

FILED

JUL 27 2011

SUSAN W. TIERNEY, CLERK
BY: _____ D.C.

COMMONWEALTH OF KENTUCKY
DAVISS CIRCUIT COURT
DIVISION II
CASE NO. 11-CI-01016

**COMMONWEALTH OF KENTUCKY, EX. REL.
JACK CONWAY, ATTORNEY GENERAL**

PLAINTIFF

V. COMPLAINT

DAYMAR LEARNING, INC.

SERVE: MARK GABIS, Registered Agent
2401 Hartford Road
Owensboro, Kentucky 42303

DAYMAR LEARNING OF PADUCAH, INC.

SERVE: MARK GABIS, Registered Agent
2401 Hartford Road
Owensboro, Kentucky 42303

DAYMAR HOLDINGS, INC.

SERVE: MARK GABIS, Registered Agent
2401 Hartford Road
Owensboro, Kentucky 42303

DRAUGHONS JUNIOR COLLEGE, INC.

SERVE: MARK GABIS, Registered Agent
2401 Hartford Road
Owensboro, Kentucky 42303

DAYMAR COLLEGES GROUP, LLC

SERVE: MARK GABIS, Registered Agent
2401 Hartford Road
Owensboro, Kentucky 42303

MARK GABIS
2401 Hartford Road
Owensboro, Kentucky 42303
and serve:
1552 Oak Park Drive
Owensboro, Kentucky 42301

DEFENDANTS

Comes the Plaintiff and for his Complaint against Defendants states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is the duly elected Attorney General of the Commonwealth of Kentucky and is responsible for the enforcement and administration of Kentucky law, including the consumer protection laws set forth in Kentucky Revised Statutes (KRS) Chapter 367. Plaintiff is sometimes referred to herein as "Plaintiff" or "Attorney General".
2. Defendant Daymar Learning, Inc. is a Kentucky corporation and has its principal office at 2401 Hartford Road, Owensboro, Kentucky 42303. Daymar Learning, Inc. owns and operates for-profit post-secondary schools as "Daymar College" in Owensboro, Albany, Bellevue, Madisonville, Scottsville, and Louisville, Kentucky and has operated a for-profit post-secondary school as "Daymar College" in Newport, Kentucky and Paducah, Kentucky. Daymar Learning, Inc. first acquired the Owensboro school in 1995 and operated it as Owensboro College of Business until 2001 when it became known as Daymar College. Thereafter the other campuses were acquired or opened and became operational as Daymar College.
3. Defendant Daymar Learning of Paducah, Inc. is a Kentucky corporation and has its principal office at 2401 Hartford Road, Owensboro, Kentucky 42303. Daymar Learning of

Paducah, Inc. owns and operates a for-profit post-secondary school as “Daymar College” in Paducah, Kentucky. It was previously known as Paducah Technical College.

4. Defendant Daymar Holdings, Inc. is incorporated under the laws of Tennessee and has its principal office located at 2401 Hartford Road, Owensboro, Kentucky 42303. Daymar Holdings, Inc. wholly owns Draughons Junior College, Inc., a Tennessee corporation, and has its principal office at 2401 Hartford Road, Owensboro, Kentucky 42303.

5. Defendant Draughons Junior College, Inc. owns and operates for-profit post-secondary schools as “Daymar College” in Bowling Green, Russellville, and Clinton, Kentucky.

6. Defendant Daymar Colleges Group, LLC is a Kentucky limited liability company and has its principal office located at 2401 Hartford Road, Owensboro, Kentucky 42303. Defendant Daymar Colleges Group, LLC, under the management and control of Defendant Mark Gabis, operates, provides services to and manages directly and indirectly all of the “Daymar Colleges” operating in the Commonwealth of Kentucky. The members of Daymar Colleges Group, LLC are brothers Mark Gabis and Damien Gabis.

