

Defendant Nakano and Defendant IOND's corporate representative Tohru Shimizu were also present throughout the trial.

Prior to taking testimony, Stipulated Facts in Lieu of Testimony and various trial briefs and memoranda were filed by the parties and Exhibits 1-15, 23, 24, 28-41, 43, 44, 46, 47, 49, 51-53, 55-62, 78-80, 82, 83, 86-90, 94-103, 106, 107, A-1 to A-49, A-60, A-62 to A-73, A-76 and A-82 were admitted into evidence by stipulation of the parties.

Beginning on October 14 and continuing through October 16, 2008 the court heard testimony from Hideyuki Takahashi, Donald R. Hidani, Allen M. Arakaki, Jeffrey S. Piper, Claudette Kanae, Arnold Garcia, James C. Dooman, Ikuo Nakano and Tohru Shimizu. During this testimony, Exhibits 26, 27, 48, 50, 54 and 64 were moved and admitted into evidence.

The Court having considered the testimony and evidence presented at trial and good cause appearing therefore, on October 17, 2008, the Court orally rendered its decision in summary manner to the parties.

THE COURT HEREBY MAKES the following Findings of Fact and Conclusions of Law pursuant to Hawaii R. Civ. P. 52(a):

FINDINGS OF FACT

1. Plaintiff Office of Consumer Protection of the State of Hawaii is the state agency responsible for enforcing Hawaii's consumer protection laws, including Hawaii Rev. Stat. Chapter 446E (regarding Unaccredited Degree Granting Institutions) and Hawaii Rev. Stat. §480-2(a) (regarding unfair and deceptive trade practices).

2. As used herein “IOND” or “IOND University” refers to the Defendant Hawaii non-profit corporation. Any references herein to “IOND Japan” are references to a Japanese corporation.

3. Defendant Nakano is a citizen and resident of the nation of Japan. He has never been a citizen of the United States nor a resident of Hawaii. On several occasions, however, Defendant Nakano traveled to Hawaii and conducted business on behalf of Defendant IOND.

4. Defendant IOND was incorporated in the State of Hawaii as a domestic non-profit corporation on April 12, 1999 with the assistance of Hawaii attorney Donald R. Hidani (“Hidani”). Hidani was an officer for Defendant IOND for a brief time. Hidani never held any position with IOND Japan in any capacity. Hidani did not knowingly participate in the issuance of any certificate or diploma issued by IOND Japan.

5. The initial concept for Defendant IOND was to charge tuition for post-secondary education and to issue degrees or diplomas for the successful completion of the educational course. However, because of the requirements of Hawaii Rev. Stat. Chap. 446E, Defendant IOND decided not to charge any tuition and not to issue any degrees or diplomas.

6. The diplomas presented to the court in Exhibits 49, 51, 52, 57 and A-60 were issued by IOND Japan and not Defendant IOND.

7. Defendant IOND did not charge anyone any tuition.

8. When Defendant IOND was preparing to initiate its operations, it created course catalogs and a website that included tuition and fee schedules, lists of courses of international study and lists of faculty. Exhibits 23, 24 and 26 and 28-41 respectively. These catalogs and websites indicated that it would issue bachelor, master and doctoral degrees, offer credits for students' life experiences, that it was an accredited institution, that it was identical to Harvard University or the oldest universities in America. The website and catalogs identified its offices as being located at 140 Lilioukalani Avenue in Waikiki and included photographic depictions thereof. The website and catalogs indicated that it had a faculty with Ph.D. credentials without indicating that the credentials were honorary degrees and that it was affiliated with the University of Lodzki. None of these statements or representations included in Defendant IOND's catalogs and website were true.

9. To its credit, Defendant IOND did include at pages 2 and 52 of the August 7, 2008 version of the website, Exhibit 41, a disclaimer of sorts. Defendant IOND stated on page 2 of this version of the website that it was not accredited and that it may not be able to issue any degrees if it did not have at least twenty-five (25) students enrolled. Exhibit 41. On page 52 of this version of the website, Defendant IOND stated that because of Hawaii Rev. Stat. Chap. 446E it decided not to perform any academic acts including the collection of any tuition, issuance of any degrees and teaching, but instead decided to perform the collection and spreading of information within the State of Hawaii as a think-tank university.

10. However, although Defendant IOND added these disclaimers in its website, it continued to also have statements that claimed that Defendant IOND issued degrees to students, gave credits to students based upon their personal experiences and many of the other false statements identified in paragraph 8 above.

11. The explanations given by Defendant IOND's representatives that they did not remove the false statements from their catalogs and websites because they hoped that Hawaii Rev. Stat. Chap. 446E would change someday and that they would be able to reinstitute their educational activities, including charging tuition and issuing degrees and diplomas, was and is no excuse for allowing the false statements to remain in informational sources, catalogs and websites.

12. Defendant IOND developed, published and disseminated very impressive informational material in the form of sophisticated catalogs and websites that appeared very official on paper. However, when examined beyond the paper or website, Defendant IOND was a sham educational operation. There is an absence of credible evidence to support a finding that Defendant IOND is a legitimate educational institution of higher education in Hawaii.

13. Moreover, the existence of the false statements in the informational sources juxtaposed with disclaimers in the same source renders the catalog and website information very confusing and misleading to anyone reviewing the informational material.

14. On at least four separate occasions, Defendant IOND filed a document with the Business Registration Division of the State of Hawaii identifying Defendant Nakano as its registered agent at 140 Liliuokalani Avenue, Suite 107, Honolulu, HI 96815. Exhibits 10, 11, 12 and 13.

