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12 CORPORATION and CBS STUDIOS  
13 INC.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

16 PARAMOUNT PICTURES  
17 CORPORATION, a Delaware  
18 corporation; and CBS STUDIOS INC.,  
19 a Delaware corporation,

18 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
22 California corporation; ALEC PETERS,  
23 an individual, and DOES 1-20,

23 Defendants.

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

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION IN  
LIMINE NO. 8 RE USE OF "STAR  
TREK" NAME**

Pre-Trial Conference: January 9, 2017  
Trial: January 31, 2017

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios  
3 Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants  
4 Axanar Productions, Inc. (“Axanar Productions”) and Alec Peters (“Peters”)  
5 (collectively, “Defendants”) to exclude Defendants’ use of the term, “Star Trek.”

6 **I. INTRODUCTION**

7 By their motion in limine, Defendants seek to exclude from evidence their use  
8 of the term “Star Trek” when referring to *Star Trek: Prelude to Axanar*, the *Vulcan*  
9 *Scene*, and the proposed full-length feature, *Star Trek: Axanar* (collectively, the  
10 “Axanar Works”). Defendants argue that, because this matter is not a trademark  
11 dispute, their use of “Star Trek” is not relevant, including to the jury’s analysis of  
12 substantial similarity. On the contrary, Defendants’ use of the term “Star Trek” to  
13 describe the Axanar Works is highly probative of the issues for trial for a number of  
14 reasons. These include whether Defendants intended to create a “Star Trek” work,  
15 and whether Peters acted willfully in infringing Plaintiffs’ copyrights.

16 Further, there are numerous pieces of evidence, including Defendants’ own  
17 statements, videos and marketing materials that use the term “Star Trek,” “Star  
18 Trek: Prelude to Axanar” and “Star Trek: Axanar.” These materials cannot be, and  
19 should not be, excised from the trial.

20 There is no merit to Defendants’ motion, and it should be denied.

21 **II. FACTS**

22 **A. The Nature of the Evidence.**

23 Defendants have referred to the Axanar Works as *Star Trek: Axanar*. This  
24 title formulation is the same as that used in Plaintiffs’ copyrighted Star Trek works  
25 (e.g., *Star Trek: The Next Generation*, *Star Trek: First Contact*). Peters also used  
26 the term “Star Trek” heavily in online statements and publications, at conventions,  
27 and in advertisements for the Axanar Project. Peters even used an email address  
28

1 ending in “@startrekaxanar.com.” *See, e.g.*, Declaration of David Grossman  
2 (“Grossman Decl.”), ¶¶ 2-3, Exs. A-D.

3 Peters also created a twitter account @StarTrekAxanar, went to conventions  
4 to advertise his film as “Star Trek: Axanar” and created numerous advertisements  
5 and promotional materials referring to his productions as “Star Trek” films and  
6 products. Grossman Decl. ¶ 5, Exs. B, F.

7 Defendants have more recently renamed the Axanar Works to exclude “Star  
8 Trek,” but that fact does not erase Defendants’ prior conduct, or render Defendants’  
9 previous statements and conduct inadmissible for this trial. Far from it, Defendants’  
10 use of the terms Star Trek (deliberately and repeatedly) is critical to this trial.

11 **III. ARGUMENT**

12 Defendants argue that their use of “Star Trek” to describe the Axanar Works  
13 is irrelevant because Plaintiffs have not filed suit for trademark infringement.  
14 However, Defendants’ use of “Star Trek” to describe the Axanar Works is not being  
15 offered to prove trademark infringement.

16 This is a copyright case, and Defendants have denied copying Star Trek in  
17 order to create *Star Trek: Prelude to Axanar* and *Star Trek: Axanar*. The fact that  
18 Defendants (prior to the filing of this lawsuit), heavily used the term “Star Trek” in  
19 their works, in their promotional materials, and in every one of their discussions  
20 regarding the content of their works, is highly relevant to whether or not Defendants  
21 intended to copy, and did copy, Plaintiffs’ works, and whether they were intended to  
22 be and are in fact substantially similar to Plaintiffs’ works. Further, Peters himself  
23 advertised his works, and raised money for his Axanar Works, by touting them as  
24 “authentic” Star Trek, an “independent Star Trek film,” and stated “this is Star  
25 Trek.” To argue, as Defendants do, that these statements should be excluded from  
26 the trial on whether Defendants copied Star Trek is absurd.

27 Moreover, Peters’ labeling of his Axanar Works with the term “Star Trek”  
28 (before he changed the titles of his works), is relevant to Peters’ attempts to obtain a

1 profit from his infringing activities – he used the term “Star Trek” to raise money  
2 from Star Trek fans, so that he could pay himself and his colleagues. Indeed, one of  
3 Peters’ own communications (which he did not turn over in discovery) shows that  
4 he discussed keeping the name “Star Trek” on an internet page promoting the  
5 Axanar Works because, to remove that phrase would decrease the amount of funds  
6 he was able to raise. Grossman Decl. ¶ 4, Exs. B, E.

7 In addition to the above, Defendants’ use of “Star Trek” in association with  
8 the Axanar Works is relevant to Plaintiffs’ claim that Peters is liable for willful  
9 infringement, and for contributory copyright infringement. Using “Star Trek” to  
10 describe the Axanar Works, supports the conclusion that Peters was aware of the  
11 infringing activity. *See Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004)  
12 (“We have interpreted the knowledge requirement for contributory copyright  
13 infringement to include both those with actual knowledge and those who have  
14 reason to know of direct infringement.”). By identifying “Star Trek” by name,  
15 Peters demonstrated that his use of elements from the Star Trek Copyrighted Works  
16 was willful and that his goal was to place the Axanar Works in the same universe as  
17 Plaintiffs’ “Star Trek” productions. The jury should be permitted to consider this  
18 fact when considering the appropriate measure of damages. *See* 17 U.S.C. §  
19 504(c)(2).

20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that Defendants’  
22 motion in limine no. 8 to exclude Defendants’ use of the term “Star Trek” should be  
23 denied.

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1 Dated: January 6, 2017

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