8 C. C. A. 362, 59 Fed. 909; Fleischmann v. Starkey, 25 Fed. 127; Filley v. Child, 16 Blatchf. 376, Fed. Cas. No. 4,787; Goodyear's India Rubber Glove Manuf'g Co. v. Goodyear Rubber Co., 128 U. S. 598, 9 Sup. Ct. 166; Browne, Trade-Marks, §§ 269-272; Fairbanks v. Jacobus, 14 Blatchf. 337, Fed. Cas. No. 4,608; Moorman v. Hoge, 2 Sawy. 78, Fed. Cas. No. 9,783; Adams v. Heisel, 31 Fed. 279; Davis v. Davis, 27 Fed. 490.

Rowland Cox and B. Lewinson, for appellee, cited authorities as follows:

Manufacturing Co. v. Trainer, 101 U. S. 63; Taendsticksfabriks Aktiebolaget Vulcan v. Myers (Sup.) 11 N. Y. Supp. 663; Fischer v. Blank, 138 N. Y. 251, 33 N. E. 1040; Franks v. Weaver, 10 Beav. 297; Manufacturing Co. v. Spear, 2 Sandf. 599; Colman v. Crump, 70 N. Y. 573; Lawrence Manuf'g Co. v. Tennessee Manuf'g Co., 138 U. S. 537, 11 Sup. Ct. 396; Rothstein v. Zechnowitz, Beekman, J., 14 N. Y. Law J. 998; Hennessy v. White, 4 Vict. Law R. Eq. 125; Cox, Manual Trade-Mark Cas. p. 378; Hostetter v. Adams, 10 Fed. 838; Le Page Co. v. Russia Cement Co., 2 C. C. A. 555, 51 Fed. 943; Chemical Co. v. Meyer, 139 U. S. 544, 11 Sup. Ct. 625; Manufacturing Co. v. Read, 47 Fed. 716; Coats v. Thread Co., 149 U. S. 566, 13 Sup. Ct. 966; Von Mumm v. Frash, 56 Fed. 837; Reddaway v. Hemp-Spinning Co. [1892] 2 Q. B. 640; Association v. Piza, 24 Fed. 149; Gilman v. Hunnewell, 122 Mass. 139; Manufacturing Co. v. Simpson, 54 Conn. 545, 9 Atl. 395; Singer Co. v. Loog, 8 App. Cas. 18; Celluloid Manuf'g Co. v. Cellonite Manuf'g Co., 32 Fed. 97; R. W. Rogers Co. v. Wm. Rogers Manuf'g Co., 17 C. C. A. 576, 70 Fed. 1017; Pillsbury v. Mills Co., 12 C. C. A. 432, 64 Fed. 841; Read v. Richardson, 45 Law T. (N. S.) 54; Brown v. Mercer, 37 N. Y. Super. Ct. 265; Ewing v. Johnston, 14 Ch. Div. 434; Lever v. Goodwin, 36 Ch. Div. 1; De Long v. De Long Hook & Eye Co., 89 Hun, 402, 35 N. Y. Supp. 509.

The case, having been argued before WALLACE and SHIPMAN, Circuit Judges, was taken under advisement, and a decision announced affirming the order of the court below, as follows:

PER CURIAM. Order of circuit court affirmed, on opinion of circuit judge.

BEADLESTON & WOERZ v. COOKE BREWING CO.

(Circuit Court of Appeals, Seventh Circuit. May 4, 1896.)

No. 285.

1. TRADE-MARKS—DESIGNATION OF QUALITY—"IMPERIAL."

   The word "imperial" is so far a designation of quality as to be incapable of adoption as a trade-mark for beer. Showalter, Circuit Judge, dissenting.

