

IN THE MATTER OF
WALKER'S NEW RIVER MINING COMPANY

COMPLAINT, FINDINGS, OPINION, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2028. Complaint, Apr. 28, 1932—Decision, Feb. 1, 1934.

TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—"NEW RIVER"
COAL FROM NEW RIVER FIELD AND GEOLOGISTS' "NEW RIVER" GROUP OF THE
POTTSVILLE SERIES—SALE AS "NEW RIVER" OF COAL FROM SAME GEOLOGICAL
CLASSIFICATION, BUT DIFFERENT FIELD.

Where a coal field in southern West Virginia, contiguous or adjacent to the New River, had long since come to be known and designated as the New River field, and the coal there mined had come to be well and favorably known as New River coal due to operators' care in selling under such name only coal of the highest grade, character, and quality, irrespective of the particular seam from which taken, and to said operators' long advertisement thereof, under said name, at large expense, so that the words had come to signify to wholesalers, retailers, and the consuming public, coal of high character, quality, and utility produced in the aforesaid particular section, and such coal under said name had come to enjoy a widespread and continuous domestic and foreign demand and sale; and thereafter a corporation engaged in mining coal from the same seam and geological classification, to wit, the "New River group of the Pottsville series", in a locality 75 to 100 miles distant from the aforesaid field, and in selling said coal in competition with the genuine New River product in various sections of the United States, including several New England States, certain large eastern cities, including New York, and various points in Ohio, Michigan, and Wisconsin, to many of which sections the former enjoyed a more favorable freight rate than the latter.

- (a) Adopted as and for its corporate and trade name, a name including words "New River", and featured said name containing the words "New River" in advertisements and advertising matter offering its said coal, and upon letterheads and stationery used in soliciting the sale thereof; and
- (b) Described its said coal in advertisements as "New River coal" and so offered, sold and invoiced the same, and as "N.R. Nut and Slack" thereby signifying New River nut and slack;

With result that purchasers thereof and said purchasers' vendees advertised and/or sold the same as and for "New River coal", and wholesale and retail coal dealers were furnished with the means enabling them to mislead and deceive their respective purchasers into believing such coal to have been produced in the New River field, and with capacity and tendency to mislead and deceive the public into believing such coal to have been there produced, and to have the uniform characteristics and qualities associated therewith, irrespective of geological origin or mining fluctuations, and to induce its purchase in such belief, and to divert trade to it from competitors offering and selling either coal produced in such field, or coal truthfully advertised, described and represented, from its own, or any other, district:

Held, That such practices, under the conditions set forth, constituted unfair / methods of competition.

TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—COAL FIELDS—
GEOGRAPHICAL V. GEOLOGICAL CONSIDERATIONS.

Carefully selected coal from a well defined territory near the New River, had long been mined, widely advertised and sold under said name, so that coal thus named had come to be widely and favorably known as meaning coal produced in said territory and possessed of certain definite, desirable characteristics and uniform qualities. Coal seams involved and underlying said territory and extending far beyond, were known for their entire extent by geologists as constituting the "New River Group of the Pottsville series". *Held*, That such fact did not justify a competing concern, which subsequently engaged in mining coal of high grade, with many similar qualities, from an anticline vein of one of the aforesaid seams, located in a field 75 or 100 miles distant from said territory and separated therefrom by a mountain range, in also naming and selling its said coal as "New River", since the association that had theretofore come to attach to the product from said territory, thus sold, found its significance in the fact of geographical location and not, as contended, in that of geological classification.

TRADE NAMES—GEOGRAPHICAL AND GEOLOGICAL NAMES—WHERE NAMES SIMILAR
FOR SAME PRODUCT—GEOGRAPHICAL NAME AND SECONDARY MEANING—LIMITATIONS
WHERE PRODUCT OUTSIDE RESTRICTED GEOGRAPHICAL AREA.

