

July 13, 2023

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VIA FEDERAL EXPRESS & ELECTRONIC MAIL

Sean Kelly
Relentless, Inc.
2221 New Holland Pike
Lancaster, Pennsylvania 17601
E-mail: unhappyfranchisee@gmail.com

Re: Posts Regarding PIRTEK USA, LLC

Dear Mr. Kelly:

This acknowledges receipt of your July 10, 2023 letter. Many of the defamatory and disparaging statements posted on your website are identified in PIRTEK's Motion for Summary Judgment filed in the Lager bankruptcy proceedings, at pages 15-18, 22-24 and 28-29 of the motion, excerpts of which are attached. Additional such posts are identified as Exhibit 2-4 hereto. In light of your letter's offer, we expect that all of these statements will be removed.

I know nothing about the prior cases referenced in your letter, nor are they (or Barbra Streisand) relevant. Your defamatory and disparaging posts in this matter stem from your role as a paid marketing agent for Lager, with a financial stake in the outcome of the litigation. Your publications are a part of an attempt to extort a settlement to your personal economic advantage.

Additionally, there is nothing in my letter to you that is defamatory. And, the fact that you have republished the letter on your website belies your assertion.

We await confirmation that your defamatory and disparaging publications are removed, as your July 10 letter offers. Further, PIRTEK stands by my July 6 communication sent on its behalf.

Sincerely,



Michael D. Joblove

Cc: Aaron Blynn, Esq.

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Attorneys for PIRTEK USA, LLC

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In Re:

**JAMES BRADLEY LAGER AND
JBL HOSE SERVICE, LLC D/B/A TEXAS
HOSE PRO,**

**Case No. 22-30072-11
Chapter 11
Jointly Administered**

Debtors.

PIRTEK USA, LLC,

Plaintiff,

v.

**JAMES BRADLEY LAGER AND
JBL HOSE SERVICE, LLC D/B/A TEXAS
HOSE PRO,**

Adversary No. 22-03042-mvl

Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

aware at the time he published it, his June 19th post would reflect poorly on PIRTEK and would damage PIRTEK. [*Id.* at pp. 148-149, at 145:17-146:8].⁷

3. Defendants' June 26, 2021 LinkedIn Post

On June 26, 2021, Defendants published another post on LinkedIn in which he wrote that he “nearly lost everything because [he] dated a woman that white franchise leadership considered a prostitutes [sic] name” and that such behavior “should not be accepted in business of franchising.” [*Id.* at pp. 151-152, at 149:9-150:12; App. K, p. 340, Lager Dep. Ex. 9]. Lager admits that he was referring to PIRTEK when he wrote “white franchise leadership.” [App. B, p. 152, at 150:13-151:5].

4. Defendants' June 27, 2021 LinkedIn Post

On June 27, 2021, Lager added yet another post discussing “Juneteenth” and referring to his liberation from the “oppressive behavior of franchising” and “indentured servitude.” [*Id.* at p. 156, at 158:10-25; App. L, p. 342, Lager Dep. Ex. 11]. Lager admits that the “oppressive behavior of franchising” was a reference to PIRTEK’s behavior. [*Id.* p. 156, at 158:19-25].

5. PIRTEK’s Arbitration Filing and the June 28, 2021 Article on the Unhappy Franchisee Website

Because of the Debtors’ brazen violations of the Second Settlement, PIRTEK was forced to initiate an arbitration against the Debtors (the “Arbitration”) by filing a Statement of Claim on June 28, 2021.⁸ [App. A, p. 6, Gubera Decl. at ¶ 20]. On the same day that PIRTEK filed its demand

⁷ Lager admits that any reference he made in his various LinkedIn posts to having his franchise agreement terminated for dating a black woman was a reference to PIRTEK’s termination of his franchise agreements since that is the only franchisor which allegedly terminated his franchise agreements for that reason. [*Id.* at pp. 144-145, at 138:12-139:22].

⁸ The Second Settlement provides for all disputes to be resolved by way of binding arbitration. The parties designated David Kaufmann as the arbitrator (the “Arbitrator”). [App. E, p. 317, Lager Dep. Ex. 5, at ¶ 19].

for arbitration, Kelly posted an article about PIRTEK on the Unhappy Franchisee Website entitled “PIRTEK USA CEO . . . Claim of No Closures in 2020 Questioned.” [App. B, p. 157-158, at 160:18-161:21; App. M, p. 344, Lager Dep. Ex. 12]. The post goes on to question whether PIRTEK has made statements about store closures which are “intentionally misleading.” [*Id.*]. This was the first post about PIRTEK that appeared on the Unhappy Franchisee Website since the parties entered the Second Settlement. [App. A, p. 7, Gubera Decl. at ¶ 21].