2. SAME—MARKS OF ORIGIN.

   Plaintiffs, who were brewers, made for several years a kind of beer, to which they gave the name "Kulmbacher," and afterwards two other grades of beer, to one of which they gave the name "Imperial." All their packages bore their own name, the coat of arms of the state of New York, where plaintiffs' business was conducted, and the name "Empire Brewery," to which was added, in the case of each special kind of beer, its particular name. On the bottles of Imperial beer, designed for export, this name was placed on the label, with plaintiffs' name, and the coat of arms and name "Empire Brewery" were printed in the corner of the label, with the words "Trade-Mark." *Held*, that plaintiffs had not adopted the word "imperial" as a mark of origin or ownership, and were not entitled to protection in its use as a trade-mark.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

The appellant, Beadleston & Woerz, a corporation existing under the laws of the state of New York, filed its bill in the court below for an injunction to restrain the appellee, the Cooke Brewing Company, a corporation of the state of Illinois, from the use of the word "imperial," claimed by the appellant as its trade-mark when applied to beer. Prior to the year 1889, the brewing business now conducted by the appellant in the state of New York had for many years been conducted by the firm of Beadleston & Woerz. The brewery was known as the "Empire Brewery." The appellant, the corporation, in that year succeeded to and has since conducted the business. Prior to June, 1885, Beadleston & Woerz brewed several grades of beer, the best quality of which was designated as "Kulmbacher." On the 30th of June, 1885, the firm purchased of the receiver of a defunct corporation, which had been engaged in the manufacture and sale of beer, the supposed title to the word "imperial" as a trade-mark when applied to beer, its use having been abandoned by such corporation. Thereafter Beadleston & Woerz and the appellant, as their successor, brewed and sold several qualities or grades of beer, the "Kulmbacher," the "Imperial," and a grade of beer of poorer quality. The firm and the corporation used as a trade-mark the coat of arms of the state of New York in connection with the name Beadleston & Woerz, the words "Empire Brewery" surmounting the coat of arms. There was also added the particular name of the beer to which the trade-mark was attached. In the case of beer sold in bulk, the name and general trade-mark were burned into the keg or barrel containing the beer, and a label pasted upon the keg or barrel, with the word "Imperial" printed thereon in red lettering, in case the keg or barrel contained beer of that grade. Afterwards they bottled their Imperial beer for the export trade, and placed upon the bottle a label bearing the name "Beadleston & Woerz, Imperial Beer, Brewed Especially for Export." In the lower left-hand corner of the label appeared the coat of arms of the state of New York, surmounted by the words "Empire Brewery," and underneath it the words "Bottling Department, New York." At the left-hand side of the coat of arms was the word "Trade," and on the right-hand side "Mark." Other devices came in use with substantially the same marks affixed, differing mainly in the color of the label. The appellee, the Cooke Brewing Company, is the proprietor of a brewery in the city of Chicago, established in the year 1887, and since the year 1892 has brewed and sold in bottles beer of three grades or qualities, the most expensive being called "Munich Hofbrau," next the "Imperial," differing in color and its manufacture from the other, less expensive to make, but said to be of equal quality, and a lower grade of beer called "Pilsener," and also an annual brew of "Bock" beer. The label used upon the bottles had printed thereon the words "Cooke's Imperial Beer," in red lettering, and "Chicago, U. S. A., Bottled at the Brewery's own Bottling Works" in black lettering, and its trade-mark consisting of a shield of stars and stripes, with the monogram "C" and a crowing cock printed thereon in red. The sales of the appellant, Beadleston & Woerz, are largely in the eastern and southern states and to the foreign trade, although to some slight extent they sell in the central and western states. The sales of the appellee are mainly confined to the central and western states.

L. C. Raegener, for appellant.

J. E. Deakin and Richard Prendergast, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge, after the foregoing statement of the case, delivered the opinion of the court.

This case in no wise falls within the ruling in Pillsbury v. Pillsbury-Washburn Flour Mills Co., 24 U. S. App. 395, 12 C. C. A. 432, 64 Fed. 841. There is here, neither in design nor in fact, a palming off upon the public of the goods of one as those of another. The labels are wholly dissimilar, with the exception of the use of the word "imperial." The parties did not occupy the same market with