

Syllabus

IN THE MATTER OF

MIXER MEDICINE COMPANY, CHARLES M. MIXER,
PROPRIETOR

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

Docket 1914. Complaint, Feb. 19, 1931—Decision, Aug. 7, 1934

Where an individual engaged in the sale of cancer medicines and pastes, manufactured by, or prepared for, him; in describing the same in circulars, booklets and letters and on containers and labels of the bottles thereof, and through booklets sent to customers and prospective customers containing hundreds of purported testimonials from persons claiming to have been cured of cancer by the use of his said remedies, and depicting scores of gruesome pictures of persons who had been afflicted with said ailment—

- (a) Falsely represented that his said preparations had therapeutic value and constituted proper treatment and cure for all kinds of cancer and scrofula, and had restored to perfect health hundreds suffering from cancerous and scrofulous afflictions, facts being they had no therapeutic value or effect in such diseases and their use was dangerous to the lives and health of those taking the same in that they postponed the procurement of proper and efficacious treatment for said diseases, and said medicines had not restored to perfect health hundreds suffering therefrom or helped, aided, or relieved any person afflicted therewith, and the depictions referred to had the tendency and capacity to deceive those observing such depictions into the erroneous belief that those depicted therein had been cured of their afflictions, or could be cured thereof, through the medicines involved;
- (b) Included the prefix "Dr." or "Drs." with said individual's name on the labels of such medicines and displayed said prefixes together with his name in the reproductions of hundreds of testimonial letters, notwithstanding fact that said individual was neither a physician or surgeon, or chemist or pharmacist, but was the son of a doctor who founded and carried on the business involved for many years prior to his retirement and death; and
- (c) Falsely represented that he could adequately diagnose and properly prescribe for cancer and scrofula from a layman's answers to a list of questions which he propounded in questionnaires sent to patients writing him, who had or suspected the presence of cancer, and which he made use of as a basis for prescribing his cancer remedies, without physical examination of the patient, on the basis of the information therein supplied, which contained questions as to the physical condition of the patient, facts being said diseases could be correctly diagnosed only through a careful physical examination by a competent physician;

With tendency and capacity to mislead and deceive ultimate consumers of said preparation into the belief that such statements and representations were true, and induce the purchase of said medicines in such belief, and divert trade to him from competitors engaged in the sale of radium and X-ray apparatus for use in the treatment of said afflictions:

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

Mr. E. J. Hornibrook 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 the Mixer Medicine Company and Charles W. Mixer, proprietor, hereinafter called respondents, have been and are using unfair methods of competition in interstate commerce.

PARAGRAPH 1. Respondents are now, and for several years last past have been engaged, with their principal office and place of business at Hastings, in the State of Michigan, in the manufacture or preparation, and sale in commerce among the various States of the United States of products described as remedies for use in the treatment of various diseases. In the course and conduct of such business, respondents have been and now are engaged in competition with individuals, partnerships, and corporations offering for sale or selling in like commerce, preparations or compounds or medicines for use in the treatment of the same or similar diseases.

PAR. 2. Respondents have offered for sale and sell in interstate commerce their products called Mixer's Cancer and Scrofula Syrup, Mixer's Cancer and Tumor Absorber, Mixer's Cancer Salve, Mixer's Scrofula Salve, Mixer's Cancer Paste, Mixer's Cancer Reducer, Mixer's Cancer Reducer Oil, Mixer's Catarrh Lotion, Mixer's Catarrh Wash, Mixer's Stomach Tonic, Mixer's Kidney Tonic, Mixer's Nerve Pills, Mixer's Goiter Paste, Mixer's Goiter Reducer, and other so-called Mixer Preparations by means of pamphlets, catalogues, leaflets, letters, circulars, and otherwise, which contain the following false and misleading representations:

Three-score years have passed since the origin of Mixer's Cancer and Scrofula Syrup, and upon the sixty-year-pages of history are written hundreds of grateful letters from those who have suffered beyond measure, and then been restored to perfect health. It can be safely said that the years grow brighter with achievements accomplished in the relief of suffering humanity by the use of the Mixer Remedies;