Following the parties’ entry into the Second Settlement, Sean Kelly would send Lager posts before posting them on his Unhappy Franchisee Website. [App. B, p. 154, at 151:12-16]. Lager was paying Sean Kelly to write articles about Lager’s experience as a franchisee and his arbitration against PIRTEK in connection with his dispute with PIRTEK. [*Id.* at pp. 101, at 34:17-25, p. 153-154, at 151:23-152:22]. Lager was also paying Kelly to write articles about his confidential Second Settlement with PIRTEK. [*Id.* at pp. 154-155, at 152:23-153:1]. At times, including after he entered the Second Settlement, Lager sent Kelly ideas for articles about PIRTEK for Kelly to post on the Unhappy Franchisee Website. [*Id.* at p. 103-105, at 40:16-23 and 41:24-42:19, pp. 159-160, at 162:24-163:5]. When providing Kelly with ideas for content to post on the Unhappy Franchisee Website, Lager would discuss with Kelly things a PIRTEK executive allegedly said. [*Id.* at p. 108, at 57:10-22]. Lager had some control over what Kelly posted on the Unhappy Franchisee Website, admitting that on occasions when Lager would ask that Kelly to refrain from posting about PIRTEK on the Unhappy Franchisee Website, Kelly would comply with the request. [*Id.* at p. 194, at 212:6-18].

6. Defendants’ July 21, 2021 LinkedIn Post

On July 21, 2021, Lager published yet another LinkedIn post in which he disclosed the fact that when his franchise agreements were terminated, he signed “an NDA.” [*Id.* at pp. 160-164, at 163:23-164:14; App. N, p. 353, Lager Dep. Ex. 14, July 21 LinkedIn Post]. The nondisclosure

agreement to which Lager referred in his post was his agreement with PIRTEK. [App. B, p. 161, at 164:12-16]. Lager also stated in his July 21st Post that “not disconnecting is a breach of our contract.” [*Id.* at p. 162, at 165:4-8]. He was admittedly referring to the confidential Second Settlement, the existence of which he was not even permitted to reveal. [*Id.* at 165:4-8].

In his July 21st Post, Lager also directed readers to “[s]imply Google Jim Lager SlideShare,” which he knew would populate a result that discussed Lager’s previous status as a PIRTEK franchisee. [*Id.* at p. 160, at 163:12-21]. Lager’s admitted goal in including the instruction for readers to “Google Jim Lager SlideShare” was to inform readers that he was referring to PIRTEK in his LinkedIn post. [*Id.* at p. 162, at 165:9-18, and p. 163, at 167:3-9]. Lager acknowledges that he disregarded his settlement obligations by publishing the July 21st Post on LinkedIn. [*Id.* at 167:10-15].

Below his July 21st Post, Lager also published statements about PIRTEK in the comments section. [*Id.* at p. 163, at 167:16-19; App. O, p. 356, Lager Dep. Ex. 15, Comments]. Specifically, Lager further discussed the existence of the Second Settlement with PIRTEK and went as far as actually typing language directly from the agreement, making terms of the Second Settlement public. [App. B, p. 164, at 168:17]. Lager further stated that mandatory mediation and arbitration allows franchisors to do anything they want and “was truly third world crime being played out in franchising where their tagline is ‘Be in business for yourself, but not by yourself.’” [*Id.* pp. 164, at 168:18-169:2]. That is a tagline previously used by PIRTEK during the time that Lager was a franchisee. [App. A, p. 7, Gubera Decl. at ¶ 22; App. B, p. 99, at 32:24-33:5].

7. The November 22, 2021 Unhappy Franchisee Website Article

On November 22, 2021, the Unhappy Franchisee Website published an article entitled “Does U.S. Army Veteran Jim Lager Recommend the PIRTEK Franchise?” (the “November 22

Post”). Lager reviewed a draft of the November 22 Post before it was published on the Unhappy Franchisee Website. [*Id.* at p. 166, at 170:18-17]. The November 22 Post bashes PIRTEK by accusing the company of exploiting military veterans to sell franchises. [App. P, pp. 358-361, Lager Dep. Ex. 16]. The November 22 Post includes numerous references to the confidentiality provisions included in the Second Settlement and Lager does not believe that Kelly obtained information about the Second Settlement from anyone other than Lager. [App. B, pp. 167-168, at 171:21-172:12]. The November 22 Post then goes on to state that “Jim Lager can’t say anything about PIRTEK, good or bad” and that to keep Lager quiet, PIRTEK has “a team of highly paid attorneys assigned to keeping Lager’s gag tight at all times.” [App. P, p. 360, Lager Dep. Ex. 16].

8. The December 7, 2021 Unhappy Franchisee Website Article

On December 7, 2021, an article was published on the Unhappy Franchisee Website entitled “Some Franchisors & VetFran Exploit Veterans Even After They’ve Failed” (the “December 7 Post”). [App. Q, p. 365, Lager Dep. Ex. 18]. The article asserts that franchisors misleadingly use success stories of military veterans to sell franchises. [*Id.* at pp. 365-369]. The article then uses Lager’s experience with PIRTEK as an example of a franchisor exploiting a veteran’s story as part of an effort to sell more franchises. [*Id.*]. The article states that “Lager can’t comment due to a non-disclosure agreement (NDA),” that “Jim Lager is prohibited, evidently, by PIRTEK from setting the record straight, from retracting his endorsement” and that “[i]t appears that franchisors like PIRTEK (through NDAs) continue to own the once-free speech of military veterans.” [*Id.* at pp. 367-368]. Included in the post is a photograph of Lager and his girlfriend that he had previously sent to Kelly to use on his Unhappy Franchisee Website. [*Id.* at p. 171, at 178:7-11].

