COPYRIGHT CLAIMS BOARD

Docket number: 25-CCB-0562
September 23, 2026

Kenneth McKee	*v.*	Alex Pagan
CLAIMANT AND COUNTERCLAIM-RESPONDENT		**RESPONDENT AND COUNTERCLAIMANT**

SECOND ORDER TO AMEND NONCOMPLIANT COUNTERCLAIM

On January 28, 2026, the Copyright Claims Board ("Board") found the amended claim ("Claim") compliant and directed claimant Kenneth McKee ("Claimant") to serve the respondent Alex Pagan ("Pagan" or "you"). On May 29, 2026, you filed a response to the Claim, in which you asserted a misrepresentation counterclaim under 17 U.S.C. § 512(f) and a contractual counterclaim against Claimant. The Board found the contractual counterclaim noncompliant and directed you to submit an amended counterclaim. You filed an amended counterclaim on August 20, 2026. The Board finds that the contractual counterclaim, as amended, still does not comply with the requirements of the CASE Act and related regulations.

To proceed with both counterclaims, you must submit a second amended counterclaim by **October 23, 2026**. If you file an amended counterclaim, it will be reviewed for compliance and the parties will be notified if it is found compliant or noncompliant. 17 U.S.C. § 1506(f)(2). You may choose to remove the contractual counterclaim and proceed only with your misrepresentation counterclaim. If your second amended counterclaim includes the contractual counterclaim and remains noncompliant, the Board must dismiss your entire counterclaim without prejudice, including your misrepresentation counterclaim, and the proceeding will continue with the claimant's infringement claim.

If you file a second amended counterclaim, it 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 counterclaim before you file again. You do not need to provide a legal argument in your counterclaim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your counterclaim. There is no character limit, so please be as detailed as possible.

Contractual Counterclaim

You have raised a "contractual counterclaim," which is a counterclaim that must be based on a contract or agreement that (1) pertains to the same transaction or occurrence as the Claimant's infringement claim, and (2) could affect the relief awarded to the Claimant. 17 U.S.C. § 1504(c)(4)(B)(ii). A contractual counterclaim must describe the contract or agreement on which the counterclaim is based, how it pertains to the same transaction or occurrence as the infringement claim, and how it could affect the relief awarded. 37 C.F.R. § 222.9(c)(6)(i)-(iii).

Your amended counterclaim identifies the parties' August 22, 2025 **Settlement, Licensing, Product Transfer, and Non-Disparagement Agreement** ("Agreement"). You now allege that Claimant breached Section 5 of the Agreement by asserting claims that you contend were released under the Agreement. You also allege that Claimant separately breached Section 4 by making statements and social media posts intended to harm Humble Performance's business reputation. You seek damages for the alleged breaches, including recovery of all or part of the $14,000 paid under the Agreement and additional damages.

However, as the Board explained in its initial **Order to Amend Noncompliant Counterclaim**, your counterclaim still does not clearly explain how the alleged breaches provide a contractual basis for relief that could affect any relief that the Board might award to Claimant in this proceeding. Section 5 releases claims "arising prior to" the Agreement, but Claimant's infringement claim concerns alleged infringement beginning after the Agreement. Your argument that Section 5 bars Claimant from pursuing the infringement claim therefore appears to be a possible defense to Claimant's copyright infringement claim rather than a contractual counterclaim that could affect the relief awarded to Claimant. Similarly, your allegation that Claimant breached Section 4 by making disparaging statements does not clearly explain how that alleged breach arises out of the same transaction or occurrence as Claimant's infringement claim or how it could affect the relief awarded on that claim.

If you file a second amended counterclaim, you must explain how the Agreement provides a contractual basis for relief that could affect any relief awarded to Claimant. If you contend that Claimant breached the Agreement, identify the terms of the Agreement that you allege Claimant breached, describe the conduct that you contend constituted the breach, and explain how that alleged breach could affect any relief awarded in this proceeding. It is not enough to state that damages on your contractual counterclaim would offset, reduce, or eliminate Claimant's recovery. You must provide facts explaining why the alleged breach could affect the relief awarded to Claimant for the infringement alleged in this proceeding.

You should include the contractual counterclaim in your second amended counterclaim only if you can allege facts showing that an agreement between the parties that relates to the infringement claim could affect any relief awarded by the Board. If you cannot correct the contractual counterclaim, you may remove it and proceed only with your misrepresentation counterclaim. If your second amended counterclaim includes the contractual counterclaim and it remains noncompliant, the Board must dismiss your entire counterclaim, including your misrepresentation counterclaim. It is not necessary to assert a contractual counterclaim for the Board to consider the merits of the infringement claim and the defenses you raised in your response. More information is available in the **Counterclaims** chapter of the CCB Handbook.

To submit a second amended counterclaim, log into your eCCB account and take the following steps:

1. From your dashboard, click the "**Amend a counterclaim**" button and select your docket number from the dropdown list.
2. Your counterclaim will unlock for editing. The information you originally entered will appear in the same order as in your original counterclaim.

3. Make the necessary edits. If you have filed supplemental documents, you must re-upload any documents you wish to include in the amended counterclaim 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 counterclaim 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 counterclaim carefully. Once you submit your amended counterclaim, you will be unable to edit the counterclaim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your counterclaim 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 provide only 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 and Counterclaims chapters of the CCB Handbook for more assistance.

Copyright Claims Board