

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
Office of Attorney General Josh Shapiro

Petitioner

V.

**TEMPLE UNIVERSITY – OF THE
COMMONWEALTH SYSTEM OF
HIGHER EDUCATION**

Respondent

Case No. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (“Commonwealth” and/or “Petitioner”), which has caused an investigation to be made into certain conduct related to Temple University – Of The Commonwealth System of Higher Education (“Temple” and/or “Respondent”) and its Fox School of Business and Management (“Fox”), pursuant to the provisions of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (“Consumer Protection Law”), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania by the Office of the Attorney General, through the Bureau of Consumer Protection, with offices located at 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103 and 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent is Temple University – Of The Commonwealth System of Higher Education, an incorporated public research university and state-related institution of

higher education, created under the laws of the Commonwealth of Pennsylvania, which maintains its headquarters and largest campus in Philadelphia, Pennsylvania.

BACKGROUND

1. Respondent is and has been engaged in trade or commerce within the Commonwealth of Pennsylvania through the operation of its university by advertising, marketing, and providing educational services to students in exchange for tuition and other associated payments.

2. Fox is a school within Respondent's university offering, among other programs, several Masters of Business Administration ("MBA"), including an MBA program provided to students entirely online (the "OMBA").

3. In addition to Fox's OMBA, which was established in 2009 and is accredited by the Association to Advance Collegiate Schools of Business ("AACSB"), the business school offers such programs as the Global Master of Business Administration ("GMBA"), Part-Time Master of Business Administration ("PMBA"), Online Master of Science in Human Resource Management ("HRM"), Online Master of Science in Digital Innovation in Marketing ("DIM"), Executive Master of Business Administration ("EMBA"), and Online Bachelor of Business Administration ("OBBA") programs (collectively, the "Other Fox Programs").

4. Respondent's current tuition price is \$1,245.00 for each credit hour in its OMBA program and up to \$1,999.00 for each credit hour for the EMBA program.

5. Business school rankings, such as those published annually by *U.S. News & World Report* ("*U.S. News*"), are generally regarded as a signifier of program prestige and are thus an important marketing tool used by schools to recruit students.

6. Many prospective MBA students consult these rankings in selecting which school they choose to attend.

7. Fox's OMBA was ranked by *U.S. News* as the #1 online MBA program in America for four (4) straight years, beginning in 2015 until it was unranked in January 2018, when Respondent discovered and self-reported that Fox had submitted inaccurate information to *U.S. News* in connection with the publication's 2018 OMBA survey.

8. Specifically, Respondent learned and disclosed that Fox's survey submission to *U.S. News* had misreported that all new entrants to the OMBA program had provided Graduate Management Admission Test ("GMAT") scores as part of their applications.

9. To encourage prospective students to apply for and enroll in Fox's educational programs, Fox has made various representations to the public in general and to students in particular, through a variety of media (including, but not limited to, websites, radio and television commercials, print advertisements, social media and promotional brochures), touting the rankings of the OMBA and certain of the Other Fox Programs.

10. Prior to its string of #1 rankings, Fox's OMBA program ranked #28 as recently as 2013. Many of the Other Fox Programs also saw a significant improvement in their rankings over roughly the same period of time and both Respondent and Fox benefited greatly from the rise in rankings; experiencing not only a significant benefit in reputation, but also a marked increase in the number of applicants, enrollees, and revenue.

11. In response to its discovery of the inaccurate survey submissions, Respondent retained the law firm Jones Day to conduct an investigation into the misreporting.

12. In July 2018, following the completion of Jones Day's investigation, Respondent publicly announced that Fox had provided *U.S. News* with inaccurate data in addition to GMAT

scores and that misreporting similar to that involving the Fox OMBA had occurred with respect to the Other Fox Programs.

13. Following Respondent's public announcement of the Jones Day investigation's findings, the Commonwealth opened its own investigation into the matter and Temple has provided its full and complete cooperation.

WHEREAS, based upon its investigation, the Commonwealth believes Respondent has engaged in conduct which violates the Consumer Protection Law, and alleges as follows:

1. Following a change in procedure initiated by the Dean in approximately mid-2013, Respondent and Fox failed to institute adequate checks and balances in the process for compiling, verifying, and submitting information to *U.S. News* and other rankings organizations.

