

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

EDUCATION MANAGEMENT
CORPORATION; ARGOSY UNIVERSITY
OF CALIFORNIA LLC; SOUTH
UNIVERSITY, LLC; BROWN MACKIE
EDUCATION II LLC; THE ART
INSTITUTES INTERNATIONAL II LLC;
and THE ART INSTITUTE OF
PITTSBURGH LLC

Defendants.

EQUITY NO. EQCE079220

PETITION

The State of Iowa ex rel. Attorney General Thomas J. Miller, acting pursuant to the authority of the Iowa Consumer Fraud Act, Iowa Code § 714.16, files this action against defendants Education Management Corporation, Argosy University of California LLC, South University, LLC, Brown Mackie Education II LLC, The Art Institutes International II LLC, and The Art Institute of Pittsburgh LLC (referred to collectively as “Defendants” or “EDMC”), and in support of its claim states as follows:

INTRODUCTION

1. EDMC is a for-profit educational institution that operates online and on ground schools including Argosy University, Brown Mackie College, The Art Institutes, and South University.

2. As of October 2014, EDMC had approximately 112,430 enrolled students online and at its 110 locations in 32 U.S. States and Canada, including Iowa residents.

3. EDMC has engaged in deceptive and misleading student solicitations touting educational benefits that were available to too few EDMC students.

4. EDMC has engaged in unfair and deceptive acts and practices against its students and prospective students, including but not limited to misrepresenting job placement rates and graduation rates for students.

5. The Attorney General brings this action under the Consumer Fraud Act to seek a court order barring EDMC from misleading Iowa students and reforming its business practices to comply with section 714.16.

PARTIES

6. Plaintiff, the State of Iowa through Attorney General Thomas J. Miller, is specifically authorized to enforce the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2015).

7. Education Management Corporation is a Pennsylvania corporation with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, and is one of the largest for-profit higher education companies in the United States.

8. Argosy University of California LLC, a California limited liability company with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, is a for-profit higher education company.

9. South University, LLC, a Georgia limited liability company with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, is a for-profit higher education company.

10. Brown Mackie Education II LLC, a Delaware limited liability company with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, is a for-profit higher education company.

11. The Art Institutes International II LLC, a Pennsylvania limited liability company with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, is a for-profit higher education company.

12. The Art Institute of Pittsburgh, LLC, a Pennsylvania limited liability company with its corporate headquarters at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania, is a for-profit higher education company.

JURISDICTION

13. The Attorney General of Iowa has the authority to initiate an action for consumer fraud in violation of Iowa Code § 714.16.

14. This Court has jurisdiction over the Defendants pursuant to Iowa Code section 714.16, because the Defendants transacted business within the State of Iowa at all times relevant to this Petition.

15. Iowa Code § 714.16(7), in pertinent part, authorizes the Attorney General to bring this action:

A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful

under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section.

VENUE

16. Venue is proper in Polk County, pursuant to Iowa Code § 714.16(10), because Defendants conducted business in Polk County, and one or more of the victims reside in Polk County.

FACTUAL ALLEGATIONS

EDMC Used High Pressure, Deceptive and Unfair Recruiting Tactics

17. Defendants targeted prospective students for high pressure recruitment, including many students Defendants knew or reasonably should have known would not likely benefit from an education at its educational institutions.

18. Defendants high-pressured prospective students to enroll upon their first contact with Defendants' recruiters.

19. Defendants made emotional pitches to recruits to pressure them to enroll.

20. Defendants misled prospective students about program costs, emphasizing cost per credit hour and other generalities rather than disclosing total costs to complete a program.

21. Defendants falsely claimed students would earn substantially higher incomes through obtaining Defendants' degrees than Defendants knew its graduates actually earned.

EDMC made false claims regarding program accreditation

22. In connection with the solicitation of prospective students, Defendants inaccurately claimed that certain of its programs were accredited by a programmatic accreditor necessary for a student to obtain licensure in their profession.

23. In connection with the solicitation of prospective students, Defendants inaccurately claimed that it was seeking to have certain programs accredited.

