

TESTIMONY OF THE NEW YORK STATE CONSUMER PROTECTION BOARD  
SUBMITTED BY RICHARD M. KESSEL, EXECUTIVE DIRECTOR

BEFORE

THE NEW YORK STATE ADVISORY BOARD FOR KOSHER LAW ENFORCEMENT  
NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

NOVEMBER 10, 1988

(11)

THANK YOU FOR INVITING ME TO SPEAK TODAY ON THE SUBJECT OF KOSHER FOOD LAWS AND REGULATIONS.

THE NEW YORK STATE CONSUMER PROTECTION BOARD AS PART OF THE EXECUTIVE DEPARTMENT OF THE STATE OF NEW YORK, IS MANDATED TO COORDINATE AND PERFORM A WIDE RANGE OF CONSUMER PROTECTION FUNCTIONS FOR THE CONSUMERS OF THE STATE OF NEW YORK.

BECAUSE KOSHER FOOD LABELING REQUIREMENTS AND STANDARDS OF IDENTITY ENABLE KOSHER CONSUMERS TO INTELLIGENTLY CHOOSE QUALITY KOSHER PRODUCTS, THE CPB HAS A STRONG INTEREST IN THIS PROCEEDING.

THE CPB BEGAN MONITORING THE PRICES AND AVAILABILITY OF KOSHER FOOD IN NEW YORK STATE SEVERAL YEARS AGO. AS A RESULT, THE GOVERNOR CREATED THE KOSHER FOOD ADVISORY COUNCIL UNDER THE AUSPICES OF THE BOARD TO INVESTIGATE VARIOUS ASPECTS OF THE KOSHER FOOD MARKETPLACE.

IN RESEARCHING ISSUES OF INTEREST TO KOSHER CONSUMERS, THE COUNCIL HAS MONITORED THE AVAILABILITY AND COST OF KOSHER FOODS AND INVESTIGATED KOSHER FOOD PRODUCTION AS IT COMPLIES WITH

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KOSHER LAWS AND REGULATIONS. COUNCIL MEMBERS HAVE CONCLUDED THAT MAINTAINING A KOSHER HOME IS NOT EASY SINCE KOSHER CONSUMERS MUST CONFRONT A NUMBER OF UNIQUE PROBLEMS EVERY TIME THEY SHOP FOR FOOD. IN FACT, FOR THIS REASON, THE COUNCIL IN COOPERATION WITH THE BOARD, PRODUCED A BOOKLET ENTITLED, A SHOPPING GUIDE FOR THE KOSHER CONSUMER. THE PUBLICATION IS DESIGNED TO ASSIST KOSHER CONSUMERS IN SOLVING PRACTICAL PROBLEMS OFTEN ENCOUNTERED WHEN TRYING TO ESTABLISH THE KOSHER STATUS OF A PRODUCT. HOWEVER, ADDITIONAL OVERSIGHT AND REGULATION IS NEEDED TO EFFECTIVELY IMPACT ON THE KOSHER RETAIL MARKETPLACE AND TO ENSURE THAT CONSUMERS ARE GETTING KOSHER PRODUCTS THAT COMPLY WITH THE INTENT AND SPIRIT OF JEWISH LAW. SOME OF THE PROBLEMS FACING CONSUMERS PURCHASING KOSHER FOOD ARE:

#### KOSHER LABELING

THERE ARE SEVERAL DIFFERENT ASPECTS OF THE LABELING ISSUE THAT ARE CAUSE FOR CONCERN TO KOSHER CONSUMERS:

1. USE OF THE WORD "KOSHER" OR LETTER "K"

APPARENTLY, A COMPANY IN NEW YORK STATE MAY LABEL FOOD WITH

THE WORD KOSHER OR THE LETTER "K" EVEN THOUGH THE PLANT DOES NOT RECEIVE RABBINIC INSPECTION. IN ADDITION, CORPORATIONS MAY UTILIZE TRADEMARKS OF KOSHER CERTIFICATION WITHOUT AUTHORIZATION. UNLESS THE NEW YORK STATE KOSHER LAW ENFORCEMENT BUREAU CAN PROVE KOSHER VIOLATIONS (E.G., THE USE OF LARD, NON-KOSHER INGREDIENTS) NO ACTION CAN BE TAKEN TO ENJOIN THE UNAUTHORIZED USE OF KOSHER SYMBOLS. THIS BUREAU OPERATING UNDER THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS DOES NOT HAVE SUFFICIENT LEGAL POWERS; THEY ARE WITHOUT SUBPOENA RIGHTS. THEREFORE, WE RECOMMEND THAT GREATER AUTHORITY BE GRANTED TO THIS ENFORCEMENT BODY TO SHIFT THE BURDEN OF SHOWING COMPLIANCE WITH KOSHER REQUIREMENTS TO THE PROCESSOR SEEKING TO USE KOSHER LABELS.

2. DETERMINING THE MEAT, DAIRY OR PARVE STATUS OF A PRODUCT

AS OUTLINED IN THE SHOPPING GUIDE FOR KOSHER CONSUMERS, MANY COMPANIES PROVIDING KOSHER PRODUCTS, OTHER THAN MEAT OR POULTRY, DO NOT MARK THE PRODUCT AS MEAT, DAIRY OR PARVE (ALSO SPELLED PAREVE - NEUTRAL) ON THE PACKAGE. CONSUMERS HAVE COME

TO RELY ON THE ACCURACY OF INGREDIENT LABELS ON PRODUCT PACKAGES. HOWEVER, BECAUSE RAW MATERIALS CAN COME FROM A LARGE VARIETY OF SOURCES, COMPANIES ARE UNDER NO OBLIGATION TO OBTAIN THEM FROM APPROPRIATE KOSHER SOURCES FOR PRODUCTS WITHOUT A KOSHER CERTIFICATION. FOR EXAMPLE, WHILE MANY EMULSIFIERS MAY BE MADE FROM PLANT OR ANIMAL MATERIALS, KOSHER PRODUCTS ARE GENERALLY ONLY PREPARED FROM PLANT SOURCES. IN ADDITION, LABELS NEED NOT DISCLOSE INFORMATION REGARDING THE CONTENTS OF SOME INGREDIENTS SUCH AS THE "NATURAL FLAVORS". FURTHER, MANY "PROCESSING AIDS" (INGREDIENTS USED DURING PROCESSING BUT WHICH ARE NOT PRESENT IN THE FINAL PRODUCT) ARE NOT EVEN REQUIRED TO BE MARKED AS PART OF THE INGREDIENT LISTING. THUS, IT IS NOT SUGGESTED THAT CONSUMERS TRY TO DETERMINE A PRODUCT'S KOSHER STATUS BY SIMPLY REVIEWING THE INGREDIENTS LISTED ON THE PACKAGE.

ANOTHER IMPORTANT FACT IS THAT MANY COMPANIES CHANGE THEIR PRODUCT(S) PERIODICALLY WITHOUT ANY NOTIFICATION. THIS CAN AFFECT THE KOSHER STATUS OF A PRODUCT OR CHANGE THE MEAT, DAIRY OR PARVE CLASSIFICATION. THEREFORE, KOSHER CONSUMERS SHOULD

REGULARLY CHECK A PRODUCT TO ENSURE THAT ITS MEAT, DAIRY OR PARVE STATUS IS UNCHANGED.

PERHAPS EVEN MORE DISTURBING IS THE FACT THAT SOME COMPANIES TREAT THE SAME PRODUCT INCONSISTENTLY IN REFERENCE TO ITS KOSHER STATUS. REPORTED CASES HAVE INDICATED THAT COMPANIES USE DIFFERENT INGREDIENTS AND KOSHER STANDARDS FOR THE SAME ITEM PRODUCED IN DIFFERENT PLANTS. IN THESE INSTANCES, THE COUNCIL RECOMMENDS THAT CONSUMERS SHOULD CONSULT WITH A RABBI, THE RABBI ISSUING THE KOSHER CERTIFICATION OF THE COMPANY MANUFACTURING THE PRODUCT.

