

2007 SEP 28 PM 3: 24

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H. CHING  
CLERK

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

07-1-1805-09 E EH

STATE OF HAWAII, by its Office of Consumer Protection,	)
	)
Plaintiff,	)
	)
vs.	)
	)
PACIFIC BUDDHIST UNIVERSITY, a Hawaii corporation and JOHN F. DE VIRGILIO,	)
	)
Defendants.	)
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CIVIL  
(Other Civil Action)  
  
COMPLAINT 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 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.

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 Pacific Buddhist University ("PBU") is a Hawaii corporation.

4. Defendant John F. De Virgilio is a resident of the City and County of Honolulu, State of Hawaii.

5. Defendant PBU maintains a website located at <http://www.pacificbuddhist.com>.

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

7. Defendant PBU is an "unaccredited institution" as that phrase is defined in Hawaii Rev. Stat. § 446E-1.

8. Defendant PBU has a "presence" in the State of Hawaii as that term is used in Hawaii Rev. Stat. § 446E-1.

**COUNT I**  
**FAILURE TO PROPERLY MAKE STATUTORY DISCLOSURES**

9. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 8 as though fully set forth herein.

10. PBU has failed to properly and adequately disclose in its website, catalogs, promotional material and/or contracts for instruction of the fact that it is not

accredited by an accrediting agency recognized by the United States Secretary of Education in violation of Hawaii Rev. Stat. § 446E-2(a).

11. The publication of each and every website, catalog and promotional material and the execution of each contract for instruction that failed to properly and adequately disclose the fact that PBU is and was not accredited by an accrediting agency recognized by the United States Secretary of Education constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

12. Alternatively, the provision to each student of such a catalog or promotional material or the execution of a contract for instruction that failed to properly and adequately disclose the fact that PBU is and was not accredited by an accrediting agency recognized by the United States Secretary of Education constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

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

**COUNT II**  
**SUGGESTIONS OF STATE LICENSING, APPROVAL OR REGULATION**

14. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 as though fully set forth herein.

15. PBU and its agents have, in its website, catalogs and/or promotional materials indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations in violation of Hawaii Rev. Stat. § 446E-5(a).

16. Each and every catalog, promotional material and/or written contract for instruction that contains such a suggestion or indication constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(a).

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

**COUNT III**  
**DEFENDANT DE VIRGILIO'S PERSONAL LIABILITY**

18. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

19. At all times relevant herein, Defendant De Virgilio was an officer and/or director of PBU.

20. Defendant De Virgilio 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 IV**  
**INJUNCTIVE RELIEF**

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 as though fully set forth herein.

22. 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 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 PBU), certificates of authority held by or for the defendants.
3. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining the defendants, its 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 itself 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.

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

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

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

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

DATED: Honolulu, Hawaii, September 28, 2007.

  
JEFFREY E. BRUNTON  
Attorney for Plaintiff

State of Hawaii vs. Pacific Buddhist University, et al.; Civil No. \_\_\_\_\_;  
COMPLAINT AND SUMMONS.

<b>STATE OF HAWAII</b> CIRCUIT COURT OF THE FIRST CIRCUIT	<b>SUMMONS</b> <b>TO ANSWER CIVIL COMPLAINT</b>	CASE NUMBER  Civil No.
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<b>PLAINTIFF</b> STATE OF HAWAII, by its Office of Consumer Protection	<b>VS.</b>	<b>DEFENDANT(S)</b> PACIFIC BUDDHIST UNIVERSITY, a Hawaii corporation and JOHN F. DE VIRGILIO
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<b>PLAINTIFF'S ATTORNEY (Name, Address, Tel. No.)</b> JEFFREY E. BRUNTON #2833 Office of Consumer Protection 235 South Beretania Street, Room 801 Honolulu, Hawaii 96813-2419 Telephone: (808) 588-2636
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**TO THE DEFENDANT(S):**

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, an answer to the complaint which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

If you fail to obey this summons, this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this summon shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.

DATE ISSUED <b>SEP 28 2007</b>	CLERK <b>H. CHING</b>	
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I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CIRCUIT COURT CLERK
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