12. The December 29, 2021 Article on the Unhappy Franchisee Website

An article entitled “Franchise Attorney, Mediator David Kaufmann Ethics Accusations” was posted on the Unhappy Franchisee Website on December 29, 2021. [*Id.* pp. 193-194, at 211:3-212:12; App. Z, pp. 410-414, Lager Dep. Ex. 29]. The December 29 Post directly quotes Lager and discusses details about the ongoing Arbitration which Kelly learned from Lager. [App. B, pp. 193-195, at 211:18-213:20].

The December 29 Post compares PIRTEK to a “captor [which is] drunk with power of having full domination over another human being” that is akin to a victim in a movie “tied to a chair in a leaking basement or remote warehouse... beaten, bleeding, shirt torn, helpless...”. [App. Z, p. 410, Lager Dep. Ex. 29]. The post states that PIRTEK “can’t help taking a few more unnecessary & sadistic punches . . . Or, in this case, hitting them with a custom rubber, PIRTEK-branded hydraulic hose.” [*Id.*]. Next, the December 29 Post purports to detail provisions from the Second Settlement, falsely stating that “both parties agreed to remove their respective Internet content regarding Jim Lager’s tenure as a PIRTEK USA franchisee.” [*Id.* at p. 411]. The post next accuses PIRTEK of breaching the Second Settlement. [*Id.*].

The December 29 Post then copies and pastes the contents of the TRO which makes reference to the Second Settlement. [*Id.* at p. 412]. The December 29 Post also includes a hyperlink to Lager’s ACLU Complaint which, as noted above, accuses PIRTEK of being racist and terminating his franchise agreements because he was in an interracial relationship. [*Id.* at p. 413].

13. The December 31 Unhappy Franchisee Website Article

On December 31, 2021, another article was posted on the Unhappy Franchisee Website discussing the status of the Arbitration, revealing the existence of the Second Settlement and

disclosing its terms. [App. B, pp. 196-197, at 214:23-215:20; App. AA, pp. 416-422, Lager Dep. Ex. 30]. On page 3 of the post, it states that “[w]histle blower, Jim Lager, has leaked Kaufmann’s attempt to silence his opposing opinions.” [*Id.* at p. 418]. Lager admits that he indeed “leaked” the TRO referenced in the article. [App. B, p. 196, at 214:17-20].

14. The January 4, 2022 Article on the Unhappy Franchisee Website and Lager’s Repost on LinkedIn

Ramping up the disparagement of PIRTEK, on January 4, 2022, an article was added to the Unhappy Franchisee Website entitled “Is PIRTEK USA Racist? Or Just Really, Really, White?” [*Id.*, p. 198, at 217:6-16; App. BB, pp. 424-432, Lager Dep. Ex. 31]. Lager believes there is a “good chance” he reviewed the article before it was posted. [App. B, p. 198, at 217:12-19]. Indeed, the January 4th post repeatedly states “according to Lager . . .,” followed by a defamatory statement suggesting that PIRTEK is a racist company and ousted him from the system because he dated a black woman. [App. BB, p. 424, Lager Dep. Ex. 31].

The January 4 Post then discusses in detail the confidentiality provision included in the Second Settlement. [*Id.* at pp. 425-426]. To that end, the January 4 Post includes a subheading that states “Is Franchise Arbitration & Confidentiality Agreements Hiding Racist Leadership & Practices at PIRTEK USA?” [*Id.* at p. 425]. The post then references Lager’s ACLU Complaint and states that “[a]ccording to a complaint filed with the ACLU by Lager, PIRTEK USA . . . [is] using a settlement agreement . . . to hide blatantly racist attitudes and actions of franchisor management.” [*Id.*]. Lager admits that he provided a copy of his ACLU Complaint to Kelly as part of his “shotgun approach” to pressuring PIRTEK. [App. B, p. 199, at 220:5-16]. Suggesting an affiliation with a white supremacist group, the January 4 Post includes a photograph from a PIRTEK meeting which refers to the attendees as a “Clan.” [App. BB, p. 429, Lager Dep. Ex. 31].

Later that day, Lager reposted the January 4 Unhappy Franchisee Website Post to his own LinkedIn account with the hashtag #blacklivesmatter. [App. B, pp. 199-201, at 220:17-222:1; App. CC, p. 434, Lager Dep. Ex. 32; DE 28, at ¶ 68]. Lager understood that by reposting the article accusing PIRTEK of being racist, it would hurt PIRTEK. [App. B, p. 201, at 222:6-20]. Lager's post also includes a specific reference to the Second Settlement. [*Id.*, p. 202, at 224:7-15]. Lager knew when he made reference to the Second Settlement that his settlement included a confidentiality provision. [*Id.* at 224:16-19].

