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8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation,

14 Plaintiffs,

15 vs.

16 AXANAR PRODUCTIONS, INC., a
17 California corporation; ALEC PETERS,
an individual; and DOES 1-20,

18 Defendants.
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Case No. 2:15-cv-09938-RGK-E

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC.'S AND ALEC
PETERS' NOTICE OF MOTION
AND MOTION *IN LIMINE* NO. 8 RE
USE OF "STAR TREK" NAME;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: January 31, 2017
Pretrial Conference: January 9, 2017
Trial Date: January 31, 2017

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 31, 2017, or as soon thereafter as
3 the matter may be heard before the Honorable R. Gary Klausner, located at 255 East
4 Temple Street, Courtroom 850, Los Angeles, California 90012, Defendants Axanar
5 Productions, Inc. and Alec Peters (collectively, "Defendants") will and hereby do
6 move this Court for an order restricting Plaintiffs' counsel and all witnesses from
7 mentioning, directly or indirectly, before jurors and prospective jurors, that
8 Defendants improperly used the name "Star Trek." This Motion is based on the
9 grounds that the probative value of allowing this evidence is far outweighed by
10 potential prejudice to the jury, waste of time, and/or unnecessary confusion of the
11 issues. Fed. R. Evid. 401-403.¹ Due to these and the additional evidentiary
12 infirmities described herein, the Court should grant Defendants' Motion *in Limine*
13 No. 8 ("Motion").

14 This Motion is based upon this Motion and Notice of Motion, the supporting
15 documents filed concurrently herewith, previously filed documents incorporated by
16 reference herein, and such oral argument and submissions that may be presented at
17 or before the hearing on this Motion. Pursuant to Local Rule 7-3, this Motion is
18 made following the conference of counsel that took place on December 9, 2016.

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20 Dated: December 16, 2016

WINSTON & STRAWN LLP

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By: /s/ Erin R. Ranahan
Erin R. Ranahan
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Attorneys for Defendants,
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ALEC PETERS

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¹ All further statutory references are to the Federal Rules of Evidence unless otherwise noted.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rules of Evidence 401-403,² Defendants Axanar Productions, Inc. and Alec Peters (collectively, "Defendants") move for an *in limine* order precluding Plaintiffs from introducing at trial any testimony, evidence or argument that Defendants have improperly used the name "Star Trek," or otherwise suggesting that the use of the name "Star Trek" is relevant to a substantial similarity analysis. While such complaints would be relevant if this case had any trademark claims, such inferences simply have nothing to do with the alleged *copyright* infringements in this case. Not only would such evidence be irrelevant and more prejudicial than probative, but also presentation of such evidence would be a waste of this Court's time, and would be extremely and irrevocably confusing to a jury. Plaintiffs cannot be permitted to muddy the evidence with unrelated implications of trademark infringement. For these and all the following reasons, Defendants respectfully request that this Court grant its Motion *In Limine* No. 8.

II. LEGAL STANDARD

Rulings on motions *in limine* are committed to the discretion of the trial court. *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27 (9th Cir. 1980) (district court has "broad discretion to make . . . evidentiary rulings conducive to the conduct of a fair and orderly trial"); *Gametech Int'l Inc. v. Trend Gaming Sys., L.L.C.*, 232 Fed. App'x 676, 677 (9th Cir. 2007). District courts can exercise their discretion to exclude evidence where the evidence is not relevant, or where the probative value is outweighed by other considerations. Fed. R. Evid. 401-403; *Wicker v. Oregon ex rel. Bureau of Labor*, 543 F.3d 1168, 1177-78 (9th Cir. 2008) (district court did not abuse discretion in excluding conclusive, speculative evidence). Even if evidence is

² All further statutory references are to the Federal Rules of Evidence unless otherwise noted.

1 considered relevant, “[t]he court may exclude relevant evidence if its probative
2 value is substantially outweighed by a danger of . . . unfair prejudice, confusing the
3 issues, [or] misleading the jury.” Fed. R. Evid. 403; *United States v. Ellis*, 147 F.3d
4 1131, 1135-36 (9th Cir. 1998) (overruling denial of motion to exclude because
5 evidence’s probative value was substantially outweighed by unfair prejudice);
6 *United States v. W.R. Grace*, 504 F.3d 745, 760 (9th Cir. 2008) (affirming district
7 court’s exclusion of evidence that was low in probative value and could have
8 confused the jury as more prejudicial than probative under Rule 403).

