



U.S. Department  
of Veterans Affairs

Veterans Benefits Administration  
Washington DC 20420

JAN 23 2017

[REDACTED]  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, D.C. 20580

Re: Request for investigation into Charlotte School of Law for unfair and deceptive practices in connection with their advertising and marketing practices.

Dear [REDACTED]

The Department of Veterans Affairs (VA) requests that the Federal Trade Commission (FTC) investigate whether the Charlotte School of Law (CSL) (which is currently approved for the enrollment of eligible veterans) violated Section 5 of the FTC Act, 15 U.S.C. § 45(a) which prohibits unfair and deceptive marketing practices. This request is in accordance with 38 U.S.C. § 3696 which mandates an agreement between VA and FTC to help ensure that VA does not approve enrollment of an eligible veteran or eligible person in a course offered by an institution which uses advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. VA was informed that the U.S. Department of Education (ED) denied CSL's Recertification Application to Participate in the Federal Student Financial Assistance Program because, among other things, ED found that CSL "substantially misrepresented" to students and prospective students the "nature and extent" of CSL's accreditation and the appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet.

Therefore, we ask the FTC to investigate these and any other deceptive or unfair practices in which CSL may have engaged.

### Background

This case involves claims of purported substantial and persistent misrepresentations committed by the CSL for failure to disclose findings by the American Bar Association (ABA) [CSL's accreditor] that CSL was in violation of three major ABA Standards for the Approval of Law Schools (Standards):

Standard 301(a): "A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."

Standard 501(a): "A law school shall maintain sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education."

Standard 501(b): "A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar."

*American Bar Association Actions:*

Based on the report of an ABA site-team compliance review and CSL's written response to the team's report of findings, the ABA announced in January 2015, that it had "reason to believe" the CSL had "not demonstrated compliance" with certain ABA standards and requested additional information to make a determination as to CSL's compliance with certain standards, including the ones cited above. CSL provided the requested information in December 2015. After reviewing the previous reports and all information submitted by CSL, the ABA issued a decision on February 3, 2016, that CSL was "not in compliance" with the above cited standards, as outlined below:

- a. Standard 301(a): The Law School has not demonstrated that it is maintaining a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as member of the legal profession.
- b. Standard 501(a): The Law School was not maintaining sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education, or;
- c. Standard 501(b): The Law School was admitting applicants who did not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.

Following the issuance of the February 2016, decision, the ABA provided CSL with an opportunity to present evidence and testimony in a hearing to refute the finding. CSL presented its evidence and provided its testimony, but nonetheless, in July 2016, the ABA issued its third decision in which it concluded that "the issues of non-compliance with Standards 301(a), 501(a), and 501(b)...are substantial and have been persistent."

In August 2016, CSL appealed aspects of the decision but did not appeal the conclusion of noncompliance with Standards 301(a), 501(a), or 501(b).

On November 14, 2016, the ABA affirmed its conclusion that CSL was not in compliance with Standards 301(a), 501(a), and 501(b), ordered remedial action, including public disclosure, and placed CSL on probation, effective November 14, 2016.



*Department of Education Actions:*

As a result of the ABA's finding, ED found that CSL breached its fiduciary duty by demonstrating a lack of administrative capability by "substantially misrepresenting" the nature of its educational programs. Based on this finding, ED denied CSL's application to recertify its participation in Federal Student Financial Assistance Programs.

First, ED found that CSL promoted on its website that it "has been awarded full accreditation" by the ABA in 2011, which required the school to "ha[ve] established full compliance with each of the ABA's standards, including standards relating to bar passage, job placement and diversity." Accordingly, beginning in February 2016, when the ABA determined that CSL was "not in compliance" with Standards 301(a), 501(a), and 501(b), the above-mentioned statements were misleading insofar as they had the likelihood or tendency to deceive reasonable students and prospective students about the current status, nature, and extent of CSL's accreditation. The misrepresentation became even more pronounced in July 2016 when the ABA again notified CSL of its noncompliance and also found that the noncompliance was "substantial" and "persistent." Although the school appealed the July 2016 determination as to the findings of the "substantial" and "persistent" nature of the noncompliance, the school did not appeal the finding of noncompliance itself. Nonetheless, the school did not amend, update, or otherwise correct its continuing and misleading representation on its website.

