


HALOCHOSCOPE



Chashad arises when the onlooker knows that if the activity is as it seems, it is forbidden. He will not surmise from the fact that it is being done that it must be permissible, but will suspect the doer, based on appearances, of transgressing. The Torah says 'You shall be innocent in the eyes of Hashem and Israel'. In addition, *chashad* causes *chilul Hashem*, desecration of Hashem's Name, when people are suspected of violating His *mitzvos*. In certain cases, the action is clearly distinct from the forbidden action, but could get confused with it. The Rabbis specifically forbade the similar activity. However, they permit it in situations where it is *maida yedia*, well-known that this activity is the permissible one. For example, if *parev* ice-cream is common, one could use it with meat. Everyone will assume that it is not milk. Similarly, if the suspected violator is learned, that the onlooker should assume that this is not the forbidden activity, but a look-alike.

Shema yilmedu applies when the onlookers could learn to permit the look-alike activity, because they think this is being done. The poskim maintain that one need not be concerned for this, if there are many others doing it as well. Either everyone knows the difference, or if they do not, they could just as easily learn from everyone else. This only works if the others serve as true role models. If the others doing this are not observant Jews, they would not be considered role models. The observant Jew may allow wrong to be learned from his personal actions. In addition, onlookers could combine the two types of *maris ayin*. They could think that while the activity is forbidden sometimes, it must be permissible at other times. The onlooker might then make up his own reasons to permit it, based on something he sees in the circumstances.

In our case, the web-page might be indistinguishable from sites in which the owner has full control over the advertisements. A user might suspect the owner of this. As mentioned, there is reason to forbid directly advertising non-kosher foods. It is likely that there will be some indication on the page to his identity. Therefore, the owner of the site must make it clear somewhere on the page, that he has no control over the advertisements for non-kosher foods. [See See e.g. Kilayim 2:etc. Chulin 41b Avoda Zara 21a, Poskim. Tur Sh Ar OC 243, YD 87:4, commentaries. Igros MosheOC IV:82 EH II:12.]

In conclusion, one need not be concerned that he is involved in marketing the non-kosher food, nor helping non-observant Jews purchase it. However, one must be concerned about arousing suspicion, and take appropriate measures to avoid it.

On the parsha ... *Cursed be he who misdirects the blind on the road ... [27:18]* That means that one who causes another to sin, *lifnei ivair*, or gives him bad advice, is singled out for a curse. The commentaries say that these eleven curses are given to those who violate in secret. Perhaps they also apply to those who corrupt society by stealthily breaking down their observance. One who is being helped to sin is considered blind because he might not realize that he is sinning. If so, he should not be liable. Evidently, he realizes that there might be something wrong with what he is doing. He is then 'blinded' by the one who gives him the impression that it is not a sin. In this way, *lifnei ivair* and *shema yilmedu* intersect. One could cleverly do something permissible, thus avoiding sinning himself, but that onlookers will confuse with something forbidden. They will then sin as a result of his misdirection.

🕯 In honor of the 400th *yahrzeit* of Maharal miPrague, R Yehuda Loewy ben Betzalel zt'l, 18th of Elul.

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This week's question:

May one become a partner in a web-site business that is supported, in part, by advertisements for non-kosher food products?

Does the owner of the site need to be concerned that some of the visitors are non-observant Jews and will purchase these products?

Is there concern that knowledge of the ownership might lead an observant, but unwitting, consumer to think that the advertisements are approved by him, and that the products must be kosher?

Need he be concerned that his own conduct will come under suspicion by a knowledgeable visitor to the site?

