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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 HANK AZARIA, an individual, and
HOW TO PICTURES, INC., a
12 California corporation,

13 Plaintiffs,

14 v.

15 CRAIG BIERKO, an individual,
16 Defendant.
17

Case No. **CV 12 9732 - FmD**

**COMPLAINT FOR
DECLARATORY RELIEF**

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
LOS ANGELES

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1 Plaintiffs Hank Azaria (“Azaria”) and How To Pictures, Inc. (“How To
2 Pictures”) (collectively “Plaintiffs”) by this Complaint hereby allege as follows:

3 **INTRODUCTION**

4 1. This action involves a dispute about the proprietary rights in a voice
5 and character created and developed by the well-known feature film, television, and
6 voice actor Hank Azaria. Azaria has created and has been developing highly
7 individualized voices and characters his entire career going back almost thirty
8 years. One such voice that Azaria independently created is that of a colorful
9 baseball announcer who speaks with peculiar speech inflections (the “Azaria
10 Voice”).

11 2. Azaria has shared his rendition of the Azaria Voice with many people
12 going all the way back to no later than 1983 when he performed it on the
13 quadrangle of his college. One of the people with whom Azaria shared the Azaria
14 Voice was Defendant Craig Bierko (“Bierko”) around the time that the two first met
15 each other in or around 1990. After this meeting, Azaria continued to use the
16 Azaria Voice intermittently.

17 3. In 2010, Plaintiffs produced a short video for the comedy website
18 “Funny or Die.” This short video is entirely based upon a baseball announcer
19 called “Jim Brockmire” (the “Jim Brockmire Character”). The Jim Brockmire
20 Character talks with the Azaria Voice. This video which was posted on the “Funny
21 or Die” internet website became instantly popular and has allowed Plaintiffs to
22 entertain discussions to develop a feature length motion picture based upon the Jim
23 Brockmire Character who uses the Azaria Voice.

24 4. After learning about the “Funny or Die” video, Bierko contacted
25 Azaria and claimed ownership over the Azaria Voice. Bierko asserted that it was
26 he who either: (a) independently created the Azaria Voice or (b) created it in
27 collaboration with Azaria. Bierko has not been clear as to which of these two
28 alternatives he is asserting. Although Azaria strongly disputes this, Bierko’s claim

1 has created a cloud over the rightful ownership of the Azaria Voice (which is an
2 integral part of the Jim Brockmire Character) such that Plaintiffs' ability to develop
3 a feature length motion picture based upon the Jim Brockmire Character is being
4 significantly impeded. A judicial determination of the rights of the parties to this
5 action as these pertain to the Azaria Voice and the Jim Brockmire Character is thus
6 required to resolve this dispute.

7 **JURISDICTION AND VENUE**

8 5. This Court has subject matter jurisdiction over this matter pursuant to
9 28 U.S.C. § 1331 in that this case arises under the copyright laws of the United
10 States, 17 U.S.C. §§ 101 et seq. (the "Copyright Act"), and the declaratory
11 judgment act, 28 U.S.C. § 2201(a).

12 6. This Court has supplemental jurisdiction over the related state law
13 claims pursuant to 28 U.S.C. § 1367(a) as these state law claims form part of the
14 same case or controversy as the claims for which this Court has original jurisdiction
15 pursuant to the Copyright Act.

16 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) (2)
17 because a substantial part of the events and omissions giving rise to Plaintiffs'
18 claims occurred within this District.

19 **THE PARTIES**

20 8. Plaintiff Azaria is an individual currently residing in the County of Los
21 Angeles, California.

22 9. Plaintiff How To Pictures, Inc. is a California Corporation with its
23 principal place of business located in the County of Los Angeles. Azaria is the
24 principal owner of How To Pictures.

25 10. Defendant Bierko is an individual currently residing in the State of
26 New York.

FACTUAL ALLEGATIONS

1
2 11. Azaria is a well-known actor. He is renowned in the entertainment
3 industry as a versatile actor who is most adept at creating voice characters who
4 display highly individualized characteristics. During the last two decades he has
5 appeared in some of the most successful television shows such as “Friends” and
6 “Mad About you,” as well as playing the title role in the series “Huff.” His movie
7 credits include starring roles in “The Birdcage,” “Godzilla,” “Shattered Glass,” and
8 “Along Came Polly.” Azaria has provided, and continues to provide the voice of
9 several characters of the television series “The Simpsons” which has been on the air
10 for over twenty years.

11 12. In or before 1983, Azaria independently created the Azaria Voice,
12 which, as noted above, is the voice of a colorful baseball announcer. He often
13 performed the Azaria Voice in and around his college campus. Azaria also had a
14 number of other voices that he independently created before or around that time.

