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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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| <p>LAMONICA FINE FOODS, LLC,<br/><br/>Plaintiff,<br/><br/>v.<br/><br/>ATLANTIC CAPES FISHERIES, INC. and<br/>CAPE MAY SALT OYSTER COMPANY,<br/>LLC,<br/><br/>Defendants.</p> | <p>Civil Action No. _____<br/><br/>Electronically Filed</p> |
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**COMPLAINT**

LaMonica Fine Foods, LLC (“Plaintiff” or “LaMonica”), by way of Complaint against Defendant Atlantic Capes Fisheries, Inc. (“Atlantic”), and Cape May Salt Oyster Company, LLC (“CMSOC”) (each “a Defendant” and together, the “Defendants”) alleges as follows:

**THE PARTIES**

1. LaMonica is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business at 48 Gorton Road, Millville, New Jersey 08332.

2. Atlantic Capes Fisheries, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 985 Ocean Drive, Cape May, New Jersey 08204.

3. Cape May Salt Oyster Company, LLC is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business at 985 Ocean Drive, Cape May, New Jersey 08204.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because claims asserted herein arise under the Lanham Act, 15 U.S.C. §§ 1114, 1125, and this Court exercises original jurisdiction pursuant to 15 U.S.C. §§ 1117, 1125(a), and 28 U.S.C. § 1338(a). This Court also exercises supplemental jurisdiction over Plaintiff's pendant state law claims pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendants because Defendants transact business within New Jersey, derive substantial revenue from intrastate and interstate commerce, and have engaged in conduct that has significantly and adversely affected the interests of LaMonica, a corporation with its principal place of business in New Jersey. Defendants knowingly and in bad faith engaged in the acts and conduct set forth herein, including breaching a settlement agreement with LaMonica and advertising and selling products under the infringing mark at issue in this action, with the reasonable expectation that such products would be advertised and sold in the State of New Jersey. Defendants have also consented to personal jurisdiction in this Court.

6. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a) and (c) because Defendants are subject to personal jurisdiction in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b) because both Plaintiff's and Defendants' principal places of business are located in this District and a substantial part of the events giving rise to these claims occurred in this District.

## **FACTUAL ALLEGATIONS**

### **Introduction**

This is not the Parties' first litigation regarding Plaintiff's CAPE MAY trademark and Plaintiff's corresponding incontestable federal trademark registration for the mark CAPE MAY. In 2018, Plaintiff was forced to file a federal lawsuit against Defendant CMSOC, a subsidiary or affiliate of Atlantic, to protect its trademark rights in the mark CAPE MAY. After two years of litigation, the Parties entered into a settlement agreement that Defendants have completely disregarded, forcing Plaintiff to once again expend substantial amounts of time and money to protect its valuable rights and substantial goodwill in the CAPE MAY trademark.

### **LaMonica's CAPE MAY Trademark**

1. LaMonica is a family-owned seafood business located in Millville, New Jersey, operated by brothers Daniel LaVecchia and Michael LaVecchia.
2. LaMonica owns and operates the largest hand-shucking plant in New Jersey with more than 200 employees and a state-of-the-art seafood packing facility.
3. The LaVecchias also own a company called Cape May Foods, Inc.
4. In 1992, Cape May Foods, Inc. began using the trademark CAPE MAY (the "CAPE MAY Mark") in commerce to identify its goods.

5. On September 27, 2000, Cape May Foods, Inc. applied to register the CAPE MAY Mark with the United States Patent and Trademark Office (the “PTO”). On May 13, 2003, the PTO approved the application and issued a Certificate of Registration under Registration Number 2714953. A copy of the registration certificate is attached as Exhibit 1.

6. On December 31, 2009, Cape May Foods, Inc. assigned its entire interest and goodwill in the CAPE MAY Mark to LaMonica.

7. Since that time, LaMonica has continued to sell fresh, frozen, and canned clam and seafood products using the CAPE MAY Mark.

8. On October 26, 2017, LaMonica filed a Declaration of Incontestability with the PTO pursuant to 15 U.S.C. § 1065 for its registration for the CAPE MAY Mark.

9. On November 24, 2017, the PTO acknowledged LaMonica’s Section 15 declaration, making LaMonica’s CAPE MAY registration incontestable.

#### **Defendants’ Unauthorized Activities**

10. Defendants sell farm-raised oysters from the Delaware Bay that Defendants call “Cape May Salts.”

11. In or around 2014, the president of Atlantic, Daniel Cohen, contacted LaMonica seeking a license to use LaMonica’s CAPE MAY Mark.

12. Mr. LaVecchia and Mr. Cohen were unable to agree on licensing terms and did not enter into a licensing agreement.

13. Despite the lack of a license to do so, Mr. Cohen formed a new limited liability company and incorporated the CAPE MAY Mark into his new company name, Cape May Salt Oyster Company, LLC.

14. Mr. Cohen also incorporated the CAPE MAY Mark into the CMSOC website at the domain [www.capemaysalts.com](http://www.capemaysalts.com).

15. At [www.capemaysalts.com](http://www.capemaysalts.com), CMSOC sold oysters and merchandise, including but not limited to, “Cape May Salt” oysters, “Elder Point” oysters, and apparel displaying the words “Cape May Salt Oyster Company.”

16. In or around September 2017, LaMonica became aware of CMSOC’s existence and its use of the CAPE MAY Mark in its company name and domain.

17. In or around October 2017, Daniel LaVecchia contacted Mr. Cohen and instructed him to cease using LaMonica’s CAPE MAY Mark.

18. Defendant refused to comply with Mr. LaVecchia’s request.

19. On January 23, 2018, LaMonica’s counsel sent a cease and desist letter to counsel for CMSOC regarding Defendant’s unauthorized use of LaMonica’s CAPE MAY Mark.

20. CMSOC never responded to the January 23, 2018 cease and desist letter.

21. On February 22, 2018, LaMonica filed a complaint in the U.S. District Court for the District of New Jersey against CMSOC, Civil Action No. 18-cv-02515, alleging claims of trademark infringement (15 U.S.C. §1114(1)), false designation of origin and false description (15 U.S.C. §1125(a)(1)(A)), cybersquatting, common law unfair competition, and New Jersey statutory unfair competition at N.J.S.A. 56:4-1 (the “2018 Litigation”).

22. On May 23, 2019, LaMonica and CMSOC participated in a settlement conference with the Honorable Joel Schneider, U.S.M.J, during which a settlement was reached in principle.

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