



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0311

October 23, 2024

Peempoj Jayaphorn

CLAIMANT

v.

John Moore

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 **November 22, 2024**. 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.

Impermissible 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 of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). 17 U.S.C. § 1504(c)(1)-(3). You have stated a claim of copyright infringement, which is a type of claim that the Board may hear, but your allegations that relate instead to unfair competition or trademark or trade dress infringement are beyond the scope of the Board.

In the “Works infringed” section of the claim, you list a copyright registration number for a group of photographic works, which you describe as “a collection of photographs featuring multiple Wiron Cube™ metal objects.” However, in the claim and in supplemental documents filed with the claim, you appear to be seeking to protect rights in the metal objects that appear in those photographs, rather than the photographs themselves. For example, in a [supplemental document](#), you contend that the respondent’s products are similar to products depicted in your photographs:

The respondent falsely claims exclusivity over their offerings, which closely imitate the claimant's offerings that are sold on www.etsy.com/shop/wironcube and on the website, www.wironcube.com, in an attempt to mislead consumers and exclude the claimant from the market.

Also, in the "Describe the infringement" section of the claim, you allege:

The respondent has produced and is marketing a pair of metal objects featuring a zigzagging pattern identical to the claimant's original product. These objects, which transform into a cube shape, replicate not only the structure but also the distinctive presentation and design choices that define the claimant's product.

The copyright for a photographic work protects the photograph itself, not objects depicted in the photograph. The Board cannot hear a claim of, for example, unfair competition based on the sale of allegedly competing metal objects. Distributing or displaying images of different metal objects, even ones in which the objects have the same general placement as the ones depicted in your images, would not by itself infringe the photographic authorship covered by your copyright registration.

In addition, many allegations in the claim implicate trademark rights, not a copyright dispute, including the following:

- "Despite inscribing the claimant's trademark on all of the claimant's products and actively using it in commerce, the respondent's actions directly undermine the brand's integrity."
- The respondent's "imitations . . . dilute the uniqueness of the claimant's brand by misleading consumers into thinking their product is associated with or identical to the claimant's [products]."
- The respondent's actions are "part of a broader pattern of imitation aimed at exploiting the claimant's established reputation in the market, misleading consumers, and undermining the market position for their gain without respect for the claimant's rights."
- "The respondent's use of the brand name 'Verio,' which closely mirrors the claimant's brand 'Wiron' in both structure and vowel sounds, further demonstrates their intent to confuse consumers and dilute the claimant's brand identity. These actions jeopardize the reputation the claimant has carefully built around the original products and branding through tireless efforts."
- "Respondent's actions are also likely to cause, and have caused, consumer confusion, harm to reputation and goodwill, and brand dilution."
- "The claimant has already encountered at least one instance of customer confusion, where a buyer mistakenly believed there was an affiliation between the claimant's product and the respondent's brand. This demonstrates the tangible harm caused by their imitation, as it undermines the distinctiveness of the claimant's product and misleads consumers."

Those allegations implicate trademark infringement. They are not material to any dispute the Board can hear or any relief the Board can provide. If you submit an amended claim, make sure that your allegations relate to a type of copyright dispute that the Board can hear. If your intent is to submit a claim of unfair competition, trademark or trade dress infringement, or other claims, rather than a copyright infringement claim (or in addition to a copyright infringement claim), you should not file an amended claim, but instead should consider filing a claim in federal court.

Substantial Similarity

Your copyright infringement claim also does not include enough facts to indicate how the allegedly infringing works are substantially similar to original, expressive elements of your photographic works that copyright protects.

To address this issue, if you file an amended claim, you should include more information about the photographic works covered by your copyright registration, the allegedly infringing photographic works, and how creative elements of specific photographic works are similar.

In the “Describe the infringement” section, you state that “the respondent’s product photography and presentation style constitute a derivative work of the claimant’s copyrighted photos, with the arrangement, layout, and overall aesthetic closely mirroring the claimant’s original images. These imitations . . . replicate key elements of the claimant’s copyrighted material.” Beyond those general assertions, you do not clearly describe the extent of the alleged similarities. Your copyright registration covers a group of twenty-three photographs, some of which appear in supplemental documents, and other documents appear to show allegedly infringements, such as documents labeled as [Infringing Listing on Amazon.pdf](#), [Infringing Listing on Etsy.pdf](#), and [Infringing Product.pdf](#). However, none of your documents specifies which of your photographs you allege is infringed, or which of the respondent’s photographs infringes it. The second photograph in your document labeled [Wiron Product \(Copyrighted Work\).pdf](#) appears to have been shot from overhead, at a similar angle as certain photographs in the allegedly infringing Amazon and Etsy listings, but copyright does not protect the general idea of photographing a product from overhead to display how its pieces fit together. The Board cannot determine which respondent photographs you allege are infringing any of your photographic works in particular. As a result, the claim does not provide enough information for the Board to evaluate the infringement claim.

If you submit an amended claim, it must include 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 particular works were taken by the respondents in specific, allegedly infringing works, or documents that are sufficient to show substantial similarity in material that copyright protects between specific works. For example, to clarify which images show the alleged infringement, you may label the exhibits more clearly or add exhibits that show the allegedly infringed and allegedly infringing images side-by-side so the Board can compare them. In addition, if it is not clear from those documents, you should describe particular elements of those images that you contend are substantially similar.

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. 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