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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2004 APR 21 11:10:26

M.N. TANIGUCHI  
CLERK

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of )  
Consumer Protection, )  
 )  
Plaintiff, )

CIVIL NO. 04-1-0731-04 (GWB)  
(Other Civil Action)

COMPLAINT AND SUMMONS

vs. )  
)  
)  
)

UNIVERSITY OF ADVANCED )  
RESEARCH-HAWAII CAMPUS, LTD., )  
a Hawaii corporation and FREDERICK )  
A. MITCHELL, )  
 )  
Defendants. )

Trial Date: None  
SCF Date: None

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 University of Advanced Research—Hawaii Campus, Ltd. ("UAR") is a Hawaii corporation doing business under the name University of Advanced Research.

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

5. Subsequent to July 1, 1999, Defendant UAR, acting in concert with others, has engaged in the operation of the unaccredited degree granting institution. To that end, UAR has offered to sell and sold post-secondary degrees.

6. UAR is an "unaccredited institution" as that phrase is defined in Hawaii Rev. Stat. § 446E-1.

7. UAR has a "presence" in the State of Hawaii as that term is used in Haw. Rev. Stat. §446E-1.

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

8. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 7 as though fully set forth herein.

9. Defendant UAR and its agents have failed to properly and adequately disclose in all catalogs, promotional materials and/or written contracts for instruction

the fact that UAR 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).

10. Each and every catalog, promotional material and/or written contract for instruction that failed to properly and adequately disclose the fact that UAR 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).

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

**COUNT II**  
**FAILURE TO HAVE TWENTY-FIVE HAWAII STUDENTS ENROLLED**

12. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 11 as though fully set forth herein.

13. Defendant UAR has failed to have twenty-five enrolled students in Hawaii in violation of Hawaii Rev. Stat. § 446E-5(d).

14. 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 OFFICE LOCATED IN HAWAII**

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

16. Defendant UAR has failed to have an office located in Hawaii in violation of Hawaii Rev. Stat. §446E-5(d).

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

**COUNT IV**  
**FAILURE TO MAINTAIN AN AGENT FOR SERVICE OR PROCESS**

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

19. UAR has failed to continuously maintain an agent for service of process within the State of Hawaii as required by Hawaii Rev. Stat. § 446E-4(a).

**COUNT V**  
**DECEPTIVE SUGGESTION OF FEDERAL RECOGNITION**

20. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 19 as though fully set forth herein.

21. In its solicitations and promotional materials, UAR has stated or suggested that it is a federally recognized institution of higher learning. It has done so by, among other things, referring to the National Center for Education Statistics, the United States Department of Education and the Office of Educational Research and Improvement in such a manner as to falsely imply or suggest that those federal agencies recognize UAR. In fact, they do not and have ordered UAR to cease and desist such false references.

22. Such conduct violates Hawaii Rev. Stat. § 480-2(a).

23. Such conduct violates Hawaii Rev. Stat. § 481A-3.

**COUNT VI**  
**DECEPTIVE SUGGESTION OF LONGEVITY**

24. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

25. In its solicitations and promotional materials, UAR has stated or that it was established more than ten years ago. In fact, UAR was not incorporated in the state of Hawaii until 1998.

26. Such conduct violates Hawaii Rev. Stat. § 480-2(a).

27. Such conduct violates Hawaii Rev. Stat. § 481A-3.

**COUNT VII**  
**DECEPTIVE REPRESENTATIONS/OMISSIONS REGARDING THE VALUE AND LEGALITY OF UAR DEGREES**

28. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 27 as though fully set forth herein.

29. UAR, in its solicitations and promotional materials, states or suggests that its degrees are as valuable as those from accredited traditional schools, are widely accepted by employers and are likely to lead to increased income levels.

30. These claims are false, misleading and deceptive since the use of UAR degrees in a number of jurisdictions is illegal and may very well subject the user to being terminated from employment and potentially indicted.

31. Each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

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

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

33. UAR has in its 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).

34. 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).

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

**COUNT IX**  
**ILLEGAL ACCEPTANCE OF PAYMENTS**

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

37. Defendant UAR 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.

38. 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).

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

**COUNT X**  
**DEFENDANT FREDERICK A. MITCHELL'S INDIVIDUAL LIABILITY**

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

41. Defendant Frederick A. Mitchell 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 XI**  
**INJUNCTIVE RELIEF**

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

43. 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 tradenames, trademarks, corporate registrations (including

that for University of Advanced Research – Hawaii Campus), certificates of authority held by or for the defendants.

3. 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.

4. Assess appropriate civil penalties against the defendants pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in favor of 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 plaintiff and against the defendants, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

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

DATED: Honolulu, Hawaii, APR 21 2004.

  
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JEFFREY E. BRUNTON  
Attorney for Plaintiff

Civil No. \_\_\_\_\_; State of Hawaii v. American University Hawaii, Inc., et al.; Complaint and Summons