15. Defendants' January 7, 2022 LinkedIn Post

On January 7, 2022, Lager posted on his LinkedIn account that “[i]f you ever wonder why I don’t speak highly of franchising perhaps its because I never would’ve thought in 2019¹¹ my black girlfriend at the time would’ve been depicted as a prostitute and I would’ve had my franchise ripped away from me.” [*Id.* p. 203, at 225:8-17; App. DD, p. 436, Lager Dep. Ex. 33]. Lager was admittedly referring to his experience with PIRTEK. [App. B, p. 203, at 225:18-20].

16. Defendants' January 7, 2022 E-Mail to Kelly

On January 7, 2022, Lager sent Kelly an e-mail attaching a document entitled “Jim Lager Mediation Presentation 2.0” and asking Kelly “[h]ow about we post this today on your site.” [*Id.*, pp. 205-206, 227:20-228:15; App. EE, p. 438, Lager Dep. Ex. 34]. The “Mediation Presentation,” is dated August 9, 2020 and is entitled “PIRTEK USA’s Racist Owner is Attempting to Destroy Their Former Top Franchisee. But With the Rising Intolerance of Institutional Prejudice, Will Racism Destroy PIRTEK USA Instead?” [*Id.* at p. 439]. The presentation Lager sent further disparages PIRTEK by stating “[i]t turns out that at PIRTEK USA, perhaps the whitest franchise chain in

¹¹ Lager was a franchisee only in the PIRTEK system in 2019. [*Id.*, p. 204, at 226:12-14].

America, a white franchisee dating a black woman is an unpardonable sin.” [*Id.*]. What follows in the presentation is approximately 18 pages of scandalous accusations against PIRTEK, mostly accusing PIRTEK of being a racist company. [*Id.* at pp. 440-458]. Lager was hopeful that Kelly would post the “Mediation Presentation” on the Unhappy Franchisee Website and recognized that the content made PIRTEK look bad. [App. B, pp. 207-208, at 232:19-233:11]. Lager was also aware at the time that the Second Settlement included a non-disparagement provision. [*Id.* p. 208 at 233:16-21].

17. Lager’s January 7, 2022 E-Mail to Marks

On January 7, 2022, Lager forwarded to Marks an e-mail sent from the Unhappy Franchisee Website’s Constant Contact account that had been sent to all of PIRTEK’s franchisees. [*Id.* at p. 209, 234:3-14; App. FF, pp. 460-462, Lager Dep. Ex. 35]. The subject line read: Is PIRTEK USA Racist? [App. FF, p. 460, Lager Dep. Ex. 35]. The e-mail also references the Second Settlement, the Arbitrator’s TRO, the NASAA Letter and Lager’s ACLU Complaint. [*Id.*]. PIRTEK was informed by at least one franchisee that it had indeed received the e-mail. [App. A, p. 6-7, Gubera Decl. at ¶ 25; App. A-6, pp. 29-30]. These accusations, which are false, were the same which PIRTEK desired to keep private by entering into the Second Settlement. [*Id.* p. 8, at ¶ 26].

18. Defendants’ January 2022 LinkedIn Post

In January of 2022, Lager added another post to his LinkedIn account in which he wrote “Pirtek. Why do you think this woman is a prostitute?” over a photograph of Lager with his girlfriend. [App. B, p. 210, at 236:2-12; App. GG, p. 464, Lager Dep. Ex. 36]. In the comments section of the same post, he wrote “[PIRTEK executives] This U.S. Army veteran does NOT endorse your franchise!” [App. GG, p. 464]. At the time he put the post on his LinkedIn account, Lager was aware that he had entered a settlement that specifically prohibited him from referring to PIRTEK’s

22. The Barrage of Post-Petition Articles on the Unhappy Franchisee Website

Between February 6, 2022 and February 9, 2022, there were a number of articles about PIRTEK published on the Unhappy Franchisee Website. [App. B, p. 225, 257:17-261:6]. Included in the posts are snippets, copied and pasted from the Second Settlement, as well as excerpts from one of the Arbitrator's rulings in the Arbitration and the proposed arbitration award. [Composite App. OO, pp. 484-494, Lager Dep. Exs. 46, 47 and 48; App. B, pp. 225-229, at 257:17-261:6]. One of the posts on the Unhappy Franchisee Website stated that "[A PIRTEK executive] agreed to pay franchisee Lager \$453,0000, which is \$300,000 in case and \$153,000 in debt forgiveness." [*Id.* p. 229 at 261:7-19; App. PP, p. 500, Lager Dep. Ex. 49]. Lager admitted that the only reason Kelly was able to post specific monetary terms of the Second Settlement was because Lager told him. [App. B, p. 229, at 261:14-19].

