

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

.....X

LEO DAKMAK and BELLUCCI PIZZA CORP.,  
Plaintiffs,  
-against-

Case No.: \_

JURY TRIAL DEMANDED

BARE MEATS, INC. and ANDREW THIERRY  
BELLUCCI,  
Defendants.

.....X

**COMPLAINT**

**PLAINTIFFS LEO DAKMAK and BELLUCCI PIZZA CORP.** (hereinafter, “Dakmak” and “Bellucci Corp” or “Plaintiffs”), by its attorneys, **STEPHEN REICH, ESQ., ATTORNEY AT LAW and RIMONDA K. DALLOUL, ESQ.**, for their causes of action against **DEFENDANTS ANDREW THIERRY BELLUCCI and BARE MEATS, INC.** (hereinafter individually “Thierry” and “Bare Meats”, collectively the “Defendants”), allege upon information and belief as follows, except as to allegations concerning the Plaintiffs or their counsel, which are made upon personal knowledge:

**NATURE OF THE ACTION**

This is a complaint for federal trademark infringement, including willful infringement under Sections 32, 43(a) and (d) of the Lanham Act (15 U.S.C. §§ 1114, 1125(a) (d)), false designation of origin under 15 U.S.C. §§ 1114, 1125(a) and (d) of the Lanham Act, violations of Sections 349, 350, and 360-L of the New York Business Law, unfair competition and defamation per se under New York Law and a declaratory judgment that Plaintiffs’ Bellucci Pizza trademark

is validly registered with the United States Patent and Trademark Office (“USPTO”), based on Defendants’ unlawful use of Plaintiff’s registered Mark, “Bellucci Pizza” and continued use despite numerous cease and desist letters, and other willful, unlawful and misleading acts. Plaintiffs seek preliminary and permanent injunctive relief, damages, including punitive damages, attorneys’ fees and costs and such other relief as the Court deems appropriate.

### **STATEMENT OF FACTS**

1. Plaintiffs operate a pizza restaurant located at 29-04 30th Avenue, Astoria, NY 11102, called “Bellucci Pizza” which they opened on or around September 10, 2020.
2. Defendant Andrew Thierry Bellucci formerly worked for Plaintiffs as a pizza chef from on or around September 11, 2020 to in or around October 2021, during which time he fully transferred his commercial rights to the Bellucci name to Plaintiff Leo Dakmak and Bellucci Pizza Corp. and affirmed that Bellucci does not bear any relation to his own last name via written, notarized agreement dated December 3, 2020 (“Agreement”).
3. Plaintiffs own a federally registered trademark for the name “Bellucci Pizza”, Registration No. 6585235 (“Mark”) and own and use the domain name, <http://www.belluccipizza.com>.
4. Thierry quit working for Bellucci Pizza in or around October of 2021 and in or around late March/early April of 2022 opened up his own pizzeria called “Bellucci’s Pizzeria” located at 37-08 30th Avenue, Astoria, NY 11103, eight blocks away from Plaintiffs’ restaurant. Thierry also launched the website <http://belluccispizzeria.com> as well as various social media accounts using the Bellucci name to promote his rival pizzeria, all in

violation of the Agreement and Plaintiffs' trademark and other rights and in blatant disregard of multiple cease and desist letters sent by Plaintiffs' attorneys.

5. Upon information and belief, Bare Meats financially backed Thierry in opening his rival pizzeria, despite, upon information and belief, knowing about the binding Agreement.
6. Contemporaneously with opening their competing pizza restaurant, Defendants defamed Plaintiffs on Instagram which was republished by the press (full statement *infra*) and through the slogan "The Real Bellucci's" that they adopted and continue to use in their advertising on the Internet, over social media, in signage and on packaging, and have started a slanderous campaign using the slang term "fugazi" meaning fake, in reference to Plaintiffs and Bellucci Pizza, have disparaged Plaintiff's attorney Rimonda Dalloul's law firm on social media and, upon information and belief, engaged and/or caused others to make harassing phone calls to Plaintiffs and employ other intimidation tactics.
7. Due to the above, the Defendants have already and are likely to continue to cause consumer confusion with the Plaintiffs and their federally registered trademark in food and restaurant services and are in violation of several other state and federal laws.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(a) for the claims arising out of the violations of Sections 32 and Section 43 of the Lanham Act, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for the claims arising out of the violation of Sections 349, 350, and 360-1 of the New York Business Law, and all other claims arising under the common law of the State of New York; and has jurisdiction

pursuant to 28 U.S.C. §§ 1338(b) and 1367 for the claims under the common law of unfair competition.

9. This Court has personal jurisdiction over the Defendants because the goods and services that are the subject of this action were, and continue to be, sold and/or offered for sale to consumers in New York State, including in this Judicial District.
10. Venue is proper in this judicial district under 28 U.S.C. § 1391, as all parties reside or have a principal place of business in it and a substantial part of the events giving rise to the claims occurred there.

### **THE PARTIES**

11. The Plaintiffs have sold and/or offered its goods and services for sale in commerce in the State of New York, and in this Judicial District since on or around September 11, 2020.
12. Plaintiffs filed a trademark application with the United States Patent and Trademark Office (the “USPTO”) on March 6, 2021, in International Class 43 (“Pizza parlors; Restaurant and bar services, including restaurant carryout services; Restaurant services featuring pizza; Restaurant services, including sit-down service of food and take-out restaurant services; Take-out restaurant services”) based on its use in commerce under 1(A) of the Trademark Act.
13. On November 5, 2021, Plaintiffs’ Bellucci Pizza trademark application was published in the Official Gazette.
14. On December 7, 2021, the USPTO issued a Notice of Allowance and the Mark was registered on the Supplemental Register as U.S. Trademark Registration No. 6585235.