DISEASES FOR WHICH OUR TREATMENT IS ESPECIALLY INTENDED

Cancers, Tumors, Goiter, Abscesses, Ulcers, Varicose Ulcers, Gastric Ulcers, or Ulcerated Stomach, Catarrh of the Stomach, Scald Head or Milk Crust,

Erysipelas, or St. Anthony's Fire, Salt Rheum, Ring Worm or Tetter, Swollen Feet or Legs, Boils, Blotches, Pustules, Pimples, in fact a remedy for all Eruptive or Cutaneous Diseases. Rheumatism, Syphilis, Catarrh, Laryngitis, Bronchitis, Dyspepsia, Piles (bleeding or otherwise), Fistula and all diseases peculiar to the glandular or assimilative system;

This booklet is the supplement or overflow of Book No. 4, bearing even date herewith, and is filled with testimonial letters from people all over the United States, who have been restored to health after years of suffering from Tumors, Cancers, Ulcers, Fever Sores, Salt Rheum, Goiter, and other diseases of the blood, by the use of our remedies. * * * *The Mixer remedies are efficient and of great merit.* * * * Book No. 4, of which this supplement is a part, contains scores of halftone reproductions of Cancers, Tumors, Goiters and eruptions, with hundreds of testimonials, accompanied by affidavits of perfect cures;

If any person will read the hundreds of testimonials we have from people who have been cured by our remedies and as herein reproduced, and *then* be skeptical they could not be convinced "though one arose from the dead." Read them with an unbiased mind and then pass judgment as to the great value of our treatment.

MIXER'S CANCER AND SCROFULA SYRUP

Alcohol 7½ Percent

FOR CANCER AND SCROFULOUS AFFECTIONS

Such as Erysipelas or St. Anthony's Fire, Tinea Capitis, Scald Head or Milk Crust, Salt Rheum, Ringworm or Tetters, Tumors, Ulcers, Boils, Pustules, Blotches and Pimples.

IT IS A SPLENDID TONIC

CATARRH

Laryngitis, Bronchitis, Dyspepsia, Piles, Fistula, and all Diseases peculiar to the Glandular or Assimilative System

DR. MIXER

Whereas, in truth and in fact, the products prepared or manufactured by respondents as aforesaid as remedies and/or cures for cancer, goiter, tumors, and other diseases, are not remedies and/or cannot cure the said diseases for which they are recommended by respondents and the use of the same cannot and will not restore to perfect health persons suffering from said diseases.

PAR. 3. Respondents in the literature and advertisements distributed by them in the course and conduct of their business in interstate commerce as aforesaid represent that respondent Charles W. Mixer is a physician or doctor of medicine when, in truth and in

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fact, said Charles W. Mixer is not and never has been a physician or doctor of medicine, licensed to practice medicine and/or surgery in the State of Michigan or any other State or States of the United States.

PAR. 4. Respondents, in the course and conduct of their business carried on as aforesaid, issue and distribute in interstate commerce circulars or questionnaires to be filled out by prospective customers or purchasers of the various and sundry Mixer remedies in which circulars or questionnaires respondents assert or represent that from the answers made to the questions asked therein that they can diagnose the diseases, particularly cancer, from which the prospective customers or purchasers may be suffering and can correctly prescribe the treatment and medicine required by said customers or purchasers in order to effect a cure, when in truth and in fact said diseases, particularly cancer, cannot be so diagnosed correctly, and certain of them require a microscopic examination in order to obtain positive diagnoses.