23. The March 25th Post on the Unhappy Franchisee Website

On March 25, 2022, a particularly inflammatory post was added to the Unhappy Franchisee Website entitled "HOSED: How My American Dream Became a Franchisee Nightmare by Jim Lager, Former Franchisee." [*Id.* pp. 229-230, at 261:22-262:10; App. QQ, p. 511, Lager Dep. Ex. 50]. Notably, the post includes what appears to be a book cover which is extremely similar to the version of the book cover included in Lager's attorneys' July 1, 2020 demand letter, which led to the entry of the Second Settlement:

Exhibit D (Snippet from Marks’s July 1, 2020 Demand)	Exhibit QQ (Snippet from March 25, 2022 Unhappy Franchisee Website Post)
	

The back cover of Lager’s book includes photographs of PIRTEK’s executives next to the words “The CEO, The Lawyers, The Bullies, The Enablers, The Liars, The Cheaters, The Mistresses.” [App. QQ, p. 511, Lager Dep. Ex. 50]. The March 25th Post purports to include an excerpt from the introduction to Lager’s Book in which Lager bashes PIRTEK. [*Id.* at pp. 512-517]. Lager understood that the whole purpose for PIRTEK entering the Second Settlement was to prevent him from making his book public. [App. B, p. 231, at 265:16-22].

The March 25th Post did not go unnoticed by the public. Following its upload to the Unhappy Franchisee Website, Lager received an e-mail from a man named Richard Denkinger who claimed to own a business called Fluid Power who said he was impressed after reading the “3/25/22 summary draft” of Lager’s book.” [App. B, p. 232, at 267:12-20; App. RR, p. 521, Lager Dep. Ex. 51]. Denkinger stated that he knew others who had been “burned” like Lager and then proposed a business arrangement whereby his company would agree not work with any PIRTEK locations within 100 miles of Defendants’ business. [*Id.* at p. 522].

EXHIBIT 2

Unhappy Franchisee

No-Nonsense Hype-Free Franchise Issues & Discussion Site

[CONTACT US](#) [DELI DELICIOUS PETITIONS](#) [FRANCHISE RESOURCE DIRECTORY](#) [PRESS ROOM](#)

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The Perils of Franchising](#)

[ALL POSTS](#) [ARBITRATION MEDIATION](#) [David Kaufmann](#) [Glenn Duncan](#)
[Jim Lager](#) [Kim Gubera](#) [Michael Joblove](#) [PIRTEK USA](#)

Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

📅 June 3, 2023 👤 ADMIN 💬 0 Comments 🏷️ Faegre Drinker, franchise bankruptcy,
franchise litigation, Glenn Duncan, jim lager, Joblove Battista, Kim Gubera, Peter Duncan,
Pirtek franchise, Pirtek USA, sean kelly, Venable

Is it a lie if someone very cleverly and intentionally creates a false impression in order to mislead? If so, is that perjury? You got me. But I do know this: it ain't honest. by Sean Kelly

This post is part of an ongoing series. I am not a party to this lawsuit and am solely responsible for my words and opinions. To the Honorable Judge Larson, I've posted a [Series Disclaimer & Clarification](#).

(UnhappyFranchisee.Com)

The case is being heard in the UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, the Honorable Michelle V. Larson, presiding.

After driving their former top franchisee and franchise brochure cover boy into bankruptcy, PIRTEK USA is suing to try to get their previous, private arbitration demand exempted from Jim Lager's bankruptcy protection.



Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

Does Spadea Lignana Bully & Silence Military Veterans?

In February, 2020 Notified Kim Gubera of a Full-page Franchise Promotion Featuring Jim Lager on PIRTEK USA's Web Page

In the arbitration proceeding that forced PIRTEK USA's former top franchisee to seek bankruptcy protection, arbitrator David J. Kauffman stated that the settlement agreement between the parties prohibited PIRTEK USA from referencing Lager anywhere on, among other things, its website. Writes Kauffman:

“

Importantly, Section 5(f) of the parties' September 2, 2020 Settlement Agreement prohibits Pirtek from referencing " ...Lager or any Lager party on any PIRTEK webpage, PIRTEK promotional materials, any PIRTEK social media post (including but not limited to on PIRTEK's website... or any other online media) or in PIRTEK print media."

On February 6, 2020, at 11:20 am, I put the search term "Pirtek Headquarters Australia" into Google Image Search.

Although many images of Jim Lager, PIRTEK USA's unpaid franchisee poster boy, were displayed, one in particular appeared to be a clear violation of the September 2, 2020 agreement.

It was a full-screen promotional webpage featuring an image of Jim Lager with the caption:

“ Jim Lager, Owner
“ PIRTEK Love Field &
“ PIRTEK Meacham
“ Dallas, Texas

PIRTEK USA Immediately Deleted the Prohibited Web Page

After I publicly posted a screenshot & link, notifying them that their violation had been exposed and documented, PIRTEK USA immediately deleted the webpage.

