

UnhappyFranchisee.Com

6/13/17

The Disciplinary Board of the Supreme Court of Pennsylvania

District 1 Office

1601 Market Street

Suite 3320

Philadelphia, PA 19103-2337

RE: Attorney #34636 Craig Tractenberg, Partner, Fox Rothschild LLP

Dear Disciplinary Board Members:

I would like to submit this formal complaint against attorney Craig Tractenberg, partner at the Philadelphia-based law firm Fox Rothschild LLP. I am currently under a threat from him that I feel is unconscionable, illegal, unethical and worthy of the strongest disciplinary action you deem appropriate. I believe that the arrogance and bullying by attorneys like Craig Tractenberg is putting the reputation of all attorneys at risk, and is a direct attack on the constitutional premise that free speech is the right of all Americans, not just those with the deepest pockets and nastiest lawyers.

My name is Sean Kelly. I'm a non-lawyer, a private citizen residing in Lancaster, PA. I am a 25+ year veteran of the franchise industry, having been VP of an international consulting firm, Director of Marketing of Auntie Anne's Soft Pretzels, and founder of the award-winning franchise marketing firm, *IdeaFarm*. I am also an industry writer, speaker and have been certified as an expert witness in franchise litigation cases.

For ten years I have published UnhappyFranchisee.Com, a website that has generated more than 20,000 comments on more than 400 franchise concepts. Franchise owners, franchise company employees, and franchisors can post their opinions and experiences on franchise issues and companies either under their real names or anonymously. Whenever possible, I contact companies or individuals discussed on the site and invite them to provide corrections, clarifications, rebuttals or alternative viewpoints. They may participate by commenting directly in the discussion portion of the site, or by emailing me their statements for publication which I will post with the same prominence as the original complaints.

My goal has always been to stimulate conversations that include all sides of an issue so readers can make up their own minds.

Sellers of dubious franchise opportunities have gone to extraordinary lengths to try to force me to remove unflattering opinions and warnings about their franchises. I have been threatened, defamed, bullied, hacked, and, on two occasions, sued. I have prevailed in each case. The largest challenge was a \$35M lawsuit that was ruled to be a SLAPP (Strategic Lawsuit Against Public Participation) by a California judge. He declared that my site provides a valuable service in the public interest and awarded me attorney's fees and court costs under the CA anti-SLAPP law.

(I have submitted a letter in support of Pennsylvania Rep. Farnese' bill for similar legislation for PA, which has passed the Senate and is currently before the House).

While I have been threatened by marginal franchisors and their marginal attorneys before, I believe that the reputable franchise attorneys from reputable firms have wisely advised their clients against attacking me because of the protection afforded web publishers under Section 230 of Title 47 of the United States Code (47 USC § 230).

Craig Tractenberg is the first of the so-called reputable franchise attorneys to attempt to force me to take down unflattering content about a client.

Craig Tractenberg is Threatening to Spread Damaging (and False) Information About Me If I Don't Meet His Demands.

On Wednesday, May 24, 2017, I posted complaints I had received from School of Rock franchise owners. I contacted executives from both the School of Rock and its private equity parent Sterling Partners to invite a response, correction, clarification, rebuttal. Franchise owners continued to post more and more complaints, many of them centered on CEO Dzana Homan and the tyrannical management and bullying that franchisees claim they are being subjected to. Franchisees were deathly afraid of their identities being exposed, as they said they would be targeted and have their stores taken away.

I continued to contact the company to offer to share their side of the story. Friday, June 2, I emailed Sterling Partners' Rick Elfman and requested a phone interview. I received no response.

On Tuesday, June 6, 2017, shortly before noon I received an out-of-the-blue, unscheduled phone call from attorney Craig Tractenberg. He said that he represented School of Rock and CEO Dzana Homan. He also mentioned that he represented other franchisors discussed on my site, including Nick Papanier Sr. of Primohoagies.

Craig Tractenberg said that his client, School of Rock, demanded that all mention of their company be removed from UnhappyFranchisee.Com. He stated that he had done extensive research on me and had compiled damaging personal information about my financial history, bankruptcy, litigation and my divorce history. If I did not remove this information as he and his clients demand, the information will be distributed and promoted publicly and will cause great damage to my reputation.

When I asked what relevance my divorce records were to the School of Rock dispute, he said “Just wait and see when they’re made public.” When I stated that I’ve been married to the same woman for 36 years and never been divorced, he got momentarily flustered and said “So we had the wrong Sean Kelly. There are lots of Sean Kellys.”

I asked Mr. Tractenberg if threatening an unrepresented person with smearing his reputation if demands weren’t met wasn’t a violation of legal ethics. He stated flatly, no, it isn’t. I said I’m pretty sure it’s the very definition of extortion.