PAR. 5. Respondents, in the course and conduct of their business carried on as aforesaid, issue and distribute in interstate commerce books or booklets or pamphlets containing numerous testimonials in which statements are made by persons giving or purporting to give said testimonials that the said persons making said statements were or had been suffering from cancer and that said persons had been cured or completely restored to health by the use of respondents' Cancer and Scrofula Syrup or other remedies of or treatments by respondents when in truth and in fact respondents were without knowledge as to the disease or diseases from which said persons were or had been actually suffering.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, in their advertising matter distributed in interstate commerce represent by half-tone reproductions of photographs and by testimonials that said half-tone reproductions of photographs and testimonials represent the terrible development of cancer, scrofula, ulcers, and kindred diseases in their varied form, when in truth and in fact respondents are without knowledge of the diseases from which said persons, or many of them so represented, are suffering so as to be able to state with definiteness and with certainty that the diseases from which said persons are or were suffering are cancer, scrofula, ulcers, or kindred diseases.

PAR. 7. The above and foregoing representations in statements of respondents by means of which they have offered for sale and sold or are selling their products as set forth in this complaint have had and have the capacity and tendency to mislead and deceive, and/or have misled and deceived the purchasing public into the belief that

the so-called Mixer remedies or preparations are remedies for or are cures of cancer, goiter, tumors, and other diseases and that the use of the same will restore to perfect health persons suffering from said diseases, and have tended to induce, and have induced, the purchase of respondents' so-called Mixer remedies or preparations in reliance upon such erroneous belief, and have tended to divert trade from and have diverted trade from and otherwise injured competitors of respondents.

PAR. 8. The above acts and things done by said respondents as aforesaid are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in interstate 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 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 on the 19th day of February, A. D. 1931, issued against and thereafter served its complaint upon respondent, Charles W. Mixer, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, testimony was heard and evidence taken in support of the charges stated in the complaint and no evidence was offered in opposition thereto. Thereafter this proceeding came on for final hearing and the Commission, having duly considered the record, and it now being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles W. Mixer, is an individual whose residence and principal place of business is the town of Hastings in the State of Michigan. At said place he is engaged in the sale of medicines trading under the name of Mixer Medicine Company, Charles W. Mixer, proprietor.

PAR. 2. Respondent, Charles W. Mixer, is the son of the late Dr. Lyman N. Mixer, who founded the business, hereinafter described.

in the year 1861. Dr. Lyman N. Mixer departed this life in the year 1903. In 1888 the aforesaid Dr. Lyman N. Mixer retired from said business and respondent, Charles W. Mixer, has conducted the business since that time. Respondent, Charles W. Mixer, is not a physician or surgeon; neither is he a chemist or pharmacist.

PAR. 3. Respondent, trading as aforesaid, solicits the sale of and sells prepared medicines for the treatment and cure of cancer. When orders are received for such medicines they are packed at said Hastings and shipped to persons ordering the same who are located in all of the States of the United States. Mixer's Cancer and Scrofula Syrup, hereinafter referred to, is also sold by respondent to druggists and shipped to them by respondent to their places of business, many of which are located in States other than the State of Michigan. These druggists in turn sell the same direct to the consuming public for use in the diseases of cancer and scrofula.

PAR. 4. Among the medicines so sold by respondent are:

Mixer's Cancer and Scrofula Syrup,	Mixer's Cancer Paste,
Mixer's Cancer and Tumor Absorber,	Mixer's Cancer Reducer,
Mixer's Cancer Salve,	Mixer's Cancer Reducing Oil.

The said Cancer and Scrofula Syrup is made by respondent at his said place of business; the others are made for respondent by chemists whose names respondent refused to disclose.

PAR. 5. Dr. Max Cutler, the present director of the Tumor Clinic of Michael Reese Hospital at Chicago, has examined some 50,000 cases of cancer. He is an authority on the disease of cancer. He testified in substance as follows:

There are only three accepted methods of treating cancer; surgery, X-ray, and radium, and there is no disagreement among the medical profession as to these three methods. Millions of dollars have been expended in trying to find some drug or medicine that would be efficacious in the treatment of cancer, without success.

He testified that none of the said medicines or pastes of respondent has therapeutic value in cases of cancer:

No drug or paste known is a cure for cancer and their use has been discarded.

