thereto.

FEDERAL TRADE COMMISSION

v.

JOHN F. DRAUGHON, DOING BUSINESS UNDER THE NAME OF DRAUGHON TEXT BOOK CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 511—May 20, 1920.

SYLLABUS.

Where a concern engaged in the publication and sale of textbooks, charts, lesson sheets, etc., for use in teaching bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies in business colleges, and in home-study courses; with a tendency to mislead and deceive the public,

(*a*) distributed circulars entitled "Government Reports on Pitmanic and Gregg Shorthand writers" which represented (1) that certain statistics respecting the percentage of shorthand writers using the Pitmanic-Graham system emanated from the Government, whereas they were compiled by private institutions, (2) that a recent Government report showed that approximately 77 per cent of the stenographers in the Federal service were writers of Pitmanic shorthand, whereas the statistics used were six years old, (3) that a Government report showed that of 886 United States official court reporters 807 wrote the Pitmanic system of shorthand, whereas no such statement had appeared in any Government publication, (4) that the Government recognised the Pitmanic as the only standard system, whereas the Government has never expressed any preference for any one shorthand system, and (5) that a Government report showed that 91.2 per cent of all leading court and

Congressional shorthand reporters of the United States wrote Pitmanic shorthand, whereas the report quoted from was in no sense a Government document;

(*b*) used substantially the same statements contained in the foregoing paragraph in display advertisements in a newspaper having interstate circulation;

(*c*) distributed advertising matter containing statements (1) that the Supreme Court had decided that the concern's bookkeeping course was the best, the statement being followed by certain explanatory matter which nevertheless did not deprive it of its misleading character; (2) that its "Civil Service Bookkeeping Set was drafted by the Government," such statement being without foundation of fact; (3) that 85 per cent of the stenographers in the Government service wrote the system of shorthand taught by schools which teach the concern's courses; (4) that 85 per cent of the Government official court reporters holding positions paying $5,000 or more a year wrote the concern's system of short hand, whereas the United States court reporters do not receive the large salaries indicated:

Held, That such false and misleading advertising under the circumstances set forth constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that John F. Draughon, doing business under the name of Draughon Text Book Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is now, and for more than two years last past has been, engaged in the business of publishing and selling text books, charts, lesson sheets, etc., whereby bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies are taught in business colleges and in home study courses to students residing

in the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries. That respondent's principal place of business is in Nashville, in the State of Tennessee, and respondent causes said textbooks, charts, lessen sheets, etc., to be transported from the State of Tennessee through and into various other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, for use in various business colleges supplied by respondent and for use by respondent's enrolled students taking the home study courses. In carrying on such business, respondent has been in direct competition with various other individuals, partnerships, and corporations similarly situated.

PAR. 2. That said respondent in the course of his business, as stated in paragraph 1 hereof, has made use of certain false and misleading statements contained in advertising matter circulated by him, and has sought by such means to disparage the business of his competitors. That respondent within the year last past has distributed circulars designated "Bulletin 2654," which circulars were entitled "Government Reports on Pitmanic and Gregg Shorthand Writers," which circulars did not contain the report of any Federal Government official, nor the report of any State government official, except that use was made of some statistics taken from reports of the United States Commissioner of Education for the years 1911 and 1913, but the main portion of said circular was made up of the unofficial comment of respondent, in which he sought to depict the claimed advantages of the Pitmanic system of shorthand over those of the Gregg and other systems of shorthand. Said circulars also contained the false and misleading statement that of the 886 official court reporters of the United States Government 807 write Pitmanic systems; and the further false and misleading statement is made that the Government recognizes the Pitmanic system as the only standard shorthand system. Substantially the same false and misleading statements were contained in a display advertisement published on March 18, 1919, by respondent in the Nashville Banner, a newspaper of general circulation. Respondent also published and distributed in the various

States of the United States, in the year last past, a folder entitled "Reasons," which also contained numerous false and misleading statements concerning his own business and that of his competitors, among which statements was one to the effect that "The Supreme Court" has decided that the Draughon bookkeeping course was the best; and further statement is made to the effect that the Federal Government had drafted Draughon's civil service bookkeeping set and that 85 per cent of the stenographers employed by the Federal Government used the shorthand system taught in the Draughon schools. That various other advertising circulars were distributed by respondent containing false and misleading statements as stated above, all of which have had the effect of creating the false impression that the course of study used by the respondent was the only standard course in use and had been so recognized by the United States Government, all of which has prejudiced the competitors of respondent and disparaged the business of such competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, John F. Draughon, doing business under the name of Draughon Textbook Co., has been for more than a year last past using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered his appearance by his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting certain of the matters alleged in the complaint herein and denying others thereof; and thereafter having made and executed an agreed statement of facts which has been filed in this said cause, in which agreed statement of facts it is stipulated and agreed that the Federal Trade Commission shall

