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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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B. TERAOKA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of  
Consumer Protection,

Plaintiff,

vs.

CHARLES JAMES dba Marlborough  
University,

Defendant.

CIVIL NO. 01-1-2370-08  
(Other Civil Action)

COMPLAINT; EXHIBITS 1-2; AND  
SUMMONS

**COMPLAINT**

Plaintiff, for a cause of action against the above-named defendant, 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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	)	
vs.	)	
	)	
	)	
CHARLES JAMES dba Marlborough University,	)	
	)	
Defendant.	)	
	)	
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	)	
_____	)	

**COMPLAINT**

Plaintiff, for a cause of action against the above-named defendant,  
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 Defendant 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. Upon information and belief, Defendant Charles James is a resident of Gibraltar.

4. On September 12, 1998, David Dymond submitted an application for renewal of the registration of the tradename "Marlborough University" to the Department of Commerce and Consumer Affairs of the State of Hawaii. The application form listed Mr. Dymond's address as 350 Ward Avenue, Suite 106-563 in Honolulu and described the nature of the business for which the tradename was being used as "distance learning."

5. In fact, Mr. Dymond resided either in Great Britain or in Bangkok, Thailand.

6. On September 21, 1998 Mr. Dymond's application was granted for a ten year term from August 26, 1998 to August 25, 2008.

7. Commencing on a date uncertain, but believed to be in 1997, Mr. Dymond dba Marlborough University began engaging in trade or commerce by advertising, publicizing and announcing to consumers the availability of degrees from Marlborough University.

8. Sometime thereafter, perhaps in 2000, the business was purchased by Defendant Charles James, who continued its operations under the tradename Marlborough University.

9. Defendant Charles James 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.

10. Marlborough University's website recited that "Here are some of the advantages of choosing Marlborough: Legally registered in the State of Hawaii."

11. Marlborough University's website also recited that "Marlborough is registered in Hawaii, USA, as *a university which has legal authority to grant degrees* but in common with ALL other global universities awarding degrees based on distance learning without classroom attendance or formal examination."

12. The online enrollment form for Marlborough University recited that "*Marlborough is registered as a Distance Learning institution with the Department of Commerce and Consumer Affairs in the US State of Hawaii in accordance with the provisions of Chapter 482 of the Hawaii Revised Statutes. Certificate of Registration No: 209260. All awards are issued in Hawaii.*"

13. The online enrollment form for Marlborough University also noted that it had a "*Registered Head Office: 350 Ward Avenue (Suite 106-563), Honolulu, HI 96814, USA.*"

14. Similar representations were made in other Marlborough University promotional materials.

15. The address Suite 106, 350 Ward Avenue in Honolulu, Hawaii is the location of AOK Business Services. AOK provides mail-forwarding, voice messaging and other services. Mr. Dymond first arranged for mail-forwarding service from AOK Business Services in February 1997. On March 8, 2000, Defendant Charles James notified AOK Business Services that he had acquired the business from Mr. Dymond.

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

17. Marlborough University is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

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

19. Having learned of Marlborough University's operations, plaintiff asked Marlborough University and its principals including defendant Charles James, to demonstrate that they were in compliance with Hawaii's laws regarding unaccredited degree granting institutions. A true and correct copy of plaintiff's request is attached as Exhibit 1.

20. Plaintiff received the response from Charles James which is attached as Exhibit 2.

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

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

22. Marlborough 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).

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

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

**COUNT II**  
**DECEPTIVE REPRESENTATIONS OF**  
**STATE LICENSING, APPROVAL OR REGULATION**

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

26. Marlborough University, through its website, catalogs and promotional material, has indicated or suggested that the State of Hawaii licensed, approved, or regulated its operations.

27. Each such indication or suggestion constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(a).

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

29. Alternatively and independently, each such indication or suggestion constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a) and or § 481A-3(a).

**COUNT III**  
**DECEPTIVE REPRESENTATIONS**

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

31. Marlborough University, through its website, catalogs and other materials, has indicated or suggested that it has directors which it does not, in fact, have.

32. Marlborough University, through its catalog and other materials, has indicated or suggested that its officers have residence addresses which they do not, in fact, have or have had.

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

**COUNT IV**  
**FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII**

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

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

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

**COUNT V**  
**FAILURE TO HAVE AN EMPLOYEE LOCATED IN HAWAII**

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

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

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

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

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

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

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

**COUNT VII**  
**ILLEGAL ACCEPTANCE OF PAYMENTS**

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

44. Marlborough University has 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 1998.

45. Marlborough 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.

46. 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).

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

**COUNT VIII**  
**INJUNCTIVE RELIEF**

48. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 47 as though fully set forth herein.

49. Unless Defendant Charles James is restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. Chap. 446E and § 480-2(a) in

the manner described herein, he 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 defendant's conduct, as alleged herein, violates the statutory provisions set forth above.

2. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining AOK Business Services, its 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 defendant.

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 tradenames (including the tradename Marlborough University), trademarks, corporate registrations, certificates of authority held by or for the defendant.

4. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining the defendant, his 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 himself 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 or claiming to operate under the laws of the State of Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

5. Assess appropriate civil penalties against the defendant 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 defendant 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 defendant, 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, August 13, 2001.

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Attorney for Plaintiff

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

DATED: Honolulu, Hawaii, August 13, 2001.

  
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