2. Over a period spanning several years, Fox provided *U.S. News* with inaccurate information across multiple data metrics that are part of the publication's OMBA rankings methodology.

3. Fox's reporting of inaccurate information to *U.S. News*, in certain instances, was done knowingly and intentionally for the purpose of improving or maintaining Fox's standing in the relevant *U.S. News* rankings.

4. Consistent with the findings of the Jones Day investigation, the Commonwealth has determined that, one or more times since at least 2014, Fox reported, as to the OMBA and certain Other Fox programs, inaccurate information to *U.S. News* with respect to, among other metrics:

- A. The number of entrants who provided GMAT scores;
- B. The mean undergraduate GPA of entrants;
- C. The number of offers of admission extended to applicants; and

D. Student-borrower indebtedness.

5. The Commonwealth's investigation also revealed that Fox misrepresented information to *U.S. News* with respect to other metrics, including, but not limited to:

- A. OMBA admissions selectivity, including, specifically, reporting applicants as having been denied admission in instances where the applicants had withdrawn or chosen not to attend Fox (leading to the highest possible selectivity score in the *U.S. News* rankings);
- B. The number of technological support staff and the ratio of faculty they support within the OMBA program; and
- C. Certain metrics relating to the Other Fox Programs.

6. The Commonwealth's investigation further indicated that Fox misrepresented similar data to certain other publications including, but not limited to, *The Princeton Review*, *Financial Times*, *The Economist*, *Business Week* and *Poets & Quants*.

7. Fox leadership and other employees created and/or promoted conditions that contributed to the reporting of inaccurate information to *U.S. News* and other rankings entities. Fox employees have reported feeling various degrees of implied and/or express pressure to improve and maintain rankings.

8. The business school rankings surveys, including that of *U.S. News*, often call for programs such as Fox to self-report various pieces of information and statistics about its program and certain survey questions may call for a school to seek clarity from the rankings publication as to how to interpret—and accurately respond to—a given question. In numerous instances, however, Fox personnel adopted questionable interpretations of survey questions without seeking clarification. Invariably, when Fox elected not to seek clarification from a given

publication, Fox personnel opted to interpret and answer the survey question at issue in a manner most favorable to Fox.

9. In at least one instance, Fox provided falsified and/or otherwise inaccurate data to *U.S. News* following the specific instruction from leadership to “use whatever [interpretation] comes out better” for Fox.

10. Key Fox personnel, in formulating a comprehensive rankings strategy for its MBA programs, noted that many rankings publications followed trends in *U.S. News* and reported to colleagues, “... if we improve our rank on the [*U.S. News*] ranking, all the others will follow.”

11. To that end, Fox devoted significant attention and resources—at times even tailoring specific aspects of its programs—precisely to generate results that would lead to its desired ranking.

12. Fox even dedicated multiple employees to the task of exhaustively analyzing the publicly available rankings data in order to define the precise weight of each metric used by *U.S. News*, so that Fox could accurately determine the specific survey responses that would allow it to improve and/or maintain its ranking position.

13. In 2014, one of the persons deployed by Fox to conduct such analyses even expressed concern about the OMBA program’s ranking rising too high, too fast and cautioned that becoming the #1 ranked program so quickly was not advisable as it would draw unwanted scrutiny to the OMBA program and their methods for improvement.

14. During the time period in which Fox’s various business school programs were engaging in the misreporting of data, Temple failed to exercise reasonable care to employ the resources sufficient to oversee Fox’s submissions.

15. The Commonwealth's investigation revealed that Temple's oversight initiative was consistently understaffed and lacking in clearly delineated standards and responsibilities. In fact, Fox personnel openly discussed among themselves that Temple was ill-equipped to uncover the repeated falsification by Fox.

16. Additionally, Fox personnel had multiple opportunities to identify inaccuracies in data sent to rankings organizations such as *U.S. News*, but these inaccuracies were not identified either before or after submission.

17. In multiple instances, Fox employees identified numerous inaccuracies within a given survey response to be provided to *U.S. News*, but only those inaccuracies which were likely to hurt Respondent's ranking were corrected and/or further addressed by Fox leadership, whereas the inaccuracies likely to help Respondent's ranking were ignored and/or otherwise left intact.