take such agreed statement of facts as evidence in this case and in lieu of testimony; and final disposition of said cause having been made by formal hearing of the same before the Federal Trade Commission on April 12, 1920, due and legal notice thereof being given respondent, receipt whereof is acknowledged by respondent's attorney, as will more fully appear by the files and records of this cause; therefore, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now and for more than two years last past has been engaged in the business of publishing and selling textbooks, charts, lesson sheets, etc., whereby bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies are taught in business colleges and in home-study courses to students residing in various States of the United States and Territories thereof, the District of Columbia and foreign countries. That respondent's principal place of business is in Nashville, in the State of Tennessee, and that respondent causes said textbooks, charts, lesson sheets, etc., to be transported from the State of Tennessee, through and into the various other States of the United States, the Territories thereof, the District of Columbia, and foreign countries for use in various business colleges supplied by respondent and for use by resepondent's enrolled students taking the home-study courses. In carrying on such business, respondent has been in direct competition with various other individuals, copartnerships and corporations similarly situated.

PAR. 2. That respondent in the course of such business as aforesaid, and during the year 1919, published and distributed printed circulars which are designated, "Bulletin 2654," one of which circulars is attached hereto marked "Exhibit A" and made a part hereof, the same as though fully set forth herein. All of such circulars so published and distributed by respondent were identical in form and substance, with the circular marked "Exhibit A." Said

circulars were entitled "Government Reports on Pitmanic and Gregg Shorthand Writers." Said circulars were composed of divers statements, statistics, etc., some of which purport to be reports of official organizations or bodies, together with divers comments thereon by the respondent, all of which statements and comments purport to prove the superiority of the Pitmanic system of shorthand.

In such circulars entitled "Government Reports," appear the following false or misleading statements, to wit:

(1) Statistics are given on page 1, of said circular, which purport to be taken from a report of a "New York High-School Committee," or the "Shorthand Section, High-School Teachers' Association." This association was and is a private organization composed of individual high-school teachers, and was and is not a public organization or governmental agency. Its report was not a Government report.

(2) Statement is made on page 2 of such circular, under the caption "A Government Report," which reads as follows:

> The following late official report (vol. 2, p. 568) of the United States Commissioner of Education, shows that out of a total of 2,444 stenographers employed in the departmental offices in Washington, 1,890 (77.3 per cent) are writers of the Pitmanic system of shorthand, and only 554 are writers of all other systems combined.

Said statement was taken from statistics given in the Commissioner of Education's report for the year 1913, and such statistics were at least six years old at the time of the issuance of said circulars.

(3) Statement is made on pages 2 and 3 of said circulars, under the caption "Another Government report," as follows:

> Of the 886 official court reporters of the United States Government, 807 write the Pitmanic system.

This statement is false and is not contained in any report of any United States governmental department, branch, or agency, or in any State governmental department, branch, or agency.

(4) Statement is made upon pages 3 and 4 of said circular as follows:

> The Government's preference [in regard to shorthand systems] was indicated, expressed in the fact that on certain blanks which the Government furnished to applicants for positions as teachers of shorthand in schools conducted by the Government—blanks which applicants were required to fill out—there was a printed statement in substance as follows: "*No one need apply unless he or she teaches a Pitmanic system.*" Doesn't this mean that the Government recognizes the Pitmanic system as the only standard shorthand system? Sure!

The United States governmental departments and the United States Civil Service Commission have never expressed a preference for any one shorthand system over any other.

(5) Statement is made upon page 4 of said circular, under the caption "Still another report" (i. e., a Government report), that—

> "A late official report of the National Shorthand Reporters' Association shows" that 91.2 per cent of "all the leading court and congressional shorthand reporters of the United States" write Pitman shorthand.

The National Shorthand Reporters' Association was and is a private organization, and such report was not a Government report.

PAR. 3. That respondent in the course of such business as aforesaid issued and published on or about March 18, 1919, substantially the same statements as contained in the "Bulletin 2654" in a large display advertisement in the Nashville Banner, a newspaper of interstate circulation published in Nashville, Tenn.

PAR. 4. That respondent in the course of such business as aforesaid and during the year 1919 published and distributed printed folders entitled "Reasons," one of which folders is attached hereto, marked "Exhibit B" and made a part hereof the same as if fully set forth herein. All of such folders so published and distributed by respondent were identical in form and substance with the folder marked "Exhibit B." In such folders appear the following false or misleading statements, to wit:

(1) Statement is made on the inside front cover of said folder under the caption, "Here is the evidence," as follows:

> The Supreme Court has decided that the Draughon Bookkeeping Course—the course which we teach—is *the best*. To the decision of the Supreme Court on a question of law all other courts and the people must assent, for nobody is likely to know the law better than the eminent men who compose the Supreme Court.