The fact that a name correctly identifies a certain product from a geological standpoint, will not permit the proper application thereof to such product commercially, where said name had theretofore come to acquire trade significance through long usage and expenditure of funds as identifying a definite district with such a product, with definite qualities associated therewith as coming therefrom, and where the product, to which application of such name is sought to be justified on geological grounds, does not in fact come from such district, though geologically identical with the product in fact there produced, and of substantially the same quality. The general principle of nonsubstitution, born of the consideration that the public is entitled to what it wants, even though its choice be governed by fashion, taste, or pure idiosyncrasy, is applicable, and even though the extent of the use of the name, otherwise correctly, so to identify such product geologically, is thereby limited. If the trade cares about geography, because it has been taught, at the producer's expense, that geography is a test of quality, it is entitled to be protected in that predilection, and it is misleading to pretend to the trade and the public that a geographical test of quality is being offered it, when in truth the test offered is a geological one.

PUBLIC INTEREST—TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—
USE OF SAME NAME, AS GEOLOGICAL IDENTIFICATION, FOR SIMILAR PRODUCT
OF SIMILAR QUALITY, NOT FROM RESTRICTED GEOGRAPHICAL DISTRICT.

The public is entitled to a product selected on the basis of tests it believes itself to be applying, and not merely to a product of practically the same quality and the same grade it would have gotten under such tests, and where a geographical name had come through long use favorably to identify a certain product to trade and public as coming from a well defined district, and as having definite virtues, it could not be said that there was no public interest in preventing the sale thereafter, under said name, as a matter of geological classification, of coal of asserted equal quality, not there mined.

Complaint

18 F.T.C.

Mr. James M. Brinson for the Commission.

Mr. George C. Doub, of Baltimore, Md., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions 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", the Federal Trade Commission charges that Walker's New River Mining Company, a corporation, hereinafter called respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Walker's New River Mining Co. is a corporation organized, existing, and doing business under any by virtue of the laws of the State of West Virginia, with its principal office and place of business in the city of Elkins in the State of West Virginia. Respondent has been, for more than a year last past and now is, engaged in the business of mining or extracting coal from a mine or mines situated in Flint in the county of Randolph in the State of West Virginia, near or in the vicinity of Elkins, W.Va., and in the sale of such product in commerce among and between the various States of the United States other than the State of West Virginia. It has caused and causes its said product, when sold, to be transported from its said place of business at Elkins, W.Va., or from its mines located as aforesaid to purchasers in a State other than the State of West Virginia. It has been, was at all times hereinafter mentioned, and now is, in competition in the course and conduct of its said business with individuals, partnerships and corporations engaged in the sale of coal in interstate commerce.

PAR. 2. Respondent Walker's New River Mining Co. has adopted, and at all times hereinafter mentioned used, and now uses as and for its corporate name and trade name the words "Walker's New River Mining Co.", in connection with offering for sale and selling its coal in commerce among and between the various States of the United States. Respondent has also caused its corporate and trade name containing as aforesaid the words "New River" to be conspicuously displayed in advertisements and advertising matter which it has caused and causes to be circulated and distributed among purchasers and prospective purchasers in the various States of the United States, and on invoices furnished purchasers of its

product, reflecting sales thereof, it has caused the same to be represented, described, or designated, as "N. R. Nut & Slack", thereby indicating and meaning New River Nut and Slack.

The words "New River" used in connection with, or to describe or designate coal or coal mines, have for many years signified and meant, and have been understood to signify and mean, and now signify and mean to the purchasing public, coal produced or extracted from mines situated in the district adjacent to New River, and lying, or being within the counties of Wyoming, Raleigh, Fayette, and Greenbrier in the southern portion of West Virginia.¹

In truth and in fact respondent Walker's New River Mining Co. does not own, operate, or control, and has not owned, operated, or controlled for more than a year last past, or at any time heretofore, any coal mine or mines situated in the New River district as hereinbefore described, and the coal which it has sold and now sells in commerce described in paragraph 1 hereof, and which it has caused and causes to be described in its invoices "N.R. Nut and Slack", has not been, was not, and is not, mined or extracted from any mine or mines situated within the district generally known as the New River Mining District.

