

JEFFREY E. BRUNTON #2833
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: 586-2636

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2001 MAY -2 AM 10:34

F. OTAKE
CLERK

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of)	CIVIL NO. <u>01-1-1362-05</u>
Consumer Protection,)	(Other Civil Action)
)	
Plaintiff,)	COMPLAINT; EXHIBITS 1-3;
)	SUMMONS
)	
vs.)	
)	
)	
STEVEN W. MOSS and THE PRESCOTT)	
GROUP. INC., a dissolved Nevada)	
corporation fdba The Prescott College)	
of Business & Leadership Studies,)	
)	
Defendants.)	
)	

COMPLAINT

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

JEFFREY E. BRUNTON #2833
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: 586-2636

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of)	CIVIL NO. _____
Consumer Protection,)	(Other Civil Action)
)	
Plaintiff,)	COMPLAINT; EXHIBITS 1-3;
)	SUMMONS
)	
vs.)	
)	
)	
STEVEN W. MOSS and THE PRESCOTT)	
GROUP. INC., a dissolved Nevada)	
corporation fdba The Prescott College of)	
Business & Leadership Studies,)	
)	
Defendants.)	
_____)	

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

3. Defendant Steven W. Moss is a resident of the State of Michigan.

4. Defendant The Prescott Group, Inc. ("PGI") is a dissolved Nevada corporation which formerly did business as The Prescott College of Business & Leadership Studies.

5. On March 11, 1999 PGI was incorporated in the State of Nevada. Public records on file with the Nevada Secretary of State identified Lance Kerness of Las Vegas as the President, Secretary, Treasurer and Registered Agent of the corporation.

6. On January 27, 2000, PGI was granted a Certificate of Authority for a Foreign Corporation by the State of Hawaii. The application for the certificate identified Defendant Moss as the President, Vice-President, Secretary and Treasurer of PGI. The certificate was signed by Defendant Moss and certified that the primary specific purpose the corporation will pursue in the State of Hawaii as "We are operating a private, unaccredited, worldwide, degree-granting home study college of business & leadership studies.

7. Commencing on a date uncertain, but believed to be in December 2000, the Defendants began engaging in trade or commerce by advertising, publicizing and announcing to consumers worldwide, through the internet, the availability of The Prescott College of Business & Leadership Studies ("Prescott").

8. The Internet uniform resource locators, or addresses, for The Prescott College of Business & Leadership Studies were and are <http://www.prescottcollege.net> and <http://www.prescottcenter.com>. The latter is merely a parked domain or dns pointer, meaning that consumers logging on to that site were automatically directed to the former site. A hard copy of the website as it appeared on February 5, 2001 is attached as Exhibit 1.

9. The website's homepage identified The Prescott College of Business & Leadership Studies as "The Worldwide Leader in State-Registered Accelerated Distance Learning." The address listed on that page for The Prescott College of Business & Leadership Studies was P.O. Box 3764, Honolulu, Hawaii and its copyright line carried an address of Kihei, Hawaii, USA.

10. Each page of the website carried the college's logo, a globe gridded with longitude and latitude over the word "HAWAII."

11. The webpage dealing with Licensing and Accreditation claimed that The Prescott College of Business & Leadership Studies was. . . "FULLY-REGISTERED with the Hawaii Department of Commerce and Consumer Affairs (D.C.C.A.) under the laws of the State of Hawaii."

12. The webpage dealing with the Disclosure Statement repeated the claim that The Prescott College of Business & Leadership Studies was . . . “FULLY-REGISTERED with the Hawaii Department of Commerce and Consumer Affairs (D.C.C.A.) to grant Degrees under the laws of the State of Hawaii”.

13. The webpage dealing with Questions stated that “Q: Is PCBLS state licensed and approved to grant Degrees? A. The Prescott College of Business & Leadership Studies is FULLY-REGISTERED to grant Degrees under the laws of the State of Hawaii by the Hawaii Department of Commerce and Consumer Affairs (D.C.C.A.)”.

14. Steven W. Moss is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

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

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

17. Prescott is or was an “unaccredited institution” as that phrase is defined in Hawaii Rev. Stat. § 446E-1.

18. Having learned of Prescott’s operations, Plaintiff asked PGI and its principals 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 2. PGI refused to substantively respond to Plaintiff's request.

19. After PGI failed to voluntarily demonstrate that it was in compliance with Hawaii's laws regarding unaccredited degree granting institutions, Plaintiff issued and served an administrative subpoena duces tecum requiring PGI to appear, to testify and to produce documents. A true and correct copy of the subpoena duces tecum is attached as Exhibit 3. PGI failed and refused to comply with the subpoena duces tecum.

COUNT I
FAILURE TO MAKE STATUTORY DISCLOSURES

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

21. Prescott 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).

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

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

COUNT II
DECEPTIVE REPRESENTATIONS

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

25. Prescott, through its website, has indicated or suggested that the State of Hawaii licensed, approved, or regulated its operations.

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

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

28. 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
FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII

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

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

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

COUNT IV
FAILURE TO HAVE AN EMPLOYEE LOCATED IN HAWAII

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

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

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

COUNT V
FAILURE TO HAVE TWENTY-FIVE HAWAII STUDENTS ENROLLED

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

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

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

COUNT VI
FAILURE TO PROVIDE RECORDS AND INFORMATION

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

39. Prescott failed to provide records and information upon Plaintiff's demand in violation of Hawaii Rev. Stat. §446E-2(b).

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

COUNT VII
ACTIVE/PASSIVE PARTICIPATION IN ILLEGAL CONDUCT

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

42. Defendant Moss was, at the time of the acts complained of herein, an officer and/or director of PGI.

43. Defendant Moss was an active or passive participant in the conduct of Prescott as set forth in the previous counts.

44. The Defendants operated a joint venture or enterprise, mutually aided and/or abetted each other, furnished or provided the means to commit the illegal conduct set forth herein, actively or passively participated in such 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 VIII
INJUNCTIVE RELIEF

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

46. 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 all 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 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.

3. Assess appropriate civil penalties against each and all of the Defendants individually pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in favor of Plaintiff accordingly.

1. Award any consumers injured by the aforementioned violations full restitution, including pre and post judgment interest, against all Defendants, jointly

and severally, pursuant to Hawaii Rev. Stat. § 487-14 and the court's inherent authority and enter judgment accordingly.

2. Assess and award judgment in favor of Plaintiff and against all Defendants, jointly and severally, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

3. Award Plaintiff such other relief as the court may deem just and equitable under the circumstances.

DATED: Honolulu, Hawaii, May 2, 2001

JEFFREY E. BRUNTON
Attorney for Plaintiff

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

5. Assess and award judgment in favor of Plaintiff and against all Defendants, jointly and severally, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

6. Award Plaintiff such other relief as the court may deem just and equitable under the circumstances.

DATED: Honolulu, Hawaii, May 2, 2001



JEFFREY E. BRUNTON
Attorney for Plaintiff