

UnhappyFranchisee.Com

Relentless, Inc.

P.O. Box 10232

Lancaster, PA 17605

RE: 7/13/23 Letter From PIRTEK USA Attorney M. Joblove

7/19/2023

VIA Email & Publication

Dear Mike:

In your July 6, 2023, you made serious accusations that I have posted defamatory content about your client, PIRTEK USA, and its officers, on my UnhappyFranchisee.com website.

On July 10, 2023, I requested a list of the specific statements you contend meet the legal standard of "defamation." Despite your repeated, false statements about my motives and professional integrity, my offer was to review them with you, in good faith, and take appropriate action.

Rather than provide the list of defamatory statements (or even one defamatory statement) as requested, on July 13 you Fedexed me a package containing:

- 1) A brief, one-page letter which did not indicate any specific defamatory statements. It did, however, reiterate false and disparaging attacks on my character.
- 2) 10 pages of excerpts from a document titled PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT dated 1/20/23 by a different law firm than your own (FAEGRE DRINKER BIDDLE & REATH LLP) in a Texas bankruptcy court proceeding that I am not a party to. Most of the hodge-podge of allegations in the excerpted Memorandum were allegations directed at the Defendant in the case, and included his LinkedIn and other social media posts, complaints to the ACLU, etc.
- 3) 16 pages of blog posts from my site – separated by and labeled with exhibit numbers and dated both 6/12/23 and 6/15/23 (entered). While they are stamped with the same case number as the MEMORANDUM pages, there is no explanation as to the context or relevance of these exhibits, nor any indication of any allegedly defamatory statements.

Mike, I doubt that it is acceptable legal procedure to barrage a non-represented non-party with a pile of pages from another firm's active litigation proceeding. I'm honestly at a loss to understand your motivation. Is sending a scary litigation filing with my name repeated over and over meant to intimidate me into removing non-defamatory content?

Is this a threat?

Or are you trying to goad me into publishing additional content to use in your campaign to destroy PIRTEK's former top franchisee... pulling my pigtales so you can report my reaction to the teacher?

Or are you simply repurposing false & misleading allegations in order to save face with or entertain your client?

Whatever your motivation, this is harassment, bullying, defamation and conduct unbecoming an officer of the court.

As I have requested that you provide specific statements that justify your allegation of defamation and both you and PIRTEK USA have repeatedly declined to do so, I must demand that you immediately cease & desist your false accusations of defamation.

I Searched Your Document(s) for Any Statement That Could be Considered Defamatory. I Found None.

Despite the lack of care and lack of seriousness evident by the rain-soaked & nearly indecipherable hodge-podge I received, I diligently reviewed the pages in search of potentially defamatory statements attributed to me.

Potential Objectionable Statement #1: Disclaimer Added

The closest I could come was the contention by Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP that a photo caption of a PIRTEK-sponsored event "suggested an affiliation with a white supremacist group."

Referring to my January 4, 2022 blog post [Is PIRTEK USA Racist? Or Just Really, Really White?](https://www.unhappyfranchisee.com/is-pirtek-usa-racist/) (<https://www.unhappyfranchisee.com/is-pirtek-usa-racist/>), the Faegre Drinker document states:

Ramping up the disparagement [by Defendant Lager] 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?"

...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."



The PIRTEK USA Clan wave their hands in the air like they just don't care.

There was no intention by the use of the word “Clan” to imply an affiliation between PIRTEK USA and the Ku Klux Klan, and, in my opinion, a reasonable person would not make that connection. For one thing, the supremacist group spells “Klan” with a “K.” Second, historical photos of Ku Klux Klan rallies indicate somber, secretive gatherings with gowns and hoods, torches & burning crosses... not joyous, arm-waving affairs depicted in PIRTEK USA's social media posts.

However, as a courtesy to your client, I have added the following disclaimer to that page that should clearly eliminate any doubt:

[AUTHOR'S NOTE: The use of the word "Clan" in the preceding photo caption was in no way intended to imply a connection or similarity between the PIRTEK USA franchisee meeting pictured and a "Ku Klux Klan" (spelled with a "K") rally. I believe I was incorrectly alluding to Wu Tang Clan as the artists who "wave their hands in the air like they just don't care." which was actually the group Cameo. To be clear, I have no knowledge of any affiliation between PIRTEK USA, its officers, agents or Australian parent and any white supremacy group or movement.]

