

IN THE MATTER OF  
HERBERT B. SYKES TRADING AS SYKES HERNIA  
CONTROL SERVICE ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 6118. Complaint, Aug. 13, 1953—Decision, Mar. 8, 1956*

Order requiring an individual in St. Petersburg, Fla., to cease representing falsely in advertisements in newspapers and magazines that his "Sykes Hernia Control" device was radically different from a truss; that it would completely cure many hernias and would hold all securely in place at all times and under all conditions; and that he and his representatives conducted clinics where sufferers from hernia might be examined and treated by a physician.

*Mr. Jesse D. Kash and Mr. William M. King* for the Commission.  
*Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C.,  
for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that respondent Herbert B. Sykes, an individual trading as Sykes Hernia Control Service, and Respondent Griffith and McCarthy, Inc., a corporation, have engaged in acts and practices which are in violation of the Federal Trade Commission Act—particularly that they have misrepresented a device for use by individuals suffering from hernia.

After the issuance of said complaint and the filing of respondents' answers thereto, hearings were held, at which testimony and other evidence in support of and in opposition to the allegations of the complaint were received before the above-named hearing examiner, duly recorded and filed in the office of the Commission, and proposed findings of fact and conclusions of law were submitted by counsel. Upon the entire record, the hearing examiner, having determined that this proceeding is in the public interest, makes the following findings of facts and conclusions.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Herbert B. Sykes, since 1931, has been engaged in the sale of a device, as that term is defined in Section 15

of the Federal Trade Commission Act, as amended,<sup>1</sup> known as "Sykes Appliance," later changed to "Sykes Hernia Control," which was and is advertised and sold to those suffering from hernia or rupture. The business was first located in Michigan City, Indiana, and was operated under the name "Sykes Manufacturing Company"; then was moved to Chicago, Illinois and operated under the trade name "Sykes Service"; moved again, in 1950, to St. Petersburg, Florida, and operated as "Sykes Orthopraxy Service," then as "Sykes Hernia Control Service." On May 29, 1953, respondent, together with his son Robert A. Sykes, and William H. Winters, executed articles of incorporation, which were duly filed on June 4, 1953, in the office of the Secretary of State of Florida, for two Florida corporations, namely, Sykes Manufacturing, Inc., of St. Petersburg, and Sykes Hernia Control Service, Inc. Respondent Herbert B. Sykes subscribed for two shares of stock, Robert A. Sykes for 49 shares, and William H. Winters for 49 shares in each corporation, that being all of the stock. Respondent Herbert B. Sykes became secretary and a director of each of the corporations. Sykes Manufacturing, Inc., was and is a corporation set up, among other things, to manufacture the device, and Sykes Hernia Control Service, Inc., is the selling corporation.

By contract dated June 5, 1953, between Sykes Hernia Control Service, Inc., and Herbert B. Sykes and his wife, Lucille G. Sykes, wherein it is recited that the corporation "desires to hire Sykes in order to keep exclusively to itself his valuable services," the said Sykes agreed to give all of his services exclusively to the corporation to assist it in advertising and selling the aforesaid device. In consideration for these services, this corporation agreed to pay to Sykes, during his lifetime, 10% of its monthly gross receipts less refunds to customers, with a guarantee of a yearly minimum of \$20,000, and, in the event that Sykes' wife should survive him, to pay the same amount to her during the remainder of her lifetime. By another contract of June 5, 1953, the Sykes Manufacturing Company, Incorporated (obviously erroneous for Sykes Manufacturing, Inc.) agreed to guarantee the payment of Sykes' salary.

By a bill of sale dated June 8, 1953, respondent Herbert B. Sykes transferred the entire assets, including the trade name, of the business operated by him as Sykes Hernia Control Service to Sykes Manufacturing, Inc., for a named consideration of \$10.00.

---

<sup>1</sup> Sec. 15 (d) The term "device" (Except when used in subsection (a) of this section) means instruments, apparatus, and contrivances, including their parts and accessories intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

## Findings

52 F. T. C.

Also on June 8, 1953, Sykes Manufacturing, Inc., entered into a contract with respondent Herbert B. Sykes, wherein it is stated that the total purchase price of the assets of the business transferred to it was \$40,000, to be paid to Sykes in annual payments of \$10,000 each, the first payment to be due on June 1, 1954. The contract further provides that in the event the corporation fails to pay any installment when due, Sykes may declare the whole balance to be due, and bring suit for that amount.