This statement is false, because there is no decision or decree or finding of the Supreme Court of the United States, or of any State, in any judicial proceeding whatsoever, that the Draughon bookkeeping course is the best bookkeeping course, or in any otherwise declaratory of the merits or demerits of the Draughon bookkeeping course. Respondent then goes on with the following statement:

> And is anybody more competent to judge as to the superiority of a bookkeeping course than practical bookkeepers, merchants, and bankers? These men constitute the supreme court in the business world. Hence, by analogy we can say that the *supreme court* has decided that the Draughon bookkeeping course—the course which we teach—*is the best*.

Such further statement, by which respondent attempts to qualify the preceding statement, does not nullify the false and misleading impression of such preceding statement and the whole tended to deceive and mislead the public.

(2) Reference is made on page 3 of said folder to the respondent's "Civil Service Bookkeeping Set, drafted by the Government." This "Civil Service Bookkeeping Set," a true copy of which is annexed hereto and marked "Exhibit C" and made a part hereof, the same as if fully set forth herein, and which was and is used by respondent in the aforesaid business, consisted of entries and problems taken from specimen entries issued by the United States Civil Service Commission supplemented by comments and instructions drafted by the respondent.

(3) On page 24 of said folder is a picture representing the conventional figure of "Uncle Sam"—that is, the

United States—and on page 25 of said folder appears the following statement:

> Uncle Sam says: * * * "I drafted the Draughon civil service bookkeeping set and 85 per cent of my *stenographers* write the shorthand system taught by the schools which teach the Draughon business training courses."

Such statements were false, because the Draughon civil-service bookkeeping set was not drafted by the United States Civil Service Commission, nor by any other branch of the United States Government, but was drafted by respondent as aforesaid, and 85 per cent of the Government stenographers do not, and did not then, write a shorthand system taught by schools which teach the Draughon "business training courses." The United States Civil Service Commission objected to the said statements, and by letters of June 20, 1919, and July 25, 1919, requested the respondent to discontinue the circulation of such folder with said statements.

(4) Statement is made on page 40 of said folder that "about 85 per cent of the Government's official court reporters, the Government stenographers who draw the *big salaries*, who hold positions paying $5,000 or more a year, write the Graham-Pitman system of shorthand, *the system which we teach.*" It is not a fact that the official stenographer for any United States court receives a salary of $5,000 or more per year, and such statement is false and misleading.

PAR. 5. All of the foregoing statements, so published and distributed in interstate and foreign commerce by means of the aforesaid circulars, folders, and advertisements, were either false, or misleading, or both, as heretofore shown; and all of them tended to mislead and deceive the public, and to hinder and embarrass respondent's competitors.

CONCLUSIONS.

From the foregoing findings the Commission concludes that the methods of competition set forth are under the circumstances set forth in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled

"An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein; and the respondent, John F. Draughon, doing business under the name of Draughon Text Book Co., having entered his appearance by his attorney, Will H. Krause, Esq., duly authorized and empowered to act in the premises; and having filed his answer; and thereafter having made and executed an agreed statement of facts which has been filed in this said cause, in which statement of facts it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony; and final disposition of said cause having been made by formal hearing of the same before the Federal Trade Commission on April 12, 1920, due and legal notice thereof being given respondent, receipt whereof is acknowledged by his attorney; and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent, John F. Draughon, doing business under the name of Draughon Text Book Co., has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, his agents, servants, and representatives cease and desist from publishing and circulating or causing to be published and circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries advertisements, circulars, folders, letters, or any other printed or written matter whatsoever, wherein it is directly or indirectly stated, set forth, or held out to the public:

(1) That the United States Government or any department, bureau, commission, branch, or agency

thereof has in any matter whatsoever recognized, declared, or reported that the Pitmanic system of shorthand or any other system of shorthand is the best shorthand system or is a better system of shorthand than any other system;

(2) That the Pitmanic system of shorthand or any other system of shorthand has been adopted as the standard system by or for United States Government or by or for any department, bureau, commission, branch, or agency thereof;

(3) That the Supreme Court of the United States or of any of the several States has in any way adjudicated the merits or demerits of the courses of instruction or any of them offered by respondent and employed in his business; or that such court has declared the same to be the best course of such instruction; or declared it to be better than any other course of such instruction;

(4) That the United States Government or any department, bureau, commission, branch, or agency thereof has in any manner whatsoever approved respondent in the conduct of his business or prepared or drafted the Draughon civil service bookkeeping set or any of the lesson sheets, textbooks, or any other publication whatsoever published, distributed, or used by respondent or his agents, servants, or representatives.

It is further ordered, That the respondent make and file with the Commission within 60 days from the date of this order his report, stating in detail the manner and form in which this order has been conformed to: and attach to such report copies of all circulars, letters, and advertising matter published, distributed, or used by him in the conduct of his business subsequent to the date of this order.

388 Complaint.

FEDERAL TRADE COMMMISSION

v.

C. H. KRONEBERGER AND W. M. KRONEBERGER, PARTNERS, STYLING THEMSELVES C. H. KRONEBERGER & CO.