



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0321
September 29, 2023

Hillary Wright

CLAIMANT

v.

Sportskeeda Inc and Absolute Sports

RESPONDENTS

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 30, 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.

Pleading Form

The Board claim form is a standardized form available on [eCCB](#). 37 C.F.R. § 222.2(a)(1). The allegations provided in the claim form should provide sufficient information to state a claim for infringement. Supplemental materials, including materials that set forth additional facts beyond the claim form, are acceptable, but attachments that take the form of a separate “complaint” or other formal pleading are not acceptable.

You submitted, as supplemental material, a document styled as a “Claim for Willful Copyright Infringement” (Complaint Attachment), which appears to be patterned on a complaint that might be filed in federal court. Submitting a separate “complaint” is not an acceptable way to plead a claim before the Board. If you file an amended claim, include a statement of the relevant facts in the claim form. If a full recitation of the facts does not fit well in the claim form, you may also attach a separate document that is limited to a recitation of the relevant facts and is not in the form of a pleading or “complaint.”

Registration Number

A copyright infringement claim before the Board must include the copyright registration number and effective date of registration for the allegedly infringed work, if it has been registered. 37 C.F.R. § 222.2(c)(7)(ii)(C). Your

claim alleges infringement of a registered work, a photograph titled “KC is KR.” The claim lists a different registration number and effective date of registration for the work than is stated in the [Certificate of Registration](#) filed with the claim. If you file an amended claim, please include the registration number VA 2-293-166 and the December 2, 2021 effective date stated in the registration.

Infringing Activity

For each respondent you name as an alleged infringer, you must state allegations regarding that respondent’s allegedly infringing activity. Your claim does not present any facts about how one respondent, Absolute Sports, used your exclusive rights in the allegedly infringed work without permission.

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

A copyright infringement claim may be raised against a direct infringer that violates one or more of those exclusive rights. You claim direct infringement by one respondent, Sportskeeda Inc (“Sportskeeda”), which you allege “copied, publicly displayed and distributed the copyrighted photo without consent or license in an online article[.]” You also allege that “Respondent displayed a tweet in their online article from a third party account that included the copyrighted photo, unaltered and unedited as originally captured,” without specifying which respondent you mean, though the Complaint Attachment indicates (at Paragraph 19) that Sportskeeda displayed a tweet that included the photograph on its website. However, the claim does not include any clear allegations of infringing activity by Absolute Sports, and you do not appear to accuse Absolute Sports of engaging in direct infringement.

A copyright infringement claim also may be raised against a “secondary infringer” who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. It appears that you wish to bring a claim of secondary infringement to hold Absolute Sports liable for infringing activities by Sportskeeda. In the Complaint Attachment, which describes Sportskeeda as Absolute Sports’ subsidiary, you assert that “Absolute Sports is vicariously, and contributorily, liable for the infringement of its subsidiary Sportskeeda.” However, those conclusory assertions are not supported by specific facts that indicate that Absolute Sports can be held liable for any infringing acts by Sportskeeda.

Secondary infringement claims must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement.

- A **vicarious liability claim** must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity, and received a direct financial benefit from the infringement.
- A **contributory liability claim** must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

If you want the Board to find Absolute Sports *vicariously liable* for Sportskeeda's use of the photograph, your amended claim must include allegations that Absolute Sports was able to control or supervise that use, and that it profited directly from that use. The current claim does not allege facts indicating that Absolute Sports could control or supervise, or received a direct financial benefit from, any infringing use.

Alternatively, if you want the Board to find Absolute Sports *contributorily liable* for Sportskeeda's use of the photograph, your amended claim must include allegations that Absolute Sports knew, or had reason to know, that uses of the photograph would be infringing, and that it facilitated that infringing conduct by inducing, causing, or materially contributing to its use. The current claim does not allege facts indicating that Absolute Sports knew, or had reason to know, of Sportskeeda's allegedly infringing use of the photograph, or that it facilitated that conduct.

If you submit an amended claim, you must include facts in the claim form that more fully explain how each respondent is liable for infringing your work. The claim must provide enough information to enable the respondents to understand the claim and respond to it.

Copyright Infringement – Elements

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

Your allegations do not provide clear facts to support the elements related to the respondents' access to your work and substantial similarity, as discussed below. However, statements and images presented in the Complaint Attachment would suffice if they were properly pleaded. For example, if the statements in the Complaint Attachment at Paragraphs 1, 11, and 17 to 20 are alleged in an amended claim form, with the accompanying images presented in clearly labeled supplemental documents, the elements of access and substantial similarity would be sufficiently pleaded for the purposes of compliance review. Please provide such details and background regarding these elements in your amended claim.

Access

Your claim does not provide facts about how the respondents had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place.

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 respondents or a close associate of the respondents; (b) was widely disseminated or was available

to the public or respondents; or (c) is so strikingly similar to the respondents' work that they could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your photograph and the allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects. For example, at Paragraph 20 of the Complaint Attachment, you stated, "The Photo was used in its entirety, exactly as [Claimant] captured and displayed it on her Instagram." Such allegations would be sufficient if properly stated in the claim form.

However, you do not provide information in the claim for, clearly describing or showing your work, or stating how it is substantially similar or identical to the respondents' allegedly infringing use of the work. As a result, the claim does not provide enough information to enable the respondents to understand the claim and respond to it.

If you submit an amended claim, include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your photograph were taken by the respondents in the allegedly infringing article, or documents that are sufficient to show the similarities. As explained above, if you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Relief Requested

The "Description of harm suffered and relief sought" section of your claim indicates that you are seeking "[s]tatutory damages for willful infringement in the amount of \$30,000." The Board cannot consider whether infringement was willful when awarding statutory damages. 17 U.S.C. § 1504(e)(1)(A)(ii)(III). If you file an amended claim, do not request statutory damages based on willfulness.

It also appears that you are seeking a larger statutory damages award than the Board can grant. 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). However, 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, and \$7,500 per work that was not timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii)(I)-(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. 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 infringement began on December 1, 2021, and the Certificate of Registration lists the effective date of registration as December 2, 2021. You do not appear to allege a “publication” of the photograph before the infringement started. The Complaint describes the photograph as “unpublished.” The Complaint also states that you posted the photograph on Instagram before the infringement began, but “[t]he public performance or display of a work does not of itself constitute publication.” 17 U.S.C. § 101; *Moberg v. 33T LLC*, 666 F. Supp. 2d 415, 421 (D. Del. 2009).

Based on those stated facts, it appears that the copyright for the unpublished photograph was registered after the infringement commenced, so the Board may not award you more than \$7,500 total in statutory damages. 17 U.S.C. §§ 412(1) & 1504(e)(1)(A)(ii)(II). Because those are the facts alleged, your request for \$30,000 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. 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