Dr. Sonnenscheien, an ear, nose, and throat specialist, testified that Mixer's Cancer and Scrofula Syrup has no therapeutic value in cases of scrofula.

The Commission finds that said medicines will not cure, or aid in the cure of cancer or scrofula, that the use of any or all of them does not constitute proper treatment in cases of cancer or scrofula, and that there is no therapeutic value in any or all of them when used in the treatment of either cancer or scrofula.

PAR. 6. When a patient writes to respondent indicating that he has, or suspects that he has cancer, he is supplied by respondent with a questionnaire, a copy of which is in evidence, marked "Com. Ex. 6." It contains questions as to the physical condition of such patient. From the answers which the patient makes to this questionnaire, the respondent maintains that he is able to determine whether or not the patient has cancer and the particular kind of cancer with which he is afflicted. When this questionnaire is filled out and received, and the answers indicate to him that the patient has cancer or scrofula, respondent prescribes Mixer's Cancer and Scrofula Syrup or some other of his said cancer remedies. Respondent does not make a physical examination of the patient.

The witness Dr. Max Cutler testified that it was quite impossible to make a diagnosis as to cancer from answers to such questionnaire. Doctors Stanbaugh, Sonnenscheien, and Dinswinger agreed with the testimony of Dr. Max Cutler as to the inadequacy of a diagnosis made from answers to questions propounded in said questionnaire.

The Commission finds that a diagnosis cannot be adequately made, nor can proper treatment for cancer or scrofula be prescribed from answers to the questions of said questionnaire.

PAR. 7. Respondent advertises his said cancer medicine and pastes in circulars, booklets and letters and on containers of the bottles and on labels appearing on bottles containing his said medicines sent to many purchasers and prospective purchasers residing outside of the State of Michigan, and in and through such advertising respondent represents:

(1) That he is a doctor of medicine.

On all the labels appearing on said medicines the names "Dr. Mixer" or "Drs. Mixer" are printed in plain type. In hundreds of purported testimonial letters which are sent to respondent's customers or prospective customers, the purported writers thereof use the name "Dr. Mixer", "Dr. Charles W. Mixer", or "Drs. Mixer";

(2) That respondent's said cancer medicines have therapeutic value, are proper treatment and cure for all kinds of cancer and scrofula;

(3) That he can adequately diagnose and properly prescribe for cancer and scrofula from a layman's answers to the list of questions propounded in said questionnaire;

(4) That his said medicines have restored to perfect health hundreds suffering from cancer and scrofulous afflictions;

(5) A booklet is sent to respondent's customers and prospective customers. It contains hundreds of purported testimonials from people claiming that they have been cured of cancer by the use of respondent's said cancer remedies. It also contains scores of grue-

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some pictures of people who have been afflicted with cancer. A copy of this booklet is in evidence, marked "Com. Ex. 2."

PAR. 8. The statement and representations in respondent's advertising as described in paragraph 7 hereof are false and misleading in that—

(1) The use of said medicines or any of them in cases of cancer or scrofula does not constitute proper treatment therefor, and they or any of them have no therapeutic value or effect in such diseases; and such use is dangerous to the lives and health of patients taking the same, in that it postpones the procurement of proper and efficacious treatment for such diseases;

(2) Respondent is not a doctor of medicine;

(3) Respondent cannot adequately diagnose and prescribe for cancer and scrofula from answers made to the questions in said questionnaire;

(4) Said medicines have not restored to perfect health hundreds suffering from cancer and scrofula, nor have they helped or aided or relieved any person afflicted with cancer or scrofula;

(5) The pictures of those afflicted with cancer appearing in said Commission's Exhibit No. 2 have the tendency and capacity to deceive those observing them into the belief that those who are depicted therein have been cured of their afflictions by the use of respondent's medicines or can be cured by such use, when such is not the fact.

PAR. 9. The Union Munier du Haut Katanga of New York City, N. Y., sells and ships radium to physicians and hospitals throughout the several States of the United States for use in the treatment of cancer. Two tumor clinics in or near Chicago have a supply of radium valued at \$450,000, and other cancer hospitals throughout the United States have supplies of radium with values ranging to over \$300,000 each.

