

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CAREER SKILLS INSTITUTE OF WEST
VIRGINIA D/B/A/ MARTINSBURG
COLLEGE, a West Virginia corporation,

Plaintiff,

v.

CHERYL MURRAY, an individual, and
JOHN DOES 1-10,

Defendants.

No. _____

COMPLAINT

**DEMAND FOR JURY TRIAL
AND REQUEST FOR TRIAL AT THE
U.S. DISTRICT COURT, FOR THE
DISTRICT OF KANSAS, IN KANSAS
CITY, KANSAS**

COMPLAINT

Plaintiff Career Skills Institute of West Virginia d/b/a Martinsburg College (“Plaintiff”), by and through its undersigned counsel, alleges as follows upon actual knowledge with respect to itself and its own acts and upon information and belief as to all other matters complained of against defendant Cheryl Murray and John Does 1-10 (“Defendants”):

NATURE OF THE ACTION

1. This is an action arising from Defendants’ ongoing efforts to smear Plaintiff’s reputation and interfere with Plaintiff’s business and business prospects by way of false and defamatory statements made to Plaintiff’s customers.

2. Defendants’ tortious acts complained of herein are ongoing and continuous, and were, and are still, intended to ruin the reputation, regard, esteem and goodwill associated with Plaintiff’s name.

THE PARTIES

3. Plaintiff is a corporation organized and existing under the laws of the State of West Virginia, having a principal place of business located at 341 Aikens Center Martinsburg, West Virginia, 25404.

4. Defendant Cheryl Murray is an individual residing at, upon information and belief, 1232 W, Spruce St., Junction City, Kansas 66441.

5. John Does on information and belief reside in this judicial district, have transacted business within this judicial district, or are causing injury within this state.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this dispute pursuant to 28 U.S.C. § 1332, because Plaintiff is a citizen of a different state than the Defendant, and the amount in controversy exceeds \$75,000.

7. This Court has personal jurisdiction over Defendant because she is domiciled and has residence in this judicial district.

8. The claims alleged in this Complaint arise in the state of Kansas, this judicial district, and elsewhere.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in this district.

FACTUAL BACKGROUND

10. Plaintiff opened its initial training center in Martinsburg, West Virginia in 2006.

11. Plaintiff currently provides performance oriented, skills-based educational programs to adults seeking to improve their levels of proficiency in a broad range of disciplines through distance education.

12. Plaintiff's education programs are comprised of short-term, skills-based certificate-level programs with approximately 50% of these programs articulating into the institution's three Associate-level degree programs.

13. Plaintiff's Associate degree programs are organized to provide students with "stackable credentials," a growing trend in higher education. This allows students to earn useful credentials as they progress through the program, prior to graduating.

14. Plaintiff is committed to providing students either no debt or low-debt education conveniently offered at a distance to accommodate adult learners.

15. As a result of the quality programs and experience in supporting adult learners in non-traditional educational delivery, Plaintiff has consistently maintained high student completion and satisfaction rates.

16. Plaintiff has been successfully serving military men and women world-wide since 2004, by providing a number of certificate and degree programs designed to meet their unique needs.

17. Plaintiff is accredited by the Distance Education Accrediting Commission (DEAC), an agency recognized by the U.S. Department of Education since 1959. DEAC is also a recognized member of the Council for Higher Education Accreditation and the International Network for Quality Assurance Agencies in Higher Education. Plaintiff received excellent feedback and its last re-accreditation review.

18. Plaintiff has successfully served the military community since 2006. Its experience and understanding of the military lifestyle have guided its institutional policies which have contributed to student success.

19. Plaintiff is an eligible institution to participate in the Department of Defense's Spouse Education and Career Opportunities program, which provides financial assistance through the Military Spouse Career Advancement Accounts (MyCAA) program to military spouses who are continuing their education by pursuing a license, certification, or Associates degree in a portable career field and occupation.

20. Plaintiff's students can use the MyCAA funds to pay for courses intended to result in certification or Associates degrees which are offered by Plaintiff.

21. At least as early as January 11, 2019, Defendant Cheryl Murray, under the alias Sheryl Shine, posted statements on the social media site Facebook.com regarding Plaintiff that are demonstrably untrue and, upon information and belief, were intended to cause harm to Plaintiff. [*See* Exhibit A hereto.]

22. For example, on January 11, 2019, Defendant Murray posted that "Martinsburg College is a complete SCAM ... [and] have a national accreditation that is in jeopardy." [Ex. A, at 1.] This statement is false. Plaintiff is a bona fide provider of educational services, and its national accreditation has not been challenged in any manner.

23. Defendant Murray further stated that "NO EMPLOYER ACCEPTS THEIR CERTIFICATIONS OR DEGREES." [*Id.*] This statement is both misleading and untrue. Plaintiff does not prepare students for occupations that will require a specific credential, therefore it is impossible for an employer not to except our certificates of completion. There is

no evidence that any employer has refused to hire a graduate simply because they graduated from Plaintiff.