15. The Plaintiffs have continuously used the Mark on and in connection with the sale and advertising of a pizza at its store front and over its website using the domain name, <http://www.belluccipizza.com>, which they also own.

### **THE DEFENDANTS**

#### **Andrew Thierry Bellucci**

16. Defendant Andrew Thierry Bellucci (“Thierry”) is an individual with a last known address of 21-15 30<sup>th</sup> Avenue, Astoria, New York 11102.

17. Thierry is well known in the New York pizza scene, both as a chef and notorious character. However, Dakmak is from Lebanon and new to the pizza business and had thus never heard of Thierry before he met him.

18. Dakmak met Thierry when he searched online for a pizza chef on or around May 15, 2020 and came across a “Craig’s List” ad Thierry posted looking for work.

19. Dakmak responded and the two first met in person on around May 19, 2020 at the space that would become Bellucci Pizza. Thierry told Dakmak he had a cousin named “Chris” that wanted to partner with him in opening a pizzeria and that Dakmak should join them. No partnership was ever formed and Chris supposedly stopped returning Thierry’s calls.

20. On or around October 12, 2020, Dakmak hired Thierry to be a pizza chef for his pizza restaurant, a decision Thierry himself told Dakmak “was maybe the stupidest thing he’d ever do.” See <https://www.grubstreet.com/2022/04/bellucci-versus-bellucci-pizza-fight.html>.

21. At all times, Thierry worked for Plaintiffs as a W-2 employee. He was never a partner or officer or manager and had no position in the company other than being employed there, despite his claims to the contrary.
22. While Dakmak wanted to call the restaurant “Ricca Pizza” as it has sentimental value to his family, Thierry first suggested naming it “Pat and Joe’s” in reference to two famous, established New York pizza brands. Dakmak demurred and Thierry began lobbying him to incorporate Bellucci in the name and even suggested Dakmak have his lawyer draft an agreement to forego and assign any commercial rights Thierry may have in the Bellucci name for commercial purposes to Dakmak and his to be formed company Bellucci Pizza Corp.
23. On December 3, 2020, the parties memorialized that assignment, the aforementioned Agreement.
24. Relying on Thierry’s word and the Agreement, on September 11, 2020, Dakmak formed a New York corporation and named it Bellucci Pizza Corp.
25. On December 23, 2020, Plaintiffs opened Bellucci Pizza. Thierry worked in the kitchen.
26. In or around March of 2021, Dakmak notified Bellucci that he was going to apply for a federal trademark for the name “Bellucci Pizza”. Thierry approved the idea and even suggested Dakmak “patent” the “Vodka-roni”, a pizza pie Thierry created. Plaintiff Bellucci Corp. applied for the Mark on March 16, 2021.
27. On or around October 20, 2021, Dakmak confronted Thierry about repeated high charges on the company credit card and in response, Thierry quit.

28. On or around October 23, 2021, Thierry posted in the pizza-centric forum, “pizzamaking.com” that he had spent all his money on *his* pizza restaurant, referring to Bellucci Pizza. Dakmak confronted him about the misleading post and Thierry apologized.
29. Within days, Dakmak discovered he was locked out of the Bellucci Pizza Instagram account that Thierry had started on behalf of the restaurant.
30. Contemporaneously, disparaging posts started appearing on that Instagram account as well as implications that Bellucci Pizza was closing and hints that Thierry planned to open his own pizzeria under the Bellucci name.
31. Upon information and belief, it was Thierry who changed the Instagram password and published the disparaging posts and messages.
32. Dakmak contacted Instagram repeatedly to regain control of the account to no avail and he eventually had to open a new account under the name @belluccipizza.NY.
33. Meanwhile, Bellucci Corp. was granted federal registration of the Mark by the USPTO and was issued a Registration Certificate on December 7, 2021, with the registration number 6585235 assigned.
34. Dakmak retained the undersigned attorney Stephen Reich to send Thierry a cease and desist letter, which the Mr. Reich sent on January 20, 2022, demanding Thierry stop any plans he had to open a pizzeria using the Bellucci name and other demands.
35. Thierry ignored the letter and continued telling the press and posting on social media that he would be opening a Bellucci Pizzeria in Astoria. See <https://patch.com/new-york/astoria-long-island-city/dueling-belluccis-new-astoria-pizzeria-set-open-after-split>.

36. In or around February of 2022, the website <http://www.bellucispizza.com> appeared, advertising that it would be soon opening a physical shop called “Bellucci’s Pizzeria” with Andrew Bellucci as chef.
37. Thierry made good on that promise and opened Bellucci’s Pizzeria eight blocks from Plaintiff’s shop in Astoria in or around late March/early April of 2022, using the Bellucci name on the storefront and in various signage, packaging, advertisements and on social media, examples of which are provided herein. To this day, upon information and belief, he continues to incorporate images of pizza from Plaintiffs’ restaurant on his social media feeds, palming them off as his own.

