

# How Mr. Duffy Outwitted Uncle Sam – and Got Rich

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(Special to the Potomac Pontil)

*“History does not teach lots of little lessons. Insofar as it teaches any lessons, it teaches only one big one: that nothing ever works out quite the way its managers intended or expected.” – Historian Gordon S. Wood.*

Anyone who has worked in government for any length of time can attest to the validity of Wood’s theory on the inevitability of unintended consequences. Certainly Walter B. Duffy understood that big lesson. To the chagrin of numerous federal officials, he exploited the un-planned-for to his considerable financial benefit.

Duffy’s story begins in Canada where he was born in 1840, about two years before his father Edmund emigrated to Rochester, New York, and opened a cider refining business. It was a successful enterprise. Edmund eventually brought young Walter into the business and left it to him when he died during the 1870s. Walter, who in the meantime had served as an officer in the Union Army during the Civil War and had married in 1868, promptly expanded the business into other products. In 1881 the Rochester directory lists Duffy as a distiller and rectifier of alcohol, “French spirits,” and malt, wheat, rye and bourbon whiskeys. He also opened a second distillery in Baltimore.

The 1880s were a time when patent medicines began their meteoric rise in popularity by aggressive advertising and other ploys. Many whiskey makers began to advertise their wares as being “for medicinal use” without being specific as to the ills they were meant to remedy. Duffy took a different approach. He decided to straddle the divide between selling the 15 cent saloon shot and hawking his booze as a cure for specific diseases. Thus about 1885 – the year it was registered with the government – was born the Celebrated Duffy’s Malt Whiskey, which he advertised as the “greatest known heart tonic.” He also claimed that his product would cure consumption (tuberculosis), bronchitis, dyspepsia (chronic indigestion), and even malaria.

The very next year found Walter in financial hot water. On November 16, 1886, the New York Times headlined: “The Duffy Failure: Creditors Looking for Mr. Duffy and Looking in Vain.” A complicated financial deal had failed, one of Duffy’s partners was headed for Honduras, and he himself was lying low. Duffy’s distillery in Baltimore was in receivership, but Walter was still president of the Rochester Distilling Company, a name he would later change to the New York and Kentucky Distilling Company.

The success of Duffy’s Malt Whiskey as a cure almost certainly helped solve Walter’s bankruptcy woes. His claim that “malt whiskey” really was medicine even convinced some Temperance advocates. Duffy backed up his fiction by concocting a story that his remedy was made from “a formula worked out fifty years ago by one of the World’s Greatest Chemists.” The distiller featured a trade mark of a bearded scientist who apparently had discovered this wonder liquid. Shown here on the back of a giveaway hand mirror (Fig. 1), the old gent also appeared on Duffy’s trade cards (Fig. 2), promotion booklets (Fig. 3), blotters (Fig. 4) and in many newspaper ads.

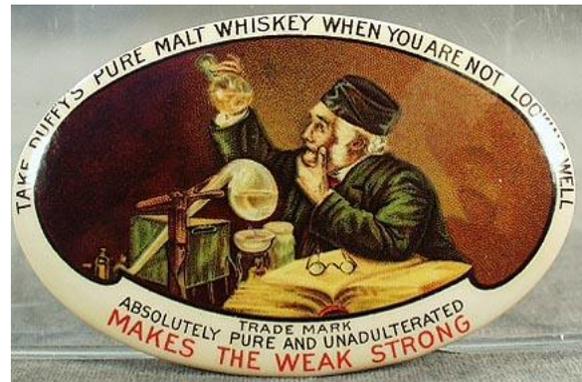


Fig 1: Duffy oval hand mirror

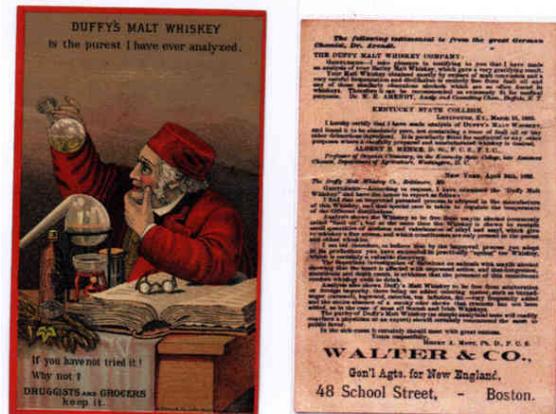


Fig. 2: Duffy trade card

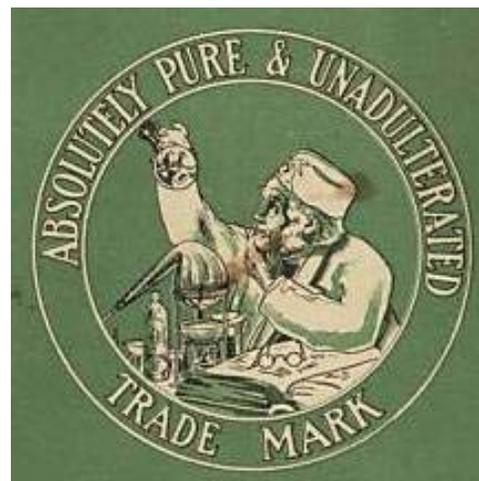


Fig. 3: Back page of Duffy promotional booklet



Fig. 4: Duffy ink blotter

Duffy insisted that his product was protected from infringement by “low grade impure whiskey” by “the Patented Bottle – Round, Amber Colored, and with Duffy blown into the glass (Fig. 5). To validate his therapeutic claims, he gave away glass medicine spoons rather than shot glasses (Fig. 6).