THE KOSHER CONSUMER MUST ALSO KNOW WHETHER A PRODUCT IS PREPARED ON EQUIPMENT THAT MAY BE DIFFERENT FROM THE INDICATED STATUS. FOR EXAMPLE, IS MEAT OR DAIRY EQUIPMENT BEING USED TO PREPARE A PARVE PRODUCT? AGAIN, AN INQUIRY TO THE INSPECTING RABBINICAL AUTHORITIES WOULD BE APPROPRIATE. FURTHER, THE PROPER USE OF SUCH PRODUCTS SHOULD BE DISCUSSED WITH A RABBI.

AN EXAMPLE TO ILLUSTRATE THIS PROBLEM IS AS FOLLOWS:

COMPANY X'S COOKIES ARE NOW AVAILABLE IN BOTH DAIRY AND PARVE

VARIETIES. IF AN O.U.D APPEARS, THE PRODUCT IS DAIRY BUT NOT CHOLOV YISROEL (MILK THAT IS UNDER CONTINUOUS JEWISH SUPERVISION FROM THE TIME OF MILKING). HOWEVER, IF ONLY AN OU APPEARS AND NO DAIRY INGREDIENTS ARE LISTED, THOSE PRODUCTS ARE STILL MADE ON THE SAME DAIRY EQUIPMENT AND REQUIRE SPECIAL CONSIDERATION IN THEIR USE BY THE KOSHER CONSUMER.

THIS TYPE OF INCONSISTENT LABELING HAS PROMPTED THE KOSHER FOOD ADVISORY COUNCIL TO PROPOSE A MORE SPECIFIC LABELING SYSTEM. CURRENTLY, DIFFERENT LETTER MARKINGS MAY BE USED FOR MULTIPLE PURPOSES. FOR EXAMPLE, THE LETTER "P" ON A PRODUCT PACKAGE MAY MEAN PASSOVER OR PARVE. THEREFORE, THE COUNCIL SUGGESTS THE FOLLOWING UNIFORM SET OF LETTERS BE USED TO ESTABLISH A MECHANISM THAT WILL ENSURE CONSISTENT AND ACCURATE LABELING BASED ON ENGLISH LANGUAGE USAGE:

M: MEAT	ME: MEAT EQUIPMENT
D: DAIRY	DE: DAIRY EQUIPMENT
N: NEUTRAL (PARVE)	F: FISH
P: PASSOVER	

### 3. LABELING OF WAXED PRODUCE

CURRENTLY, WAXES OR OTHER COATINGS USED ON FRESH FRUITS AND VEGETABLES ARE NOT BEING DISCLOSED. ALTHOUGH THE FEDERAL FOOD,

DRUG AND COSMETIC ACT REQUIRES THAT WAXED FRUITS AND VEGETABLES BE PROPERLY LABELED AND DECLARED AS SUCH, THE U.S. FOOD AND DRUG ADMINISTRATION HAS NOT BEEN ACTIVE IN THIS AREA. IN FACT, THE COUNCIL HAS SUPPORTED A CITIZEN'S PETITION TO THE FDA ON THIS ISSUE.

AS A RESULT OF FDA'S LAXNESS IN THIS REGULATORY AREA, KOSHER CONSUMERS IN NEW YORK STATE MAY BE PURCHASING AND ULTIMATELY CONSUMING FRUITS AND VEGETABLES THAT ARE PROHIBITED BY JEWISH LAW. FURTHERMORE, CONSUMERS WHO HAVE A MEDICAL NEED-TO-KNOW ARE ALSO BEING DEPRIVED OF THIS NECESSARY INFORMATION.

WHEN THE FEDERAL GOVERNMENT FAILS TO RESPOND TO THE NEEDS OF OUR CONSTITUENCY, WE HAVE AN OBLIGATION TO TAKE ACTION ON BEHALF OF OUR CITIZENRY WHERE APPROPRIATE. THEREFORE, WE URGE THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS TO USE ITS STATUTORY AUTHORITY, IF POSSIBLE, TO ENFORCE FEDERAL LAW TO REQUIRE SUCH DISCLOSURE. NOT ONLY WILL THIS GUARANTEE CONSUMERS' RIGHT-TO-KNOW SUCH INFORMATION BUT WILL ENFORCE THE LAW THAT IS CURRENTLY BEING PUSHED ASIDE AT THE EXPENSE OF KOSHER CONSUMERS.