On February 22, 2022, I emailed Kim Gubera (also Glenn Duncan, Michael Joblove, David Kauffman) the following:

“ On February, 7 I posted the link to the full page Lager photo on the PirtekUSA.com website, here:
<https://www.unhappyfranchisee.com/jim-lager-on-pirtek-website/>

“ I assume that PIRTEK found this posting helpful, as the image was removed within 24 hours!

“ Request for comment from attorney joblove & arbitrator Kaufmann: Were you aware that Jim Lager's full-page image was still posted on the PIRTEK USA.com franchise promotional website and could have been removed at any time? Had Mr. Joblove instructed PIRTEK to remove such content? Does Mr. Kaufmann still comment PIRTEK was fully compliant?

“ To help Ms. Gubera, who has expressed her urgency in protecting the PIRTEK brand from being publicly associated with Jim Lager, I thought I would share the URLs of 5 PIRTEK-initiated & controlled press releases

posted from the PIRTEK USA admin account on Thomas.net.

“

I actually signed up for an account to be sure that Users like PIRTEK post and can delete their own content (they can).

“

In fact, PIRTEK USA posted press releases as recently as last year when they celebrated opening the 100th franchise.

“

Does Ms. Gubera, Mr. Joblove & Mr. Kaufmann still maintain that this site is a 3rd party site beyond the control of PIRTEK USA? As a franchise sales and marketing professional for 3 decades, I can assure you that the PIRTEK account, profile and press release content is under PIRTEK's full control.

“

If Ms. Gubera is truly concerned about PIRTEK's association with Jim Lager, isn't it reasonable to assume these press releases will be deleted immediately?

Ms. Gubera, Glenn Duncan, attorney Michael Joblove and arbitrator David Kauffman all received the link to the full-page franchise page that was indexed in Google, was displayed publicly in Google search results, and was obviously not password-protected.

In Her Sworn Declaration, Gaslighting Kim Gubera Omits PIRTEK's Blatant Settlement Breach

On March 20, 2023, PIRTEK's attorneys submitted the document **DECLARATION OF KIM GUBERA IN SUPPORT OF PIRTEK USA, LLC'S MOTION FOR SUMMARY JUDGMENT** in support of its motion for summary judgement.

“

Given Lager's personal issues... PIRTEK does not wish to be affiliated with Lager in any way and, despite having no obligation to do so, has taken steps to remove any references to Lager from any PIRTEK materials which existed prior to the Second Settlement... [emphasis mine]

Lager's complaints had been PIRTEK USA's continued display of his success story, military record and endorsement of PIRTEK USA posted on their website and pages they posted and controlled from the time *before* the ownership change to present. As far as I know, he had never claimed PIRTEK had posted anything about him after Glenn Duncan took control of the company. Gubera evades the real issue:

“

Additionally, at no time after the September 2, 2020 settlement has PIRTEK included Lager's image, or any reference to Lager in any of PIRTEK promotional materials, webpage, website, print media or social media created after the Second Settlement was entered... [emphasis mine]

Then she refers to an article of little relevance that supposedly resided on a password-protected intranet. *Huh?*

If this isn't a red herring, it sure smells like one.

“

29. At some point, PIRTEK discovered that there existed on its intranet, but not its public webpage, an article from Fluid Magazine (an internal PIRTEK newsletter that can only be accessed from PIRTEK's intranet) from nearly ten years ago in which a few franchisees are described as receiving awards. One of the franchisees was Lager. That article is not available to be viewed by the public and could only be accessed by someone who has a username and password to access PIRTEK's intranet.

Kim Gubera: Is This Perjury? Perjury Adjacent? Or Just an Expertly Crafted Lie?

This is the kind of tradecraft that earns Michael Joblove and the associates at Venable & Faegre Drinker the big bucks.

“

Let's have Kim Gubera shout **AT NO TIME DID WE REFERENCE JIM LAGER** (in materials created after September 2, 2020).

“

Then refer to a herring-scented straw man Fluid Magazine article that can be easily refuted as only accessible “by someone who has a username and password.”

“

Then, a couple of paragraphs later, drop in the names of two former PIRTEK employees who were witnesses on Jim Lager's behalf.

“

People might think: Wait a minute... they would have usernames & passwords! Could THEY have screenshotted 10-year-old award pictures?

(Admittedly, I could be giving them too much credit...)

But the truth is that Kim Gubera & company knew that they had a full-page franchise promotion of Jim Lager on their publicly viewable website.

I know because I found it using a basic Google image search. I documented it and notified them.

They must've realized that it was clear proof that they had breached the settlement – even David Kauffman would have to admit that.

They scrambled and removed it immediately.

Then they decided to spin a narrative, under penalty of perjury, as if it never existed... and dump it and hundreds of other pages on a busy court, assuming no one will call them out on their deception.