15 13. After he left college, but before he ever met Bierko, Azaria continued
16 to perform the Azaria Voice in front of a number of people. One of those people,
17 who knew Bierko, knew that Bierko also did an announcer voice (the “Bierko
18 Voice”). In or around 1990, almost ten years after Azaria had created the Azaria
19 Voice, Azaria and Bierko were introduced by a person who suggested that Bierko
20 do the Bierko Voice for Azaria and that Azaria do the Azaria Voice for Bierko.

21 14. After Azaria met Bierko in or around 1990, they started fooling around
22 with the Azaria Voice and the Bierko Voice. Azaria and Bierko used to put the
23 Azaria Voice and the Bierko Voice respectively on voice messages for each other
24 for a period of about 3-5 years.

25 15. In 2010, Azaria developed and produced a short video for the website
26 “Funny or Die.” Azaria transferred all proprietary rights that he had in all aspects
27 of this project (including the Jim Brockmire Character) to his company, How To
28 Pictures. Using the Azaria Voice as a catalyst, How To Pictures hired a team of

1 writers to develop a backstory and plot to go with the character that would use the
2 Azaria Voice. Bierko was not part of this team. Once Azaria deemed the character
3 using the Azaria Voice to be sufficiently formed and delineated, he pitched the idea
4 of making a short video based upon this character to producers from “Funny or
5 Die.” The “Funny or Die” producers chose the Jim Brockmire Character as the
6 basis around which to structure a video short and Plaintiffs produced the video
7 short of the Jim Brockmire Character.

8 16. Under the terms of the agreement that How to Pictures and “Funny or
9 Die” reached pertaining to the video short, How to Pictures retained all rights in all
10 aspects of the underlying Jim Brockmire Character (including the Azaria Voice). In
11 return, “Funny or Die” was granted the rights to the video short.

12 17. In the “Funny or Die” video, Azaria portrays the Jim Brockmire
13 Character, who uses the Azaria Voice, and who has a characteristic attire (plaid
14 jacket with a fresh rose on his lapel), a host of famous admirers (real life
15 sportscasters such as Dan Patrick, Rich Eisen, and Joe Buck who appear in the
16 video short), the penchant for making obscure and off-the-wall cultural references
17 when commenting on a baseball game, and a backstory regarding how he caught his
18 wife cheating on him, had a breakdown on air, and was consequently fired. The
19 development of the Jim Brockmire Character into a full-fledged persona was
20 created by Azaria and writers hired by How To Pictures without any input from
21 Bierko.

22 18. When the video came out it became popular. As a result of this
23 popularity, Azaria and How To Pictures are exploring avenues of exploiting the Jim
24 Brockmire Character further, which includes developing a script that has been
25 submitted to a financier for production of a motion picture.

26 19. Since the release of the “Funny or Die” video short, Bierko has
27 demanded that Azaria cease and desist from exploiting the Azaria Voice and, by
28 inference, the Jim Brockmire Character. Bierko is erroneously stating that he

1 (Bierko) created the Azaria Voice and, by implication, the Jim Brockmire
2 Character. This claim by Bierko has created a cloud over the ownership of the
3 proprietary rights in the Jim Brockmire Character and the Azaria Voice. This
4 cloud, which is entirely of Bierko's own making, has made it difficult for Azaria
5 and How To Pictures to exploit the valuable copyrighted asset which is the Jim
6 Brockmire Character (which includes the Azaria Voice) because would-be
7 financiers and possible licensees of this asset would have valid doubts as to who is
8 the proper copyright holder of the Jim Brockmire Character. Thus, there is a
9 significant likelihood that the value of the Jim Brockmire Character will be
10 permanently damaged resulting in substantial damages to How To Pictures, the
11 rightful copyright owner of the Jim Brockmire Character.

12 **FIRST CLAIM FOR RELIEF**

13 **(For Declaratory Relief regarding Copyright Ownership of the**
14 **Jim Brockmire Character)**

15 20. Plaintiff How To Pictures re-alleges and incorporates herein by
16 reference each and every allegation contained in paragraphs 1 through 19, inclusive,
17 of the complaint as though set forth at length.

18 21. Azaria independently created the Azaria Voice which he then
19 incorporated into the Jim Brockmire Character. Azaria transferred all ownership in
20 the Jim Brockmire Character to How To Pictures. The Jim Brockmire Character is
21 distinctively delineated such that it is copyrightable subject matter which can
22 acquire independent copyright protection.