Herbert B. Sykes served as secretary and director of each corporation until about two weeks prior to March 10, 1954, when he transferred his two shares of stock in each corporation to William H. Winters, without consideration, and, by resignation, severed his official connection with both corporations.

PAR. 2. Prior to establishment of the aforementioned corporations, respondent Herbert B. Sykes, acting under his various trade names, established branch offices and distributorships in a number of cities throughout the United States, and issued franchises to persons who established offices in other specific territories. He provided advertising matter and, to the best of his ability, controlled the advertising used by these various offices. He participated in their profits, and in some instances paid their rent and other office expenses.

Parts for making up the devices involved in this proceeding were transported from respondent's principal place of business in the various States in which he was located to the branch offices, distributorships, franchise-holders, and traveling representatives located in various other States of the United States and in the District of Columbia, and Respondent Herbert B. Sykes maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia. The volume of his business was substantial. This business has been and is now being carried on by the two Florida corporations.

PAR. 3. Respondent Griffith and McCarthy, Inc., is a corporation organized and existing under the laws of the State of Florida, with its office and principal place of business located in the St. Petersburg Times Building, St. Petersburg, Florida. Said respondent is now, and for more than one year last past has been, engaged in the operation of an advertising agency. In such capacity said respondent prepared advertising matter for respondent Sykes, and either delivered the same to Sykes for use by him and his distributors, or caused the same to be published in various newspapers throughout the United States. All the advertising prepared by this respondent was suggested by, approved and frequently revised

by respondent Sykes. The sole witness who appeared from the advertising agency stated that he did not think anything was ever prepared for Sykes that Sykes himself did not change. According to the testimony, this respondent had no part in the preparation or dissemination of the advertising matter in which the great bulk of the claims attacked in the complaint appeared. The record is unclear as to the part taken by this respondent as to other advertising. Accordingly, it is found, as suggested by the proposed findings submitted by counsel in support of the complaint, that the proof is insufficient to warrant a finding that this respondent has violated the Federal Trade Commission Act as charged.

PAR. 4. In the course and conduct of his business respondent Herbert B. Sykes disseminated and caused the dissemination of various advertisements concerning said device by United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements in various newspapers and magazines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device.

PAR. 5. Among and typical of the advertisements disseminated or caused to be disseminated by said respondent are the following:

Sykes Hernia Control is not a "truss." Unlike a truss, the Sykes Hernia Control does not press on the pelvic bone structure in any way. Nor does it use straps, belts or buckles. It thus employs entirely new mechanical features and, *most important*, serves quite a different function—the physical correction of Hernia and Rupture.

#### MEN

Tired of Trusses? Let us prove that (1) you need never buy another truss; (2) your rupture troubles may vanish forever; and (3) that hernia disappears completely without surgery or injections in many cases. Check some of the testimonial letters from our file.

Sykes Service consists of lifetime service in the correction of your condition with a series of revolutionary new appliances which have no equal on the market today. The wearer is not burdened with troublesome straps, leather, or the soggy odorous parts that have always made wearing trusses so obnoxious and inadequate. We are doing what the medical profession has long considered impossible in the control of hernia and rupture. Very rapid improvement has been reported by 8 or 9 out of every 10 people fitted—and in the course of several months, many gratefully tell us that their hernia no longer comes out.

Sykes Hernia Control Service means that both Rupture and Hernia may now be successfully overcome without resorting to surgery. You do not have to go to the hospital. You do not have to lose time from work. You don't have to use up your savings. From the moment you are fitted with a modern Sykes Control your rupture or hernia is immediately held securely and muscles and organs are maintained in their proper position. Relief is permanent, and

nature usually, quickly, begins to restore muscular tissue to near normal condition.

**SORRY**

No rupture cripples! \* \* \* We PROMISE immediate relief and lifetime service. Many report "hernia disappears" in a few months. Lift, strain, climb as if you had never been ruptured.

