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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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H. CHING
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

Plaintiff,)

vs.)

PACIFIC EDUCATIONAL SERVICES)
COMPANY, a Nevada corporation dba)
Hawaii College of Pharmacy; DENISE)
A. CRISWELL aka Deedee Criswell)
aka DeDe Criswell aka Denise)
Criswell Nakajima and DAVID)
CHAMPION MONROE fka David)
Yacas,)

Defendants.)

CIVIL NO. 05-1-1356-07 **S S M**
(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 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 jurisdiction over this matter pursuant to Hawaii Rev. Stat. §§ 480-21 and 603-21.5.

3. Venue in the City and County of Honolulu, State of Hawaii, is proper under Hawaii Rev. Stat. § 603-36.

4. Defendant Pacific Educational Services Company ("PES") is a Nevada for-profit corporation. On April 23, 2003, PES applied for and was issued a Certificate of Authority for Foreign Corporation from the Business Registration Division of the State of Hawaii.

5. Defendant Denise A. Criswell ("Criswell") is the president, chief executive officer and chairman of the board of directors of PES. She is believed to be a resident of Kentucky, Nevada or Hawaii. Defendant Criswell has also used the names DeeDee Criswell, Dede Criswell and Denise Criswell Nakajima.

6. Defendant David C. Monroe ("Monroe") is the secretary and a director of PES. At various times, he has held himself out to be the Vice Chairman of the Board, Chief Operating Officer and "planning strategist" of PES. He is believed to be a resident of Kentucky, Nevada or Hawaii. Defendant Monroe has also been known as David Yacas.

7. In September 2003, PES registered the trade name Hawaii College of Pharmacy ("HICP") with the Business Registration Division of the State of Hawaii.

8. Upon learning of PES' registration of the trade name HICP, Plaintiff notified Defendants of the existence and requirements contained in Hawaii's Unaccredited Degree Granting Institution law, Hawaii Rev. Stat. Chapter 446E.

9. In response, Defendants assured Plaintiff in September 2003 that:

"Pacific Educational Services, dba, Hawaii College of Pharmacy has **NO** current students enrolled as we will not enroll or officially accept students into the program until the application for pre-candidacy to the American Council on Pharmaceutical Education has been submitted and approved for site visit and enrollment practices and procedures."

"Once the accreditation process is in action, we will start marketing and informational sessions. Again, marketing materials have not yet been released, as we are following standard and acceptable "pre" accreditation procedures."

"We are currently developing a pre-application package to be sent by or before October 1, 2003 to the American Council on Pharmaceutical Education (ACPE)."

"We will not begin the process of educating pharmacists in the State of Hawaii without positive action via the application process per ACPE. Upon successful submission and response from ACPE the College will be in the pre-candidate status of accreditation. . . ."

"On October 1, 2003 our initial application for accreditation to the American Council on Pharmaceutical Education is due . . . Until such review by ACPE, PES intends not to accept students into the program."

"We will, of course, keep the State of Hawaii informed of all accreditation actions."

10. Despite those assurances made during the course of an official government investigation, and notwithstanding the fact that PES made no formal application for pre-candidacy status with ACPE, Defendants began receiving and accepting applications for enrollment from prospective students during the spring of 2004.

11. Defendant PES is not now and never has been accredited by an accrediting agency recognized by the United States Secretary of Education.

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

13. Defendant PES has a "presence" in the State of Hawaii as that phrase is defined in Hawaii Rev. Stat. §446E-1.

COUNT I
FAILURE TO PROPERLY MAKE STATUTORY DISCLOSURES

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

15. PES has failed to properly and adequately disclose in its catalogs, promotional material and/or contracts for instruction 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).

16. The publication of each and every catalog and promotional material and the execution of each contract for instruction that failed to properly and adequately disclose the fact that PES 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).

17. 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 PES 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).

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

COUNT II
DISCLOSURE OF APPLICATION FOR FUTURE ACCREDITATION

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

20. PES, in its catalogs, promotional material and/or contracts for instruction disclosed that it had applied for future accreditation in violation of Hawaii Rev. Stat. § 446E-5(f).

21. The publication of each and every catalog and promotional material and the execution of each contract for instruction that disclosed the fact that PES had applied for future accreditation constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(f).

22. Alternatively, the provision to each student of such a catalog or promotional material or the execution of a contract for instruction that disclosed the fact that PES had applied for future accreditation constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(f).

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

COUNT III
FAILURE TO MAINTAIN STATUTORY AGENT

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

25. In February 2005, PES an Annual Corporate Report with the Business Registration Division of the State of Hawaii. The report identified its registered agent as David C. Monroe at 94-1045 Poluku Street, Waipahu, Hawaii 96797.

26. Defendant Monroe cannot be located at that address.

27. Failure to properly designate an agent violates Hawaii Rev. Stat. §446E-4(a).

28. Violations of Hawaii Rev. Stat. § 446E-4(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT IV
FAILURE TO PRODUCE RECORDS, DOCUMENTS AND INFORMATION

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

30. On July 11, 2005 Plaintiff requested PES produce certain documents, records and information.

31. PES has failed to produce the requested documents, records and information in violation of Hawaii Rev. Stat. §446E-2(c).

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

COUNT V
ILLEGAL ACCEPTANCE OF PAYMENTS

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

34. During the course of its operations, PES accepted and received tuition payments and other fees from students despite not being in compliance with all of the requirements of Hawaii Rev. Stat. Chapter 446E.