#### **Bare Meats**

38. Bare Meats is a New York Corporation that runs the “Butchr Bar” restaurant in Astoria, Queens. Its principal office is located at c/o Butchr Bar, 37-08 30th Ave, Astoria, NY, United States, 11103 and lists its Chief Executive Officer as Helen Katakis. Upon information and belief, Helen Katakis is related to Matthew Katakis, who admitted to backing Thierry in the press. See the following quote in <https://www.grubstreet.com/2022/04/bellucci-versus-bellucci-pizza-fight.html>: “Matthew Katakis, another Astoria restaurateur who owns Butcher Bar, a few blocks away on 30th Avenue. In Bellucci, Katakis saw a hard-luck case. “He’s never had somebody help him,” Katakis posts. “He’s been trampled on a couple times in his life.” Vendor receipts also list Bare Meats as payee for Bellucci’s Pizzeria.



39. On April 20, 2022, Dakmak's other lawyer, Rimonda Dalloul, Esq. sent a separate cease and desist letter to Mrs. Katakis, restating the facts and included the Mr. Reich's previous letter sent to Thierry as well as ample evidence of infringement and other unlawful acts.
40. Shortly thereafter, Thierry published a post on Instagram disparaging Ms. Dalloul's law firm.
41. Around the same time, Dakmak received numerous threatening voicemails from an individual warning him to stop interfering with Bellucci Pizzeria and Thierry.
42. With some sleuthing, Dakmak tracked down an individual named Neofitis Stefanides, a doctor who runs an orthopedics practice in Astoria as the caller. When Dakmak confronted him over the phone, Stefanides ominously asked if "he thought he was a tough guy?" and then hung up.
43. In response, Dakmak left a bad review on Stefanides's Google business webpage, stating that Stefanides had threatened him.
44. Dakmak then received a call from Matthew Katakis, who told him Stefanides was an investor in Bellucci's Pizzeria and threatened to sue Dakmak and his pizza business.
45. In or around April through May of 2022, Plaintiffs have received numerous inquiries from customers and web listing agencies asking if the dueling pizzerias are related, including one such agency that informed Dakmak that someone had been trying to change and/or remove the address of Bellucci Pizza Corp.
46. On May 13, 2022, Pina M. Campagna, a partner in the Carter, Deluca & Farrell, LLP law firm, responded to Ms. Dalloul's letter, stating that they were investigating the allegations against their client Bare Meats.

47. On May 16, 2022, Ms. Dalloul emailed Bare Meats' firm, alerting them to Thierry's repeated disparagement of her law practice and demanded that they get him to stop. They did not respond.

48. Both Bare Meats and Thierry continue to engage in the unlawful and unauthorized use of the Bellucci name and infringement of the Mark on their website and at their pizzeria.

Below see a comparison table of each party's use of the Bellucci name in trade.





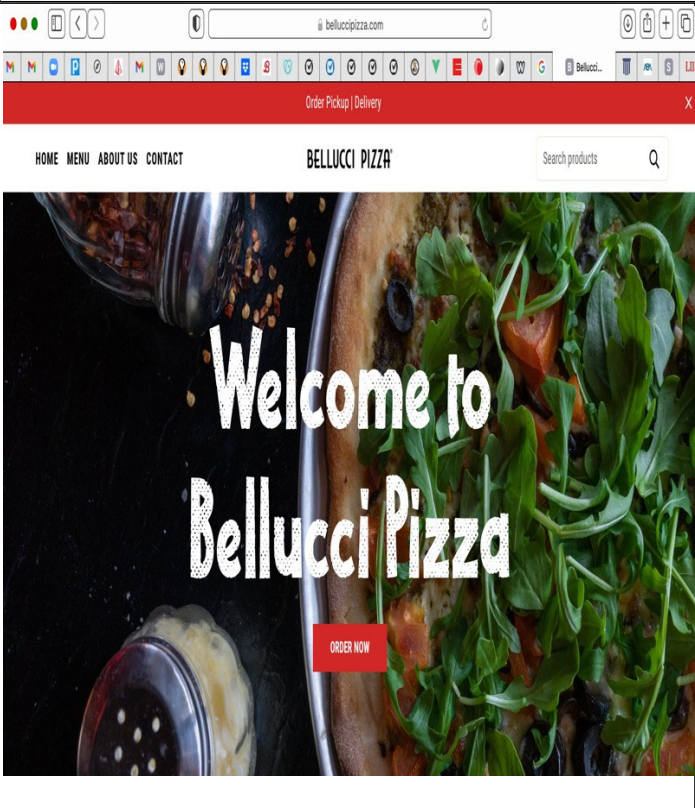
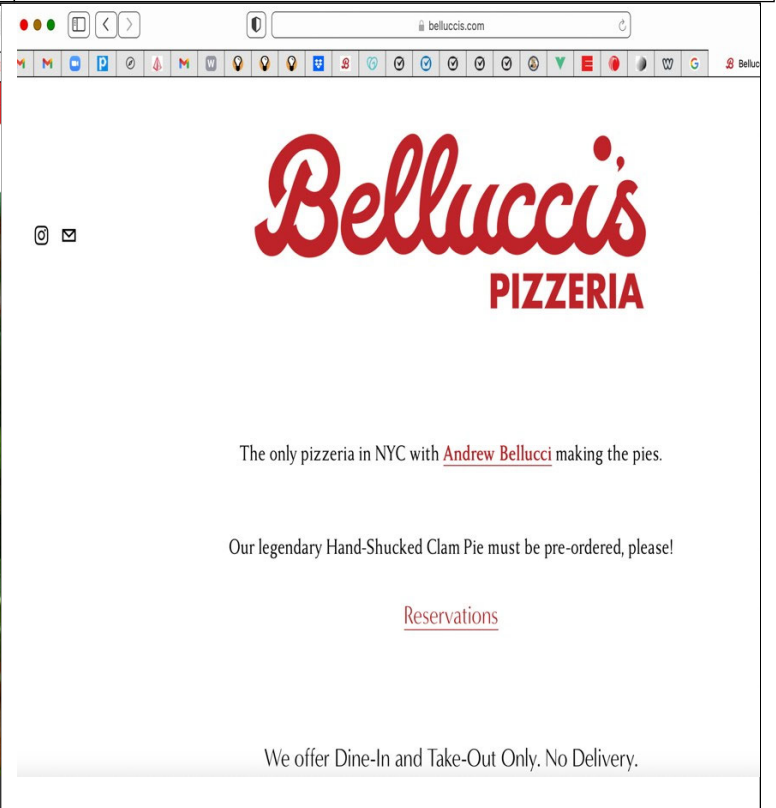
See also the below photograph from the Grub Street article published on April 27, 2022, at <https://www.grubstreet.com/2022/04/bellucci-versus-bellucci-pizza-fight.html>, with Defendants' store front on the left, Plaintiffs' on the right.