I've had two unsuccessful surgeries and used several types of trusses that did not hold my large double hernia. In November, I started using the Sykes Hernia Control and I can truthfully state that I feel much better. The hernias are no longer a problem, having almost completely disappeared. \* \* \*

Fitted with Sykes hernia control on December 19, 1949, for hernia—hernia gone in 3 months time. \* \* \*

\* \* \* I have had a hernia for a period of 10 years and after wearing a Sykes Appliance for a period of fifteen months am completely cured.

After 40 years of hernia and about 16 trusses, Sykes Hernia Control Service has corrected my hernia in just two months—Even when I take off the control and strain, no sign of the hernia appears.

You will be able to lift heavy objects, strain in any position, climb, swing a sledge hammer if that is your work.

\* \* \* June 4, 1951. Am 22 years old. Have had hernia about 15 years, as large as my fist. Started with Sykes Control August 5, 1950. Was doing heavy lifting on beer truck—since then it has been held and no longer comes out—can even leave off when not doing heavy work—played ball when doing without it—never came out—and the hernia is now gone completely.

I suffered two strangulations and had to call my doctor at three o'clock in the morning. After much trouble he got a replacement. Then after two months I had another strangulation, which was very serious. The doctor ordered an operation, but I refused.

A short time later your service man came to Pittsburg. I contacted him and purchased a control in June 1951.

I am almost completely healed—I haven't had a bit of trouble. I can work at anything I care to—stoop and bend, climb or lift—and even push a lawn mower without any discomfort whatsoever.

For 35 years I've had hernia trouble. I am a post operative case. Both sides are very bad. \* \* \* I came to you of Sykes Hernia Control and got your appliance about two years ago. That was the end of my trouble.

The unique cantilever design of the Sykes Control stimulates circulation in the abdominal tissues and assists nature in building greater abdominal muscle tone and strength.

PAR. 6. Through the use of the statements contained in the aforesaid advertising, respondent Herbert B. Sykes has represented, and represents:

1. That the Sykes device is not a truss, is radically different from a truss, and is a revolutionary device;
2. That it will retain all ruptures or hernias;
3. That its use will improve the condition of hernia or rupture in a great majority of the cases of persons fitted, and many will be completely cured;

4. That the design of said device stimulates circulation of blood in abdominal tissues and assists nature in building greater abdominal muscle tone and strength, and in restoring muscular tissue to a more normal condition;

5. That said device will hold a rupture or hernia securely in place at all times and under all conditions of activity and strain.

PAR. 7. A hernia, frequently referred to as a rupture, is a protrusion of an organ or part through an opening in the walls of its natural cavity. A truss is an appliance to support a weakened or injured part and to retain the protrusion that may have taken place, as in a hernia.

1. The Sykes device is a truss, similar in design and principle to many other trusses on the market which depend upon the use of a spring to provide the pressure necessary to retain a hernia. It is not revolutionary, nor does it employ new mechanical features, although in some details it varies from other trusses which serve identical purposes.

Respondent's device consists of a frame of heavy spring steel wire, .192" (slightly more than  $\frac{3}{16}$  of an inch) in diameter, covered with rubber tubing. The free ends of the wire frame are posterior and have pads attached which press against the hip muscles under tension when the device is in use. The wire is shaped to conform to the size and contour of the wearer's body, and is bent at the front to provide for the attachment of a pad or pads which can be adjusted to fit directly over either a single or a double hernia. These pads vary in size and shape to conform to the individual requirements of each user and, when properly adjusted, are held in place by the spring-steel tension. All pads are of foam rubber covered with cloth and attached to a metal disc. The spring steel frame provides elasticity which allows a certain freedom of movement on the part of the wearer.

2. The device will not retain all hernias. The fact is that no device or combination of devices will do that. There are incarcerated or strangulated hernias which would be made materially worse, with results which might be fatal, if respondent's device or any other truss were used. There are irreducible hernias in which the protruding parts cannot be pushed back into their normal cavities, because, in many instances, they have adhered to the walls through which they protrude. Such hernias cannot be retained by respondent's device. Likewise there are other types and sizes of hernia which cannot be retained by any truss.

The usefulness of respondent's device is limited to the retention of reducible hernias.