18. Even when Fox first alerted *U.S. News* to the GMAT inaccuracies discussed herein above, and *U.S. News* requested that Fox provide the actual, correct value, a Fox staff member knowingly responded by providing yet another inaccurate, inflated value to *U.S. News*.

WHEREAS, based upon its investigation, the Commonwealth alleges that the aforesaid acts constitute "unfair methods of competition" and/or "unfair or deceptive acts or practices," as prohibited by Section 201-3 of the Consumer Protection Law, as defined by Sections 201-2(4)(v) (vii), and (xxi) as follows:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have, 73 P.S. § 201-2(4)(v);

2. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, 73 P.S. § 201-2(4)(vii); and

3. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

WHEREAS, pursuant to Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission by Respondent of a violation of the Consumer Protection Law for any purpose. 73 P.S. § 201-5. Moreover, this Assurance of Voluntary Compliance shall not be considered an admission by Respondent to the factual allegations set forth herein.

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law in lieu of commencing statutory proceedings under Section 201-4 of the Consumer Protection Law. 73 P.S. §§ 201-4, 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade or commerce within the Commonwealth of Pennsylvania, Respondents agree for themselves, their successors, assigns, officers, partners, agents, representatives, employees, and all other persons acting on their behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. Respondent shall not, in the future, engage in conduct which violates the Consumer Protection Law, and any future amendments thereto.

B. Respondent shall not, in any medium (including, but not limited to, websites, radio and television commercials, print advertisements, social media and promotional

brochures), market, advertise, tout, or otherwise promote the rankings attained by the OMBA and the Other Fox Programs during the years of 2014 through 2018.

C. In the event any prospective applicant or enrolled student in the OMBA or the Other Fox Programs requests, orally and/or in writing, any information about or relating to the rankings status and/or history of such programs, or otherwise inquires about, references or mentions the status and/or history of same, Respondent shall have an affirmative duty to provide to any and all such prospective applicants or enrolled students an electronic and/or hard copy of the Frequently Asked Questions summary (“FAQ”) detailing Respondent’s rankings-related misconduct and the remedial measures subsequently taken to address such misconduct. The FAQ is subject to final approval of the Commonwealth and shall be submitted to the Commonwealth for final approval within thirty (30) days after the Effective Date of this Assurance of Voluntary Compliance.

D. Respondent shall ensure that each school, college, and degree/certification program within Respondent’s university develops and fully implements standardized processes for the aggregation, collection, inspection, verification, and submission of data to rankings organizations.

E. Respondent shall not submit any data to rankings organizations unless that data has been aggregated, collected, inspected, verified, and submitted in full compliance with the applicable standardized process set forth in accordance with the preceding paragraph.

F. Respondent shall establish and adequately staff a university-level office dedicated to overseeing the proper aggregation, collection, inspection, verification, and submission of data to rankings organizations. This office shall report directly to the Board of Trustees.

G. Respondent shall continue to retain an independent, third-party auditor to monitor Respondent's data reporting practices through at least the 2020-21 academic year. Respondent has already retained such an auditor to monitor and work on issues related to data reporting for the 2018-19 academic year. Beginning on the Effective Date and continuing through the end of the 2022-23 academic year, Respondent shall, upon thirty (30) days of receipt of any audit reports regarding rankings surveys from this or other third-party auditors, forward those reports to the Commonwealth.

H. Beginning in the current year and continuing through the end of the 2022-23 academic year, Respondent shall implement mandatory annual training in data integrity and ethical standards for all Fox employees involved in the aggregation, collection, inspection, verification, and submission of data to rankings organizations. Respondent shall log and/or otherwise document employees' participation in this training and such documentation shall be provided to the Commonwealth upon written request of same.

I. To the extent it has not already done so, Respondent shall develop and promote robust direct and indirect reporting mechanisms for whistleblower protections, including an anonymous hotline, as well as providing greater education and information regarding those protections. Specifically, Respondent will do the following:

1. Establish a phone number through which individuals may anonymously report issues, including suspected falsification of student data. This phone number will be readily accessible on Respondent's website. Respondent will keep records of these calls, and provide them to the appropriate functional area for appropriate resolution;

2. Create a webpage explaining that students, faculty, and other Respondent-affiliated individuals are protected from retaliation for whistleblowing. A link to that webpage will be readily accessible on Respondent's website; and
3. Provide annual training for all Fox faculty and staff regarding anonymous reporting mechanisms and anti-retaliation policies, beginning in the current year and continuing, at a minimum, through the end of the 2025-26 academic year.