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See side by side of Plaintiffs' and Defendants' website homepages:

Plaintiffs' site: <a href="http://www.belluccipizza.com">http://www.belluccipizza.com</a>	Defendants' site: <a href="http://www.belluccis.com">http://www.belluccis.com</a>
	

49. There is also evidence of actual confusion from customers trying to order pizza from one place only to learn they ordered it from the other and Plaintiffs have already been personally damaged by such confusion in the form of cancelled orders and bad online reviews, which, upon information and belief, are part of a coordinated smear campaign by Defendants.

Furthermore, user searches for “Bellucci Pizza” in search engines such as Google bring users to stories and information about both the Plaintiffs and the Defendants, as well as Defendants’ website, <http://www.belluccispizza.com> as well as to links and numerous news articles about the parties’ dispute. Not coincidentally, Plaintiffs’ sales are down 30-40% in the months since Defendants started unlawfully competing and committing other bad acts towards Plaintiffs described herein.

50. The Defendants have refused to respect the Plaintiffs’ rights, despite repeated demands from the Plaintiffs from the beginning of 2022.

51. Then, on May 23, 2022, the undersigned attorney received a letter from Dyan Finguerra-DuCharme of the Pryor Cashman law firm denying any wrongdoing and making counter allegations against Plaintiffs, including that the Mark was improperly registered without Thierry’s consent.

52. Therefore, this is an action for trademark infringement and false designation brought pursuant to Sections 32, 43(a) and 43(d) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and (d); and causes of action under Sections 349, 350, and 360-1 of the New York General Business Law, and for other violations of the New York State common law as well as seeking a declaratory judgment of the validity of the Bellucci Pizza trademark.

53. The Defendants’ misuse of the Bellucci Pizza Mark, in connection with unauthorized sale of pizza and food services, including those sold through their Infringing Website, has

54. injured the Plaintiffs' reputation and goodwill.

55. Unless enjoined, the Defendants' conduct will continue to injure both Plaintiffs and the public.

### **FIRST CLAIM FOR RELIEF**

#### **Federal Trademark Infringement in Violation of Section 32 of the Lanham Act (15 U.S.C. § 1114)**

56. The Plaintiffs hereby repeat each and every allegation set forth in paragraphs 1 to 55 above as if fully set forth herein.

57. Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a), prohibits any person from using in commerce, without the consent of the registrant:

“any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . .”

58. The Mark is federally registered and Plaintiffs have used it in commerce from as early as 2020.

59. The Plaintiffs have not authorized the Defendants' use of the Mark.

60. The Defendants' unauthorized use of the Mark on or in connection with the advertising and sale of goods and services constitutes the use of Plaintiffs' registered Mark in commerce.

61. The Defendants' unauthorized use of the Mark has already and is likely to further cause confusion, mistake, or deception; cause the public to believe that the Defendants' products emanate or originate from Plaintiffs when they do not, or that the Plaintiffs have authorized, sponsored, approved or otherwise associated itself with the Defendants or their competing pizza business bearing the Mark.

62. The Defendants' unauthorized use of the Mark has resulted in the Defendants unfairly and illegally benefitting from the Plaintiffs' goodwill.
63. This conduct has caused substantial and irreparable injury to the public, to Leo Dakmak and Bellucci Pizza Corp., to the Mark and the substantial goodwill represented thereby.
64. Accordingly, the Defendants have engaged in trademark infringement in violation of 15 U.S.C. § 1114.
65. The Defendants' acts have caused, and will continue to cause, irreparable injury to the Plaintiffs.
66. The Plaintiffs have no adequate remedy at law and are thus entitled to damages in an amount yet to be determined.
67. The Defendants' egregious conduct in repeatedly selling infringing pizza goods and services bearing unauthorized use of the Mark, is willful and intentional and in light of the totality of the circumstances described herein, this constitutes an exceptional case, entitling Plaintiffs to an award of their attorneys' fees and costs.