7. Upon information and belief, The Mark A. Gabis Revocable *Inter Vivos* Trust and The Damien A. Gabis Trust are the shareholders in Daymar Learning, Inc., Daymar Learning of Paducah, Inc., and Daymar Holdings, Inc. Upon information and belief, the beneficiaries of The Mark A. Gabis *Inter Vivos* Trust and The Damien A. Gabis Trust are Mark Gabis and Damien Gabis, respectively.

8. Defendant Mark Gabis is a resident of Kentucky and resides at 1552 Oak Park Drive, Owensboro, Kentucky. Mr. Gabis is the President of Daymar Colleges Group, LLC, Daymar Learning of Paducah, Inc., Draughons Junior College, Inc., Daymar Holdings, Inc., and Daymar Learning, Inc.

GENERAL STATEMENTS

9. In and around 2008, the Office of Attorney General received information that Daymar College precludes students from purchasing their textbooks and supplies cheaper from other vendors. After receiving unsatisfactory information in response to inquiries by the Office of Attorney General to explain the practices, the Office of Attorney General issued a Subpoena and Civil Investigative Demand to Mark Gabis as agent for Daymar Learning, Inc./Daymar College in early 2009. The Office of Attorney General issued subsequent subpoenas and civil investigative demands to obtain additional information from Defendants as part of its investigation. The lengthy investigation culminated in a conclusion that Defendants are engaged in a sophisticated practice of deceiving and misleading students about their textbooks and financial aid so that students will be forced into purchasing their textbooks and supplies from Daymar College at prices substantially higher than other vendors. Further, Defendants employ unfair and deceptive practices in recruiting and enrolling students, including: enrolling and retaining students with false assurances that their credits will transfer to public or traditional schools, when, in fact, the credits do not transfer in most circumstances; offering programs that do not meet the career educational standards of Daymar College's own institutional accreditation organization; recruiting and enrolling students who incur substantial debt to attend Daymar College, but who do not meet Daymar College's own admission standards and so are unable to complete the program and/or obtain a job in their field.

10. Defendants offer post-secondary career educational services to consumers in the Commonwealth of Kentucky in the name of "Daymar College." Daymar College students may obtain certificates, diplomas, associate degrees and bachelor degrees. The various fields of career study available at Daymar Colleges include, but are not limited to, accounting, billing and

coding, medical massage therapy, criminal justice, business management, cardiographic technology, medical assisting, paralegal, pharmacy technology, nursing, and network support administration.

11. Upon information and belief, the reported cost of tuition for programs at Daymar Colleges range from approximately \$13,920.00 for a certificate to approximately \$57,000.00 for a bachelors degree.

12. Upon information and belief, Defendants do not disclose adequate information to prospective students about costs for attending Daymar College and financial aid.

13. Upon information and belief, Defendants Daymar Learning, Inc., Daymar Learning of Paducah, Inc., and Draughons Junior College, Inc. (hereinafter "Defendant School Corporations") have a policy to admit students who they know do not meet Daymar College's own standards or generally acceptable standards for admission to career colleges, thereby increasing the students' chances of withdrawing from the program with substantial debt that they do not have the means to repay. Indeed, upon information and belief, with the exception of a single not-for-profit school, Daymar Learning, Inc. has the highest default rate on federal student loans of any other Kentucky based school. Daymar Learning, Inc.'s FY 2008 Trial Three Year Cohort Default Rate on federal student loans is 36.94. The parent school of which Draughons Junior College, Inc. is a part has a FY 2008 Trial Three Year Cohort Default rate of 26.21. The rate for Daymar Learning of Paducah, Inc. is 32.61.

14. Upon information and belief, Daymar Colleges have not met the standards of their institutional accrediting body in particular with respect to sufficient full-time faculty, adequate training and credentials for instructors, and sufficient facilities and materials available for education.

15. Upon information and belief, Daymar College's credits do not transfer to most other colleges in the Commonwealth of Kentucky. With the knowledge, assistance and at the direction of Mark Gabis, Daymar Holdings, Inc. and Daymar Colleges Group, LLC, Defendant School Corporations make oral statements to students that Daymar College credits transfer to other colleges and do not inform prospective students that credits earned at Daymar College are not likely to transfer.

