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**FILED**  
IN CLERKS OFFICE  
U.S. DISTRICT COURT, N.Y.  
★ JAN 25 2005 ★  
P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
FEDERAL TRADE COMMISSION )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PATRICK R. KELLY, individually and )  
doing business as Patrick R. Kelly )  
Enterprises and P. R. K. Enterprises, )  
 )  
Defendant. )  
\_\_\_\_\_

Civil Action No. 99 Civ. 562 (RJD)

**PROPOSED FINAL JUDGMENT  
AND PERMANENT INJUNCTION  
ORDER**

RJD, LISTED  
1/24/05

On January 29, 1999, Plaintiff, the Federal Trade Commission ("the Commission"), filed its complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b), charging Defendant Patrick R. Kelly in this action with violations of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.* A Preliminary Injunction was entered by this Court on February 10, 1999.

Having reviewed the Commission's motion for summary judgment and the response by Defendant thereto, and in accordance with this Court's Memorandum and Order dated March 30,

2004 granting said motion and directing Plaintiff to submit this Final Judgment and Permanent Injunction Order, **IT IS HEREBY ORDERED ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and all parties hereto.
2. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. §53(b);
3. This is an action by Plaintiff instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b). Pursuant to these sections, Plaintiff has authority to seek the relief it has requested.
4. The acts and practices of the Defendant were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5 and 19 of the FTC Act, 15 U.S.C. §§ 45 and 57b, and the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*
6. Entry of this Final Judgment is in the public interest.

**DEFINITIONS**

For purposes of this Final Judgment, the following definitions shall apply:

1. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services;

2. "Defendant" means Defendant Patrick R. Kelly, doing business as Patrick R. Kelly Enterprises and P. R. K. Enterprises, and his successors, assigns, officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under his control or under common control with him, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device;

3. "Plaintiff" means the Federal Trade Commission;

4. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rules of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

#### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendant, in connection with the sale of any products or services, is hereby permanently restrained and enjoined from:

- A. Representing, expressly or by implication, that through the use of his products or services, consumers can alter their identifying information to conceal adverse credit information from their credit records, credit histories, or credit ratings, including, but not limited to, the use of Employer Identification Numbers ("EINs"), Taxpayer Identification Numbers ("TINs"), or alternative Social Security Numbers in lieu of the consumers' own Social Security Numbers;

- B. Representing expressly or by implication that the building of a new credit record by applying for credit using an EIN, a TIN, or an alternate Social Security Number instead of a consumer's own Social Security Number is legal; and
- C. Misrepresenting any material fact concerning the ability of Defendant's products or services to perform or provide any credit-related function for consumers, including, but not limited to, improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit;
- D. Misrepresenting any fact material to a consumer's decision to purchase Defendant's products or services.

## **II. CREDIT REPAIR ORGANIZATIONS ACT**

**IT IS FURTHER ORDERED** that Defendant is hereby permanently restrained and enjoined from violating the Credit Repair Organizations Act, ("CROA"), 15 U.S.C. §§ 1679 to 1679j, as presently enacted or as it may hereinafter be amended, including, but not limited to, violating 15 U.S.C. § 1679b(a)(2) by making any statement, or counseling or advising any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to: (1) any consumer reporting agency; or (2) any person who has extended credit to the consumer or to whom the consumer has applied or is applying for an extension of credit.

## **III. PROHIBITED PAYMENTS**

**IT IS FURTHER ORDERED** that Defendant is hereby permanently restrained and enjoined from charging or receiving any money or other consideration for services which Defendant has agreed to perform for the purpose of improving any consumer's credit record, credit history, or credit report before all such services have been fully performed.

#### **IV. . . CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendant is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security Number, or other identifying information of any person who paid any money to Defendant, at any time prior to the date this Final Judgment is entered, in connection with the sale of the products or services referenced in the Complaint. *Provided, however,* that Defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

#### **V. . . CUSTOMER NOTIFICATION**

**IT IS FURTHER ORDERED** that Defendant shall, within ten (10) days after the date this Final Judgment is entered, mail notices by first class mail, postage prepaid, to all persons, companies, or other entities to whom Defendant, or any person, company, or other entity with whom Defendant was or is affiliated, sold products or services in which it was represented, expressly or by implication, that through the use of such product consumers could alter their identifying information to conceal adverse credit information from their credit records, credit histories, or credit ratings, including, but not limited to, the use of EINs, TINs, or alternative Social Security Numbers in lieu of the consumers' own Social Security Numbers. Such notices shall state as follows:

In the past, you purchased a product from Patrick R. Kelly, doing business as Patrick R. Kelly Enterprises or P. R. K. Enterprises, that recommended applying for, obtaining, and using an employer identification number or an alternate Social Security Number to obtain a new credit file. You should be aware that it is a felony, punishable by up to five years imprisonment, to falsely represent a number as your Social Security Number with the intent to deceive any other person. It is also a felony, punishable by up to thirty years imprisonment, to make any false statement, including one about your Social Security Number, to a federally insured financial institution on an application for a loan or other credit document. Consequently, you should disregard the recommendation contained in that product.