## **SECOND CAUSE OF ACTION**

### **False Designation of Origin in Violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a))**

68. Plaintiffs hereby repeats each and every allegation set forth in paragraphs 1 to 67 above as if fully set forth herein.
69. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) provides, in relevant part, that: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—(1)(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such

person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

70. By making unauthorized use, in interstate commerce, of the Mark, Defendants have used a “false designation of origin” that is likely to cause confusion, mistake or deception as to the affiliation or connection of the Defendants with Plaintiffs and as to the origin, sponsorship, association or approval of the Defendants’ services and goods by Plaintiffs, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
71. The Defendants’ acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent the Defendants’ services as those of Plaintiffs, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
72. The Defendants’ wrongful acts will continue unless and until enjoined by this Court.
73. The Defendants’ acts have caused and will continue to cause irreparable injury to the Plaintiffs.
74. The Plaintiffs have no adequate remedy at law and have been damaged in amount yet to be determined.
75. The Defendants’ egregious conduct in selling infringing goods and services is willful and intentional.



### THIRD CLAIM FOR RELIEF

#### **Deceptive Acts and Practices Unlawful in Violation of the New York General Business Law (N.Y. Gen. Bus. Law §§ 349 and 350 and 360-L)**

76. Plaintiffs hereby repeat each and every allegation set forth in paragraphs 1 to 75 above as if fully set forth herein.

77. New York General Business Law, Section 349 states, in relevant part, that: “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

78. Through their advertisements, distribution, offers to sell and sale of unauthorized goods and services bearing the Mark, the Defendants have engaged in consumer-oriented conduct that has affected the public interest of New York and has resulted in injury to consumers in New York.

79. Section 350 of the New York General Business Law states that “False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

80. The Defendants’ deceptive acts or practices, as described herein, are materially misleading. Such acts or practices have deceived or have a tendency to deceive a material segment of the public to whom the Defendants have directed their marketing activities, and Plaintiffs have been injured thereby.

81. Section 360\_L of the New York General Business Law states that:

“Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.”

82. Defendants unlawful and unauthorized use of the Bellucci name in commerce infringes upon and dilutes Plaintiffs' Mark and otherwise injures their business reputation as they are using the identical name in the same area of industry and the parties directly compete with one another in the pizza food and service industry.

83. By the acts described above, the Defendants have willfully engaged in deceptive acts or practices in the conduct of business and furnishing of services in violation of Sections 349 and 350 and 360-L of the New York General Business Law.

84. The Defendants' acts have caused, and will continue to cause, irreparable injury to Plaintiffs. The Plaintiffs have no adequate remedy at law and have been damaged in an amount yet to be determined.

**FOURTH CLAIM FOR RELIEF**  
**Trademark Infringement in Violation of New York State Common La**

85. Plaintiffs hereby repeats each and every allegation set forth in paragraphs 1 to 84 above as if fully set forth herein.

86. The Plaintiff owns all right, title and interest in and to the Mark as described above, including all common law rights in therein.

87. The goods and services sold by the Defendants incorporate imitations of Plaintiffs' common law trademark rights in the Bellucci name.

88. The Defendants' use of the Bellucci name and trademark is unauthorized and is likely to cause consumer confusion.

89. By the acts described above, the Defendants have engaged in trademark infringement in violation of the common law of the State of New York.

90. The Defendants' acts have caused, and will continue to cause, irreparable injury to Plaintiffs. The Plaintiffs have no adequate remedy at law and have been damaged in an amount yet to be determined

**FIFTH CLAIM FOR RELIEF**

**Unfair Competition in Violation of the New York Common Law**

91. Plaintiffs hereby repeat each and every allegation set forth in paragraphs 1 to 90 above as if fully set forth herein.
92. The Defendants have palmed off their goods and services as Plaintiffs', improperly trading upon the Plaintiffs' goodwill and valuable rights in and to the Mark and Bellucci name.
93. The Defendants have committed the above alleged acts willfully, and in conscious disregard of Plaintiffs' rights, and Plaintiffs are therefore entitled to exemplary and punitive damages pursuant to the common law of the State of New York in an amount sufficient to punish, deter and make an example of the Defendants.
94. By the acts described above, the Defendants have engaged in unfair competition in violation of the common law of the State of New York.
95. The Defendants' acts have caused and will continue to cause irreparable injury to Plaintiffs. The Plaintiffs have no adequate remedy at law and have been damaged in an amount yet to be determined.

**SIXTH CLAIM OF ACTION**

**Breach of Contract**

96. Plaintiffs hereby repeat each and every allegation set forth in paragraphs 1 to 95 above as if fully set forth herein.
97. Plaintiffs and Defendant Thierry entered into a binding agreement called a "Release Form—Authorization to use the Bellucci Name" on December 3, 2020, supported by

good and valuable consideration, where Thierry transferred all of his rights to the Bellucci name to Dakmak (“Agreement”).

98. Plaintiffs performed their obligations under the Agreement.

99. By using the Bellucci name in trade without authorization from Dakmak, Thierry breached the Agreement.

100. Plaintiffs have been damaged by that breach in an amount yet to be determined.

## **SEVENTH CLAIM OF ACTION**

### **Defamation Per Se**

101. Plaintiffs hereby repeat each and every allegation set forth in paragraphs 1 to 100 above as if fully set forth herein.

102. Defendant Thierry has repeatedly disparaged Plaintiffs in the press and on social media, including making the below false and injurious statement on Instagram in or around October of 2021: “I’ve decided to [sic] it a wrap at Bellucci Pizza Astoria. My business partner & I have different visions for the future. I’m slow & deliberate in every step of my process. My first concern —always — is making the best pizza I can with the finest ingredients available. Cutting corners to maximize profits is not, nor ever will be, part of my vision,” (“Instagram Statement”).

