



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0215

## United States Copyright Claims Board

Dolls Kill, Inc.

CLAIMANT

v.

BMEssentials

RESPONDENT

### 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 **January 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. There is no additional filing fee for a second amended claim. If you amend your 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 a second amended claim. 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 Claim – Access

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 you 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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your amended claim does not present facts about how the respondent had “access” to one of your allegedly infringed works, which your amended claim describes as a “Photo of Butterfly Boots,” titled “Terrarium Butterfly Boots” photo. “Access” means a reasonable opportunity to view your work before the alleged infringement took place. A [supplemental document](#) filed with your amended claim appears to depict the other two allegedly infringed photographs, alongside the same or strikingly similar photographs on the respondent’s website. That documentation is a sufficient basis to support the element of access for those two photographs at this stage, but the amended claim does not include such documentation for the “Terrarium Butterfly Boots” photo.

The takedown notices filed with your amended claim do not help to show that the respondent had access to that photograph. You uploaded a [takedown notice](#) that includes links to what appears to be your “Terrarium Butterfly Boots” photo displayed on your website, and links to several pages on bmessentials.com (apparently [the respondent’s website](#)) with “allegedly infringing content,” but the bmessentials.com webpages do not currently display the “Terrarium Butterfly Boots” photo or any other photographs. In part because hyperlinks can lead to material that is no longer available online, the Board will not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation.

To address this issue, you must file a second amended claim that includes allegations or documents that make access to each allegedly infringed work 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. Alternatively, you can upload copies of the “Terrarium Butterfly Boots” photo and the allegedly infringing image, or add such images to the [supplemental document](#) named “2022.1.7 Copy of BMEssentials Copies - Sheet1 (2).pdf,” if such images demonstrate that the works are strikingly similar. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly distinguished and compared to each other.

#### Copyright Infringement Claim – Substantial Similarity

Your amended claim also does not include any facts to explain the similarities between your “Photo of Butterfly Boots” and any allegedly infringing work by the respondent. If it is not readily apparent from supplemental materials submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Though you have attached copies of your other allegedly infringed works in a supplemental document, your amended claim does not include a copy of the “Terrarium Butterfly Boots” photo, or describe, state, or show how that work and any allegedly infringing work are substantially similar. If you submit a second amended claim that maintains that the respondent infringed the “Terrarium Butterfly Boots” photo, include more specific allegations or documents that support a claim that the respondent used an identical or substantially similar work. Alternatively, you may file a second amended claim that omits the “Terrarium Butterfly Boots” photo from the list of allegedly infringed works.

### Final Amendment

Your amended claim resolves some, but not all, of the issues raised in the November 10, 2022 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 amended 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 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 second 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

December 16, 2022