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Attorney for Plaintiff

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2003 JUL 17 PM 2:09

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.

UNITED STATES OPEN UNIVERSITY,  
INC., a Hawaii corporation and  
THERON E. DALTON dba United  
States Open University,

Defendants.

CIVIL NO. 03- 1- 148 2- 07  
(Other Civil Action)

COMPLAINT AND SUMMONS

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

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Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection,	)	CIVIL NO. 03-1-1482-07 RWP (Other Civil Action)
	)	
Plaintiff,	)	COMPLAINT AND SUMMONS
	)	
vs.	)	
	)	
UNITED STATES OPEN UNIVERSITY, INC., a Hawaii corporation and THERON E. DALTON dba United States Open University,	)	Trial Date: None SCF Date: None
	)	
Defendants.	)	
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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 United States Open University, Inc. ("USOU") is a Hawaii corporation.

4. Defendant Theron E. Dalton ("Dalton") is a resident of the State of California.

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

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

7. Subsequent to July 1, 1999, the defendants, acting in concert have engaged in the operation of the unaccredited degree granting institution USOU. To that end, the defendants have offered to sell and sold post-secondary degrees and transcripts.

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

9. USOU has or claims 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**

10. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 9 as though fully set forth herein.

11. Defendants have failed to properly and adequately disclose in all catalogs, promotional materials and/or written contracts for instruction the fact that USOU 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).

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

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

**COUNT II**  
**FAILURE TO CONTINUOUSLY MAINTAIN A STATUTORY AGENT**

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

15. USOU 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 III**  
**FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII**

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

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

18. 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**

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

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

21. 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**

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

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

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

**COUNT VI**  
**ILLEGAL ACCEPTANCE OF PAYMENTS**

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

26. Defendants have 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.

27. 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).

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

**COUNT VII**  
**DEFENDANT THERON E. DALTON'S INDIVIDUAL LIABILITY**

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

30. Defendant Dalton 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.

31. Alternatively, Defendant Dalton treated the corporation as his alter ego and the corporate veil, if any, should be otherwise pierced.

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

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

33. 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 United States Open University, 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 individually 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, \_\_\_\_\_.

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JEFFREY E. BRUNTON  
Attorney for Plaintiff

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

DATED: Honolulu, Hawaii, July 17, 2003.

Jeffrey E Brunton  
JEFFREY E. BRUNTON  
Attorney for Plaintiff

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