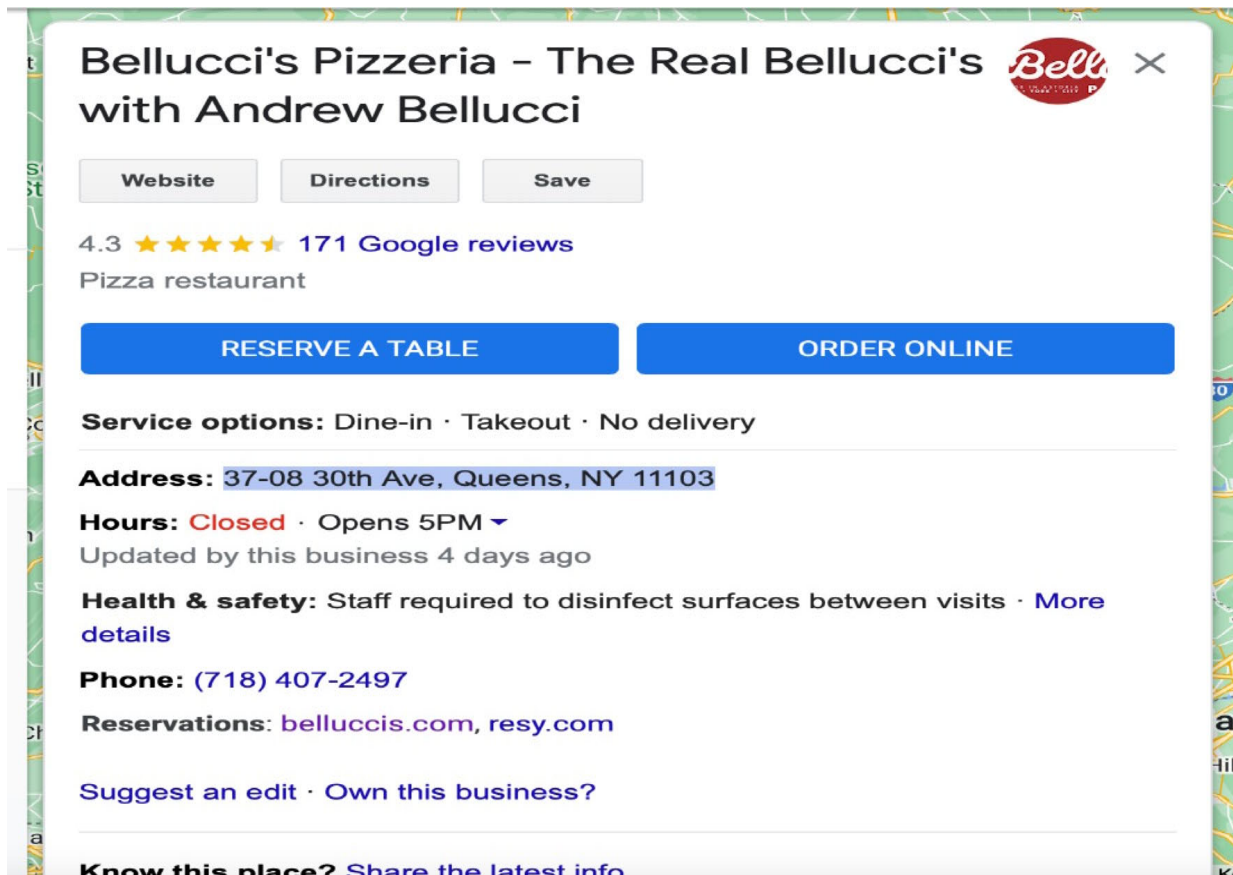
103. The Instagram Statement falsely claims that Thierry and Plaintiffs were business partners, that Plaintiffs “cut corners” and put profits ahead of the quality of their pizza and customers. The Instagram Statement is believable to the average reader by the fact that Thierry worked for Bellucci Pizza, compounded by the lie that he was a partner, and would thus have knowledge of Plaintiffs’ business practices.

104. The Instagram Statement concerns Plaintiffs' business and ply in trade and upon information and belief, it remains in circulation and lives on in the press. See

<https://patch.com/new-york/astoria-long-island-city/belluccis-pizza-close-over-business-dispute-owner-says>.

105. Plaintiffs have been damaged by the Instagram statement in an amount yet to be determined.

106. Bare Meats and Thierry both also defamed Plaintiffs on the Internet with their slogan "The Real Bellucci's", pictured in a Google advertisement below:



107. The slogan is defamatory because it falsely hails Bellucci's Pizzeria as the "real Bellucci's" thereby designating Plaintiffs' restaurant Bellucci Pizza as fake or unoriginal when in fact Bellucci Pizza came first.
108. The defamatory slogan relates to Plaintiffs' business and ply in trade.
109. Defendants use the defamatory slogan in a variety of mediums, including but not limited to Google Ads, Instagram and the food application, "Toast". See <https://www.instagram.com/therealbelluccis/> and <https://www.toasttab.com/local/belluccis-pizzeria-37-08-30th-ave/r-678f3173-31eb-44ee-b5f9-c21dfb29035d>.
110. Plaintiffs have no remedy at law and have been damaged by the defamatory slogan in an amount yet to be determined.
111. Defendants have also started a social media campaign with the hashtag #FtheFUGAZI and FUGAZI in reference to Plaintiffs, which is a slang term for fake. See <https://www.dictionary.com/e/slang/fugazi/>.
112. This campaign is intended to put in the mind of the consumer the falsehood that Defendants' pizzeria is the true and original Bellucci Pizza when they are fully aware that Plaintiffs' Bellucci Pizza restaurant came first.
113. Plaintiffs have no remedy at law and have been damaged by the defamatory campaign in an amount yet to be determined.

