

IN THE MATTER OF
GENERAL DISTILLERIES CORPORATION

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

Docket 2445. Complaint, June 19, 1935—Decision, Apr. 10, 1940

Where a corporation engaged, under rectifier's basic permit, in purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors, and in production of gin by process of redistillation of alcohol over juniper berries and other aromatics, and in sale of said various products among the various States and in the District of Columbia, and engaged, for some 2 years last past, under distiller's basic permit, in producing, bottling, and selling brandy produced in distillery leased therefor by it, and, as thus variously engaged, in substantial competition with others engaged in manufacture by distillation of whiskies, gins, and other alcoholic beverages from the raw materials and in sale thereof in trade and commerce as aforesaid, and with those engaged in rectifying, blending and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in sale thereof in commerce as aforesaid, and including among said competitors those who, as distillers from mash, wort, or wash of the whiskies, brandies, and other alcoholic beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as part of their corporate or trade names, on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling whiskies, gins, and various other alcoholic beverages, do not use such words as aforesaid—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery, invoices, billheads, and order blanks, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that said whiskies and other alcoholic beverages contained in such bottles were by it made through true process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies and other alcoholic beverages, excepting brandy as above set forth, by it so bottled, labeled, sold, and transported, and did not own, operate, or control any place or places where such alcoholic beverages, with exception aforesaid noted, are made by process of distillation from mash, wort, or wash, as long definitely understood from word "distilleries" when used in connection with industry in question and products thereof by trade and ultimate purchasing public, and it was not a distiller, for the alcoholic bottled beverages of which there is a preference on the part of a substantial portion of the purchasing public; With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller, and that the whiskies and other alcoholic beverages sold by it were by it distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy its said products made and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name or in any other man-

Complaint

ner, misrepresent themselves as distillers; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan* and *Mr. W. W. Sheppard*, trial examiners.
Mr. DeWitt T. Puckett for the Commission.

Mr. Joseph W. Ress, of Hartford, Conn., and *Mr. Briggs G. Simpich*, of Washington, D. C., for respondent.

COMPLAINT

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, having reason to believe that General Distilleries Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized in March 1934, existing and doing business under the laws of the State of Connecticut, with its principal office and place of business in the city of Hartford in said State. It is now, and since its organization, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and since its organization

has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits and liqueurs does not make or constitute respondent a distiller as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the

words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 19, 1935, issued and served its complaint in this proceeding upon respondent General Distilleries Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations

Findings

30 F. T. C.

of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph W. Ress, attorney for the respondent before John J. Keenan and W. W. Sheppard, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence presented in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid and Briggs G. Simpich, Esq., of Washington, D. C., and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized in 1934, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business at 77-79 Homestead Avenue, Hartford, Conn. Its officers are:

President.....	Abraham Abrahamson,
Treasurer and Manager.....	Julian Shoor,
Secretary.....	David Lyon Abramson.

Since March 9, 1934, it has been and still is engaged in business as a rectifier and wholesaler of distilled spirits and the production of gin by the process of redistillation of alcohol over juniper berries and other aromatics pursuant to a rectifier's basic permit No. R-504, issued to it by the Federal Alcohol Administration Division of the Treasury Department. Its present permit authorizes it to engage at the above address in the business of rectifying and blending distilled spirits, gin, wine, and other spirituous beverages, and while so engaged, to sell, offer and deliver for sale in interstate commerce and foreign commerce such spirits, wine, gin, and other spirituous liquors so rectified or blended, conditionally upon its compliance with sections 5 and 6 of the Federal Alcohol Administration Act, and all other provisions thereof; the twenty-first amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, gin, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to the law which are now or may hereafter be in force; and the laws of the States in which the permittee engages in business. The permit issued in 1934 was from the former Alcohol

Control Administration and on October 17, 1935, the permit respondent is presently operating under was issued by the Federal Alcohol Administration.