J. Respondent shall establish and fund an annual scholarship beginning the first full academic year after the Effective Date, and continuing each academic year through at least the 2029-30 academic year, that will award Five Thousand and 00/100 Dollars (\$5,000.00) each to no less than five (5) students enrolled in any one of the OMBA, GMBA, PMBA, HRM, DIM, EMBA, and OBBA programs. The specific terms of that scholarship will be consistent with the terms of other scholarships offered by Respondent and shall include the following criteria:

1. Each student shall be selected by a committee appointed by the Dean; and
2. The scholarship may be renewed for a second year so long as the recipient remains in good standing and maintains a GPA of at least 3.25.

K. Respondent shall perform annual compliance assessments to ensure that the foregoing terms are adhered to by the Respondent. Beginning in the current year and continuing through the end of the 2022-23 academic year, Respondent shall forward annual compliance reports to the Commonwealth within 30 (thirty) days of their completion.

III. Monetary Relief

A. Respondent shall be liable for a total payment¹ in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) (hereinafter “Required Payment”), which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, in recognition of the costs incurred in pursuing this enforcement action, and shall be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

B. **Payment Terms** – Defendants hereby agree to pay to the Commonwealth the Required Payment due and payable under Paragraph III.A. herein above in accordance with the following:

1. Respondent agrees to pay to the Commonwealth the Required Payment in full upon execution of this Assurance of Voluntary Compliance.
2. Payment shall be made by certified check, cashier’s check, or money order, made payable to the Commonwealth of Pennsylvania, and forwarded to James Wise, Deputy Attorney General, Pennsylvania Office of Attorney General, Bureau of Consumer Protection, 1600 Arch Street, Third Floor, Philadelphia, PA 19103.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Philadelphia County shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

¹ In addition to the scholarship to be established and funded by Respondent in accordance with the terms set forth in Paragraph II.J. herein above.

B. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by a consumer or a local, state, federal, or other governmental entity.

C. Time shall be of the essence with regard to Respondent's obligations hereunder.

D. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

E. Respondent understands and agrees that if Respondent has made any false statement in or related to this Assurance of Voluntary Compliance, that such statement is made pursuant to and under penalty of 18 P.S. § 4904 relating to unsworn falsifications to authorities.

F. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

G. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of

Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

I. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

J. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

K. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

{SIGNATURES ON THE FOLLOWING PAGE}

WHEREFORE, intending to be legally bound, the parties have hereto set their hands
and seals.


For the Petitioner:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Date: 12/12/19

By: _____


James S. Wise
Deputy Attorney General
PA Attorney I.D. #314913
Commonwealth of Pennsylvania
Office of Attorney General
Bureau of Consumer Protection
1600 Arch Street, Third Floor
Philadelphia, Pennsylvania 19103
Telephone: (215) 560-2414

For the Respondent:

TEMPLE UNIVERSITY

Date:

12/12/19

By:



Kenneth Kaiser
Vice President, Chief Financial Officer and
Treasurer
Temple University
Garden Level, Sullivan Hall
1330 W. Polett Walk
Philadelphia, PA 19122

Date:

By:

Eric W. Sitarchuk
Counsel for Respondent
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Date:

By:

Catherine M. Recker, Esquire
Counsel for Respondent
Welsh & Recker, P.C.
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Date:

By:

Amy B. Carver, Esquire
Counsel for Respondent
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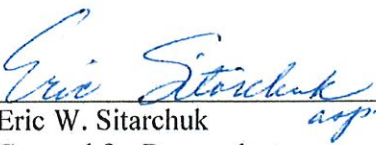
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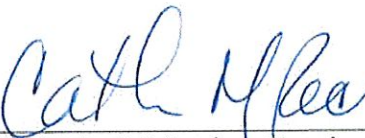
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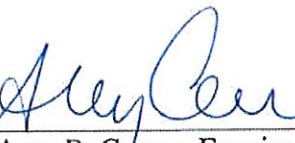
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