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FIRST CIRCUIT COURT
STATE OF HAWAII
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F. OTAKE
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of
Consumer Protection,

Plaintiff,

vs.

BRIGHTON UNIVERSITY, a Hawaii
nonprofit corporation; BRIGHTON
UNIVERSITY, INC., a Missouri
corporation; MARK H. SEYER AND
RONALD W. BEALERT,

Defendants.

CIVIL NO. 02-1-1503-06
(Other Civil Action)

COMPLAINT; EXHIBIT 1 AND
SUMMONS

COMPLAINT

Plaintiff, for a cause of action against the above-named defendants, avers
and alleges that:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action brought by the Office of Consumer Protection of the
State of Hawaii pursuant to Hawaii Rev. Stat. Chapters 446E, 480 and 487 seeking to

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COMPLAINT

Plaintiff, for a cause of action against the above-named defendants,
avers and alleges that:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action brought by the Office of Consumer Protection of the State of Hawaii pursuant to Hawaii Rev. Stat. Chapters 446E, 480 and 487 seeking to enjoin the Defendants from engaging in certain acts or practices in violation of Hawaii's consumer protection laws and to obtain other and additional relief.

2. This court has subject matter jurisdiction over this case pursuant to Hawaii Rev. Stat. §§ 480-21 and 603-21.5.

3. Defendant Brighton University ("BU") is a Hawaii corporation.

4. Defendant Brighton University, Inc. ("BUI") is a Missouri corporation.

5. Defendant Mark H. Seyer ("Seyer") is a resident of the State of California.

6. Defendant Ronald W. Bealert ("Bealert") is a resident of either the State of California or the State of Arizona.

7. On April 27, 1992, BU's Articles of Incorporation were filed with the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii. Defendant Seyer signed the articles as an incorporator.

8. BU regularly and timely filed annual corporate exhibits with the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii for the years ending December 31, 1992 through 1998. Most of those filings indicated that Alberto Rico, Jr. was the president of BU. In fact, Mr. Rico was only a nominal officer and director and BU was owned and/or controlled by Defendant Seyer. Those annual exhibits also falsely listed Alberto Rico, Jr.'s parents home address as BU's address.

9. During the period from 1992 through 1998, BU operated an unaccredited degree granting institution in or from the State of Hawaii or under the ostensible authority of the laws of the State of Hawaii.

10. On or about December 5, 2001, someone forged Defendant Alberto Rico, Jr.'s signature, as BU's president, on annual corporate exhibits for the years ending December 31, 1999 and 2000. Those exhibits were filed with the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii on or about December 15, 2001. BU has not filed its annual corporate exhibit for the year ending 2001.

11. On December 29, 2001 Defendant Seyer apparently prepared, signed, but did not file, an annual corporate exhibit on behalf of BU claiming that it was "not in existence, now incorporated in Saint Louis, Missouri."

12. BU's 1999 annual corporate exhibit identifies BU's mailing address as "1164 Bishop Street #124, Honolulu, Hawaii 96813." BU's 2000 annual corporate exhibit identifies BU's mailing address as "1164 Bishop Street, #124, Honolulu, Hawaii 96813."

13. BU's 1999 annual corporate exhibit identifies the street address of BU's registered office as "1164 Bishop Street, #124, Honolulu, Hawaii 96813" and Alberto Rico, Jr. as the registered agent at that address. BU's 2000 annual corporate exhibit identifies the street address of BU's registered office as "1164 Bishop Street, #124 Honolulu, Hawaii 96813" and Rico as the registered agent at that address.

14. There is no office located at 1164 Bishop Street, #124 Honolulu, Hawaii 96813.

15. 1164 Bishop Street, #124, Honolulu, Hawaii is the street address for a company called "The Mail Exchange." The Mail Exchange provides mail forwarding, messaging, packing postal and other services to individuals who contract with it. Alberto Rico, Jr. does not reside at that address and cannot be found there.

16. On August 20, 1999 Defendant Seyer, as Chancellor, executed an Application for Delivery of Mail Through Agent form on behalf of BU authorizing The Mail Exchange to accept BU's mail. The form recites that the address would be used for soliciting and doing business with the public. Mail sent to BU at that address was forwarded to Defendant Seyer in California.