EDMC Misrepresented Job Placement Data to Students and Prospective Students

24. Defendants engaged in deceptive and unfair practices in calculating disclosed job placement rates, including but not limited to:

- a. misrepresenting EDMC graduates who worked only temporarily as having been “employed,” based, for example, on a single day of work;
- b. misrepresenting EDMC graduates as having been “placed in field” although the employment in question was at a level below that of the graduates’ fields of study, including but not limited to a graduate with an AA in Business Management based on employment as a Customer Service Representative at a retail store and a graduate with an Accounting diploma based on employment as a cashier at a fast food restaurant.

EDMC Accepted Leads Obtained Through Deceptive Means

25. Defendants accepted and paid for prospective student referrals from third party lead generators who operated online and who Defendants knew or reasonably should have known obtained leads through deceptive practices and then recruited students based on those leads.

EDMC Maintained an Unfair Refund Policy

26. Defendants' tuition refund policy unfairly charged students for classes that commenced after they withdrew from Defendants' schools.

27. The deceptive and unfair practices cited in paragraphs 17-26 above led to certain Iowa students enrolling in and becoming indebted for Defendant's educational courses.

28. This Petition for injunctive relief has not been presented to, or denied by, any other judge of the district court.

29. Pursuant to Iowa R. Civ. P. 1.207, no security is required of the State.

CAUSES OF ACTION

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. Subsection "2," paragraph "a" of the Iowa Consumer Fraud Act provides in pertinent part:

The act use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise ... whether or not a person has in fact been misled, deceived, or damaged is an unlawful practice.

32. Iowa Code § 714.16(1) provides the following definitions:

(f) "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

33. Iowa Code § 714.16(7) provides that except in the case of a material omission, it is not necessary for the Attorney General to prove reliance, damages, intent, or knowledge, stating in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

CONSUMER FRAUD ACT VIOLATIONS

34. Defendants' business transactions in Iowa are in connection with the lease, sale, or advertisement of merchandise.

COUNT ONE – DECEPTION

35. Defendants violated Iowa Code § 714.16(2)(a) by engaging in deception in connection with its solicitations for enrollment in educational courses, as set forth in paragraphs 17-26.

COUNT TWO – MISREPRESENTATION

36. Defendants violated Iowa Code § 714.16(2)(a) by engaging in misrepresentation in connection with its solicitations for enrollment in educational courses, as set forth in paragraphs 20-24.

COUNT THREE – UNFAIR PRACTICES

37. Defendants violated Iowa Code § 714.16(2)(a) by engaging in unfair practices in connection with its solicitations for enrollment in educational courses as set forth in paragraphs 17-26.

REQUEST FOR RELIEF

WHEREFORE, PLAINTIFF respectfully requests:

A. That the Court, pursuant to Iowa Code § 714.16(7), issue a permanent injunction enjoining Defendants and (as applicable) each of Defendants' directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged

or acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with the Defendants who have actual or constructive notice of the Court's injunction from engaging in deceptive, misleading, and unfair practices or otherwise violating the Iowa Consumer Fraud Act as alleged herein.

B. That the Court expand the provisions of the injunctions as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against the Defendants for amounts necessary to restore to all affected persons all money acquired by means of acts or practices that violate the Consumer Fraud Act.

D. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against the Defendants for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against the Defendants for civil penalties up to \$40,000.00 for each separate violation of the Consumer Fraud Act.

F. That the Court award the State interest as permitted by law.

G. That the Court, pursuant to Iowa Code § 714.16(11), enter judgment against the Defendants for mandatory attorney fees, state's costs and court costs.

H. That the Court grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

By: /s/ Jessica Whitney
JESSICA WHITNEY
Special Assistant Attorney General
Director-Consumer Protection Division
Hoover State Office Building, 2nd Floor
1305 E. Walnut Street
Des Moines, Iowa 50319
Telephone: 515-281-5926/Fax: 281-6771
Jessica.Whitney@iowa.gov

By: /s/ Nathan Bake
NATHAN BLAKE
Assistant Attorney General
Hoover State Office Building, 2nd Floor
1305 E. Walnut Street
Des Moines, Iowa 50319
Telephone: 515-281-5926/Fax: 281-6771
Nathan.Blake@iowa.gov