PAR. 3. There have been, for many years last past and now are, many producing coal mines in the New River District described in paragraph 2 hereof, and from them there has been produced and sold each year, and is now produced and sold each year in interstate commerce, a large and extensive tonnage of coal, by many individuals, partnerships, and corporations operating mines in such district. Such coal so produced and sold as "New River Coal" has acquired in foreign countries as well as in the United States, and for many years last past has maintained a high reputation on account of its character and utility, and is now widely and popularly known for its excellence in the United States and in foreign countries among the purchasing public, and has long had, and now has, a consistent and favorable good will, and the name "New River" as applied to, or used in connection with, coal has become and is a substantial asset of great value to the many individuals, partnerships, and corporations engaged in the production and sale of coal from mines in the New River District.

The mines owned or operated by respondent from which the coal sold by it in interstate commerce is mined or extracted, are neither

¹ The complaint originally named "Lafayette" instead of "Fayette" in the foregoing enumeration of counties, but was changed to its present form, in order to conform to the evidence, pursuant to motion of the Commission's chief counsel.

adjacent nor contiguous to the New River, or the New River District, and in fact are situated in a region from 100 to 150 miles distant from the New River District.

PAR. 4. The practices of respondent, in using the words "New River" in its corporate and trade names, and in offering for sale and selling its coal described, designated, or invoiced as "New River Coal" have had and have, and each of said practices has had and has the capacity and tendency to mislead and deceive the public into the belief that the coal so offered for sale and sold by respondent has been and is coal mined or extracted from, or produced in, the district generally known as the New River District, and to induce the purchase of such coal in reliance on such erroneous belief. Such practices also have had and have, and each of them has had and has the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce, coal mined or produced in the New River District, and from competitors offering for sale and selling, in interstate commerce, coal from other districts in West Virginia than the New River District, truthfully described and designated.

PAR 5. The acts and practices of respondent as described in paragraph 2 hereof are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, in violation of the provisions of Section 5 of the Act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, OPINION, AND ORDER

Acting in pursuance of the provisions 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" (38 Stat. 717) the Federal Trade Commission on the 26th day of April, 1932, issued and thereupon served as required by law, its complaint upon Walker's New River Mining Co., a corporation, hereinafter designated as respondent, in which said complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent, Walker's New River Mining Co., having filed its answer herein, testimony and evidence were duly received before an examiner for the Commission, theretofore duly appointed for such purpose in support of the complaint and on behalf of respondent.

Thereupon this proceeding having come on for final hearing on the record and on briefs and oral argument by attorneys for the Commission and the respondent, and the Commission having considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and now files this its report in writing, stating its findings as to the facts and its conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walker's New River Mining Co., has been since 1927 and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, having its principal office and place of business in the city of Elkins, State of West Virginia. Respondent has been since its organization and now is engaged in the business of mining or extracting coal from a mine or mines situated at Flint in the county of Randolph in the State of West Virginia, near or in the vicinity of Elkins, in said State, and in the sale of such coal in commerce among and between the various States of the United States. It has caused and causes its coal when so sold to be transported from its said place of business at Elkins, W.Va., or from its mines located, as aforesaid, to purchasers in a State or States other than the State of West Virginia. Respondent has been, was at all times hereinafter mentioned, and now is in the course and conduct of its said business in competition with individuals, partnerships, and corporations engaged in the sale of coal in interstate commerce, including producers of coal in the New River field sold in interstate commerce as New River coal, as hereinafter set forth.

PAR. 2. Coal has been mined in southern West Virginia on territory contiguous or adjacent to the New River since 1872 when completion of an extension of its railway by the Chesapeake & Ohio Railroad Co. opened such territory to development and since then it has been served in connection with the transportation of coal exclusively by the Chesapeake & Ohio and the Virginia railroad companies to tidewater ports or other points.

