications of their derivative of my work by several months.” However, under those sections of the Copyright Act, when the same work is infringed by an ongoing series of related infringing acts, the registration is only “timely” if it predates the first infringing act in the series, not just the most recent infringing acts. “Every court to consider this question has come to the same conclusion; namely, that infringement ‘commences’ for purposes of § 412 when the first act in a series of acts constituting continuing infringement occurs.” *Johnson v. Jones*, 149 F.3d 494, 506 (6th Cir. 1998) (collecting cases). As a result, your registration is untimely, “not only for the particular infringement that . . . commenced before registration, but for all of the . . . infringements of a work if one of those infringements commenced prior to registration.” *Cornerstone Home Builders, Inc. v. McAllister*, 311 F. Supp. 2d 1351, 1352 (M.D. Fla. 2004) (citing *Mason v. Montgomery Data, Inc.*, 967 F.2d 135, 143 (5th Cir. 1992)).

The maximum amount of statutory damages available from the Board is \$7,500 per work infringed when the copyright is registered both after the infringement commenced and more than three months after the work’s first publication. Because those are the facts alleged, your request for \$15,000 in statutory damages is not permissible and not compliant with the CASE Act. If you file an amended claim, you will need to limit any request for statutory damages to an amount the Board can grant.

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