The issues:

A) Trading in non-kosher foods

B) *Lifnai Ivair*, misleading others to sin

C) *Chashad*, arousing suspicion

A) *Sechorah bidevar isur, trading in non-kosher foods*

Items forbidden to eat but permitted to benefit from, may be used for any purpose. However, they may not be used for commercial gain, or sold even for non-food uses. The Talmud derives this from the terminology of the Torah. Many consider this a Scriptural restriction. Some maintain that it is Rabbinically instituted, linked to the language of the verse, to reinforce the original prohibition against eating the food. As a Rabbinical institution, it would be considered precautionary or a decree to safeguard a Scriptural *mitzvah*. As a Scriptural *mitzvah*, it would be a prohibition in its own right. The rabbis place limitations are placed on the extent of this prohibition. This indicates that it is of Rabbinical nature. Those who consider it Scriptural say, indeed it is stated by the Torah, but no details are given on how it applies. This was left to the Rabbis to decide.

Included in this prohibition, is the trapping and sale of living or dead animals. A hunter or trapper who tries to catch kosher animals, but sometimes lands a non-kosher species, may sell his catch. If he purposely catches non-kosher species, he may not sell them. One may sell a live donkey or camel. Though they can be eaten, their primary function is as working animals. Their use as meat is secondary.

If a trapper catches rabbits for their hides, or if a dealer buys rabbits for their hides, it is questionable whether he may sell the meat after skinning them. The hides are non-foods, and are excluded from the prohibition. If the skinner calculates his profit to include the sale of the meat, he is doing business with *davar he'asur*. If he makes a profit by selling the hides alone, the meat is extra. He may sell it, like incidental trapped non-kosher species. The reason for these dispensations is, one may not intentionally deal in *nevailah*, carcasses slaughtered incorrectly. If one has a *nevailah* in his possession, the

Torah explicitly permits selling it to a gentile. Similarly, if one came into possession of a *nevailah* unintentionally, he may benefit from its sale. Food products that are not forbidden Scripturally, but Rabbinically, may be sold.

In our case, the web-site might be supported solely by a company that deals in non-kosher foods. It might be supported by advertisements of a general nature. The advertisements might be arranged by an agency. Occasionally, an item will appear, mixed in with other items, that advertises non-kosher food. The owner of the web-site or the business using the web-site might count on the advertisements for the non-kosher products. Or he might be counting on revenue from general advertisements. Some products might not be Scripturally forbidden. If so, even if he counts on the profit from the advertisements, there is a mixture of advertised items, some of which he may 'trade' in and others in which he may not trade. Since the forbidden items came in together with the permissible ones, one might be allowed to trade in them as well. Or, this mixture might have been planned to include both types of item. This can hardly be considered incidental.

The matter is complicated if the web-site is being provided 'free' by a hosting company, with in-built advertisements sold by the hosting company. The benefit to the Jew is the indirect savings of the rental of a web-site, or the payment he might otherwise make to a server or other provider. He is not trading in the non-kosher items, but is benefiting from the trade of a gentile. Further, in this case, he is not considered a share-holder or a party to the trade in the *davar he'asur*. He is being used by another to promote this trade.

Even if one actually advertises for a gentile trader, he is not a party to the trade. He is not even a middle-man. According to the opinion that this prohibition is based on the concern that one might come to eat the food, in our case, the Jew never comes in contact with it. The poskim debate whether one may invest with a gentile dealing with *davar he'asur*, based in part on this issue. In our case, the Jew does not have a share in the advertisement. He does not get anything based on whether the advertisements are effective.

Apart from financial gain, other benefits are sometimes forbidden. In general, these are cases of using the items in place of other items that one might be obliged to provide or used as a gift to cull favor. For example, the poskim discuss whether one may buy non-kosher food items to give a gentile employee. They also discuss taking such items as security or collateral for a debt. However, if a debtor cannot pay cash, one may accept these items and sell them. This is not dealing commercially, but rescuing one's property. In our case, if the only way to avoid renting was by intentionally advertising non-kosher items, this might be problematic. However, this is not the case. Furthermore, the actual item is not being handled by the web-site holder, and there are no sure results.