The territory above described became known and designated and has been so known and designated as the New River field or district for more than twenty-five years. Coal was and still is mined in such territory from several seams, principally the Sewell, the Beckley, the Fire Creek, and the Welch. These seams extend beyond the boundaries of the New River field, both in a northerly and southerly direc-

tion. The Sewell seam extends to the north in Pennsylvania and in such State is there called the Sharon. Extending southerly the Beckley and Fire Creek seams are mined in the Winding Gulf field and both of these seams together with the Sewell seam are mined in the Pocahontas field. Coal from all of these seams was studied by geologists and was classified and described in geological literature as "New River Group of the Pottsville Series." Mining operations, at first on land contiguous to the New River, extended from time to time until land adjacent to the New River was also mined and the New River field continued to develop and grow until it embraced and now includes substantial parts of the counties of Fayette, Raleigh, and Greenbrier in southern West Virginia.

The number of operators in the New River field also from time to time increased until now there are and for a considerable period before the organization of respondent company there were sixty-three producers of coal in the New River field, and for more than twenty-five years last past coal from such field has been and is sold as New River coal. It has been and is the policy and practice of coal operators in the New River field to offer for sale and sell as New River coal only coal of the highest grade, character and quality mined in the New River district irrespective of the particular seam or seams from which it has been or is extracted. In other words coal found in any seam in the New River field inferior in grade, character or quality has not been and is not sold by producers of coal in the New River district as New River coal. The result of such a practice by producers of the New River district has been that wholesale and retail dealers in coal and the consuming public have associated the words New River with coal of a distinctively and uniformly high-grade character and quality originating and produced in, or from the New River field.

The coal operators or producers of the New River field have expended for many years last past and long prior to the organization of respondent company considerable sums of money in advertising such high-grade product of their mines as New River coal and one of them has expended a million dollars in advertising its product as New River coal. It produces approximately 3,000,000 tons of coal yearly and employs 3,000 men.

In the aggregate there are mined in the New River field approximately 12,000,000 tons of coal yearly and for this coal on account of the aforesaid practice in such New River field of selling as New River coal only that of high quality there is a favorable goodwill and a continuous and wide-spread demand. Coal from such field is

sold both in the United States and in foreign countries as New River coal and its excellence and utility have become so associated with the words New River that they have signified and meant for many years prior to the organization of respondent company and now signify and mean to wholesale and retail dealers and the consuming public, coal of high character, quality and utility, produced in that particular section of West Virginia known as the New River field or district.

PAR. 3. Respondent, Walker's New River Mining Co. adopted at the time of its said organization, and at all times since has used, and now uses, as and for its corporate name and trade name, the words "Walker's New River Mining Company", in connection with offering for sale and selling its coal in commerce among and between the State of West Virginia and the various States of the United States and in commerce between the State of West Virginia and the District of Columbia. Respondent has caused its corporate name and trade name containing the words, as aforesaid, "New River" to be conspicuously displayed in advertisements and advertising matter, which it has caused and causes to be circulated and distributed among purchasers and prospective purchasers in the various States of the United States. The letterheads of stationery respondent uses in communications with inquirers or prospective purchasers or others from whom it solicits business, carry, in large and conspicuous letters, the words "Walker's New River Mining Company." They also bear the following legend: "Walker's New River Big Sewell Mine, Flint, W.Va., and W.M. Ry."

In its advertisements, and in such communications, respondent has described and describes its coal as "New River" coal, and it has been and is its practice to offer for sale, sell and invoice it as "New River" coal, sometimes as "N.R. Nut and Slack", thereby signifying New River Nut and Slack.

The mines, owned or operated by respondent from which the coal sold by it in interstate commerce as "New River" coal is mined or extracted, are neither adjacent nor contiguous to the New River or the New River district or field and are, in fact, situated in a region from seventy-five to one hundred miles from the New River coal field or district which is known and described as "Cheat Mountain Coal Field", and coal produced from such mines by respondent is not New River coal as such words signify and mean and as such description is known and understood by the purchasing public.