FURTHER, WE RECOMMEND THAT LEGISLATION BE INTRODUCED THAT WOULD PERMIT ALL MONIES RECEIVED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS FOR VIOLATIONS/PENALTIES, BE USED TO FOSTER THE DEPARTMENT'S KOSHER ENFORCEMENT ACTIVITIES RATHER THAN USE MONEY FROM THE STATE'S GENERAL FUND.

4. HALACHICAL STATUS OF A PRODUCT

MANY PROBLEMS ARE ASSOCIATED WITH PRODUCT INGREDIENTS. BECAUSE OF THEIR NATURE, THEIR SOURCE, OR PROCESSING, INGREDIENTS MAY NOT BE KOSHER. SUCH INGREDIENTS MIGHT GET SWITCHED DURING PRODUCTION DUE TO SHORTAGES, PRICE, OR SIMPLE OVERSIGHT. PLANT EQUIPMENT PRODUCING NON-KOSHER FOOD MAY PREPARE "KOSHER" FOOD WITHOUT CLEANING OR KOSHERIZING THE MACHINES. MISLABELING OR MISPACKING CAN ALSO OCCUR DURING THE LATTER STAGES OF PRODUCTION.

IN ADDITION, NEW TECHNOLOGICAL DIFFICULTIES FACE THE KOSHER CONSUMER AND MANUFACTURER. WITH THE ADVENT OF FREEZE DRYING, SPRAY DRYING, ULTRA HIGH TEMPERATURE STERILIZATION, ENCAPSULATION AND THE PROLIFERATION OF COMPLEX FATTY ACIDS, FLAVORS, ENZYMES AND FERMENTATION PRODUCTS, NEW QUESTIONS HAVE

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BEEN POSED AND ARE IN NEED OF ANSWERS FROM THE JEWISH COMMUNITY.  
FOR EXAMPLE, DOES THE KASHRUS STATUS OF A GENETICALLY ENGINEERED  
ENZYME EXACTLY MATCH THE STATUS OF THE ORIGINAL, "NATURAL" ENZYME  
-- DOES THAT AFFECT ITS STATUS HALACHICALLY AND HOW DOES THIS  
IMPACT ON THE LABELING OF SUCH PRODUCT?

THESE LABELING ISSUES AND OTHERS NEED TO BE ADDRESSED FOR  
PURPOSES OF IDENTIFYING VIABLE RESOLUTIONS THAT WILL NOT INFRINGE  
GREATLY ON THE RETAILERS OF KOSHER FOOD BUT AT THE SAME TIME WILL  
PROVIDE USEFUL AND ACCURATE INFORMATION TO CONSUMERS.

CO-MINGLING OF KOSHER AND NON-KOSHER FOODS

AN ISSUE CONFRONTING THE KOSHER COMMUNITY FOR SEVERAL YEARS  
NOW IS THAT OF THE CO-MINGLING OF KOSHER AND NON-KOSHER PRODUCTS.  
WHILE RETAIL STORES AND GOVERNMENT HAVE SOUGHT WAYS IN WHICH TO  
RESOLVE THIS PROBLEM, THE MARKETPLACE CONTINUES TO BE PLAGUED BY  
INSTANCES WHERE KOSHER AND NON-KOSHER PRODUCTS ARE FOUND MIXED  
TOGETHER THEREBY LEADING TO CONSUMER CONFUSION.

WE BELIEVE THAT THE DEPARTMENT MUST GIVE THIS ISSUE A CLOSER  
LOOK FOR PURPOSES OF IDENTIFYING VIABLE WAYS THAT KOSHER

CONSUMERS CAN DIFFERENTIATE BETWEEN A KOSHER AND NON-KOSHER PRODUCT. SUCH A MEANS WOULD INCLUDE THE PROPOSED LABELING AS DESCRIBED EARLIER. AS PART OF THIS REVIEW PROCESS, THE DEPARTMENT SHOULD SOLICIT THE INPUT OF BOTH KOSHER CONSUMER ORGANIZATIONS AND INDUSTRY, SUCH AS THE NEW YORK STATE FOOD MERCHANTS ASSOCIATION, TO DISCUSS REMEDIES TO THIS ONGOING PROBLEM.