24. Defendant Murray further stated that “because of it being a national accreditation NO decent college will accept their credits for you to continue your education elsewhere.” [*Id.*] This statement is false, as at least 52 colleges and universities have accepted credits earned by Plaintiff’s students, including Rutgers, University of Texas, and a number of others.

25. Defendant Murray further stated that “[Plaintiff is] also recently advertising an “articulation” program with Trident University, WGU, AND Bellevue University. ☹ this is FALSE.” This statement is also false. Plaintiff does not openly advertise its articulation agreements, but rather lists the agreements on Plaintiff’s website as per the requirements of those agreements. However, Plaintiff has signed articulation agreements with Trident University, Western Governors University, and Bellevue University.

26. Defendant Murray further stated that “[e]verything in the above post is accurate. There are only .5% real success stories, all the rest are from reps who are forced to leave positive reviews to keep their jobs.” [Ex. A, at 12.] This statement is false. As noted herein, Defendant’s initial post was false. Further, Plaintiff has not forced its reps to leave positive reviews, and none of the reviews presented on Plaintiff’s website were provided by any past or current employee of Plaintiff.

27. Defendant Murray further stated that “[t]he school reps are trained to prey on young and ill informed spouses. They force employees to write good reviews regarding the school, it’s a train wreck. The employees aren’t even allowed to speak out or they get fired.” [Ex. A, at 14.] This statement is untrue, as shown above.

28. Defendant Murray further stated that “[Plaintiff’s employees] are instructed to lie, evade or be vague to those who are knowledgeable about accreditation.” [Ex. A, at 21.] This statement is untrue. Plaintiff has never given any such instruction to its employees.

29. Defendant Murray further stated that “normally even certifications come with SOME credits (normally not always I’m speaking in general here) that can be transferred into your degree plan. Problem with martinsburg is NOTHING is transferable.” [Ex. A, at 23.] Not only is this statement untrue, but it misunderstands the nature of certificate-level programs. Certifications are not granted by a college; they are awarded after passing an examination given by a third-party, such as an industry association. Certifications do not transfer in the way that course credits might transfer. The credits earned in a certificate program at Martinsburg College transfer into Plaintiff’s own associate degree programs. Similarly, the credits earned through Plaintiff’s associate degree programs are often transferrable to a number of other institutions.

30. Defendant Murray further urged Plaintiff’s students to “[f]ile an OFFICIAL complaint on Martinsburg so that MyCAA will take them off the funding list & an official investigation can occur” and “report them to the BBB.” [Ex. A, at 3.] Upon information and belief, Defendant Murray’s statement was intended to cause harm to Plaintiff by encouraging Plaintiff’s students and prospective students to cease doing business with Plaintiff.

31. Defendant Murray also instructed Plaintiff’s students and prospective students to “file an official complaint with the department of education as well as mycaa. I’d then quit after the complaint was filed and start elsewhere. Your credits won’t transfer well to any university so regardless you’re out.” Upon information and belief, Defendant Murray’s statement was intended to cause harm to Plaintiff by encouraging Plaintiff’s students and prospective students

to cease doing business with Plaintiff and engage in abusive process by filing meritless complaints against Plaintiff.

32. Upon information and belief, Defendant Murray is actively seeking out Plaintiff's current and prospective students on an individual basis in order to disseminate the false statements and convince the current and prospective students to cease doing business with Plaintiff.

33. Defendant Murray's actions have resulted in actual harm to Plaintiff. At least one employee has resigned from Plaintiff, citing Facebook.com postings about Plaintiff as the cause for anxiety and the need to resign. Defendant's false postings have also caused numerous current and former students to file complaints against Plaintiff, with the complaints using wording provided by Defendant in the Facebook.com postings. These complaints have caused and are causing financial harm to Plaintiff, in both employee time spent handling the complaints and in refunds paid out as a result of the complaints.

34. Upon information and belief, Defendant John Doe 1-10 have participated with Defendant Murray in targeting Plaintiff's current and prospective students on an individual basis in order to disseminate the false statements and convince the current and prospective students to cease doing business with Plaintiff.

35. The ongoing harm to Plaintiff and Plaintiff's reputation is irreparable, and cannot be redressed solely through monetary damages.

FIRST CLAIM FOR RELIEF
(Business Defamation Against Defendant Murray)

36. The allegations in Paragraphs 1 through 35 above are realleged and incorporated herein by reference.

37. Defendant's false statements identified herein defame the business enterprise of Plaintiff as well as the services offered by Plaintiff

38. Defendant's statements identified herein are false and/or are disseminated intentionally without a good faith basis of fact in that Defendant failed to use ordinary care to determine whether the false statements were true. Defendant knew the false statements would have a potentially devastating impact on Plaintiff.

39. Defendant's false statements are not protected by privilege by instead are motivated by bad faith in an attempt to cause harm to Plaintiff.