17. BU's 1999 and 2000 annual corporate exhibits identify Alberto Rico, Jr. as its president and a director. Alberto Rico, Jr. did not sign these exhibits and did not authorize his name to be so used. In fact, Alberto Rico, Jr. never functioned as a president or director of BU. Instead BU was controlled by Defendant Seyer.

18. BU's 1999 and 2000 annual corporate exhibits identify Defendant Bealert as its vice-president and a director.

19. BU's 1999 and 2000 annual corporate exhibits identify Defendant Seyer as one of its directors.

20. BU's 1999 and 2000 annual corporate exhibits identify Cornelius Breyer as one of its directors. Cornelius Breyer has never consented to being named as a corporate director for BU.

21. BU's 1999 and 2000 annual corporate exhibits contain a certification by the unidentified forger of the document that the business is "Inactive." Contrary to this representation, as outlined below, BU has conducted business as an unaccredited degree granting institution

22. On July 27, 2000, BUI was incorporated as a nonprofit corporation in the State of Missouri.

23. BUI is not now or has it ever been legally authorized to grant degrees in or from the State of Missouri.

24. Defendant BU is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

25. Defendant BUI is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

26. Defendant Bealert is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

27. Defendant Seyer is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

28. Subsequent to July 1, 1999, the defendants, acting in concert, have engaged in the operation of an unaccredited degree granting institution named Brighton University. To that end, the defendants have offered to sell and sold educational services, including those leading to degrees. In conjunction therewith, the defendants have utilized a variety of marketing materials, including catalogs.

29. Brighton University is an "unaccredited institution" as that phrase is defined in Hawaii Rev. Stat. § 446E-1.

30. Brighton University has or claims to have a "presence" in the State of Hawaii as that term is used in Hawaii. Rev. Stat. §446E-1.

31. A true and correct copy of Brighton University's 2001/2002 Special Programs Division Southeastern United States Catalogue is attached as Exhibit 1.

COUNT I
FAILURE TO MAKE STATUTORY DISCLOSURES

32. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 31 as though fully set forth herein.

33. Brighton University failed to properly and adequately disclose in all catalogs, promotional materials, including its website, and/or written contracts for instruction the fact that it is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education in violation of Hawaii Rev. Stat. § 446E-2(a).

34. Each and every catalog, promotional material and/or written contract for instruction that failed to properly and adequately disclose the fact that Brighton University is and was not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

35. Violations of Hawaii Rev. Stat. § 446E-2(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT II
FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII

36. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 35 as though fully set forth herein.

37. Brighton University has failed to have an office located in Hawaii in violation of Hawaii Rev. Stat. §446E-5(d).

38. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT III
FAILURE TO HAVE AN EMPLOYEE LOCATED IN HAWAII

39. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 38 as though fully set forth herein.

40. Brighton University has failed to have an employee located in Hawaii in violation of Hawaii Rev. Stat. § 446E-5(d).

41. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT IV
FAILURE TO HAVE TWENTY-FIVE HAWAII STUDENTS ENROLLED

42. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

43. Brighton University has failed to have twenty-five enrolled students in Hawaii in violation of Hawaii Rev. Stat. § 446E-5(d).

44. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT V
SUGGESTIONS OF STATE LICENSING, APPROVAL OR REGULATION

45. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 44 as though fully set forth herein.

46. Brighton University has in its promotional materials, specifically its catalogue, indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations in violation of Hawaii Rev. Stat. §446E-5(a).

47. The publication of each and every promotional material that indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

48. Alternatively, the number of days that each and every promotional material that indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations was viewable by the public constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

49. Alternatively, each student that enrolled as a result of each and every promotional material that indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

50. Violations of Hawaii Rev. Stat. § 446E-5(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT VI
DECEPTIVE REPRESENTATIONS

51. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 50 as though fully set forth herein.

52. Brighton University has made a series of misleading and deceptive statements in its catalogue, including:

- a. that Brighton University has served nearly 10,000 students;
- b. that it has a "main campus" in Hawaii;
- c. that its Colleges of Clinical Psychology and Forensic Arts, Breeden-Massey Institute of Archeology, Center for Justice Studies and Theological School are located in Honolulu;
- d. that the aforementioned have been visited by over 9,000 students, prospects and alumni;
- e. that the Council on Post-secondary Education of the State of Hawaii has granted approval to Brighton University; and
- f. that the university is licensed and chartered by the states of Missouri and Hawaii to grant both undergraduate and graduate degrees to the level of Doctor of Philosophy.

