Cooley

Avoiding Common Legal Issues at Coding Schools: Marketing

April 18, 2017

The rapid growth of accelerated learning programs providing training to aspiring high-tech professionals – the best known being the coding academies or "boot camps" – has been the subject of plenty of attention in the last couple years. Given the high cost of traditional higher education and the need to train a new generation of workers for the tech economy, we expect that trend to continue. But while the education market is ripe for this kind of disruption, it remains a regulated space. Alternative providers may not look or feel like conventional colleges, but they are often similarly regulated.

The marketing practices of all schools are currently a hot button issue in the education business. Highly visible, provocative ads may attract the attention of potential students, but they also attract the attention of myriad state and federal regulators, including potentially the Federal Trade Commission (FTC) and the Consumer Finance Protection Bureau (CFPB) and, more often, state attorneys general, consumer protection agencies and an army of consumer advocates specifically focused on protecting students.

At the federal level, the FTC has issued guidance for marketing to students, titled Guides for Private Vocational and Distance Education Schools. The Guides apply to any for-profit entity that provides educational courses and programs (not just institutions offering vocational or distance education) and outline conduct that the FTC considers to be an unfair or deceptive practice. Conduct inconsistent with the Guides may result in investigations and actions by the FTC seeking injunctive relief and consumer payments. And although the FTC Act does not create a private right of action, most states have a consumer protection code modeled after the FTC Act that allows for private claims or investigations by the state's attorney general.

In addition, many state education agencies that regulate non-degree programs like coding academies have specific rules about what may or may not be represented to students. There are rules, for example, about when an entity can use terms such as "academy" or "university." (Witness the ill-fated Trump University, which was not in fact a "university."). Most state education agencies also require education providers to enter into an enrollment agreement with students, and many states require such agreements to include specific terms and provisions to protect consumers.

Consumer complaints, and the regulatory scrutiny they bring, most commonly originate when students misunderstand the credentials they will receive, the cost or duration of a program or their employment prospects, even if the statements made about them are qualified in the "fine print." You do not necessarily need to run every ad by an attorney, but you and your marketing team need to know what the issues are for regulators and take extra care to ensure marketing materials are fully accurate.

Student outcomes are a particular subject of regulatory scrutiny. While most alternative providers are not required to provide information on student outcomes, many do. Prospective students are demanding data on employment and salary outcomes, and the market is responding appropriately. These disclosures can be a useful marketing tool, but too often, there is a lack of transparency into how statistics are derived and poor communication about what they actually mean.

For example, an education provider may advertise robust employment rates among students who complete their program, but fail to clarify that the advertised figures only represent outcomes for individuals already in tech jobs or with a computer science degree, as compared to someone looking to switch careers. Some providers are joining together to create a common set of industry standards to make comparisons easier; others are setting their own measures. Meanwhile, state attorneys general and the FTC have become aggressive in cracking down on practices that could mislead students. Most consumer protection laws provide judges and regulators considerable leeway to decide what constitutes misrepresentation in this context, and even meritless claims can be costly to litigate and harmful to your reputation. As a best practice, we recommend that marketing materials be reviewed separately by someone other than the vendor or the marketing department that created them, and we encourage schools to regularly update their websites.

Bottom line: all advertised claims should be verifiable, substantiated and accurate, and a thoughtful, proactive approach can avoid unwanted scrutiny from regulators and disgruntled students.

Paul Thompson counsels schools and technology companies that provide services to schools on regulatory challenges

in the education sector.