16. Defendants provide prospective and continuing students written statements which are incomplete and do not include material information about the transferability of credits. The written statements are misleading and provide the false impression that credits earned at Daymar College will transfer.

17. Upon information and belief, Defendants have individually and collectively engaged in conduct intended to compel students into purchasing their textbooks and other supplies from Daymar College instead of third-party vendors. Defendants direct instructors, staff and employees not to provide students the International Standard Book Number ("ISBN") or similar book identifier for the textbooks prior to the commencement of classes, and shrink-wrap the textbooks sold in Daymar College bookstores in a manner intended to hide the ISBN so that students cannot identify the specific textbook to purchase elsewhere. Defendant School Corporations have told and continue to tell students that they must purchase their textbooks from Daymar College in order to use their financial aid to cover that cost.

18. Defendants have provided false and misleading information to students about the students' entitlement to their student financial aid funds, including, but not limited to, loan funds, received from third-parties and held by Defendants.

19. Defendants have committed false, misleading, deceptive and unfair trade practices individually and collectively by taking the financial aid monies owing and belonging to students and using these monies for their own use and benefit by denying students access to their funds for any purpose other than purchasing textbooks, supplies and services from Daymar College. Defendants have engaged in unconscionable conduct in causing students to incur additional educational costs and interest charges.

20. Upon information and belief, Daymar College textbooks and supplies are substantially more expensive than the same or comparable textbook and supplies from other vendors. Defendants do not sell "used" textbooks.

21. Upon information and belief, Defendants Mark Gabis, Daymar Holdings, Inc., and Daymar Colleges Group, LLC had knowledge of, directed, and assisted in all false, misleading, deceptive and unfair practices that Defendants Daymar Learning, Inc., Daymar Learning of Paducah, Inc., and Draughons Junior College, Inc. are alleged herein to have engaged in.

COUNT I

FALSE AND MISLEADING INFORMATION AND MATERIAL OMISSIONS RELATING TO THE TRANSFERABILITY OF CREDITS

22. The allegations of Paragraphs 1 through 21 are hereby incorporated.

23. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in conduct of trade or commerce in violation of KRS 367.170 by making false oral statements to prospective and continuing students that the credits earned at Daymar College will transfer to other educational institutions in the Commonwealth of Kentucky when in fact credits earned at a Daymar College most likely will not transfer to other institutions.

24. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in violation of KRS 367.170 by providing to prospective and continuing students written statements which are incomplete and misleading with respect to information about the likelihood that their credits earned at Daymar College will transfer. The disclosures are misleading because they do not contain true and complete information about the limitations on the actual transferability of credits earned Daymar College.

25. The aforementioned acts and practices constitute willful violations of the prohibition against unfair, false, misleading or deceptive acts and practices in violation of KRS 367.170.

COUNT II

UNFAIR, FALSE, MISLEADING AND DECEPTIVE PRACTICES IN ADVERTISING, RECRUITING AND ENROLLMENT

26. The allegations of Paragraphs 1 through 25 are hereby incorporated.

27. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in trade or commerce in violation of KRS 367.170, in that they admit students into programs at Daymar College in violation of their own standards or generally acceptable admission standards among career colleges thereby increasing the chances that students will not be able to complete the program and/or obtain employment in the desired field of study while the students incur substantial debt for a program they will not be able to complete or benefit from.

28. Defendants have engaged in unfair and deceptive acts and practices in trade in violation of KRS 367.170 by offering programs that do not meet the standards of their institutional accreditation.

29. The aforementioned practices constitute willful violations of the prohibition against unfair, false, misleading or deceptive acts and practices in violation of KRS 367.170.