53. Each and every catalog, promotional material and/or written contract for instruction that contained such a misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

54. Alternatively, each student that enrolled as a result of each and every promotional material that contained such a misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

COUNT VII
ILLEGAL ACCEPTANCE OF PAYMENTS

55. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 54 as though fully set forth herein.

56. Brighton University has had or claimed to have had a continual "presence" in the State of Hawaii as that phrase is used in Hawaii Rev. Stat. § 446E-1 and § 446E-5 since at least July 1, 1999.

57. Brighton University has accepted or received tuition payments or other fees on behalf of students despite not being in compliance with all of the requirements of Hawaii Rev. Stat. Chap. 446E.

58. The acceptance of such payment(s) or fee(s) from each student constitutes a separate and independent violation of Hawaii Rev. Stat. §446E-5(e).

59. Violations of Hawaii Rev. Stat. § 446E-5(e) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT VIII
DEFENDANT SEYER'S INDIVIDUAL LIABILITY

60. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 59 as though fully set forth herein.

61. Defendant Seyer is an officer and director of BU and BUI.

62. Defendant Seyer actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described herein.

COUNT IX
DEFENDANT BEALERT'S INDIVIDUAL LIABILITY

63. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 62 as though fully set forth herein.

64. Defendant Bealert is the Chancellor of Brighton University.

65. Defendant Bealert actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described herein.

COUNT X
INJUNCTIVE RELIEF

66. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 65 as though fully set forth herein.

67. Unless defendants are restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. Chap. 446E and § 480-2(a) in the manner described herein, they will continue to do so, irreparably harming and injuring the consuming public of the State of Hawaii.

WHEREFORE, plaintiff prays that this court:

1. Find, order, adjudge and declare that defendants' conduct, as alleged herein, violates the statutory provisions set forth above.

2. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining The Mail Exchange, their agents, employees, successors and assigns, directly or indirectly, individually or in concert with others, or through any corporate or other device from providing voice mail, mail forwarding, or any other service to the Defendants.

3. Issue a temporary restraining order, preliminary injunction and permanent injunction directing the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii to dissolve, terminate, revoke and/or cancel all trade names, trademarks, corporate registrations (including that for Brighton University), certificates of authority held by or for the defendants.

4. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining the defendants, their agents, employees, successors

and assigns, directly or indirectly, individually or in concert with others, or through any corporate or other device from any of the following:

- a. Providing any post-secondary instructional programs or courses leading to a degree;
- b. Acting as or holding themselves out as a “college, academy, institute, institution, university” or anything similar thereto;
- c. Failing to comply with Hawaii Rev. Stat. Chap. 446E or § 480-2(a) in any particulars; and
- d. Owning or operating any business in the State of Hawaii, claiming to operate under the laws of the State of Hawaii, or having a presence in Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

5. Assess appropriate civil penalties against the defendants individually pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in favor of plaintiff accordingly.

6. Award any consumers injured by the aforementioned violations full restitution, including pre and post judgment interest, against the defendants, jointly and severally, pursuant to Hawaii Rev. Stat. § 487-14 and the court’s inherent authority and enter judgment accordingly.

7. Assess and award judgment in favor of plaintiff and against the defendants, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

8. Award plaintiff such other relief as the court may deem just and equitable under the circumstances.

DATED: Honolulu, Hawaii, June 20, 2002.

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Attorney for Plaintiff

- c. Failing to comply with Hawaii Rev. Stat. Chap. 446E or § 480-2(a) in any particulars; and
- d. Owning or operating any business in the State of Hawaii, claiming to operate under the laws of the State of Hawaii, or having a presence in Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

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7. Assess and award judgment in favor of plaintiff and against the defendants, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

8. Award plaintiff such other relief as the court may deem just and equitable under the circumstances.

DATED: Honolulu, Hawaii, June 20, 2002.



JEFFREY E. BRUNTON
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