

The Illegal ©

As the largest kosher certifying agency in the world, the OU is deeply concerned about protecting the integrity of our kosher symbol. Thus, when a product bearing an unauthorized © appears, as occasionally happens, the OU responds quickly and efficiently.

While products with an unauthorized or illegal © represent only a tiny fraction of those that are legitimately certified by the Union (out of 225,000 labels, approximately 50 illegal ones are discovered each year), nevertheless the OU takes symbol misuse very seriously.

It is also important to note that symbol misuse does not only affect the Orthodox Union. Indeed, all major kosher certifying agencies, and in a broader sense, all manufacturers of brand name goods, are regularly plagued by trademark infringement.¹

How Does Misuse Happen?

There are a number of ways in which symbol misuse can happen.

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Misconception that the © is a universal kosher symbol. A manufacturer in Turkey, supervised by the local rabbinic, begins to export jelly to the United States. Erroneously told that

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the © is the generic kosher symbol in the United States, the company begins using it without certification.

Printing Error. A major New York supermarket chain introduces a new line of canned meat and pasta. In order to create a mock-up of the new label, the supermarket graphics department takes an existing label of OU-certified canned peas and carrots. The designers accidentally copy the

Intentional Fraud. A beverage manufacturer applies for OU certification. During our inspection of the plant, we learn that the beverages are pasteurized on the same equipment used to pasteurize non-kosher grape drinks. We tell the manufacturer that we can-

not certify his products. Determined to increase sales, company executives decide to use the © anyway.

Accidental Kashrut Violation. In violation of the established kosher program, an OU-certified company unintentionally uses a non-kosher source of shortening. The rabbinic field representative (RFR) spots the non-kosher ingredient during his next visit, but the finished goods have already been shipped to supermarkets around the country.

Protecting the OU Symbol

Protecting the integrity of the ©, the OU aggressively pursues any unauthorized use of its symbol through its Trademark Compliance Department. Upon discovering an illegal ©, the Union immediately sends a strongly-worded letter to the company in question explaining that the © is an internationally registered certification mark and that unauthorized use of it constitutes trademark infringement and violates other US laws as well (i.e. false advertising, state kosher laws...). The OU demands that the product's manufacturer as well as its kosher status (if known) be revealed to the Union within 48 hours. The letter is fol-

lowed up with a phone call.

The majority of products bearing an illegal © do, in fact, turn out to be kosher. The product may be innately kosher or supervised by a legitimate kosher certifying agency. (OU staff will often have to inspect the plant to determine the product's kosher status.) If the product is kosher, the OU will request damages for trademark infringement and the case will be closed.

If however, the product is not kosher or if its kosher certification is unacceptable by our standards, the OU will send a cease and desist order, demanding an immediate market recall. The Union will also place "Kosher Alerts" in all of the Jewish newspapers in the area of distribution, as well as on our web site, e-mail subscription list and other *kashrut*-related web sites. (The cost of a recall, which often runs tens of thousands of dollars, is in itself a strong disincentive to cheat. Some companies have even gone bankrupt because of illegal usage of kosher symbols and the resulting recall.) Subsequently, the Union will monitor the recall effort through random inspections of stores and warehouses. Once the recall is in effect, the Union will also request damages. Most companies readily comply. If the company is uncooperative, the Union will seek the help of attorneys.

Regarding the beverage manufacturer mentioned earlier, for example, the OU received assurances that the product would be withdrawn from supermarket shelves. The manufacturer withdrew the item from three supermarket chains; we requested damages and assumed the case was closed. Subsequently, we discovered the product in a fourth supermarket chain. Though we requested numerous times that the item be removed, the manufacturer refused to cooperate. The Union filed a lawsuit and the case is now pending in federal court with the legal costs on both sides escalating rapidly.

In another recent case, the OU filed a lawsuit against a manufacturer, two

wholesalers and three supermarket chains because of their failure to take corrective action. Although the primary responsibility lies with the manufacturer, the wholesaler and retailer can be held responsible for trademark infringement as well, once they have been advised that a product bears an unauthorized trademark.

At times, the OU may also seek the help of consumer protection agencies as well as state attorneys general and departments of agriculture. Additionally, nearly half of the states in this country have instituted kosher laws, which are, of course, helpful in protecting the integrity of the ©. What is more, the Union has successfully brought lawsuits in foreign countries. In one European country that historically has not required food recalls even for health-related issues, the OU won a decision requiring a recall of a product bearing an illegal ©.

Interestingly, the OU aggressively pursues unauthorized usage of the © even in non-food related items. Electronics manufacturers such as Casio and Radio Shack, as well as universities and laundromats have all received cease and desist letters from the Union. The reason for this is simple: unauthorized usage of the © dilutes its exclusivity.

How Illegal ©s Are Discovered

There are a number of ways in which illegal ©s come to our attention. The OU has over 500 RFRs, many of whom crisscross the US as well as other countries, overseeing plants. Occasionally they spot a suspicious-looking product bearing the ©. (My wife hates shopping with me. Having worked in the Trademark Compliance Department for over six years, I feel compelled to examine all products bearing an ©.) Sometimes, calls come from *mashgichim* from other certification agencies or even from governmental agencies charged with monitoring the food industry. I once received a call from someone at the Minnesota

Department of Agriculture who was investigating a company that bore fraudulent organic statements on its labels in addition to an unauthorized ©. Still other unauthorized ©s are turned in by OU-certified companies reporting on competitors who are unlawfully stealing a share of the kosher market. I have even been provided with the date of arrival and name of the ship carrying imported products bearing an unauthorized ©. (I contacted US Customs and requested they seize the product.)

From time to time, we will also dispatch a field representative to a supermarket to take inventory of all the brands bearing an ©. This list is then matched against the OU database of certified products to ascertain that the kosher symbols are all authorized.

How Can You Help?

One of the most difficult aspects of dealing with the illegal © is notifying the public. Although companies generally comply with recall efforts, no recall is 100 percent effective (e.g. consumers who have already bought the product). While the OU publicizes "Alerts" in a variety of ways, publicity is an area where you, the reader, can be helpful. Every *shul* should have a designated subscriber to the OU "Kosher Alert" e-mail, who will ensure that announcements are made in *shul* whenever problems arise. What else can you as a consumer do? If you spot a suspicious-looking product (a dairy item without the requisite "D"), tell us! Call us at 212-613-8241 or e-mail kosher@ou.org. (You need to have the brand name, product name and company as listed on the label.) Remember—kosher canned meatballs and spaghetti at 99 cents is probably too good to be true. **JA**

Note

1. The © symbol has been registered in the United States and many other countries. The symbol is also registered with the US Customs Service, which can seize and destroy items imported from other countries.