Potential Objectionable Statement #2: Disclaimer Added

Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP objected to a statement in my November 22, 2021 post [Does U.S. Army Veteran Jim Lager Recommend the PIRTEK Franchise?](https://www.unhappyfranchisee.com/jim-lager-pirtek-franchise/) (https://www.unhappyfranchisee.com/jim-lager-pirtek-franchise/):

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 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."

I have added the following disclaimer/clarification:

AUTHOR'S NOTE: The above statement uses the literary devices of hyperbole, exaggeration ("at all times") & metaphor (Lager's gag) and should not be taken literally. "Lager's gag" is symbolic, representing the restriction of his free speech

by franchisor PIRTEK. "At all times..." is not meant to be taken literally, as weekends, evenings and holidays are likely excluded.

Potential Objectionable Statement #3: Disclaimer Added

Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP objected to a statement in my December 29, 2021 post "[Franchise Attorney, Mediator David Kaufmann Ethics Accusations](https://www.unhappyfranchisee.com/franchise-attorney-david-kaufmann/)" (<https://www.unhappyfranchisee.com/franchise-attorney-david-kaufmann/>):

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..."

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."

While I do not believe this passage to be anywhere near defamatory, I have added this disclaimer solely as a courtesy and show of good faith:

[Author's note: the preceding has been edited slightly to emphasize that this is solely my opinion & a fantasy scenario of my imagination. To my knowledge, neither PIRTEK USA management nor its attorneys have inflicted physical pain on any franchisee with a hydraulic hose, PIRTEK-branded or otherwise.]

Potential Objectionable Statement #4: Clarification Added

Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP objected to a statement in my December 7, 2021 post "[Some Franchisors & VetFran Exploit Veterans Even After They've Failed](https://www.unhappyfranchisee.com/vetfran-exploits-veterans/)" (<https://www.unhappyfranchisee.com/vetfran-exploits-veterans/>):

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 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."

Since my assertion that “franchisors misleadingly use success stories of military veterans to sell franchises” is supported and documented with actual examples, I must guess that the objection is to the ruse of “NDAs” as a catch-all term. I have added the following clarification:

AUTHOR’S NOTE: As a non-attorney, I, like many others, sometimes use “NDAs” as a catch-all term for contract clauses that silence criticism and chill free speech. The term NDAs as used herein my refer to non-disclosure agreements, non-disparagement agreements, confidentiality agreements or similar clauses that prohibit sharing of opinions and experiences.

Potential Objectionable Statement #5: Clarification Requested

Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP objected to a statement in my June 28, 2021 post [PIRTEK USA CEO Kim Gubera Claim of No Closures in 2020 Questioned](https://www.unhappyfranchisee.com/pirtek-usa-kim-gubera-2/) (<https://www.unhappyfranchisee.com/pirtek-usa-kim-gubera-2/>):

Kelly posted an article about PIRTEK on the Unhappy Franchisee Website entitled: "PIRTEK USA CEO ... Claim of No Closures in 2020 Questioned."... The post goes on to question whether PIRTEK has made statements about store closures which are "intentionally misleading."

Mike, perhaps you can shed some light on why this is objectionable and, importantly, why Ms. Gubera won't respond or clarify this seeming contradiction. I have asked her and the company for clarification several times with no response.

The post states:

PIRTEK USA CEO told Franchise Times that none of the company’s hydraulic hose franchises ceased operation in 2020. However, PIRTEK’s heralded debut franchise in New York and its owner, Asim Iqbal, have been erased from PIRTEK’s website. Others have similarly disappeared. Was Ms. Gubera misquoted? Misinformed? Or intentionally misleading prospective franchisees?

Ms. Gubera’s claim seems contradictory with the company’s disclosure statements:

In its 2021 FDD, the 100-unit PIRTEK discloses that, in 2020, 3 franchises were terminated, 6 franchises were reacquired by the franchisor and 6 franchises were transferred to new owners.