The various sections of the United States in which the coal of respondent is sold in competition with the genuine New River coal

include certain parts of Massachusetts, Connecticut, Rhode Island, the Metropolitan District of New York, Philadelphia, Baltimore, Washington, and various points in Ohio, Michigan, and Wisconsin. In many of such sections except the tidewater points and the area immediately tributary thereto, depending entirely upon transportation by rail of coal from the Cheat Mountain district and the New River district or field, the respondent enjoys a more favorable freight rate for the transportation of its coal than producers of coal in the New River district or field.

As the result of respondent's practices hereinbefore described, purchasers of coal sold to them as New River coal, have advertised it and sold it as New River coal, and still advertise and sell it as New River coal and their vendees in turn have resold it and continue to resell it to the consuming public as New River Coal, the particular designation under which the respondent caused it and still causes it to be sold in interstate commerce.

PAR. 4. The practice of respondent in using the words "New River" in its corporate and trade name and its practice of offering for sale and selling its coal described, designated, or invoiced as "New River" coal, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the public into the belief that the coal so offered for sale and sold by respondent has been and is coal mined, extracted, or produced in the district generally known as the New River district or New River coal field, a name which to the public is an assurance of uniform character and value irrespective of geological origin, or fluctuations in quality encountered in mining from various seams of coal, and to induce the purchase of such coal in reliance on such erroneous belief.

The aforesaid practices of respondent have also furnished and furnish wholesale and retail coal dealers with the means by which they have been and are enabled to mislead and deceive their respective purchasers into the belief that the coal offered for sale and sold by respondent is coal produced, originating or mined in the New River field.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert trade to respondent from competitors offering for sale and selling coal produced in the New River district or field and from competitors offering for sale and selling coal from any other district or field in the United States, including the Cheat Mountain coal field, truthfully advertised, described, and represented.

OPINION OF THE COMMISSION

The respondent is charged with using unfair methods of competition in interstate commerce in that it is using the words "New River" in connection with the sale in interstate commerce of coal which, it is contended, is not coal known to the trade as New River coal. By its use of the name "New River" in its corporate name, its business literature and in its general advertising, it is alleged to be engaged in practice that deceives purchasers and thereby constitutes an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act.

The respondent is a West Virginia corporation, organized in 1927, and engaged since that time in the business of mining coal from mines situated in Randolph County, W.Va. It sells its product in other States, particularly Ohio, New York, Pennsylvania, the New England States, and the District of Columbia, advertising it generally as New River coal.

Coal was first mined in the New River territory about 1872 when that region was opened up by the Chesapeake & Ohio Railway. The mining operations began on the banks of the New River but soon extended to contiguous territory in the counties of Fayette, Raleigh, and Greenbrier—a territory frequently spoken of as the New River field. In this field, there are now some 63 coal companies, producing about 12,000,000 tons of coal a year. For many years an effort has been made to give the product of these companies a special trade value by denominating it as New River coal and advertising such coal in the markets naturally served by this field. More than a million dollars has been spent in this form of advertising. Not all coal mined in the New River field, even though mined from seams that may geologically be regarded as belonging to the New River series, is regarded or sold by these operating coal companies as New River coal. The coal in order to come within that description must also be of a certain quality, namely, smokeless in character and having a low volatile content and a high heating efficiency.

The efforts of the operators in the New River field to distinguish New River coal from other types of coal and to give it a recognized reputation for quality have been generally successful. It is widely known throughout the Eastern States and even in England as a bituminous coal of high quality. Because of its low volatile content and high heating value, it is much used by steam vessels to supply their bunkers.

Geologically the coal, known as New River coal and mined in the New River field, comes from seams belonging to the New River group of the Pottsville series.¹ The principal seams in this series are the Sewell, Welch, Beckley, and Fire Creek. Some of these seams extend far beyond the New River field, running northeast into Pennsylvania and southwest as far as the Virginia state line.

Randolph County, where the respondent's mining operations are carried on, is from seventy-five to one hundred miles distant from the New River field. A mountain range intervenes. The respondent mines a vein of the Sewell seam, which vein is known as a syncline or anticline vein, being physically separated by a ridge from the principal Sewell seam. The respondent's coal is of high quality, having many of the qualities of the New River coal mined in the New River district, though having a higher moisture content, a higher fusing point and a lower British thermal unit content.

