

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,)	
)	
Plaintiffs,)	
)	
Vs.)	CIVIL NO. 07-1-1671
)	
IOND UNIVERSITY, et al.,)	Court's Decision
)	
Defendants.)	
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TRANSCRIPT

Of the proceeding held on October 17, 2008, before
The Honorable Gary W.B. Chang, judge presiding.

APPEARANCES

JEFFREY BRUNTON	Attorney for Plaintiffs
MICHAEL MORIYAMA	
ROBERT KAWAMURA	Attorney for Defendants

LAHELA KAMALANI-MOE
Official Court Reporter
CSR 321/RPR
First Circuit Court
State of Hawaii

1 The court finds that it has jurisdiction over the
2 subject matter and the parties in this case and that venue is
3 proper in this court. The court wishes to clarify that when
4 it states "IOND" or "IOND University," it's referring to the
5 Hawaii corporation. When the court means to refer to the
6 Japan corporation, it will use the word "Japan" in connection
7 with the name "IOND."

8 IOND is a Hawaii corporation that was formed in 1999
9 with the assistance of Hawaii attorney Donald Hidani. Mr.
10 Hidani was an officer for IOND briefly. He never held any
11 position with IOND Japan in any capacity. He also did not
12 knowingly participate in the issuance of any certificate or
13 diploma issued by IOND Japan.

14 The initial concept for IOND University was to
15 charge tuition for post-secondary education and to issue
16 degrees or diplomas for the successful completion of the
17 educational course. However, because of the requirements of
18 HRS Chapter 446E, IOND decided not to charge any tuition and
19 not to issue any degrees or diplomas. IOND has never charged
20 anyone any tuition and has never issued any degree or diploma;
21 therefore, IOND is not subject to HRS Chapter 446E.

22 As a consequence, judgment is entered in favor of
23 defendants and against plaintiff as to Counts 1, 2, 3, 4, 5,
24 and 6 of the first amended complaint. All of these counts
25 seek to prosecute claims based upon HRS Chapter 446E.

1 When IOND was preparing to initiate its operations,
2 it created course catalogs and a website that indicated
3 tuition and fee schedules, list of courses of international
4 study, list of faculty, it would -- that it would issue
5 bachelor, master, and doctorate degrees, that it would offer
6 credits for students' life experiences, it was an accredited
7 institution, it was identical to Harvard or the oldest
8 universities in America.

9 Its offices were located at 140 Liliuokalani Avenue
10 in Waikiki. Photographs of the offices were also depicted.
11 It had a faculty with PhD credentials without indicating that
12 the credentials were honorary degrees and that it was
13 affiliated with the University of Lodzki, L-o-d-s-z-k-i, in
14 Poland. None of these ten statements of -- in IOND's catalogs
15 and web sites were true.

16 To IOND's credit it did state at Pages 2 and 52 of
17 its website a disclaimer of sorts. IOND stated at Page 2 that
18 it's not accredited and that it may not be able to issue any
19 degrees if it does not have at least 25 students enrolled. At
20 Page 52 it stated that because of HRS Chapter 446E IOND
21 decided not to perform any academic acts including, number
22 one, collection of any tuition; number two, issuing any
23 diploma; and, number three, teaching. But it did decide to
24 perform collection and spreading of information within the
25 state of Hawaii as a think hyphen tank university.

1 Although IOND added these disclaimers in its
2 website, it continued to also have statements about IOND
3 issuing degrees to students, giving credits to students based
4 upon their personal experiences, and many of the other ten
5 false statements. IOND representatives' explanation that they
6 did not remove the false statements from their literature and
7 web sites was because they hoped that HRS Chapter 446E would
8 change someday and that they would be able to reinstitute
9 their educational activities including charging tuition and
10 issuing degrees and diplomas. IOND's representatives'
11 explanation regarding why the false statements were not
12 removed is no excuse for allowing these false statements to
13 remain in the informational sources.

14 IOND developed and held out very impressive
15 informational material in the form of sophisticated catalogs
16 and web sites that appeared very official on paper. However,
17 when examined beyond the paper or website, IOND was a sham
18 educational operation. There is an absence of credible
19 evidence to support a finding of IOND as a legitimate
20 educational institution of higher education in Hawaii.

21 Moreover, the existence of the false statements in
22 the informational sources juxtaposed with disclaimers in the
23 same source renders the catalog and website information very
24 confusing and misleading to anyone reviewing the informational
25 material. As such, maintaining these conflicting statements

1 in IOND's informational sources coupled with the absence of
2 any legitimate educational operations by IOND constitutes an
3 unfair and deceptive practice.