Fig. 5: The Duffy Patented (1886) bottle (at right)



Fig. 6: Duffy glass dose spoon

Enter Washington, D.C. officialdom. In order to help pay the expenses of the Spanish American War, Congress had passed a special tax on patent medicines. On July 5, 1898, the Commissioner of Internal Revenue, N.B. Scott, wrote to the local collector of revenues in Rochester ruling that: “Duffy’s Pure Malt Whiskey, is by being advertised as a cure for consumption, dyspepsia, malaria, etc., liable to a stamp tax as a medicinal article....” A background memo elaborated that although Duffy’s contained nothing but distilled spirits, it was a patent medicine “by the manner in which it is presented to the public.” The ruling decreed a tax of two cents per bottle. We can imagine Commissioner Scott laughing about sticking it to Duffy as he signed the order.

In reality, the Feds did Walter two enormous, if unintended, favors. Estimates are that before it was repealed after the war, the stamp tax cost him about \$40,000, not an inconsiderable sum. At the same time, however, it exempted



him from hundreds of thousands in federal and state liquor taxes and allowed him to advertise with some legitimacy as “the only whiskey recognized by the Government as medicine” – a claim that turned out to be worth millions.

Even Samuel Hopkins Adams (Fig. 7), whose series of articles in *Colliers Magazine* in 1905-1906 led to the passage of the Pure Food and Drug Act, admitted that Duffy was partially justified in his claim of Federal recognition of his whiskey as medicine. Nevertheless, this famous “muckraker” took particular aim at Duffy’s product, because of its claims to “cure” and its inferiority even as whiskey. He also exposed as phony newspaper testimonials to its healing effects by alleged clergymen and Temperance workers. Nevertheless, Adams’ revelations failed to dampen sales.



Fig. 7: Samuel Hopkins Adams

The first head of the Food and Drug Administration, Dr. Harvey W. Wylie in 1907 similarly took aim at Duffy – and ended frustrated with Washington bureaucratic foot-dragging: “I stated that Duffy’s Malt Whiskey was one of the most gigantic frauds of the age and a flagrant violation of the law, and that there was no necessity that we delay at all in the matter.” After his pleas for prosecution were ignored for two years, the doctor denounced the “determined efforts of my colleagues to protect Duffy’s Pure Malt Whisky from being molested either by seizure or bringing any criminal case against the maker.”

Duffy’s fellow Irishman, Patrick W. Cullinan, was the only official to win a case against the distiller. As the New York Commissioner of Excise, Cullinan in 1905 went to court claiming that Duffy’s was nothing more than sweetened whiskey and subject to state liquor taxes. The company countered with eleven physicians, four of them members of the Rochester Health Department, who swore their belief that the whiskey contained drugs that made it real medicine. The New York Supreme Court, however, ultimately supported Cullinan and made the drink subject to the liquor tax. This proved to be only a slight setback to Duffy: the money continued to roll in.

As a result of this soaring success, the formerly bankrupt Walter Duffy now was on his way to becoming a multimillionaire. His first wife, Theresa, had died in 1885 and in 1892 he married Loretta Putnam, a woman with an artistic bent and a taste for fine furnishings. She filled their fashionable

Lake Avenue (Fig. 8) mansion in Rochester – described as “palatial” –with a lavish assemblage of antiques and paintings. When some items went to auction in 1913, the auctioneer’s catalogue exclaimed: “What wealth!”



Fig. 8: Postcard: Lake Avenue Mansions

At his death at the age of 70 in 1911, the New York Times called Duffy “one of Rochester’s best known business men and financiers” and listed the many companies on which he held executive and director positions. He also was a principal stockholder in a enterprise that owned hotels, including the Rochester Hotel (Fig. 9), and the Schubert Theater in New York City.



Fig. 9: Postcard: Rochester Hotel

After Walter’s death, his Duffy’s Malt Whiskey underwent change. Dr. Wylie had warned the patent medicine industry that using the word “cure” in advertising would subject products to particular scrutiny. As an ad (Fig. 10) from 1915 indicates, Duffy’s got the message. It makes no claims beyond being a “tonic stimulant” and a “household remedy.” Moreover, the name of the firm had been changed to the Duffy Malt Whiskey Company.

Prohibition brought still other alterations. The word “whiskey” now became anathema. So Duffy’s became a tonic. The distillery moved to Los Angeles and the name changed to Duffy’s Laboratory, Ltd. Even the depiction of the Old Chemist changed on the label of the bottles (Fig. 11) as did the

embossing (Fig. 12). The product itself appears to have remained essentially whiskey: The alcoholic content was listed as “not over” 40 percent. Forty percent alcohol is 80 proof, the same as bourbon.



Fig. 10: 1915 Newspaper Ad



Fig. 11: Duffy Tonic bottle (left)

Fig. 12: Embossing on Duffy Tonic bottle (right)

Whether the “Dry police” eventually caught up with Duffy’s is not clear but by 1926 the company that Walter built was forever out of business. Nevertheless, Mr. Duffy had gone from bankruptcy to riches, helped immeasurably by his ability to profit by the fumbblings of Uncle Sam.

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**Notes:** The information in this article was drawn from a number of Internet sources, prominent among them the New York Times online archives. A compilation of Samuel Hopkins Adams’ articles on the patent medicine industry, called *The Great American Fraud*, similarly is available online.

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