Three (3) franchisees representing 9 franchises are listed as having been terminated, non-renewed or ceased to do business for other reasons during 2020.

Additionally, at least two locations that appeared in the 2020 FDD are neither listed in the new FDD, nor are the franchisees listed as having left the system.

As this calls into question Ms. Gubera’s honesty, I ask, once again, for clarification on this inconsistency.

Potential Objectionable Statement(s) #6: Clarification Requested

Mike, you included the June 3, 2023 post [Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?](https://www.unhappyfranchisee.com/pirtek-ceo-kim-gubera-perjury/) (https://www.unhappyfranchisee.com/pirtek-ceo-kim-gubera-perjury/)

The post questions the accuracy and truthfulness of CEO Kim Gubera's statements in a sworn deposition posted as part of this same MEMORANDUM in the PIRTEK v. Lager bankruptcy court case you excerpted.

Ms. Gubera's testimony regarding the continued existence of former franchisee Jim Lager's likeness on a publicly viewable PIRTEK-owned web page seems to be a carefully crafted misdirection:

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.

I was the one who alerted Ms. Gubera and PIRTEK USA as to the existence of a full franchise promotional website that was not only publicly viewable, it was indexed in Google search. The home page prominently displayed the image and name of franchisee Jim Lager, which I understand to be a blatant violation of the settlement agreement at that time.



While the subdomain URL contains the word "private," I have clear documentation that this, and other files on that subdomain, were NOT password-protected and were publicly viewable. Ms. Gubera would know this as she obviously had the site removed after I alerted her to its existence.

Mike, you may be able to create confusion regarding PIRTEK's continued use of Lager's image and story on PIRTEK-controlled pages owned by 3rd parties, but the fact that PIRTEK USA appears to have breached their agreement with the content on their own web server seems indisputable. It's disturbing that you, Ms. Gubera & the other attorneys representing PIRTEK USA appear to have no regard for the actual facts.

It appears to me (and this is my opinion) that this is an example of the rich and powerful being able to outspend, overwhelm and run over the rights of a hardworking individual, a military American veteran, a top franchisee in a dishonest and dubious manner.

Am I wrong? If so, please explain.

Thanks For Including Proof That Defendant Lager Does Not Control What I Post

Mike, I do appreciate you including Vince Slusher & Kristen L. Perry of Faegre Drinker Biddle & Reath LLP's statement regarding a January 7, 2022 email that reinforces my point that Jim Lager has no control over what I post and when I post it – with the exception of his sponsored, authored posts that were removed as part of your previous settlement agreement:

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."

The "Mediation Presentation," is dated August 9, 2020 and... is approximately 18 pages of scandalous accusations against PIRTEK, mostly accusing PIRTEK of being a racist company. Lager was hopeful that Kelly would post the "Mediation Presentation" on the Unhappy Franchisee Website...

Lager allegedly wanted the 19-page Mediation Presentation posted to my site, but, as the sole person with editorial control, I declined to post it.

I Have Addressed Each of the Potentially Objectionable Statements (4), Asked for Clarification on 2 More, & Added Multiple Disclaimers. We Are Finished.

Mike, I have diligently extracted every conceivable objectionable statement from the mass of papers that you sent.

While none are defamatory, I posted multiple disclaimers as a courtesy to you and your client.

I have requested a factual response on two issues regarding CEO Gubera's interview statements and sworn declaration, and will take further action, if appropriate, once a response is received.

This concludes my willingness to indulge vague, unprofessional & threatening communications.

Cease & Desist Your Unprofessional & Unethical Harassment, Bullying & Defamation

Mike, I am not a contract-bound franchisee you can bully and intimidate in the shadows of sealed court proceedings or private arbitration.

I asked you, in good faith, for the statements that you believe justify your accusation of defamation.

You dropped 26 pages of scary-looking litigation papers in a Fedex envelope with a disparaging, threatening letter on your Venable LLP letterhead.

I certainly hope your next communication is more professional & productive, as I've invested the last of my patience with this pettiness & game-playing.

All the best,

Sean Kelly

President, Relentless, Inc.

Publisher, UnhappyFranchisee.Com