Ms. Gubera: Your Response is Once Again Invited by the Court of Public Information & Opinion (CPIO)

Once again, Kim Gubera, PIRTEK USA and their legal minions are invited to provide corrections, clarifications, rebuttals and their alternative viewpoint.

You'll find the Court of Public Information & Opinion much less expensive and more expeditious than your preferred system of private arbitration, but you might find that transparency and public debate will result in becoming better people running a better company.

Truth might be a tough pill to swallow, but why not give it a try?

** In my opinion. All of this is my opinion. Everything I say or write is my opinion, except verifiable fact, and therefore non-actionable as defamation. Not that that will stop them 🙄Winking smile*

See all [PIRTEK USA Posts](#).

See posts in the *PIRTEK USA v. Lager Franchise Perils Series*

The words and opinions expressed here are solely the opinions of Sean Kelly, who invites corrections, rebuttals and respectful debate. Sean Kelly is an independent investigative journalist with 35 years of franchise industry experience. Since founding [UnhappyFranchisee.Com](#) in 2006, his reporting has exposed & shut down several predatory franchise & investment schemes. Sean Kelly is a franchise watchdog who prompted and aided the FBI investigation that shut down the 165-victim multi-million-dollar NY Bagel franchise scam and landed perpetrators Dennis Mason & Joseph Smith in federal prison. Sean was featured in the ABC Four Corners expose of 7-Eleven wage theft in Australia and has served as an advisor to Dateline NBC. He has withstood bullying, intimidation & frivolous lawsuits as high as \$35M and never lost. His crack editorial staff and fact checkers include Chick, Gem, Red, Pru & Joanie the Rescue Chicken.

Contact the author at [UnhappyFranchisee\[at\]Gmail\[dot\]com](mailto:UnhappyFranchisee[at]Gmail[dot]com)

TAGS: PIRTEK, PIRTEK USA franchise, PIRTEK australia, Kim Gubera, Glenn Duncan, Peter Duncan, Michael Joblove, Venable, Faegre Drinker, David Kauffman, Kauffman Gildin & Robbins, Jim Lager, Sean Kelly, Franchise litigation, franchise arbitration, Franchise NDAs, Franchise gag orders

EXHIBIT 3

Unhappy Franchisee

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PIRTEK USA v Jim Lager Series: The Perils of Franchising

June 3, 2023 ADMIN 0 Comments David Kauffman, Faegre Drinker, franchise arbitration, Franchise gag orders, franchise litigation, Franchise NDAs, Glenn Duncan, jim lager, Kauffman Gildin & Robbins, Kim Gubera, Michael Joblove, Peter Duncan, PIRTEK, PIRTEK australia, Pirtek USA franchise, sean kelly, Venable

Welcome to the PIRTEK USA v Jim Lager Series: The Perils of Franchising.

This page will serve as an index to posts and updates, links to prior posts and reference documents.

PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

AAA Arbitrator David Kaufmann:

AAA Franchise Arbitrator Kaufmann Flaunts Pro-Franchisor Bias

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David J. Kaufmann, the self-appointed franchisor-biased arbitrator in the PIRTEK USA litigation against its former top franchisee, Jim Lager, claims there are no problems in franchising.

But there IS a problem in franchising: That franchisor-biased David J. Kaufmann arbitrates franchisee vs. franchisor disputes. by Sean

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AAA Franchise Arbitrator Kaufmann Flaunts Pro-Franchisor Bias

PIRTEK USA v Jim Lager Series: The Perils of Franchising

Kelly, publisher, UnhappyFranchisee.Com.

This post is part of the series: PIRTEK USA v Jim Lager Series: The Perils of Franchising. Read: PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

(UnhappyFranchisee.Com) The arbitrator in PIRTEK USA's continued campaign to destroy its former top franchisee, David J. Kaufmann, has left no doubt that **he should NEVER have been in a position to arbitrate franchisee vs. franchisee disputes.**

His latest New York Law Journal article, **Is the FTC Cracking Down – Or Cracking Up?** the amusingly pompous King David makes no effort to hide his contempt for franchisees, franchisee advocates, the Federal Trade Commission (FTC) and The Franchise Rule.

Kaufmann's latest proclamation is a condescending response to a previous column in the NYLR authored by his "colleague and good friend," [I bet],

respected franchisee attorney Ronald Gardner ("**The Giant Has Awoken: Franchisors in FTC's Crosshairs**").

Kaufmann pronounces that there is no evidence of any problems in franchising, and no "growing concern around unfair and deceptive practices in the franchise industry."

He condescendingly tells advocates of fair franchising to "stop twirling their batons and put down their pom-poms."

Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

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Does Spadea Lignana Bully & Silence Military Veterans?



David J. Kaufmann

David Kaufmann's article oozes contempt for the Federal Trade Commission (FTC), which he acknowledges is "the primary federal agency governing franchise sales activity."

At one point, David Kaufmann states "perhaps the FTC wants to reacquaint itself with the Lanham Act."

King David even threatens the FTC to "to stay in its lane," or risk the public embarrassment of a legislative defeat promulgated by him and his big-money franchisor lobbyists.

