



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0117

United States Copyright Claims Board

Ronald K. Dewitt

CLAIMANT

v.

Select-O-Hits

RESPONDENT

CORRECTED 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 17, 2022**. 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 extra 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.

Copyright Infringement – Elements

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not present enough facts to support any of the elements of a copyright infringement claim, as discussed further below.

Copyright Infringement – Ownership

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement[.]” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from use of the work.

A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. Your claim does not specify how the claimant is the legal or beneficial owner of the work at issue.

Your claim is based on infringement of a work, “You Said It was Love,” registered by the Copyright Office with Registration Number SR0000136299. The Copyright Office record consists of a sound recording registration with the title “Special Treat,” published in 1990 as a 12-inch record with the contents “You said it was love” and “Give it up.” The copyright claimant in the registration record is stated as “© ® on recording, words, music; SOH Distributors Network (employer for hire).”

The registration raises legal issues about your status as a legal and beneficial owner of the allegedly infringed work. You list yourself as an author of the allegedly infringed work in the “Works infringed” section of the claim, but the registration records do not identify you as the author or copyright claimant. For legal purposes, the author of a “work made for hire” is not the individual who actually created the work. Instead, the party that employed or commissioned the individual to create the work is considered both the author and the copyright owner of the work.

If you submit an amended claim, you must show you are the legal or beneficial owner of the sound recording. When amending your claim, you must provide some specific allegations about how you own the registered work, have an exclusive license to use the exclusive rights at issue, or can be considered the beneficial owner. You can do this either by adding facts to the “Describe the infringement” section explaining your ownership in exclusive rights in the work at the time of the infringement, or by submitting supplemental documents. For example, you may describe your relationship with SOH Distributors Network and detail how you obtained legal or beneficial ownership of the copyright. It may also clarify your claim to state whether SOH Distributors Network and the respondent Select-O-Hits are the same entity or, if they are not, to describe their relationship to each other.

More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook. More information about authorship and works made for hire is available in [Circular 30: Works Made for Hire](#).

Also, the claim was filed under the name Ronald K. DeWitt, while the record cover art filed with the claim as a supplemental document refers instead to Kirk DeWitt. If you file an amended claim, please clarify if that is one and the same person, and if it is not, explain the relationship between the claimant and Kirk DeWitt.

Copyright Infringement – Infringing Activity

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

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work by means of a digital transmission, 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.

The “Describe the infringement” section of your claim alleges that the respondent has been “selling records and recouping royalties, and copyrighting music that was recorded in 1989.” Your claim also includes allegations that infringing acts occurred on YouTube, and that “I originally had the song playing at the radio station in Houston on 102.1[.] [W]e received no royalties from the song. . . . I received zero payment.” While there are references to lack of payment to you, your allegations do not appear to describe any infringing activity under copyright law, and do not offer enough detail about how the respondent used your work in a way that would infringe any of your exclusive rights. For instance, selling records and making profit from the sale, by itself, is not an infringing activity if the copies have been lawfully made and obtained. 17 U.S.C. § 109(a).

If you submit an amended claim, you must more fully explain how the respondent infringed your allegedly infringed work. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how the respondent Select-O-Hits engaged in the infringing activity. You should be as detailed as possible, setting forth what the respondent did in relation to the work you allege was infringed.

Copyright Infringement – 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. To address this issue, you must file an amended claim with 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. For example, if the respondent Select-O-Hits is related to SOH Distributors Network, which is listed as the copyright claimant and the employer for hire in the registration records for the copyright identified in the claim, stating facts in your amended claim about that relationship, and about SOH Distributors Network’s relationship to the original recording, may explain how the respondent had access to the work.

Copyright Infringement – 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 materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

A supplemental document filed with the claim appears to depict cover art for a sound recording of “You Said It Was Love” credited to Special Treat, with liner notes that list Kirk DeWitt as the Executive Producer and state that the record was produced by “Kirk Dewitt and Special Treat.” However, you do not provide any detailed information describing or attaching the actual work you allege was infringed, or how it was used in any infringing work. No allegations in the “Describe the infringement” section describe your work or any allegedly infringing work, or state that or show how they are identical or substantially similar, and you have not provided copies of any sound recordings as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an amended claim, it must include 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 your work were taken by the respondent in an allegedly infringing work, or attach copies or other documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled so they can be properly compared to each other.

Misrepresentation Claim – No Misrepresentation

You are also bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under section 512(f) of the Copyright Act, as added by the Digital Millennium Copyright Act (“DMCA”). Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a DMCA 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 DMCA takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the online service provider’s decision to take down or repost the content,
5. The online service provider relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it does not provide any information about how the respondent, or anyone else, made a misrepresentation in a takedown notice or counter-notice to an online service provider. Instead, your allegations contradict the basis

for the claim. Your claim alleges that no one sent a DMCA takedown notice to an online service provider, and that no counter-notice was sent. Your allegations do not state facts that the respondent sent any DMCA takedown notice or counter-notice relevant to a section 512(f) misrepresentation claim. If you submit an amended claim, you must omit the misrepresentation claim unless you can state facts in support of each element of the 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 you have filed 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

October 18, 2022