23 22. An actual controversy has arisen, and now exists, between How To
24 Pictures and Bierko concerning their respective rights in and to either the Jim
25 Brockmire Character (which incorporates the Azaria Voice) or just the Azaria
26 Voice that Azaria independently created no later than 1983. Plaintiff seeks the
27 following declarations from the Court:
28

1 (a) That the Jim Brockmire Character (which incorporates the
2 Azaria Voice) as laid out in the treatment and screenplay that was then turned into
3 the “Funny or Die” video short is copyrightable subject matter.

4 (b) That neither the Azaria Voice, nor the Bierko Voice, on their
5 own, is copyrightable subject matter.

6 (c) That How To Pictures is the sole and exclusive copyright owner
7 of the Jim Brockmire Character (which incorporates the Azaria Voice).

8 (d) That Bierko has no right, title, or interest in the Jim Brockmire
9 Character or the Azaria Voice.

10 (e) That Bierko is estopped or otherwise precluded from asserting
11 any claim for copyright ownership or co-ownership of the Jim Brockmire Character
12 by virtue of the doctrines of waiver, estoppel and laches.

13 23. Plaintiff How To Pictures desires a judicial determination of its rights
14 and obligations with respect to the Jim Brockmire Character and the Azaria Voice.
15 Such a declaration is necessary so that How To Pictures may ascertain those rights
16 and obligations, to prevent further contest by Bierko to How To Picture’s
17 ownership of the Jim Brockmire Character (which incorporates the Azaria Voice),
18 and so that the value of How To Picture’s interest in such character will not be
19 further diminished by Bierko’s acts.

20 **SECOND CLAIM FOR RELIEF**

21 **(For Declaratory Relief regarding Defendant’s threatened claim of**
22 **Breach of Implied Contract)**

23 24. Plaintiffs Azaria and How to Pictures re-allege and incorporate herein
24 by reference each and every allegation contained in paragraphs 1 through 23,
25 inclusive, of the complaint as though set forth at length.

26 25. Azaria independently created the Azaria Voice no later than 1983
27 before or at the time when he was a college student. This occurred at least seven
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1 years before he met Bierko in or around 1990, and when each shared with the other
2 (as well as with several other third parties) their rendition of their respective
3 announcer voices (the Azaria Voice and the Bierko Voice). Neither at that time,
4 nor at any time since then, did Azaria or Bierko make any contractual promises to
5 each other regarding both the Azaria Voice and the Bierko Voice, or any derivation
6 therefrom.

7 26. An actual controversy has arisen, and now exists, between Azaria
8 and/or How to Pictures on the one hand, and Bierko on the other, concerning
9 whether they ever made an agreement regarding the ownership and/or use of the
10 Azaria Voice and the Bierko Voice. Plaintiff seeks the following declarations from
11 the Court:

12 (a) That Azaria created the Azaria Voice no later than 1983.

13 (b) That, in or around 1990, when Bierko shared the Bierko Voice
14 with Azaria and other parties there was no understanding (implicit or otherwise)
15 that Azaria would not be entitled to use the Azaria Voice or any derivation
16 therefrom unless Bierko would be compensated for Azaria's use.

17 (c) That no contract (expressed, implied or otherwise) was ever
18 formed between Azaria and/or How to Pictures on the one hand, and Bierko on the
19 other, pertaining to the Azaria Voice, the Bierko Voice, or the Jim Brockmire
20 Character at any time.


21 27. Plaintiffs desire a judicial determination of their rights and obligations
22 with respect to the Jim Brockmire Character and the Azaria Voice. Such a
23 declaration is necessary so that Azaria and How to Pictures may ascertain those
24 rights and obligations, to prevent further contest by Bierko to How to Pictures'
25 ownership of the Jim Brockmire Character (which incorporates the Azaria Voice),
26 and so that the value of Azaria's and How To Pictures' interest in such character
27 will not be further diminished by Bierko's acts.

28

1 WHEREFORE, Plaintiffs respectfully request that judgment be awarded as
2 follows:

- 3 1. For a declaration that Plaintiff How To Pictures is the sole copyright
- 4 owner of the Jim Brockmire Character (which incorporates the Azaria Voice);
- 5 2. For a declaration that Plaintiffs and Defendant did not enter into a
- 6 contract with respect to the Azaria Voice, the Bierko Voice, or the Jim Brockmire
- 7 Character, and therefore Plaintiffs could not have breached any agreement relating
- 8 thereto;
- 9 3. For costs of suit incurred herein;
- 10 4. For reasonable attorneys' fees;
- 11 5. For any other orders necessary to accomplish complete justice between
- 12 the parties; and
- 13 6. For such other and further relief as this Court may deem just and
- 14 proper.

15
16 Dated: November 14, 2012 **ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.**

17
18 By: 
19 Michael J. Plonsker
Rex D. Glensy

20 **ATTORNEYS FOR PLAINTIFF HANK**
21 **AZARIA AND HOW TO PICTURES, INC.**