## **EIGHTH CAUSE OF ACTION**

### **Declaratory Judgment (28 U.S.C. Sec. 2201 et seq.)**

114. Plaintiffs hereby repeats each and every allegation set forth in paragraphs 1 to 113 above as if fully set forth herein.
115. The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its jurisdiction...any court of the United States...may declare the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought.” (28 U.S.C. Sec 2201(a))
116. Plaintiffs registered the trademark Bellucci Pizza with the USPTO on the Supplemental Register on December 7, 2021 (“Mark”). The registration number is 6585235.
117. Plaintiffs relied on the Agreement transferring commercial rights in the Bellucci name to them as assurance that Thierry would not contest the Mark, as wells as Thierry’s oral consent (*supra*).
118. Defendants never once objected to or opposed registration of the Mark until they did so through their attorney by letter on May 23, 2022, after they had been put on notice by numerous times by Plaintiffs that they were infringing on the Mark.
119. In that letter, Defendants have taken the position that Plaintiffs’ registration is invalid because Bellucci is Thierry’s name, which requires consent to be filed with the USPTO during the application process.
120. Defendants also alleged in their letter that the Mark registration listed first use anywhere date of 2010 also serves to somehow compromise or invalidate the registration.
121. Plaintiffs contend that neither issue affects the validity of the Mark and their ownership rights over it.

122. First, as Plaintiffs already named their corporation Bellucci Pizza Corp. and owned the Bellucci name by virtue of the Agreement, there was no need to take any additional steps and the USPTO, upon seeing that the owner's name and the Mark were the same, rightly assumed the Bellucci name belonged to the applicant, Bellucci Pizza Corp.
123. Second, any errors alleged by Plaintiffs (if any) on the trademark application were not material and, if known, would not have caused the USPTO examiner to deny registration. Plus, they are correctable under the Trademark Act.
124. At all relevant times in seeking registration of the Mark and to present day, Plaintiffs have acted in good faith and any application errors they made, if any, were unintentional, immaterial and without malicious or injurious intent, towards Defendants or anyone else.
125. Accordingly, an actual controversy exists between the Parties as to which this Court may declare the rights and other legal relations of any interested party seeking such declaration.
126. Plaintiffs seek a declaratory judgment that their federally registered trademark "Bellucci Pizza" is validly registered and owned exclusively by them and not subject to cancellation or other interference by Defendants and prevents them from taking any steps to do so.

## **NINTH CAUSE OF ACTION**

### **Unjust Enrichment**

127. Plaintiffs hereby repeats each and every allegation set forth in paragraphs 1 to 126 above as if fully set forth herein.



128. Through their unlawful acts and misdeeds described herein, Defendants have been unjustly enriched in amount yet to be determined and at Plaintiffs' expense.

129. The nature and extent of the harm Plaintiffs' have suffered and continue to suffer at Defendants' hands, it is against equity and good conscience to permit Defendants to retain any financial benefits they may have obtained as a result.

130. Furthermore, the Thierry had a close relationship—employer/employee--- with Plaintiffs and is intimately familiar with their business practices.

131. Bare Meats knew or should have known about the Agreement Bellucci made with Plaintiffs assigning his commercial rights to his name to Dakmak and his full renunciation of the name therein (see Exhibit B), upon which, Dakmak relied on in granting Thierry's wish to name the restaurant Bellucci Pizza and registering the trademark Bellucci Pizza.

132. Plaintiffs' reliance proved detrimental when Defendants turned around and opened Bellucci's Pizzeria eight blocks away and Plaintiffs have suffered and continue to suffer immeasurable harm while Defendants rake in the profits, upon information and belief, in no small part due to the press this dispute has already received and the inflammatory social media posts, defamatory statements and other unfair business practices Defendants have engaged in.

## **TENTH CAUSE OF ACTION**

### **Tortious Interference with Contractual Relations**

133. Plaintiffs hereby repeats each and every allegation set forth in paragraphs 1 to 132 above as if fully set forth herein.

134. Upon information and belief, Defendant Bare Meats knew about the binding Agreement Thierry made assigning all commercial rights to the Bellucci name to Dakmak and his renunciation of it when they, upon further information and belief, financed his new restaurant using the Bellucci name.
135. Determined to launch a new pizzeria using the Bellucci name, Bare Meats, upon information and belief, instructed or otherwise facilitated Thierry breaching the Agreement by using the Bellucci name in commerce by opening a rival pizzeria blocks away without Plaintiffs' consent and without justification.
136. Plaintiffs have been financially damaged by the breach in an amount yet to be determined.

