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**TESTIMONY OF DAVID B. HAMM, ESQ.**

**ON BEHALF OF**

**AGUDATH ISRAEL OF AMERICA**

**COMMISSION ON LEGISLATION AND CIVIC ACTION**

**SUBCOMMITTEE ON KASHRUS**

**AT A PUBLIC HEARING SPONSORED BY**

**THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS**

**NOVEMBER 10, 1988**

Mr. Chairman, Members of the Commission, Members of the Advisory Board for Kosher Law Enforcement, Ladies and Gentlemen. My name is David Hamm, and I speak today on behalf of the Agudath Israel of America and its Commission on Legislation and Civic Action, whose Kashruth Sub-Committee I am privileged to chair. For more than six decades, the Agudath Israel has stood in the forefront of efforts to protect the rights of the Jewish people to practice their religion and to fulfill their religious obligations. Through its many departments, the Agudath Israel has been involved in wide-ranging charitable and educational pursuits, running the gamut from care for the elderly, to assistance of displaced homemakers, to educational programs for the benefit of our youth. Of greater significance for the purposes of this hearing, members of the Agudath Israel's Commission on Legislation and Civic Action and of its Office of Government Affairs have regularly testified before public hearings, legislative committees and executive panels concerning legislation or regulations having impact upon the Jewish community. Agudath Israel has consistently sought to work together with the legislative and executive branches of government for the purpose of establishing and enforcing fair and appropriate laws protecting the rights of all citizens to practice their religion.

In this light, we express our thanks to Commissioner Donald G. Butcher for inviting us to address this panel on issues concerning the laws of New York State governing the sale and preparation of food products represented as Kosher, currently contained in Article 17 of the Agriculture and Markets Law. For, to us and to those we represent, these laws are no small matter; they stand as a bulwark against those who would, through deception and fraud, cause us to violate our deeply-held religious beliefs and convictions.

We state at the outset our strong support for the efforts of the Department of Agriculture and Markets' Kosher Division, and specifically of Rabbi Schulem Rubin, to enforce the law for the protection of Kosher consumers in our State. For many decades, the statutes governing the sale of food purporting to be Kosher have served to deter fraud and deception of the Kosher-consuming public. There is not now, and never has been, a rule mandating that any manufacturer or seller of food products prepare their foods in accordance with Orthodox Jewish requirements, nor that they provide Kosher food for the needs of Kosher consumers. However, those manufacturers, distributors or sellers of food purporting to be Kosher may not be permitted to defraud or deceive consumers who rely upon their representations, and whose religious beliefs

would prohibit their purchase and use of such food products if the representations are falsely made. The efforts of the Department and of its Kosher Division to ascertain that those purporting to sell Kosher food do not trample upon the rights of Kosher consumers through false or misleading advertising or deceptive consumer practices are to be highly lauded.

Yet, despite the Department's best efforts, we believe that there is room for improvement for the benefit of the public both in the statutory scheme and in the method of its enforcement.

The statutes and regulations are, we feel, designed to accomplish three essential goals: first, to protect the Kosher-consuming public from fraudulent and deceptive practices; second, to punish those who commit fraud in this area, so as to deter repetition by them or by others; and third, to make available to the Kosher-consuming public the information necessary to allow consumers to make their own informed decisions in this area. We believe that the ability to achieve each of these goals would be enhanced by certain changes in the statutes, in the regulations and in the priorities of enforcement.

1. Penalties and Enforcement Mechanisms. We believe that the existing statutory penalties and enforcement procedures are insufficient for the purposes of protection and deterrence. Unfortunately, some unscrupulous purveyors of supposedly "Kosher" products view the fines and penalties under the statutes merely as part of the cost of doing business, and the delays inherent in the enforcement procedures (coupled with the unlikelihood of imprisonment even if their practices are uncovered) as working in their favor.

We urge that the powers of enforcement under the statute be enhanced in two ways. First, we urge that the statute include a provision permitting a private cause of action by defrauded consumers against the purveyors of food products misrepresented as "Kosher". One of the critical deficiencies of the present system of enforcement has been the insufficient number of inspectors available to enforce compliance with the statutory and regulatory provisions. In this day and age of budgetary constraints, we recognize that a substantial improvement in that respect, while certainly to be hoped for, may not eventuate. By creating a private cause of action on behalf of defrauded consumers, the Legislature would go a long way toward deterring misconduct and permitting independent enforcement against unscrupulous practices in this

area. We note that private causes of action have become increasingly popular in the Deceptive Practices Acts of many states; those statutes can provide the blueprint for inclusion of such a provision in this statute.

Second, we urge an amendment to the statute that would permit the Department to apply for and obtain a Court Order enjoining the sale of products in violation of the statute, placing such products in quarantine, and, where appropriate, requiring a recall by the manufacturer or distributor of food products violating the statutory requirements. It is intolerable, where good cause has been shown to believe that a purveyor of food is defrauding the public, that the deceptively labelled or advertised food products remain in the hands of the defrauder. Furthermore, the injunctive mechanism would strike home to those who would defraud the public and convince them that we will not permit the continuation of their "business as usual."

2. Consumer Input and Information. Certain additional measures can and should be taken to improve the educational aspect of the existing statute and regulatory system, so as to enhance the ability of consumers to make knowledgeable decisions. We recommend the establishment and

the advertisement of a "hot-line" telephone number, at which Kosher consumers can register complaints concerning alleged violations of the laws governing the sale of Kosher products, and from which the Kosher-consuming public can obtain information concerning the supervision of products and establishments purporting to be Kosher. We note that, under Agriculture and Markets Laws §§201-b(2), 201-e(3)(3-a)(3-b) and (6), and 201-g, those purporting to offer foods labelled as "Kosher" must register the name and address of those supervising the kosher status of such products with the Department of Agriculture and Markets. The establishment and advertisement of a "hot-line", from which the Kosher-consuming public can obtain such information, would be a true service to the public.