35. The acceptance of tuition payments and other fees from each student constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(e).

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

COUNT VI
MISREPRESENTATIONS REGARDING PRE-CANDIDACY STATUS

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

38. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that they had applied with the American Council on Pharmaceutical Education ("ACPE") for "pre-candidacy" accreditation status.

39. In fact, Defendants never made such an application to ACPE's Board of Directors, but merely submitted a "draft" application for review and consultation by the staff of ACPE.

40. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that the ACPE would make a site visit in the early spring of 2004.

41. In fact, no such site visit had ever been approved or scheduled by ACPE and none took place.

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

43. Independently and additionally, each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3.

COUNT VII
MISREPRESENTATIONS REGARDING CANDIDACY STATUS

44. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 43 as though fully set forth herein.

45. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that "candidate accreditation" status was automatic or a mere formality. In fact, such status is discretionary and contingent on approval by ACPE's Board of Directors.

46. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that they had submitted an application with the ACPE for "candidate" status which would be considered at the June 2004 ACPE Board meeting.

47. In fact, prior to making those claims, Defendants had not made such an application to ACPE's Board of Directors, but merely submitted a "draft" application for review and consultation by the staff of ACPE.

48. Although Defendants eventually made such a formal application to the ACPE Board of Directors, they were advised by the ACPE Board, following its January 2005 meeting, to withdraw the application.

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

50. Independently and additionally, each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3.

COUNT VIII
MISREPRESENTATIONS REGARDING AFFILIATION

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

52. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that HICP was affiliated with the accredited University of Southern Nevada.

53. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that the president of the accredited University of Southern Nevada was a member of their Board of Trustees.

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

55. Independently and additionally, each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3.

COUNT IX
MISREPRESENTATIONS REGARDING CLASS SIZE

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

57. Prospective students were informed and otherwise lead to believe that the inaugural class for HICP would consist of 120-130 students.

58. In fact, Defendants accepted enrollments from approximately 248 students.

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

60. Independently and additionally, each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3.

COUNT X
MISREPRESENTATIONS REGARDING FACILITIES

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

62. In their websites and other promotional materials, and orally, Defendants falsely represented, stated and otherwise implied that they had secured a developer to build a permanent campus which would be completed by early 2005.

63. Construction of such a "permanent campus" has not yet even begun.

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

65. Independently and additionally, each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3.

COUNT XI
SYSTEMATIC BREACH OF CONTRACTS

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

67. Prior to enrollment, HICP students were informed and believed that HICP was a "three-year" pharmacy school; i.e. that if they successfully passed the required courses, they would be able to graduate in three years.

68. In an attempt to reduce class size, HICP unilaterally altered the terms of progression through the school; increasing the time which some of the students would take to complete their studies from three to four years or even longer.

69. This conduct constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

COUNT XII
RETALIATION

70. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as though fully set forth herein.

71. Upon learning that three of its students were preparing to file complaints with Plaintiff, the Defendants immediately began administrative proceedings to expel the students from HICP and caused, *ex parte*, a temporary restraining order to be issued against them by a judge of the District Court of the District of Honolulu.

72. The Defendants, in an attempt to discredit the three complaining students and to deter others from exercising their rights to redress with a government agency, caused the notice of expulsion to be delivered to the ACPE, the Plaintiff and the Hawaii and California Boards of Pharmacy.

73. The application for a permanent injunction which accompanied the application for a temporary restraining order and the temporary restraining order itself were subsequently withdrawn with prejudice by the Dean of HICP.

74. These actions are and were retaliatory in nature and constitute an unfair or deceptive trade practice in violation of Hawaii Rev. Stat. § 480-2.

COUNT XIII
DEFENDANT CRISWELL'S PERSONAL LIABILITY

75. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 74 as though fully set forth herein.

76. At all times relevant herein, Defendant Criswell was an officer and/or director of PES.

77. Defendant Criswell 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 XIV
DEFENDANT MONROE'S PERSONAL LIABILITY

78. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 77 as though fully set forth herein.

79. At all times relevant herein, Defendant Monroe was an officer and/or director of PES.

80. Defendant Monroe 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 XV
INJUNCTIVE RELIEF

81. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 80 as though fully set forth herein.

82. Unless Defendants are restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. Chap. 446E, §480-2(a) and §481A-3 in the manner described herein, they will continue to do so, irreparably harming and injuring the consuming public of the State of Hawaii.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

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

2. Appoint a receiver for the assets of the Defendants pursuant to Hawaii Rev. Stat. §480-16.

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. Failing to comply with Hawaii Rev. Stat. Chap. 446E, § 480-2(a) or §481A-3 in any particulars;
- b. Collecting tuition payments and/or other fees from or on behalf of students unless and until Defendants are in complete compliance with Hawaii Rev. Stat. Chapter 446E;
- c. Directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing, dissipating, converting, withdrawing or otherwise disposing of assets, funds, real property or other property, wherever located, owned or controlled by or held for the benefit of, in whole or in part, or in the possession of any of the Defendants, except as ordered by the court; and
- d. Owning or operating any business in the State of Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

4. Assess appropriate civil penalties against each of 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, jointly and severally, 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, July 27, 2005.


JEFFREY E. BRUNTON
Attorney for Plaintiff