Then Tractenberg went back into attack mode.

In addition to the public smear campaign, he also threatened to crush me with a major lawsuit. When I mentioned Section 230, he stated that, because I had quoted from or edited comments I would not be protected under Section 230. He said something to the effect of “That’s where you screwed up!”

When I mentioned winning the SLAPP suit in California, he stated “We’re not in California.” (Though his client is headquartered in California).

When I mentioned I had prevailed in a \$30,000 lawsuit against me, he bragged “\$30,000? I’ve got almost that much in this already!”

Mr. Tractenberg stated that he had proof, in writing, that I had encouraged School of Rock franchise owners to stop paying their royalties and advertising fees (he called it a “Royalty Strike”). I told Mr. Tractenberg that he couldn’t possibly have what he claims because I would never encourage withholding royalties. It’s well-known in franchise litigation circles that franchisee attorneys warn franchisees not to withhold royalties as it puts them at a legal disadvantage.

In fact, I received an email from a supposed franchisee who had mentioned that a group had decided to withhold royalties. I wrote back to the supposed franchisee that I’m not an attorney but he should check with a franchisee attorney before doing that since I’ve read it’s a bad idea. I sent a link to an article warning against royalty strikes. I now suspect that email may have been an attempt to entrap me into endorsing a royalty strike, and Mr. Tractenberg still made the untrue allegation despite the fact I didn’t fall for it.

Craig Tractenberg violated the ethical prohibitions against making false statements, making extortion-like threats and threats of defamation.

Craig Tractenberg made a number of false statements of fact:

He stated that he had my divorce records. I have never been divorced.

He stated that he had written proof that I recommended a royalty strike. No such document exists.

He stated that the Code of Conduct for attorneys does not prohibit making extortion-like threats against an unrepresented non-attorney. I don’t believe that’s true.

He threatened to go through with his threat to spread these false statements to my detriment if I do not meet these demands.

Today, it's been a week since Mr. Tractenberg's threatening call. Despite the fact that I called his bluff and published the content of his threats, I have not received a retraction or an apology from either Mr. Tractenberg or his clients.

Why would Craig Tractenberg make such an outrageous and illegal threat?

I have been puzzled as to why Craig Tractenberg and his clients would choose such heavy-handed and misguided tactics to bully me. I don't have any good skeletons in my closet.

I've never been arrested, had no DUIs, never been divorced, no child support payments.

I had a bankruptcy 10 years ago, but that was disclosed publicly two lawsuits ago to no effect.

Then I remembered my wife's joke that I have an evil twin out there. There is another Sean Kelly who lives in our area. Every few years I get calls from the hospital or collection agencies over his unpaid bills. Once I got a call from the state police about an abandoned auto. Someone once posted his DUI records to the site thinking they were mine.

There's a very real possibility that Craig Tractenberg dug up a bunch of dirt on another Sean Kelly and gleefully told his client that he had damaging goods on me. That would explain him boasting that he had my divorce records when I've never been divorced.

Craig Tractenberg is putting his clients at risk as well.

So perhaps Craig Tractenberg ran up \$30,000 in billings and told his private equity client Sterling Partners that he had dug up all kinds of embarrassing dirt on this scumbag Sean Kelly, and they gave him the go-ahead with the sure-fire extortion demands. *Only they had the wrong Sean Kelly.*

Craig Tractenberg's threatening phone call to me and his reluctance to retract the threat or apologize will likely generate 10-15 additional blog posts and will likely result in widespread negative press for both School of Rock and Sterling Partners. An attorney friend told me that Tractenberg definitely created exposure for a possible defamation suit against his clients.

This is not the first time Craig Tractenberg threatened UnhappyFranchisee.Com to the detriment of his client.

In 2014, Craig Tractenberg demanded that I remove content regarding his client Nick Papanier, Sr., who had been convicted of tax evasion and sentenced to prison. Instead of acquiescing to Mr. Tractenberg's threats, I publicly refused and posted statements from a U.S. attorney refuting Tractenberg's statements. Craig Tractenberg arrogantly called the U.S. attorney "reckless," and made several statements that were easily disproved by the court record. Tractenberg's threats provided no benefit to his client and, in fact, earned them more negative publicity.

I would urge you to send a message to Craig Tractenberg, in the strongest way possible, that attorneys are not above the law and that using extra-legal extortion-like threats against an unrepresented third party is a violation of legal ethics and the law.

I am willing to swear under oath that the representations contained in this complaint are true and accurate to the best of my knowledge. I am available to answer questions, provide supporting documents, and assist you in your investigation in any way possible.

Thank you for your attention to this matter.

Sean Kelly

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