No contention is made, however, that the respondent is selling as New River coal a coal of an essentially inferior quality. The contention is that the respondent's coal is not New River coal, inasmuch as New River coal has a specific meaning in the coal trade limiting it to coal of a particular quality mined in the New River field. The contention is further that, though the respondent's coal may appropriately be designated as New River coal from the geological standpoint, inasmuch as it is mined from a seam in the New River group of the Pottsville series, so designating it to the coal trade is misleading because that trade has a general understanding that New River coal is limited to coal mined in the New River field.

1. The respondent contends that New River coal is not in fact a term signifying to the trade coal from the New River field. Instead, it is contended that New River coal is appropriately applied in the trade to coal mined from any of the coal seams known as the New River group of the Pottsville series. Such an issue of fact naturally evokes conflicting and contradictory testimony. The Commission's witnesses embraced representative persons in the coal trade from Boston, New York, Philadelphia, and Washington—the chief urban centers in the eastern market for New River coal. The geographical rather than the geological content was given by them to the term New River coal.² Some vagueness existed as to the exact limits of the New River field, but the witnesses did not travel beyond the territory contiguous to the territory embraced in the counties of

¹The testimony on this point by the Commission's witnesses was generally to the same effect, though one of the Commission's witnesses, a large New England dealer, testified that he thought the respondent's use of the term New River as applied to his coal was entirely proper.

Fayette, Raleigh and Greenbrier. The respondent's witnesses, on the other hand, maintained that the term to the trade was primarily one with geological content. Some testimony was given by dealers in Randolph county as to the trade significance of the term and also to the effect that coal from that county was generally sold as New River coal. Testimony as to other companies than the respondent selling coal mined elsewhere than in the New River field as New River coal is not convincing.^a The great weight of the evidence favors the contention of counsel for the Commission that New River coal is a trade term and as such applicable only to coal of a certain quality mined in the New River field.

2. The respondent again contends that, even though the public and the coal trade give the geographical and not the geological content to the term "New River" as applied to coal, selling as New River coal such coal as can geologically be designated as New River coal is not an unfair method of competition. The contention bases itself upon the thesis that there can be no rightful appropriation of a geological name to an article as coming from a restricted geographical area when there is a more extensive area from which an article identical from the geological standpoint and of substantially the same quality is produced. Otherwise, so the argument runs, operators in other areas who have the same product to sell cannot correctly and appropriately designate their product inasmuch as the correct and appropriate designation has already been pre-empted. Another viewpoint, the respondent urges, would favor monopoly and make impossible full development of the geological resources of the territory. Coal from the Pittsburgh seam, the respondent points out, is mined as Pittsburgh coal in regions far removed from Pittsburgh. Similarly, Pennsylvania crude oil is produced not only in the State of Pennsylvania but also in West Virginia, Ohio, and in New York.

The argument, however, loses sight of the fact that in such instances no trade quality, other than that of geological identity, had attached by long usages and the expenditure of funds, to the geographical appellation given the product. It is true that there can be no exclusive trade appropriation of a geographical term so as to

^a The examiner excluded evidence offered by the respondent tending to show that companies mining coal from other fields than the New River field employed the words "New River" in their corporate names. This exclusion was unfortunate, but the respondent was permitted to introduce testimony showing that these companies sold coal not mined in the New River field as New River coal. Some evidence tending to show that the Consolidation Coal Co., the largest bituminous coal concern in West Virginia, sold coal mined in McDowell County as New River coal was introduced. It was admitted, however, that coal mined from the Sewell seam in Pennsylvania was never sold as New River coal but frequently sold as Sewell coal.