COUNT III

COMPELLING STUDENTS TO PURCHASE TEXTBOOKS AND SUPPLIES FROM DAYMAR COLLEGE

30. The allegations of Paragraphs 1 through 29 are hereby incorporated.
31. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in trade or commerce in violation of KRS 367.170 by making false statements directly and through implication that students can only use their financial aid to purchase textbooks and supplies from Daymar College.
32. Additionally, Defendants unfairly and unconscionably deny students the ability to use their financial aid to purchase textbooks and supplies cheaper from another vendor by withholding from students the textbook identifying information, such as ISBN, and wrongfully withholding students' financial aid.
33. The aforementioned acts and practices constitute willful violations of the prohibition against unfair, false, misleading or deceptive acts and practices in violation of KRS 367.170.

COUNT IV

TAKING FUNDS OWING AND BELONGING TO STUDENTS FOR DEFENDANTS' OWN USE AND BENEFIT

34. The allegations of Paragraphs 1 through 33 are hereby incorporated.
35. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in trade or commerce in violation of KRS 367.170, by individually and collectively taking financial aid funds owing and belonging to students for Defendants' own use and benefit.
36. Defendants deny students access to their funds for any purpose other than purchasing textbooks, supplies and services from Daymar College.

37. Defendants collect these monies for the students and through a series of actions including misleading information and manipulation of deposits and credits of student accounts, wrongfully obtain and retain funds belonging to students.

38. Defendants have engaged in unconscionable conduct in causing students to incur additional educational costs and interest charges.

39. The aforementioned acts and practices constitute willful violations of the prohibition against unfair, false, misleading or deceptive acts and practices in violation of KRS 367.170.

COUNT V

UNLAWFUL RESTRAINT OF TRADE OR COMMERCE

40. The allegations of Paragraphs 1 through 39 are hereby incorporated.

41. Defendants wrongfully require students to purchase their textbooks and other supplies from Daymar Colleges and prevent students from purchasing their textbooks and other supplies from other vendors in violation of KRS 367.175.

42. The aforementioned acts and practices constitute willful violations.

COUNT VI

FALSE, MISLEADING AND DECEPTIVE INFORMATION PROVIDED TO PROSPECTIVE AND CONTINUING STUDENTS

43. The allegations of Paragraphs 1 through 42 are hereby incorporated.

44. Defendants have engaged in unfair, false, misleading and deceptive acts and practices in conduct of trade in violation of KRS 367.170 by providing false, misleading, and deceptive information to prospective and continuing students about Daymar College and by providing incomplete, false and deceptive information to prospective and continuing students about the financial aid associated with attending Daymar College.

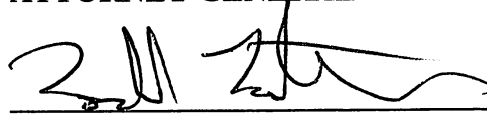
45. The aforementioned acts and practices constitute willful violations of the prohibition against unfair, false, misleading or deceptive acts and practices in violation of KRS 367.170.

WHEREFORE, Plaintiff prays for judgment as follows:

- 1) That all Defendants, pursuant to KRS 367.190, be enjoined from further practices constituting unfair, false, misleading or deceptive trade practices, including the practices alleged herein;
- 2) For judgment against all Defendants and each of them finding willful violations of the Kentucky Consumer Protection Act, KRS 367.170;
- 3) That the Court award civil penalties against all Defendants and each of them in the amount of two thousand dollars (\$2,000.00) per each willful violation of KRS 367.170 of the Kentucky Consumer Protection Act pursuant to KRS 367.990(2);
- 4) That the Court award civil penalties against all Defendants and each of them for the greater of five thousand dollars (\$5,000.00) or two hundred dollars (\$200.00) per day for each and every violation of KRS 367.175 pursuant to KRS 367.990(8);
- 5) That the Court require all Defendants and each of them to pay restitution to consumers who have suffered harm as a result of Defendants' unfair, false, misleading and deceptive practices, as provided by KRS 367.200.
- 6) That the Court award Plaintiff's costs, including costs of investigation and attorneys' fees;
- 7) For a trial by jury; and
- 8) For any and all other relief to which Plaintiff may be entitled.

Respectfully submitted,

**JACK CONWAY
ATTORNEY GENERAL**

A handwritten signature in black ink, appearing to read "Todd E. Leatherman", written over a horizontal line.

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