In summary, the owner of the web-site does not seem to be involved in trading forbidden foods, for a number of reasons. [See Shemini 11:35 (Torah Temimah 142), commentaries. Shvi'is 7:3-4, Yerushalmi 7:1 Psachim 23a Bava Kama 82b, Poskim. Rambam, Maachalos Asuros 8:16-18. Terumas Hadeshen 200. Tur Sh. Ar. YD 87 117:1, (Taz, Darkei Teshuva esp. 17-24), commentaries. Tesh. RAE I:74 II:32 etc.]

B) Lifnai Ivair

Usually, when one Jew is present while another Jew wishes to commit a sin, two *mitzvos* apply to the second Jew. He may not aid and abet in the commission of the sin, and he must intervene to stop the first Jew from sinning. In our case, the second of these

cannot apply. He does not know whether a Jew will sin as a result of the advertisements. He does not even know if and when visitors to his site will be shown these advertisements. [He could warn Jews not to purchase non-kosher items advertised there!]

The issue that does arise is *lifnei ivair*, literally, placing a stumbling block before the blind. This Scriptural *mitzvah* includes two other meanings. One may not give another advice against his own interests. One may also not help another violate a *mitzvah*. This includes helping anyone violate something forbidden to him. Accordingly, one may not sell forbidden food to a Jew. One may sell it to a gentile, though he might, in turn, sell it to a Jew. He will then be helping the Jew sin, but *lifnei ivair* is not one of his seven *mitzvos*. By inference, it is forbidden to help one Jew violate *lifnei ivair*, by selling him food that he will sell to a third Jew.

Lifnei ivair only applies Scripturally where the violator could not act without the help of the facilitator. For example, a Jew is on one bank of a river reaches for pork on the other bank. If he cannot reach it without help, one may not pass it to him. If he could reach it, and one passes it to him, he violates a Rabbinical extension of *lifnei ivair*, known as *mesayaia*, helping. If the violator is intentional, some say that one is not held liable for *mesayaia*, only for Scriptural *lifnei ivair*, when it applies. Though many Jews habitually violate the kosher laws nowadays, many of them are not considered brazen or habitual violators. They act from ignorance.

There is a view that one cannot be held liable for these situations when the sinner will not violate the *mitzvah* right away. If so, in our case, if the advertisement does not have a link to purchase the item immediately, hosting the advertisement on one's website would not involve *lifnei ivair* (though it is 'bad advice'). If most visitors to the site are not likely to be tempted to violate, the owner of the site is not liable. In terms of the non-Jewish vendor advertising the non-kosher food, the owner of the website is, at best, helping a non-Jew sell to a Jew. It gets complicated if the vendor is indeed Jewish. Nonetheless, due to the lack of intent of the website owner, coupled with the randomness of the advertisements, the anonymity of the visitors, and the lack of direct involvement of the website owner, it would seem that the owner of the site is not in violation of *lifnei ivair*. [See Kedoshim 19:14, commentaries. Psachim 22b 40b Bava Metzia 75a Avoda Zara 6a-b 14a 21a, Poskim. Tur Sh Ar OC 159:1-2 YD 151:9 159:2 160:1, commentaries.]

C) Chashad

Assuming the owner of the web-site is doing nothing wrong, there might still be an issue with regard to using this server. The reason the owner is not liable for anything is because he had no intention to advertise the non-kosher items. He has no control over which advertisements are shown. He has no real share in sales, and there might not even be any sales. Nonetheless, a browser visiting his site does not know all of these factors. He will think that the owner, whom he might know to be an observant Jew, is willingly advertising the non-kosher items. He might think that it is forbidden, suspecting the owner of wrongdoing. He might think that it must be permitted, and will then do the same.

In this situation, the issue of *mar'is ayin*, appearance of impropriety, arises. The Rabbis forbade anything giving the appearance of wrongdoing, even when the actual activity or situation is perfectly permissible. There are two types of *maris ayin*, roughly paralleling the two possibilities raised. They are known as *chashad* and *shema yilmedu*.