While its charter is sufficiently broad to permit it to engage in almost any phase of the liquor business, actually until September 26, 1938, it was engaged solely in the blending of whiskies, wines, gins, and other spirituous beverages, and the selling of same at wholesale. It purchases these spirits which it blends from various distillers and bottles them under its warehousing and bottling basic permit issued at the same time and by the same authority as was its rectifier's permit. On September 26, 1938, it was granted a distiller's basic permit No. D-898, by the Administrator of the Federal Alcohol Administration authorizing it to produce brandy by distillation on the premises of the Earnest C. Alderman Distillery, Barnes Hill Road, Burlington, Conn., said Alderman being the holder of basic distiller's permit M. D.-59.

Of the whiskies purchased by it in bulk from distillers, it bottles some straight without alteration and other whiskies after blending or rectifying. The gin manufactured by it through the process of redistillation of purchased alcohol over juniper berries and other aromatics is bottled and sold to the trade and constitutes approximately 15 percent of the volume of its business. The whiskies, both straight and blended, constitute 50 to 60 percent of its trade, and the brandy which it produces, since September 26, 1938, constitutes the balance. The respondent does not now and never has, except since September 26, 1938, produced or manufactured distilled spirits of any kind, from mash, wort, or other raw materials. The rectification of alcoholic spirits by this respondent as aforesaid in the production of gin, does not make or constitute it a distiller or a distilling company as defined by section 3247 of the Revised Statutes of the United States regulating Internal Revenues.

The Commission finds that this respondent is now and has been since 1934 engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors and in the sale thereof in constant course and trade in commerce between and among various States of the United States and the District of Columbia; that since the issuance to it of the distiller's basic permit D-898, on September 26, 1938, it has produced, bottled and sold brandy produced in a distillery which it leases for that purpose in Burlington, Conn.; that approximately 25 percent of its sales and distribution has been in States other than the State of Connecticut.

In the course and conduct of its said business, it causes its products, when sold, to be transported from Hartford, Conn., into and through

Findings

30 F. T. C.

various other States of the United States to the purchasers thereof, who are wholesalers and retailers located in these other States of the United States and in the District of Columbia.

In the course and conduct of its business as aforesaid, respondent is now and since March 4, 1934, has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages from the raw materials and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and has been during said period, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the business of rectifying, blending and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. On the premises of respondent are various tanks for storage and blending, bottle fillers, labeling machines, and the equipment usually found in a rectifying plant. There is also distilling apparatus for the production of gin by distilling purchased alcohol over juniper berries and other aromatics. The respondent is now and has been since September 26, 1938, producing brandy by distillation from leased premises pursuant to a basic distiller's permit No. D898, issued by the Administrator of the Federal Alcohol Administration. The law permits the use of the name or designation of distiller, or distilleries with respect to brandies produced under said permit.

Rectifying, in the distilled spirits rectifying industry, means the mixing or blending whiskies of different grades or types. A blend of whiskies is a combination of various straight whiskies of different types or ages, and blended whisky is a product with something other than whisky in it, such as neutral spirits (grain alcohol) and sometimes caramel or prune juice, or whatever the rectifier sees fit to put into it.

During such times as a rectifier is either bottling or labeling his products, a gager from the Alcohol Tax Unit of the Bureau of Internal Revenue is present, solely for the protection of the Government's revenue. A great many distilling companies, in addition to the distilleries, operate a rectifying plant at some little distance from their distilling plant where they perform substantially the same operations as a rectifier. Blown somewhere in the glass of the bottles used, mostly in the bottom of the bottle, there is a symbol consisting of a letter

followed by a number identifying the bottler. For instance, there is a "D" for distiller, and an "R" for rectifier, the number following the said letter corresponds with the distiller's rectifier's basic permits, thus "R-504" designated General Distilleries Corporation as a rectifier to those who know and understand such designations. Distillers also bottle liquor from their rectifying plants and label it as "Blended and bottled by," or "bottled by," as the case may be so that by the use of such phrases alone appearing on the label followed by the name of the bottler one cannot tell whether the bottler was a distiller or a rectifier. The designation "D-898" designates the General Distilleries Corporation to those who know and understand such designation as distillers.

