

JEFFREY E. BRUNTON #2833
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: (808) 586-2636

Attorney for Plaintiff

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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F. OTAKE
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of
Consumer Protection,

Plaintiff,

vs.

SOUTH PACIFIC UNIVERSITY, a
Hawaii nonprofit corporation and
CURTIS E. SMITH,
Defendants.

CIVIL NO. 01-1-2766-09
(Other Civil Action)

COMPLAINT; EXHIBITS 1-2; 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

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| Consumer Protection, |) | (Other Civil Action) |
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| CURTIS E. SMITH, |) | |
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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 South Pacific University ("SPU") is a Hawaii nonprofit corporation.

4. Upon information and belief, Defendant Curtis E. Smith is a resident of the State of California.

5. On August 26, 1992, 2000 Articles of Incorporation of SPU were filed with the Business Registration Division of Department of Commerce and Consumer Affairs of the State of Hawaii.

6. On March 29, 2001 SPU submitted its annual report for the year ending December 31, 2000. That report identifies SPU's mailing address and principal office address as being at 7 Waterfront Plaza, 500 Ala Moana Boulevard, Suite 400 in Honolulu, Hawaii.

7. The address Seven Waterfront Plaza, Suite 400 in Honolulu, Hawaii is the location of Corporate Office Centers which provides mail-forwarding, voice messaging and other services to SPU.

8. SPU maintains a website located at <http://www.southpacificuniv.edu>. That uniform resource locator address is registered to Defendant Curtis E. Smith.

9. The website recites that SPU offers higher education courses leading to Associates, Bachelors, Masters and Doctorate Degrees.

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

11. Defendant Curtis E. Smith is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

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

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

14. Having learned of SPU's operations, plaintiff asked SPU and its principals, including Defendant Curtis E. Smith, 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.

15. Plaintiff received the response from Defendant Curtis E. Smith which is attached as Exhibit 2.

COUNT I
FAILURE TO MAKE STATUTORY DISCLOSURES

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

17. SPU 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).

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

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

COUNT II
FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII

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

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

22. 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 EMPLOYEE LOCATED IN HAWAII

23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 22 as though fully set forth herein.

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

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

COUNT IV
FAILURE TO HAVE TWENTY-FIVE HAWAII STUDENTS ENROLLED

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

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

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

COUNT V
SUGGESTIONS OF STATE LICENSING, APPROVAL OR REGULATION

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

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

31. 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).

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

COUNT VI
ILLEGAL ACCEPTANCE OF PAYMENTS

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

34. SPU 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 July 1, 1999.

35. SPU 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.

36. 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).

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

COUNT VII
DEFENDANT CURTIS E. SMITH’S INDIVIDUAL LIABILITY

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

39. Defendant Curtis E. Smith 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 VIII
INJUNCTIVE RELIEF

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

41. 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 Corporate Office Centers, 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 Defendants.

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, trademarks, corporate registrations (including that for South Pacific University), certificates of authority held by or for the defendants.

4. 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.

5. Assess appropriate civil penalties against the defendants individually 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 defendants, jointly and severally, 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 defendants, 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, September 20, 2001.

JEFFREY E. BRUNTON
Attorney for Plaintiff

- 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.


5. Assess appropriate civil penalties against the defendants individually 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 defendants, jointly and severally, 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 defendants, 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, September 20, 2001.



JEFFREY E. BRUNTON
Attorney for Plaintiff