The notice shall be printed in typeface of at least 14 points, boldfaced, in clear contrast with the background, and shall contain no other information or enclosures except as may be approved in advance by counsel for the Federal Trade Commission. Defendant shall, within sixty (60) days after the date this Final Judgment is entered, provide the names and addresses of those consumers to whom such notices were sent to Ann F. Weintraub, Esq., Federal Trade Commission, Northeast Region, 1 Bowling Green, Suite 318, New York, NY 10004.

## **VI. JUDGMENT**

**IT IS FURTHER ORDERED** that Judgment in the amount of four thousand seven hundred and thirty seven dollars (\$4,737) is entered against Defendant. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. The Commission in its sole discretion may use a designated agent to administer consumer redress. No portion of this

Judgment for equitable monetary relief shall be deemed a fine, penalty or punitive assessment, or forfeiture.

Within three (3) business days after the entry of this Final Judgment, CitiBank shall wire transfer all the funds in Patrick R. Kelly's business checking account, number 16101762, to the Federal Trade Commission, Treasury ABA No. 02130004, Commission's ALC No. 29000001, reference information: FTC Matter Name - Patrick R. Kelly Enterprises; FTC Matter Number - X990029.

**VII. ACKNOWLEDGMENT OF RECEIPT OF FINAL JUDGMENT BY DEFENDANT**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by Defendant of this Final Judgment as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Final Judgment.

**VIII. DISTRIBUTION OF FINAL JUDGMENT BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Judgment, Defendant shall:

- A. Provide a copy of this Final Judgment to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) Defendant is the majority owner of the business or directly or indirectly manages or controls

the business, and where (2) the business is engaged in performing any credit-related function for consumers, including, but not limited to, improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit, or assisting others engaged in these activities;

- B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Final Judgment, as required in Subparagraph A of this Paragraph.

#### **IX. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Judgment, Defendant, in connection with any business where: (1) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in performing any credit-related function for consumers, including, but not limited to, improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit, or assisting others engaged in these activities, is hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;



- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
- C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services;
- D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:
- (1) the consumer's name, address, telephone number, and the dollar amount paid by the consumer;
  - (2) the written complaint or refund request, if any, and the date of the complaint or refund request;
  - (3) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
  - (4) each response and the date of the response;
  - (5) any final resolution and the date of the resolution; and

- (6) in the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

**X. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Judgment may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment, Defendant shall notify the Commission of the following:
- (1) any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
  - (2) any changes in Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business or employment; and
  - (3) any proposed change in the structure of any business entity owned or controlled by Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address,

or any other change that may affect compliance obligations arising out of this Final Judgment, thirty (30) days prior to the effective date of any proposed change; *provided, however*, that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

- B. One hundred eighty (180) days after the date of entry of this Final Judgment, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is complying with this Final Judgment. This report shall include but not be limited to:
- (1) Defendant's then current residence address and telephone number;
  - (2) Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
  - (3) a copy of each acknowledgment of receipt of this Final Judgment obtained by Defendant pursuant to Paragraph IX; and
  - (4) a statement describing the manner in which Defendant has complied and is complying with Paragraphs I through V of this Final Judgment;
- C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and produce

documents on fifteen (15) days' notice with respect to any conduct subject to this Final Judgment;

- D. For the purposes of this Final Judgment, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director  
Federal Trade Commission  
1 Bowling Green, Suite 318  
New York, NY 10004

Re: FTC v. Patrick R. Kelly

- E For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.
- F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendant.

## **XI. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor

Defendant's compliance with this Final Judgment by all lawful means, including, but not limited to, the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Final Judgment;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice;
- C. Nothing in this Final Judgment shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant has violated any provision of this Final Judgment or Section 5 of the FTC Act, 15 U.S.C. § 45.

## **XII. ACCESS TO BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Judgment, for the purpose of further determining compliance with this Final Judgment, Defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where: (1) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in performing any credit-related function for consumers, including, but not limited to, improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit, or assisting others engaged in these activities. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Judgment; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Judgment for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and
- B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors, or otherwise, of any business to which Subparagraph A of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Judgment. The person interviewed may have counsel present.

*Provided that*, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Judgment.

**XIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this 24 day of January, 2004, at Brooklyn, New York..



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RAYMOND J. DEARIE  
UNITED STATES DISTRICT JUDGE

**SUBMITTED BY:**

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General Counsel

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