Section 3247 of the Revised Statutes (U. S. C. A. Tit. 26, section 1183 (a)), regulating Internal Revenue, defines a "distiller" as follows:

Every person who produces distiller spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance or who, making or keeping mash, wort, or wash has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (U. S. C. A. Tit. 26, section 1398 (f)), defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus with the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whisky, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

PAR. 3. The testimony of those having long experience in both the distilled spirits rectifying industry and distilling industry established that this respondent's plant and operations do not make or constitute this respondent a distiller in the sense commonly understood by the liquor industry. There were also called a large number of witnesses who were lay-members of the purchasing public, and with few exceptions, their testimony was to the effect that by such terms as "distilling," "distillery," and "distiller," when used in the trade or corporate name of a concern handling alcoholic beverages, they understood that concern to be engaged in an initial process of producing spirituous or alcoholic beverages from grain or mash, and that they have a distinct preference for a distillery bottled package over one bottled by a rectifier, for the reason that they would expect to get

a much better product which had been distilled under proper supervision and without tampering. And said witnesses indicated definitely that they would prefer and choose liquor carrying the label of a distilling company or a distiller.

The Commission finds that for a long period of time, the word "distilleries" when used in connection with the liquor industry and with products thereof, has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of such liquors by the process of distillation from mash, wort, or wash, and that a substantial portion of the purchasing public prefers to buy alcoholic beverages prepared and bottled by distillers.

PAR. 4. All of respondent's products are sold under its corporate name "General Distilleries Corporation." In the sale of whiskies, some of said whiskies are sold without the name of the distiller thereon on the face of said bottle, but only the words "Bottled by General Distilleries Corporation." Other whiskies, straight and blended, are sold with the name of the distilling company or producer who manufactured or blended said whiskey and the label also bears designation "Bottled by General Distilleries Corporation." Its rum is sold without the name of the producer on the front label and with no other information than "Bottled by General Distilleries Corporation." It does not distill rum. Prior to securing its permit to distill brandy, respondent sold brandy with labels bearing the name of the winery and distillery and respondent's own name as the bottler thereof. On its blended whiskies, the respondent, after carrying the name of the whisky, has the designation "Blended and Bottled by General Distilleries Corporation." On its gins, the respondent carries the label "Distilled and Bottled by General Distilleries Corporation." On other of its whiskies which it bottles exclusively for customers, said labels bear the designation "Bottled Exclusively for," then gives the name of the liquor store for whom it is bottled, with no other designation on the face thereof as to who is the distiller or bottler. As to straight whiskies, since about August 1936, under a requirement of the Federal Alcohol Administration, respondent is compelled to place a label on the bottle naming the State in which the liquor was distilled and its age. In the matter of blended whisky, respondent is required to place a back label on the bottle stating the amount of whisky and the amount of neutral spirits therein. The respondent must get the approval of the Federal Alcohol Administration on all labels before using them, and has apparently complied with the rules and regulations of the Federal Alcohol Administration. The respondent's corporate name as it appears on the label is required to

correspond with the name as it appears on the basic permit as issued by the Federal Alcohol Administration. The Federal Alcohol Administration never passed upon the propriety or impropriety of the name used by the respondent corporation.