9 **III. ARGUMENT**

10 **A. Any Evidence, Testimony or Argument Regarding** 11 **Defendants’ Use of The Name “Star Trek” Should Be** 12 **Excluded**

13 In an effort to color, cloud, and confuse the views of the Court and the jury in
14 this case, Plaintiffs repeatedly and consistently refer to Defendants’ actions in terms
15 of the Star Trek brand or franchise, as though the suggestion that Defendants’
16 Works are “Star Trek Films” is sufficient to show substantial similarity and,
17 therefore, copyright infringement.³ Plaintiffs must be precluded from introducing
18 evidence regarding Defendants’ use of the Star Trek name or trademark, as such
19 evidence is irrelevant to the issues in this case. Specifically, Deposition Exhibit
20 numbers 205, 206, and 207, which feature a Facebook Messenger discussion
21 between Defendant Peters and a colleague regarding the use of the “Star Trek”
22 name, should be excluded. Importantly, no reference to the use of Star Trek as a
23 name or trademark is related to any specific alleged copyright infringements at

24 ³ For example: “...purpose was to make an authentic film that would ‘look and feel
25 like a true Star Trek movie;” “...sought to create a business model that would
26 compete with Plaintiffs, distributing high quality, professional ‘Star Trek’ films...;”
27 “...production that’s going to change the way people view Star Trek;” “...he set out
28 to create a professional Star Trek movie...” Dkt. 72 at 2 (Plaintiffs’ Motion for
Summary Judgment); Dkt. 88 at 4-5 (Declaration of David Grossman in Support of
Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment).

1 issue in this action, and any such use would have little, if any, independent
2 probative value because Plaintiffs have not alleged any counts of trademark
3 infringement. Consequently, Plaintiffs should be prohibited from making
4 arguments as to whether any use of the Star Trek name by Defendants is a violation
5 of Plaintiffs' copyrights, as such arguments would only be relevant under a theory
6 of trademark infringement. Accordingly, Plaintiffs should not be permitted to
7 introduce any evidence regarding Defendants' use of the Star Trek name or title
8 because it is irrelevant to their claims of copyright infringement. Fed. R. Evid. 401,
9 402.

10 Additionally, Plaintiffs do not use the name "Star Trek" in any of the works
11 that Plaintiffs allege are infringing in this case. Plaintiffs have repeatedly and
12 incorrectly referred to one of Defendants' Works as "Star Trek: Prelude to Axanar."
13 See, e.g., Dkt. 72 at 4 (Plaintiffs' Motion for Partial Summary Judgment). The
14 current title of this work is *Prelude to Axanar*. See, e.g., Dkt. 75-19 (*Prelude to*
15 *Axanar*). And regardless of Defendants' associations of their works with Star Trek,
16 such has no bearing on this case, as this would at most relate to a claim under
17 trademark laws, not copyright laws. Therefore, Plaintiffs should be prohibited from
18 using this incorrect, misleading title for *Prelude to Axanar*, and from making any
19 arguments that rely on Defendants' alleged improper use of the name "Star Trek."

20 **B. The Probative Value of Any Use By Defendants Of The**
21 **Name Star Trek Is Outweighed By Substantial Prejudice**

22 Evidence has probative value only if it has any tendency to make the
23 existence of any legally necessary proposition in the case more or less likely. Fed.
24 R. Evid. 401-402. Evidence is unfairly prejudicial if it has an "undue tendency to
25 suggest decision on an improper basis." Fed. R. Evid. 403, Advisory Comm. Notes,
26 1972 Proposed Rules. Rule 403 explicitly states that evidence may also be excluded
27 if the waste of time caused by its introduction outweighs its probative value.
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1 To the extent evidence or arguments suggesting Defendants’ alleged improper
2 use of the Star Trek name in association with Defendants’ works could be relevant
3 to Plaintiffs’ claims, such evidence would be more prejudicial than probative, and
4 would confuse the issues in this case. *See* Fed. R. Evid. 403. Prejudice suffered by
5 Defendants from Plaintiffs implying that Defendants are guilty of trademark
6 infringement, which is not an issue in this case, outweighs any probative value.
7 Specifically, the allegation of the improper use of “Star Trek: Prelude to Axanar”
8 would likely cause the jury to improperly consider any explicit association
9 Defendant has had with Star Trek, resulting in an improper basis upon which to
10 decide the *copyright* claims at issue in this case. As the introduction of evidence
11 regarding Defendants’ use of the name Star Trek would be more prejudicial than
12 probative, its consideration would also be a waste of time.

13 Accordingly, the Court should preclude from introduction any evidence or
14 testimony regarding Defendants’ use of the name Star Trek.

15 **IV. CONCLUSION**

16 For all the foregoing reasons, Defendants respectfully request that this Court
17 grant its Motion *In Limine* No. 8.

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Dated: December 16, 2016

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