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# AVOIDING CONSUMER PROTECTION LAWSUITS: A REVIEW OF VARIOUS CASES AND UNDERSTANDING HOW TO MINIMIZE YOUR EXPOSURE

2025 CAPPS Convention

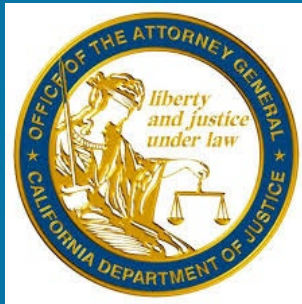
San Diego, California

October 1, 2025

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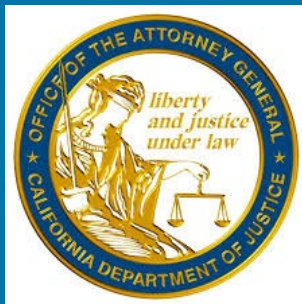


**GOMBOS | LEYTON**  
ATTORNEYS



JUST BECAUSE YOU'RE  
PARANOID DOESN'T  
MEAN THEY AREN'T  
REALLY AFTER YOU





- Broad agency discretion.
- Wide-ranging investigations.
- Nasty enforcement powers.
- No harm to consumers is irrelevant.
- Agency Dog Pile probable

# STATE ATTORNEYS MIGHT BE EVEN WORSE, IF THAT'S POSSIBLE



- California Unfair Competition and False Advertising Laws can mean anything at all.
- Truth of statements not necessarily a defense.
- No harm  $\neq$  No foul.
- Change in governments/agency heads not saving the day.

# CASE STUDY #1: ASHFORD UNIVERSITY

## (California Attorney General)



- Cal. AG alleged that Ashford and its parent company mislead students about:
  1. Professional licensure outcomes;
  2. The cost of a degree and availability of financial aid;
  3. Program pace;
  4. Transferability of credits.

BUT: Ashford's enrollment agreements were truthful.

# CASE STUDY #1: ASHFORD UNIVERSITY

## (California Attorney General)



- The Court found Ashford responsible for 1,243,009 violations and imposed \$22,375,782 in civil penalties.
- Accurate disclosures in enrollment agreements and catalogs did not cure alleged misrepresentations in calls.
- Heavy focus on “high-pressure” culture in admissions department.
- ED discharged \$4.5b in federal loans.

# FEDERAL TRADE COMMISSION ACT



- The FTCA also broadly prohibits unfair or deceptive acts or practices.
- FTC need only show a “tendency to deceive” (whatever that means).
- “Deceptive” practices are defined as involving a material misrepresentation, omission, or practice that is likely to mislead a consumer acting reasonably in the circumstances.
- The FTC can and does sue and do other Very Bad Things.

# CASE STUDY #2: UNIV. OF PHOENIX

(Federal Trade Commission)



Agreed to \$191 million settlement with FTC in December 2019 over "Let's Get to Work" ad campaign.



# CASE STUDY #2: UNIV. OF PHOENIX

## (Federal Trade Commission)



### Issues:

- Promised “partnerships” with recognizable companies and desirable brands.
- Promised that companies represented in the ad campaign provided assistance in developing academic programs.
- Ads also featured alumni who worked at “partner” companies.

# DEPARTMENT OF EDUCATION SUBPART M



- The Department of Education expanded its consumer protection authority.
- Same meaningless tendency to mislead standard.
- ED can destroy you with HCM2 and worse.
- No harm ≠ No foul.

# CASE STUDY #3: GRAND CANYON UNIV.

(Department of Education)



- DOE claimed certain GCU documents listing the “total” minimum academic course requirements for doctoral programs were misleading.
- GCU pointed out that those same documents contained disclosures explaining that graduates, on average, required several continuation courses.
- DOE took the position that no harm ≠ no foul.
- DOE sought over \$37 million in civil penalties for over 7,547 alleged violations.
- After the 2024 election, DOE ultimately dismissed the fine action.

# AGENCIES CAN AND DO “TAG TEAM” THEIR ENFORCEMENT EFFORTS

- ED, CFPB, DOJ, and the FTC often coordinate.
- Student advocacy groups (like National Student Defense) lobby state and federal agencies to bring enforcement actions.
- Agencies often collaborate with qui tam litigations (whistleblowers) to enforce agency regulations.
- Expect “copycat” litigation. **Garbage attracts vermin.**



# TAKEAWAYS: HIGHER ED HOT BUTTONS

Statements of the following types will generate the most scrutiny:

- Licensure/Suitability of degree for specific careers
- Nature of the educational program
- Nature of financial charges
- Employability of graduates



# PROTECTING AGAINST REGULATORY BULLIES

- Do:
  - Provide clear guidelines and expectations.
  - Show them to your lawyers (pathologists) before you publish.
- Don't:
  - Let campuses free lance publications/policies.
  - Use stuff other schools publish without focused review.

# DISCLOSURES & DISCLAIMERS ARE NOT ENOUGH

Disclosures/Disclaimers can clarify a statement but cannot cure a false or deceptive statement.

- FTC standard: “clear and conspicuous”

“The ultimate test is not the size of the font or the location of the disclosure, although they are important considerations; the ultimate test is whether the information intended to be disclosed is actually conveyed to consumers.”

# IMPLEMENTING EFFECTIVE POLICIES & PROCEDURES

Effective roll-out of new policies and procedures requires clear communication to staff members and buy-in

- Responsible staff acknowledge receipt and understanding with signature and date
  - Add to employee manuals/handbooks/internet or intranet pages etc.
  - update new hire onboarding materials

# IMPLEMENTING EFFECTIVE POLICIES & PROCEDURES

Regularly review policies and procedures. Annual is minimum.

SHOW YOUR POLICIES/PROCEDURES TO YOUR LAWYERS

# OVERSIGHT BY MANAGEMENT

Policies and Procedures are paper. Insufficient.

Observe admissions, student services, and career services IN PERSON.

Outcomes reports require review OUTSIDE OF THEIR DEPARTMENT.

Get Counsel involved for internal investigations.

# QUESTIONS

Stephen Chema

[stchema@glpclaw.com](mailto:stchema@glpclaw.com)

Keith Zakarin

[kzakarin@glpclaw.com](mailto:kzakarin@glpclaw.com)

David Obuchowicz

[dobuchowicz@glpclaw.com](mailto:dobuchowicz@glpclaw.com)