David J. Kaufmann's overly demeaning chest-thumping and condescension seems to be for the benefit of his true audience: The big money franchisors whose interest he serves.

I believe that the true, underlying message of this exaggerated and ridiculous article is:

“

Your money's been well spent.

“

We are in control and that's not going to change.

“

You are free to continue to do whatever you want to whomever you want, and no one will hear about it.

How Franchisor-Biased David Kaufmann Silences Franchisee Dissent

Despite his dedication to serving only franchisors in his law practice at Kaufmann Gildin & Robbins, Kaufmann is somehow allowed to mediate and arbitrate franchisor-franchisee disputes for the American Arbitration Association (AAA).

How is it that one who has represented the best interests of franchisors for decades & openly expresses contempt for franchisees, franchisee advocates & the FTC would be allowed to arbitrate franchisor vs. franchisee disputes.

As made public in unsealed documents submitted by PIRTEK USA attorneys in their attempt to get their arbitration claims exempted from Lager's bankruptcy, Kaufmann's bias and double-standard applied the franchisor and against franchisee Lager seems apparent:

- Jim Lager was a top-selling, award-winning franchisee of PIRTEK USA, was a mentor to other franchisees and was prominently featured in PIRTEK USA franchisee recruitment programs
- PIRTEK USA was sold to new owners, who refused to renew Jim Lager's franchise agreements without adequate justification
- In 2020, Kaufmann oversaw mediation that resulted in a settlement agreement between franchisor PIRTEK USA & a top franchisee, Jim Lager.
- The Franchisor & Franchisee mutually agreed to remove all Internet content referring to their prior relationship.
- Franchisee Lager was required to remove content with his complaints about his treatment as a franchisee & PIRTEK's franchise practices.
- PIRTEK USA was required to stop using Lager's likeness, success story & military service to promote & sell PIRTEK franchises.
- Franchisee Lager complied and removed his content, as agreed, including a series of posts on a 3rd party website.
- PIRTEK USA did not comply, & continued to promote Lager's success story via previously placed stories. At least one of the promotional placements included Lager's 1st & 2nd year sales as a PIRTEK franchisee which allegedly constitutes an illegal "earnings claim" in violation of the FTC Franchise Rule.
- Lager's attorneys repeatedly appealed to Kaufmann to have PIRTEK remove the non-compliant content from the Internet.
- Kaufmann repeatedly refused, claiming the franchisor is under no obligation to comply with removing content on 3rd party sites (even though Lager was required to do so).
- Lager's franchisee attorneys provide irrefutable evidence, including affidavits from 2 former PIRTEK employees, that the franchisor has the power to remove the content from the Internet.
- **Kaufmann refused to require (or even suggest) that PIRTEK to remove Lager's PIRTEK success story & earnings claim content from the Internet - even from promotions residing on PIRTEK USA's own webpage and on marketing accounts PIRTEK controlled.**
- **Yet Kaufmann forbade franchisee Jim Lager from submitting his opinions or participating in the open comment invitations by the Federal Trade Commission (FTC) in 2020 and the National Association of (NASAA) in 2021, even though neither submission referred to PIRTEK by name.**
- In fact, David Kaufmann issued a Temporary Restraining Order (TRO) prohibiting Jim Lager from submitting his opinions to state administrators.
- **Kaufmann justified prohibiting Lager from sharing opinions (that didn't mention PIRTEK USA) by referring to the very content he refused to make PIRTEK USA remove(!)**
- Kaufmann stated that although Jim Lager's letters did not name PIRTEK, "anyone with Google can figure out the company he's referring to."
- Franchisee Jim Lager reached his limit with Kaufmann's alleged coddling of the franchisor while simultaneously cudgeling his rights.

He rejected the legitimacy of the proceedings and Kaufmann as mediator/arbitrator and is speaking out publicly.

That's right: Kaufmann defended the right of franchisor PIRTEK USA to continue to promote its relationship with Jim Lager on the Internet, but denied Jim Lager's right to participate in public proceedings because PIRTEK USA self-identifies through illegal and non-compliant content.

David Kaufmann Issued a Temporary Restraining Order (TRO) to Keep Franchisee Complaints From State Administrators

An abundance of credible complaints and ideas were submitted to the FTC despite King David's exhortations:

Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices

David J. Kaufmann's article provides his big franchisor base with conspiracy-theory, election-denier-level deflection of the public complaints submitted to the FTC:

“

...the FTC will receive hundreds (if not thousands) of coordinated identical letters advancing complaints against franchisors...

Unfortunately, Kaufmann and his cohorts have suppressed the experiences and opinions of innumerable franchisees through forced arbitration, NDAs, confidentiality and non-disparagement clauses, bullying and intimidation.

Hopefully, enough will have leaked through to awaken the Giant that the FTC could truly be – but so far has not been.

Also read:

Franchise Arbitrator David Kaufmann's Credibility on Trial After Kangaroo Court Hearing