Second, ED found that CSL promoted on its website to students and prospective students (under the heading "Practical Preparation is Critical") that it "created" a "rigorous curriculum ... to ensure that [CSL] students are equipped with practical skills that will allow them to thrive in a professional setting." This statement appears directly beneath the section of the webpage in which CSL promotes its "full compliance" with ABA standards, which includes Standard 301(a), which provides that law schools should maintain a "rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." In this context, ED found that CSL's promotion of its "rigorous curriculum" was misleading insofar as: (1) as described above, the ABA has specifically and repeatedly concluded that CSL has not maintained a "rigorous" program of legal education, that its failures in this regard are "substantial" and "persistent," and that CSL's plans to come into compliance with that standard have not proven effective or reliable; and (2) the positioning of CSL's description of its curriculum as "rigorous" directly beneath the discussion of compliance with the ABA standards (which use the word "rigorous" to describe what is expected of a compliant program) has the likelihood or tendency to leave students and prospective students with the false impression that CSL was compliant with that very requirement by the ABA.

ED concluded that each of the above misleading statements constitutes a substantial misrepresentation because students and prospective students could reasonably be expected to rely on each of these statements to their detriment.



In reaching its conclusion about a student's reasonably reliance on the above cited statements, ED points to CSL's own arguments to the ABA as particularly relevant. CSL argued to the ABA that if students and prospective students were aware of the ABA's findings of noncompliance, that would have a "profound impact on admissions" because: (1) knowledge of the ABA's findings would make applicants "much less likely to enroll;" and (2) such a disclosure would "effectively tell applicants to beware of attending the Charlotte School of Law." In addition, CSL argued to the ABA that public disclosure of its noncompliance would "have an adverse impact on [CSL's] ability to retain high-performing students," because it would "inevitably create anxiety on the part of high-performing students and make their transfer more likely." Thus, under CSL's own arguments, the truth about its noncompliance would have impacted the decisions made by prospective students and current students to either enroll or continue their studies at CSL.

Finally, ED found that CSL substantially misrepresented the bar passage rates of CSL graduates in an interview the President of CSL had with the Charlotte Business Journal published on November 30, 2016. In that interview, the President stated that "[i]f you look at bar pass rates between 2009 and 2013, we were consistently at or above the state bar average pass rate. That is an incredible feat for a new school." However, bar passage data published on CSL's website shows that, out of the nine sittings of the North Carolina bar exam (between July 2009 and July 2013), CSL's first-time bar passage rate was actually below the state average five times (with a maximum differential of -13.33%) and above the state average only four times (with a maximum differential of 7.4%). Thus, ED concluded that the President's statement was false and/or misleading, particularly when he was making representations as a law school president responding to questions about an accreditor's finding of the school's substantial and persistent failures to prepare students for admission to the bar. ED concluded that substantial misrepresentations about the success that CSL graduates have on bar examinations constitute substantial misrepresentations about both the "appropriateness of [CSL's] courses and programs to the employment objects that [CSL] states its programs are designed to meet," and the schools' success in training its students to meet "requirements that are generally needed to be employed in the fields for which the training is provided." ED concluded that because a reasonable student or prospective student would have understood the President's comments to be misleading in its representation of CSL graduates' prior success on the bar examination, those statements constituted substantial misrepresentations in violation of 34 C.F.R. § 668.71.

*Additional Facts:*

- The CSL was founded in 2004 as a for-profit legal education institution. CSL only has one campus.
  - a) Number students enrolled in '2015-2016 = 48, with 27 students using the Ch33 GI Bill.
  - b) Amount of Chapter 33 paid in '2015 was \$373,710.12.
  - c) Amount of Chapter 33 Yellow Ribbon payments in '2015 was \$91,486.34

- d) Current Graduation Rate = 42.3% National Average
- e) Current tuition and fees = \$21,970
- f) Current monthly housing allowance = \$1,491

*Department of Veteran Affairs (Action Taken)*

VA sent an email message to all GI Bill recipients attending CSL informing them that on December 19, 2016, ED issued a letter to their school denying its Application for Recertification, and that effective December 31, 2016, their participation in the federal student aid programs would end.

**Conclusion**

ED found various statements on the CSL's website and several statements by the President of CSL to be "substantial misrepresentations." As a result, ED denied CSL's request for recertification to participate in title IV Federal Student Aid Programs. Veterans or eligible persons must be afforded protection from such unfair and deceptive practices when selecting an institution at which to utilize their education benefits. Because our cursory exploration of CSL's enrollment program and the finding of ED regarding "substantial misrepresentations," we ask the Commission to promptly initiate a full investigation and take any action deemed appropriate.

Respectfully submitted,

[REDACTED]

Robert M. Worley II  
Director, Education Service  
Veterans Benefits Administration  
Department of Veterans Affairs

cc: [REDACTED] Acting Associate Director of the Division of Financial Practices, Bureau of Consumer Protection, FTC

**LIST OF EXHIBITS**

EXHIBIT 1: Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Charlotte School of Law, 201 South College Street, Suite #400, Charlotte, NC 28244; OPEID 04143500.  
Also available at: <https://studentaid.ed.gov/sa/about/announcements/csl>