4 The court also finds that IOND's failure to
5 designate an individual residing in the state of Hawaii as its
6 registered agent -- excuse me -- violates HRS Section 414D-71
7 subsection 2A. This shall be considered as part of the same
8 unfair, deceptive practice already found by the court.

9 In considering appropriate remedies, the court notes
10 that there's no evidence of any actual harm to any member of
11 the public as a result of IOND's unfair and deceptive
12 practices. Therefore, plaintiff is not entitled to an award
13 of three-fold damages. However, the imposition of a civil
14 penalty does appear to be appropriate.

15 As mentioned above, there is no evidence of any
16 actual harm to any member of the public. Also, to IOND's
17 credit, it did make an attempt to publicize its disclaimer
18 albeit diluted by its failure to remove the false and
19 therefore confusing information. Therefore, the court shall
20 find that the unfair and deceptive practices stemming from the
21 informational sources by IOND constitutes a single violation.

22 A violation of HRS Section 414D-71(2)(a) also
23 constitutes a separate single violation. Since IOND
24 represented that it spent \$700,000 to maintain its operations
25 thus far, a maximum penalty of \$10,000 per violation or a

1 total of \$20,000 civil penalty for all violations appears to
2 be fair.

3 The court was also not able to find any legitimate
4 educational activity associated with IOND. Therefore, the
5 court shall issue injunctive relief and order that IOND shall,
6 beginning on or before December 1, 2008 and continuing every
7 day thereafter, refrain from engaging in any activity in the
8 state of Hawaii including but not limited to distributing or
9 making available its information material -- informational
10 material -- excuse me -- including catalogs and web sites
11 unless and until it complies with all applicable laws.

12 Therefore, judgment on Counts 7, 8, 9, and 11 shall enter in
13 favor of plaintiffs and against defendant IOND as indicated
14 above.

15 Turning to the matter of claims against defendant
16 Ikuo Nakano, while Professor Nakano may have been asleep at
17 the switch when it comes to the operations of IOND, the court
18 is unable to find direct acts on the part of Professor Nakano
19 that subjects him to personal liability for the informational
20 sources. He is not the owner of IOND and he was not in charge
21 of developing the informational sources that constituted
22 unfair and deceptive practices. However, he did allow himself
23 to be designated as the registered agent for IOND all the
24 while knowing that he was a resident of Japan and not a
25 resident of Hawaii. If he claims that he was not aware that

1 the registered agent for IOND was required to be a resident of
2 Hawaii, that was not an excuse.

3 Therefore, the court shall find that defendant
4 Nakano did participate in an unfair, deceptive practice by
5 allowing his name to be used as the registered agent while
6 knowing that IOND did not have any legal rights to represent
7 that Liliuokalani address as IOND's offices. This
8 transgression shall constitute a single violation, and a civil
9 penalty of \$2,500 shall be imposed. Since there was no
10 evidence of any actual damages sustained by reason of this
11 transgression, the court shall not award any three-fold
12 damages to plaintiff.

13 Defendant Nakano shall also be ordered to
14 immediately cease and desist from filing any further papers
15 with the state of Hawaii that indicates that he is the
16 registered agent for IOND. Judgment as to Counts 10 and 11
17 shall enter in favor of plaintiff and against defendant Nakano
18 as indicated above.

19 Counsel for plaintiff is asked to prepare detailed
20 and complete findings of fact and conclusions of law and order
21 and a separate judgment.

22 Any questions or statements to be made for the
23 plaintiff? First, Mr. Brunton.

24 MR. BRUNTON: No, Your Honor.

25 THE COURT: Mr. Kawamura?

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MR. KAWAMURA: No.

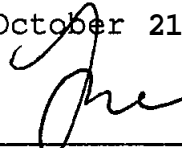
THE COURT: Verywell. Court stands in recess.

(Proceeding concluded.)

CERTIFICATE

I, Lahela Kamalani-Moe, Official Court Reporter,
First Circuit Court, State of Hawaii, do hereby certify,
Only upon placement of my original signature below, the
Foregoing Pages 1 through 9 comprise a full, true, and
Correct transcript of the proceeding held on October 17, 2008
Before the Honorable Gary W.B. Chang, judge presiding.

DATED: October 21, 2008



Lahela Kamalani-Moe, CSR 321/RPR