We further recommend, in order to enhance public knowledge and the ability of the consumer to decide upon the propriety of kosher certification, that the registration requirements be enlarged to include additional information, both with respect to the product involved and with respect to those supervising its Kosher status. We urge that the registration statement in connection with each food commodity sold in packaged form (under Agriculture and Markets Law §201-e) include a statement by the Kosher status supervisor as

to whether the product (a) contains dairy derivatives, (b) was prepared on the same equipment used for dairy products, (c) contains meat or poultry derivatives, (d) was prepared on the same equipment as meat or poultry products, or (e) is pareve and was prepared on equipment used for neither dairy nor meat nor poultry products. This information is of vital concern to many Kosher consumers, and the inclusion of such information on the registration statement should have little prejudicial impact on the industry.

We also suggest that the registration requirements include the name of the rabbinical school and/or rabbi from whom the supervising rabbi, if any, received ordination. The Kosher-consuming public has the right to know the basis upon which products sold as "Kosher" are claimed to fall into that category, and this suggestion would bring more knowledge to the consumers and enhance their ability to reach an informed determination.

3. Additional Substantive Recommendations. There are, to be sure, other substantive areas in which our present law can be improved and expanded upon to provide greater protection for the Kosher-consuming public. Time limitations prevent a detailed exposition of specific suggestions in this



area. Briefly, we would suggest a statutory amendment which would require that packaged products bearing a label including a symbol of Kosher status, and which contain meat or dairy derivatives, also state, on their label, the word "Dairy" or the letter "D", or the word "Meat" or the letter "M", as is appropriate. We also urge an amendment to the statute that would prohibit the common-place practice of organizations, in inviting members and guests to dinners in hotels and restaurants, of purporting to offer a "Kosher alternative" which, in truth, is not at all Kosher. We urge further that those organizations, catering establishments or hotels purporting to provide a Kosher dinner, luncheon or affair be prohibited from serving, during the course of that meal, wines, and liquors which are not Kosher.

4. Agency Enforcement Priorities. As for the practical enforcement of the statutes, we believe that industry acceptance of the positive purposes of the law would be enhanced through a formal gradation of penalties by regulation, and through a reconsideration of priorities. For example, while we do not condone the haphazard placement of packaged non-Kosher foods in a supermarket display marked Kosher, we do not consider that to be a high-priority area of enforcement. Of far greater importance is ascertaining, for example, that

the same equipment used for unpackaged non-Kosher foods at a supermarket delicatessen counter not be used for foods sold as "Kosher". The nature of the offense -- the potential for fraud against the public emanating from the offensive act -- should govern both the degree of penalty and the allocation of resources in the enforcement of the statute.

One area of enforcement we feel requires special mention. Under Section 201-e(6) of the statute, any change in the Kashruth certification of a food commodity sold in packaged form must be reported "immediately" to the Department. Other provisions of that Section prohibit the use of the symbol of a Kosher certifying organization without prior registration with the Department. We believe that these statutory requirements are certainly broad enough, even as presently written, to prohibit the unauthorized use of, or the unauthorized continued use of, a symbol of Kosher certification on a product as to which there is no current and effective registration statement. Yet, improper use or continued use of such symbols is perhaps one of the most common traps for the Kosher consumer. We view the enforcement of these provisions to be of vital concern to the Kosher-consuming public, and urge it be given high priority by the Department.

5. Recodification. Our State's laws governing the sale of products purporting to be Kosher have existed for many decades. Over the past two decades, there has been a substantial increase in the number of New York consumers demanding Kosher products. This increase in demand has brought with it an increased potential for unscrupulous practices on the part of certain food distributors, who find the enlarged Kosher-consuming market an easy prey for their deceptive and false consumer practices. The need for vigilance against consumer deception in this area has substantially increased over these years, and the Legislature has acted in response to these circumstances. It has, over the past twelve years, amended the laws governing the sale of products labelled "Kosher" some 20 different times, changing the language of existing provisions, adding provisions to existing sections, or establishing new sections addressing newly-perceived problems. As a result of these hearings, it is likely that further changes will be effected.

The result is a statute which, while addressing many of the concerns voiced by the Kosher-consuming public, contains some overlapping provisions, provisions out of sequence, and some ambiguities concerning the circumstances under which various provisions may be applicable.

We believe that a review and overall recodification of these statutes is warranted. We believe that the Governor of this State should appoint a commission -- as he has done in the context of many other laws in need of revision -- to review the existing statutory provisions and the regulations established thereunder, and report to the Legislature its recommendations for a comprehensive, consolidated, orderly and equitable statute protective of the rights of the Kosher-consuming public; a statute which clearly informs those food purveyors who choose to represent their wares as "Kosher" of their obligations to the public born of those representations; a statute which imposes penalties sufficient to deter the few unscrupulous businessmen who would defraud the public and thereby violate not only their rights as consumers but their rights to practice their religious principles; a statute which will provide to the enforcing agency, both the authority and the flexibility to effectively prevent deceptive consumer practices and to punish those who violate the statutory provisions. In recodifying the statute, such a Commission should certainly be guided by the experience of the Department of Agriculture and Markets Kosher Division, and take into consideration the experience of other states in the enforcement of their laws prohibiting deceptive practices against the Kosher-consuming public.

We thank the Department for the opportunity to present these views. Agudath Israel has a continuing interest in these hearings and in the recommendations advanced by other organizations and individuals. We stand ready to assist the Commission in any way. I would be happy to respond to any specific inquiries in connection with my testimony.