THE BOARD RECOGNIZES THAT THERE ARE A NUMBER OF RELIGIOUS SECTS THAT HAVE DIETARY RESTRICTIONS. FURTHER, THERE ARE CONSUMERS WHO FOR HEALTH REASONS MUST KNOW CERTAIN INGREDIENT INFORMATION (I.E. SALT CONTENT). THEREFORE, IT IS IMPERATIVE THAT ANY SYSTEM DEvised TAKE INTO CONSIDERATION THE NEEDS OF OTHER SPECIALIZED INTEREST GROUPS WHILE MEETING THE DEMANDS OF THE KOSHER COMMUNITY.

#### INSECTICIDES AND PESTICIDES USE IN KOSHER FOODS

INSECTS ARE NOT KOSHER. THERE IS AN ENIGMATIC QUESTION FACING THE FOOD INDUSTRY; HOW TO RECONCILE THE NEED FOR TIGHTER PESTICIDE CONTROL WITH VERY REAL NECESSITIES OF THE JEWISH

COMMUNITY. THE INTEGRATED PEST MANAGEMENT (I.P.M.) SYSTEM IS A FEDERAL PLAN DESIGNED TO RECTIFY THE PESTICIDE PROBLEM. THIS INVOLVES THE USE OF MORE MECHANICAL CONTROLS (TRAPS AND SCREENS), BIOLOGICAL CONTROLS (BENEFICIAL BACTERIA AND INSECTS), AS WELL AS BETTER PLANTING TECHNIQUES. THIS COULD MEAN ACCEPTABLE PEST LEVELS WILL RISE -- A FACT WHOLLY UNACCEPTABLE TO THE JEWISH COMMUNITY.

THE DEPARTMENT MUST REVIEW THIS ISSUE MORE CLOSELY TO DETERMINE WHETHER STATE CONTROL OF PESTICIDE USE IS FEASIBLE AND TO IDENTIFY THE RAMIFICATIONS OF SUCH ON THE KOSHER COMMUNITY.

#### RABBINIC INSPECTIONS

ANOTHER ISSUE OF GREAT CONCERN TO THE KOSHER COMMUNITY IS THE FREQUENCY AND THOROUGHNESS OF RABBINIC INSPECTIONS OF KOSHER RETAIL STORES. CONSUMERS WANT TO KNOW HOW OFTEN INSPECTIONS ARE MADE AND THE PERSON'S NAME WHO PERFORMED SUCH EXAMINATION. THE DEPARTMENT HAS INDICATED TO THE COUNCIL THAT A LISTING OF INSPECTING RABBIS WILL BE AVAILABLE ON A COMPUTER DATABASE SYSTEM. HOWEVER, TO DATE, NO SUCH SYSTEM IS IN PLACE.

WE RECOMMEND THAT THE DEPARTMENT IMMEDIATELY COMPUTERIZE THIS INFORMATION IN CONJUNCTION WITH A MEDIA ADVISORY TO ALERT KOSHER CONSUMERS THAT SUCH INFORMATION IS AVAILABLE UPON REQUEST.

IN SUMMARY, LET ME EXPLAIN THAT BOTH THE COUNCIL AND THE BOARD ARE GREATLY CONCERNED WITH THE ISSUES ASSOCIATED WITH THE REGULATION OF THE KOSHER FOOD MARKETPLACE AND ARE AVAILABLE TO ASSIST THE DEPARTMENT AND/OR BUREAU IN ANY WAY POSSIBLE. IN FACT, THE DEPARTMENT HAS BEEN AN ACTIVE PARTICIPANT ON THE COUNCIL AND WE LOOK FORWARD TO CONTINUING THIS RELATIONSHIP IN HOPES OF STRENGTHENING KOSHER LAW ENFORCEMENT.

THANK YOU AND IF THERE ARE ANY QUESTIONS I WILL TAKE THEM AT THIS TIME.