

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

VERA SEROVA,

Plaintiff and Respondent,

v.

SONY MUSIC ENTERTAINMENT
et al.,

Defendants and Appellants.

B280526

(Los Angeles County
Super. Ct. No. BC548468)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

COURT OF APPEAL - SECOND DIST.

FILED

SEP 13 2018

JOSEPH A. LANE Clerk

Deputy Clerk

THE COURT:

It is ordered that the opinion filed herein on August 28, 2018, be modified as follows:

On page 23, first full paragraph, after the third sentence ending “statement of opinion rather than fact,” add as footnote 8 the following footnote, which will require renumbering of all subsequent footnotes:

[Fn. 8:] In her petition for rehearing, Serova argues that Appellants’ challenged statements on the Album Cover and in the Promotional Video were statements of fact, not opinion, because consumers would have understood them to be factual assertions about the identity of the lead singer of the songs in the album.

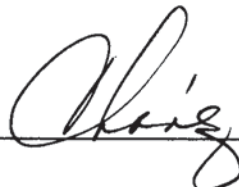
This argument misunderstands the issue. The question here is not whether Appellants have a defense to Serova's claims because their challenged statements were truthful assertions of opinion rather than alleged false statements of fact. In that context, focus on the listener's understanding is appropriate. (See, e.g., *Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 260–261 [applying a “totality of the circumstances” test in a libel action to determine whether a statement was one of fact or opinion].) Rather, the question here is whether Appellants' challenged speech was commercial. Under the court's analysis in *Kasky*, the *speaker's* knowledge about the content of the speech is the important feature in answering that question. Nike's challenged speech in that case concerned its own business operations which were within its personal knowledge. (*Kasky, supra*, 27 Cal.4th at p. 963.) That is not the case here, as Appellants were not involved in the initial recordings of the Disputed Tracks. From Appellants' perspective, their challenged statements about the identity of the lead singer were therefore necessarily opinion. [End of fn. 8.]

There is no change in the judgment.

Serova's petition for rehearing is denied.



LUI, P. J.



CHAVEZ, J.



HOFFSTADT, J.