The General Electric X-Ray Corporation makes and sells an X-ray machine used in the treatment of cancer. It is sold to licensed practicing physicians and accredited institutions and hospitals, sanitariums, and clinics in every State. Some of the hospitals using them as treatment for cancer are the Warrick Memorial Cancer Clinic of Garfield Hospital, Washington, D. C., the Hood Kelley Hospital of Baltimore, Md., the Clinic of the University of Pennsylvania at Philadelphia, and the Memorial Hospital of New York City. The Kelly-Oett Manufacturing Company of Covington, Ky., makes X-ray machines for use in the treatment of cancer and other malignant afflictions and ships the same in interstate commerce, as do also the Westinghouse X-Ray Company and the Westinghouse Electric &

Manufacturing Company. Hundreds of these machines have been so sold and shipped for such use.

The respondent, in the sale of said medicines, is in competition in interstate commerce with other persons, copartnerships, and corporations who and which sell radium and X-ray apparatus for use in the treatment of the diseases of cancer and scrofula and who and which sell and ship the same from their places of business into and through the various States of the United States to the places of business or residences of the users thereof.

PAR. 10. Each and all of the statements and representations as to the efficacy of respondent's said medicines and methods of diagnosis contained in the advertising as set forth in paragraph 8 herein have and have had the tendency and capacity to mislead and deceive the ultimate consumers of said medicines into the belief that such statements and representations were and are true, and to induce them to purchase respondent's said medicines in such belief, and have and have had the tendency and capacity to divert trade to respondent from its said competitors.

CONCLUSION

The practices of the respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation 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

This proceeding having come on to be heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and the briefs of the attorney for the Commission and of respondent, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusion that the respondent had 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"; and the Commission being fully advised in the premises—

It is ordered, That respondent, Charles W. Mixer, his agents, employees, and representatives, in connection with the advertising, offering for sale or sale in interstate commerce, and in the District of Columbia, of the products Mixer's Cancer and Scrofula Syrup,

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Mixer's Cancer and Tumor Absorber, Mixer's Cancer Salve, Mixer's Cancer Paste, Mixer's Cancer Reducer, Mixer's Cancer Reducing Oil, or any other product or products of the same or substantially the same ingredients or compound, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, or on labels, bottles, containers or boxes, or otherwise—

(1) That said products, or any other product or products of the same, or substantially the same ingredients or compound, or either or any of them, will cure, aid in the cure, or have cured cancer, or can aid in the cure or have cured scrofula, or have therapeutic value in the treatment of cancer or scrofula;

(2) That cancer or scrofula can be correctly diagnosed by means of answers to questionnaires, or in any other manner except by and through a careful physical examination by a competent physician;

(3) That Charles W. Mixer is a physician or surgeon.

It is further ordered, That 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.

Complaint

IN THE MATTER OF

SUTTON BROTHERS, INCORPORATED

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

Docket 2193. Complaint, June 8, 1934—Order, Aug. 8, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale, offer, and advertisement of handkerchiefs in interstate commerce and in the District of Columbia, to cease and desist from directly or indirectly using or causing to be used the words, "Warranted pure linen cording", as a label upon handkerchiefs not made of linen, or otherwise to describe or designate handkerchiefs as linen unless the material contained therein is linen.

Mr. Morton Nesmith for the Commission.

Mr. Jacob Ansbacher, of New York City, 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 Sutton Bros., Inc., 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 said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Sutton Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City of New York in said State. Said respondent, Sutton Bros., Inc., is now, and since its organization in, to wit, the year of 1930, has been engaged in the manufacture and sale of handkerchiefs between and among the various States and Territories of the United States. It has manufactured and sold, and has caused and still causes, the said articles in which it deals, to be transported from its said place of business into and through other States of the United States to various jobbers and retailers located at points in various States of the United States. In the course and