#### **ELEVENTH CAUSE OF ACTION**

##### **Breach of the Covenant of Good Faith and Fair Dealing**

137. The Parties voluntarily entered into the Agreement.
138. Beyond the Agreement's express terms, it was implied therein that Defendants would not open a rival pizzeria using the same or even a similar name to Bellucci.
139. Plaintiffs relied on the Agreement to create a company under the Bellucci name, open a pizza restaurant under the Bellucci name and register a trademark under the Bellucci name
140. Defendants acted in bad faith and deprived the Plaintiffs of their right to receive their benefits under the Agreement by turning around and opening a competing pizzeria with the Bellucci name only eight blocks away and have, upon information and belief, engaged in a smear campaign to further damage Plaintiffs' business and reputation

141. Plaintiffs have no adequate remedy at law and have been damaged in amount yet to be determined.

**PRAYER FOR RELIEF WHEREFORE**, the Plaintiff prays:

1. For a **FINAL JUDGMENT** that:

- a. The Defendants have engaged in trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114;
- b. The Defendants have violated Section 43(a) and (d) of the Lanham Act, 15 U.S.C. § 1125(a);
- c. The Defendants have engaged in deceptive acts and practices unlawful in violation of Sections 349 and 350 and 360-L of the New York General Business Law;
- d. The Defendants have engaged in trademark infringement in violation of the common law of the State of New York;
- e. The Defendants have engaged in unfair competition in violation of the common law of the State of New York;
- f. The Defendants breached the Agreement with Plaintiffs;
- g. The Defendants intentionally interfered with Plaintiff's contractual relations in violation of the common law of the State of New York;
- h. The Defendants have been unjustly enriched through their bad acts and at Plaintiffs' expense under the common law of the State of New York;
- i. The Defendants defamed Plaintiffs per se under the common law of the State of New York;

- j. The Defendants breached the implied covenant of good faith and fair dealing under the common law of the state of New York; and
  - k. that the above acts were done willfully, and/or intentionally.
2. For an entry of a declaratory judgment that Plaintiffs' Mark is validly registered and that it is not subject to challenge or interference by Defendants and prevents them from taking any such steps.
3. For entry of an **ORDER** preliminarily and permanently enjoining and restraining the Defendants, and their officers, agents, servants, employees and attorneys and all those in active concert or participation with any of them, from:
- a. Using any reproduction, copy or colorable imitation of the Bellucci Pizza trademark, (as defined herein) for and in connection with any goods or their packaging or services not authorized by Plaintiffs;
  - b. Engaging in any course of conduct likely to cause confusion, deception or mistake, or to injure Plaintiffs' business reputation or profit off of Plaintiffs' good will,
  - c. Using any false description or representation, including words or other symbols tending falsely to describe or represent Defendants' unauthorized goods or their packaging as being those of Bellucci Pizza, or sponsored by or associated with Plaintiffs, and from offering such goods and services into commerce;
  - d. Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which may or is likely to lead the trade or public, or individual members thereof, to believe that any services provided or goods made, distributed, or sold by the Defendants are in any manner associated or connected

with Plaintiffs, or are sold, made, licensed, sponsored, approved or authorized by Plaintiffs;

- e. Effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in any Final Judgment or Order in this action; and
- f. Defaming or otherwise publishing false statements regarding Plaintiffs and to remove from circulation any such false statements including but not limited to those described herein, from all forms of media anywhere in the world.

4. For an entry of an **ORDER** transferring to Plaintiffs' control or canceling at Plaintiffs' election, the Infringing Domain Name and any other domain names and social media accounts used by the Defendants to engage in unauthorized activities, so they may no longer be used for unauthorized purposes and that upon Plaintiffs' request, the Internet Registries shall take all actions necessary to ensure that the Infringing Domain Name, other domain names and social media accounts be transferred and or disabled accordingly.

5. For entry of an **ORDER** requiring the Defendants to disseminate corrective advertisements in a form approved by the Court to acknowledge their violations of the law hereunder, and to ameliorate the false and deceptive impressions produced by such violations.

6. For all such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products or associated packaging of goods or advertisement of services, sold or otherwise circulated or promoted by the Defendants are authorized by Plaintiffs or related in any way to Plaintiffs' goods and services.

7. For an assessment of the **ACTUAL DAMAGES** suffered by Plaintiffs, trebled, and an award of all profits that Defendants have derived from using the Bellucci Pizza Mark, as well as costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117 as well as under applicable state law.

8. For **COSTS OF SUIT**, including reasonable attorneys' fees and costs and punitive damages in an amount the Court deems appropriate to punish Defendants for their wanton and willful misconduct and to deter others from engaging in same and for such other and further relief as the Court shall deem appropriate.

**JURY TRIAL DEMAND**

PURSUANT TO RULE 38B OF THE FEDERAL RULES OF CIVIL PROCEDURE, THE PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL TRIABLE ISSUES RAISED BY THIS COMPLAINT.

Dated: June 21, 2022

Respectfully Submitted by:



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and

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*Attorneys for Plaintiffs*

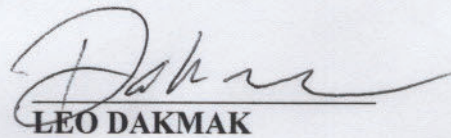
**VERIFICATION**

Leo Dakmak, owner of BELLUCCI PIZZA CORP, being duly sworn, deposes and says:

That I am Plaintiff in this action; that I have read the foregoing Complaint and knows the contents thereof and it is true of my own knowledge except as to those matters which are herein stated to be alleged upon information and belief and as to those matters I believe them to be true of my own knowledge.

The undersigned affirms that the foregoing statement is true, under the penalty of perjury.

Dated: June 15, 2022  
Brooklyn, NY

  
LEO DAKMAK

Sworn to before me this  
15<sup>th</sup> day of June, 2022

  
NOTARY PUBLIC

SWORN BEFORE ME on this  
17<sup>th</sup> DAY OF June 2022

M CARMELLE JEAN FRANCOIS  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01JE6224432  
Qualified in Queens County  
Commission Expires July 6, 2022