40. Plaintiff has suffered continuing and ongoing commercial damages.

41. The false statements by Defendant is causing ongoing damage to Plaintiff.

SECOND CLAIM FOR RELIEF
(Trade Libel Against Defendant Murray)

42. The allegations in Paragraphs 1 through 35 above are realleged and incorporated herein by reference.

43. Defendant published the false statements on Facebook.com and directed them to Plaintiff's customers and potential customers.

44. Defendant's statements identified herein are false in that they materially misstate the nature, quality and characteristics of Plaintiff and its services.

45. When Defendant published the false statements, it knew that the representations were false, recklessly disregarded whether they were true, or failed to use ordinary care to determine whether they were true, because Defendant did not have a reasonable basis for asserting the false statements.

46. Defendant's publication of these false, defamatory statements about Plaintiff has damaged Plaintiff's reputation.

THIRD CLAIM FOR RELIEF
(Tortious Interference with Contractual Relations Against All Defendants)

47. The allegations in Paragraphs 1 through 35 above are realleged and incorporated herein by reference.

48. As set forth above, Plaintiff and its student entered into valid and subsisting contractual relationships.

49. Upon information and belief, Defendants were aware of and knew of the existence of the contractual relationship between Plaintiff and its students.

50. Upon information and belief, Defendants intentionally and maliciously interfered with the business relationship between Plaintiff and its students by use of improper motives and improper means to intentionally and tortiously interfere with said business relationships.

51. Upon information and belief, Defendants was motivated substantially by malice and/or personal interest in her interference with this business relationship, rather than the furtherance of legitimate business interests.

52. Upon information and belief, Defendants' actions set forth above were intentionally designed to cause students to breach and/or cancel their contracts with Plaintiff, and Defendants acted without justification.

53. Upon information and belief, except for the conduct of Defendants set forth herein, Plaintiff was reasonably certain to have continued the relationship with its customers.

54. As a direct and proximate cause of the tortious interference with this contractual relationship, Plaintiff has suffered and will continue to suffer losses in an amount which cannot be ascertained at present, but reasonably believed to be in excess of \$75,000.

55. Plaintiff is entitled to compensatory and punitive damages as a result of Defendant's unlawful conduct.

FOURTH CLAIM FOR RELIEF
(Injunctive Relief Against All Defendants)

56. The allegations in Paragraphs 1 through 35 above are realleged and incorporated herein by reference.

57. As set forth herein, Defendants engaged and continue to engage in a systematic and methodical scheme to wrongfully disseminate false statements to Plaintiff's current and prospective customers.

58. Defendants' misconduct will continue to harm Plaintiff's reputation and goodwill.

59. Plaintiff has no adequate remedy at law for the damaged reputation and loss of goodwill caused by Defendants' ongoing misconduct.

60. By reason of Defendants' unlawful acts and practices described herein, Advisors

61. Plaintiff has suffered, is suffering, and will continue to suffer irreparable injury for which Plaintiff is entitled to injunctive relief under state and federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant on each of its claims, and grant Plaintiff the following relief:

A. Enter judgment in favor of Plaintiff on each of its claims;

B. Adjudge that Defendant Murray has committed acts of business defamation and trade libel against Plaintiff;

C. Adjudge that Defendant Murray has committed acts of tortious interference with contract against Plaintiff;

D. Award Plaintiff compensatory damages and punitive damages in an amount to be proven at trial;

E. Pursuant to KS Stat § 60-900 (2017), et seq., an order preliminarily and permanently enjoining all Defendants from all further acts of business defamation, trade libel, and tortious interference with contract against Plaintiff;

F. An order requiring Defendant Murray to undertake corrective advertising to inform the public of the falsity of its statements;

G. Award Plaintiff its costs and expenses incurred in this action, including attorney's fees; and

H. Award Plaintiff such other further relief as this Court may deem equitable.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

PLACE OF TRIAL

Plaintiff requests that trial take place in the U.S. District Court, for the District of Kansas, in Kansas City, Kansas pursuant to Local Rule 40.2.

DATED this 23rd day of January 2019.

Respectfully submitted,
MARTIN LEIGH PC

/s/ William H. Meyer

Thomas J. Fritzlen, Jr. KS Bar #17450
William H. Meyer KS Bar # 18142
2405 Grand Blvd., Suite 410
Kansas City, Missouri 64108
Telephone: (816) 221-1430
Facsimile: (816) 221-1044
Email: whm@martinleigh.com
Email: tjf@martinleigh.com

and

Matthew A. Barlow Utah Bar #9596
Roger J. McConkie Utah Bar #5513
WORKMAN | NYDEGGER
60 East South Temple, Suite 1000
Salt Lake City, UT 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707
Email: mbarlow@wnlaw.com
Email: rmcconkie@wnlaw.com

*Counsel for Plaintiff Career Skills Institute of
West Virginia d/b/a Martinsburg College*