15. Defendant Nakano, however, has never been a resident of the State of Hawaii.
16. There is no evidence of any actual harm to any member of the public.
17. While Defendant Nakano may have been asleep at the switch when it came to the operations of Defendant IOND, there are no direct acts on the part of Defendant Nakano that subject him to personal liability for the unfair or deceptive trade practices occasioned by the informational sources. Defendant Nakano is not the owner of Defendant IOND and he was not in charge of developing the informational sources that constituted unfair or deceptive practices.
18. However, Defendant Nakano did allow himself to be designated as the registered agent for Defendant IOND all the while knowing that he was a resident of Japan and not a resident of Hawaii. If he claims that he was not aware that the registered agent for Defendant IOND was required to be a resident of Hawaii, that is not an excuse.

CONCLUSIONS OF LAW

1. This is an action brought by Plaintiff 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. This court has personal jurisdiction over Defendants IOND and Nakano.

4. Venue is proper herein.

5. Defendant IOND is not now and has never been a “degree granting institution” as that term is defined in Hawaii Rev. Stat. § 446E-1 because it has never charged anyone any tuition and has never issued any degree, as that term is defined in Hawaii Rev. Stat. § 446E-1, or diploma.

6. Because Defendant IOND is not now and never has been a “degree granting institution” as that term is defined in Hawaii Rev. Stat. § 446E-1, it is not now and never has been subject to the requirements of Hawaii Rev. Stat. Chap. 446E.

7. As a consequence, judgment is entered in favor of Defendants IOND and Nakano and against Plaintiff as to Counts I, II, III, IV, V and VI of the First Amended Complaint.

8. The inclusions of the false statements set forth in paragraph 8 of the Findings of Fact, in Defendant IOND’s catalogs and websites constitute an unfair or deceptive trade practice in violation of Hawaii Rev. Stat. §480-2(a).

9. The conflicting statements in Defendant IOND’s informational sources coupled with the absence of any legitimate educational operations by Defendant IOND as in set forth in paragraphs 12 and 13 of the Findings of Fact, constitutes an unfair or deceptive trade practice in violation of Hawaii Rev. Stat. § 480-2(a).

10. The unfair or deceptive trade practices stemming from the informational sources used by Defendant IOND shall constitute a single violation of Hawaii Rev. Stat. § 480-2(a).

11. Defendant IOND’s failure to properly designate an individual residing in the State of Hawaii as its registered agent violates Hawaii Rev. Stat. § 414D-71(2)(A).

12. The violation of Hawaii Rev. Stat. § 414D-71(2)(A) constitutes a separate single violation of Haw. Rev. Stat. § 480-2(a).

13. Since there is no evidence of any actual harm to any member of the public as a result of Defendant IOND's unfair or deceptive practices, Plaintiff is not entitled to three-fold damages.

14. The imposition of a civil penalty pursuant to Hawaii Rev. Stat. §480-3.1, however, is appropriate.

15. Since Defendant IOND represented that it spent Seven Hundred Thousand Dollars (\$700,000.00) to maintain its operations thus far, a maximum civil penalty of Ten Thousand Dollars (\$10,000.00) per violation or a total of Twenty Thousand Dollars (\$20,000.00) for all violations appears to be fair and shall be and hereby is imposed against Defendant IOND.

16. As there is no legitimate educational activity associated with Defendant IOND, unless Defendant IOND is restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. §480-2(a) in the manner described above, it will continue to do so, irreparably harming and injuring the consuming public of the State of Hawaii.

17. Therefore, Defendant IOND, beginning on or before December 1, 2008 and continuing every day thereafter, is hereby enjoined and shall refrain from engaging in any activity in the State of Hawaii, including but not limited to distributing or making available its information material, catalogs and websites, unless and until it complies with all applicable laws.

18. Judgment is to be entered in favor of Plaintiff and against Defendant IOND as to Counts VII, VIII, IX and XI of the First Amended Complaint.

19. Defendant Nakano engaged in an unfair or deceptive practice by allowing his name to be used as the registered agent while knowing that Defendant IOND did not have any legal right to represent that 140 Liliuokalani Avenue, Suite 107, Honolulu, Hawaii was the address of its registered office and the business office of its registered agent. This transgression shall constitute a single violation of Hawaii Rev. Stat. § 480-2(a).

20. A civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) shall be and hereby is imposed against Defendant Nakano individually.

21. Since there is no evidence of any actual damages sustained by reason of this transgression, Plaintiff is not entitled to any three-fold damages.

22. Unless Defendant Nakano is restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. §480-2(a) in the manner described above, he will continue to do so, irreparably harming and injuring the consuming public of the State of Hawaii.

23. Defendant Nakano shall be and hereby is ordered to immediately cease and desist from filing any further papers with the State of Hawaii that indicates that he is the registered agent for Defendant IOND.

24. Judgment is to be entered in favor of Plaintiff and against Defendant Nakano as to Counts X and XI of the First Amended Complaint.

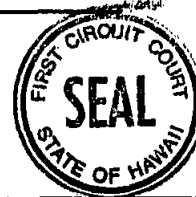
25. This Court shall retain jurisdiction to enforce the terms and conditions of the final judgment to be entered herein.

26. There are no remaining claims against any party in this case.

IT IS **HEREBY ORDERED, ADJUDGED AND DECREED** that final judgment be entered accordingly.

DATED: Honolulu, Hawaii, MAR 02 2009

GARY W. B. CHANG



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "R. Kawamura", is written over a horizontal line.

ROBERT D. KAWAMURA
Attorney for Defendants

Civil No. 07-1-1671-09 (GWBC); State of Hawaii vs. IOND University and Ikuo Nakano;
FINDINGS OF FACT; CONCLUSIONS OF LAW AND ORDER DIRECTING ENTRY OF
FINAL JUDGMENT