The Commission finds that in the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, invoices, billheads, order blanks, and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that said whiskies and other alcoholic beverages therein contained were by it manufactured through a true process of distillation from mash, wort, or wash, when as a matter of fact, respondent is not a distiller, and does not distill the said whiskies and other alcoholic beverages, except brandy, by it so bottled, labeled, sold and transported, and does not own, operate, or control any place or places where whiskies and other such alcoholic beverages, except the brandy since September 26, 1938, are manufactured by a process of distillation from mash, wort, or wash, and the said beverages are not produced and bottled by respondent as a distiller, in its distilleries, or in its distillery. That the brandy which has been, since September 1938, produced by the respondent is under a special permit whereby it is allowed only as the lessee of a distillery to produce upon its own responsibility brandy from such fruit or materials as brandy is usually produced; that said permit does not permit and respondent does not produce under said permit any whiskies or other alcoholic beverages.

PAR. 5. There are among the competitors of respondent engaged in the sale of alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals, who distill from mash, wort, or wash, whiskies, brandies and other alcoholic beverages sold by them and who truthfully use the words "distillery," "distilleries," "distilling," or "distillers" as part of their corporate names or trade names on their stationery, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

Order

30 F. T. C.

PAR. 6. The representation by the respondent as set forth in paragraph 4 hereof is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies and other alcoholic beverages sold by the respondent are distilled by it from mash, wort, or wash, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the aforesaid products manufactured and bottled by the respondent, thereby diverting trade to the respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John J. Keenan and W. W. Sheppard, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by DeWitt T. Puckett, counsel for the Commission, and by Joseph W. Ress and Briggs G. Simpich, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, General Distilleries Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of whiskies, gins, or other spirituous beverages (except brandies actually distilled by it, and except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics) in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through the use of the word "Distilleries" or any other word of like import, in its corporate name, on its stationery,

advertising, or labels attached to the bottles in which its said products are sold and shipped, or in any other way, (a) that the respondent is a distiller of the said whiskies, gins or other spirituous beverages; or (b) that the said whiskies, gins or other spirituous beverages were by it manufactured through a process of distillation; or (c) that respondent owns, operates or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the respondent shall within 60 days after service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
CONSOLIDATED PINNACLE COAL COMPANY AND
ELLIS MORRELL

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

Docket 3234. Complaint, Sept. 30, 1937—Decision, Apr. 10, 1940

Where a corporation had long been engaged in the operation of a mine at Pinnacle in Colorado, and in the sale of coal therefrom under name "Pinnacle" in said and adjacent States, including Iowa, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming, and had expended large sum in advertising said coal and, for a number of years, was second largest coal mine operator in county in question and still one of the larger operators, and had built up a good reputation for coal mined by it as product of good grade and quality, and included in trade-mark registered by it word "Pinnacle," together with words that it was mined and shipped only by it, and made use of such trade-mark and words in its business for over 20 years and applied same to coal mined by it and to its freight cars, trucks, wagons, bins, etc., and coal under name "Pinnacle" had come to be generally recognized in the trade and among sellers and purchasers thereof in sales territory concerned as mined by it and exclusively from mine of that name and town; and thereafter corporate competitor, and relatively small operator, engaged in shipping to customers in Nebraska coal produced from mine some 42 miles distant from said Pinnacle mine or mine there located—

Made use of its corporate name, including word "Pinnacle," in connection with offer and sale of coal in question, and featured said corporate name in advertising material and made use of name "Pinnacle" in label under which it sold said coal, together with claims and representations thereon to effect that it was of highest quality, notwithstanding fact product in question was not that from said Pinnacle mine, to which it was generally inferior;

With capacity and tendency to mislead and deceive members of purchasing public into erroneous and mistaken belief that coal produced and sold by it under such label had been produced from mine at Pinnacle, operated by corporation aforesaid, and was of a grade and quality equal to that of the coal so named and produced by said corporation, and to induce members of purchasing public to buy its said coal by reason of such mistaken and erroneous belief, and with result of diverting trade unfairly to it from competitors, including those who offer and sell in commerce coal produced in mines other than that located at Pinnacle as above set forth, and operated by said corporation, and do not represent their coal as produced from such Pinnacle mine, and those who do not misrepresent in any particular the grade and quality of their product:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.