exclude others who are selling products of the same geographical origin from indicating that fact by using the term commonly employed in the trade as indicative of that geographical origin. *Delaware & Hudson Canal Co. v. Clark*, 80 U.S. 311. But where a geographical origin has a trade significance, the use of a term descriptive of such an origin cannot be applied to a product of a different origin, even though such a product may be of identical quality. *City of Carlsbad v. W. T. Thackery & Co.*, 57 Fed. 18. See also *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216; *George Harvey v. American Coal Co.*, 50 F. (2d) 832. This general principle of nonsubstitution, born of the consideration that the public is entitled to what it wants even though the public's choice may be governed by fashion, taste or pure idiosyncrasy, is applicable even though a term which is descriptive of geographical origin can be applied in the universe of geological discourse to describe a product of a different geographical origin. If the trade cares about geography, because it has been taught at the producer's expense that geography is a test of quality, it is entitled to be protected in that predilection. Nothing prevents the respondent from urging the trade to accept in place of a geographical test, a geological one. But it is misleading to pretend to the trade and the public that a geographical test of quality is being offered, when in truth the test offered is a geological one.

3. The respondent's final contention is that no public interest is to be served by this proceeding. It argues that its coal is of the same quality as New River coal mined in the New River field, and that therefore, the public is not truly deceived. But this neglects the fact that it is in the public interest that the public is entitled to the tests that it believes itself to be applying and not merely to a product of practically the same quality and the same grade as it would have gotten had it applied its test.

4. The existence of competition in this case is not in issue. The respondent sells its coal in competition with New River coal primarily in the Eastern market. And its position, some seventy-five miles nearer these markets and served by a different road, gives it a freight rate advantage over its New River competitors in some of these Eastern markets as well as at some of the Lake ports.

These findings, and the conclusions derivable therefrom, lead to the conclusion that the respondent should cease and desist from representing by its corporate name, its business and advertising literature, that it is selling New River coal. An order to that effect should issue.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of respondent, the testimony and evidence, briefs and arguments of counsel for the Commission and counsel for respondent, and the Commission having filed its report stating its findings as to the facts and its conclusion that the respondent has violated the provisions 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",

It is now ordered, That respondent Walker's New River Mining Co., in or in connection with, offering for sale or selling coal in interstate or foreign commerce or in commerce between the State of West Virginia and the District of Columbia or in the District of Columbia, cease and desist directly or indirectly from—

(1) Describing or designating said coal as "New River" coal or by the abbreviation "N.R.", or by any other abbreviation, letters or words of the same or similar import unless such coal originates, is produced or mined in that portion of West Virginia lying, being or situated within the territory generally known as the "New River" field or district.

(2) Using in its corporate name the words "New River" or words, letters or abbreviations of the same or similar import unless coal so offered for sale or sold originates or is produced or mined in the "New River" field or district as described in paragraph 1 hereof.

It is further ordered, That respondent file a report in writing with the Commission within 60 days from and after service of this order, setting forth in detail the manner and form of its compliance therewith.

IN THE MATTER OF
JACOB ANTINOPH AND HARRY MEDOFF, COPARTNERS,
DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF PHILADELPHIA LEATHER-GOODS CO.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2098. Complaint, Mar. 29, 1933—Order, Feb. 2, 1934

Consent order requiring respondents, their agents, etc. to cease and desist, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of handbags, suitcases, and other luggage or other products made from the under layers of sealskin, known as "Split Seal", from designating and describing the same as "Seal" or "Genuine Seal" unless the word "Seal" is modified by the word "Split" in letters equally conspicuous or other expression clearly and conspicuously designating that the material is an under layer of sealskin.

Mr. Harry D. Michael for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions 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", the Federal Trade Commission charges that Joseph¹ Antinoph and Harry Medoff hereinafter referred to as respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. The respondents Joseph Antinoph and Harry Medoff are now and have been for several years last past partners under the firm name and style of Philadelphia Leather-Goods Co., and engaged in the business of manufacturing and selling in interstate commerce to jobbers and retail dealers throughout the United States handbags, suitcases, and other luggage. They cause said merchandise when sold to be shipped in interstate commerce from their said place of business at Philadelphia into and through other States of the United States to the purchasers thereof at their respective points of location. In the course and conduct of their business respondents are and have been in competition with many other persons, firms and corporations located in the United States engaged

¹ Should be Jacob. See p. 192.