

June 1, 2015

President Bill Penner,
General Manager Joseph Holtz
Park Slope Food Coop
782 Union Street
Brooklyn, New York 11215
Via Fax

Dear Mr. Penner and Mr. Holtz,

I am an Israeli attorney and principal of the Shurat HaDin-Israel Law Center, a civil rights organization that represents American victims of terror in civil litigation in the United States courts.¹ My colleague, Robert J. Tolchin, is American counsel to our organization. In addition, we have both been involved in efforts to counter anti-Semitic and anti-Israel campaigns designed to delegitimize the Jewish State including the second Gaza Flotilla.

Our organization is opposed to the BDS -- Boycott, Divestment and Sanctions -- movement, which is inherently biased and prejudicial and has an extremist agenda that unfairly singles out Israel and Jews. The BDS movement's goal is solely the destruction of the State of Israel and it's Jewish community.

It has come to our attention that the Park Slope Food Coop ("PSFC") is considering implementing a boycott against the Jewish State, Israeli manufacturers, companies and products. This includes enacting a boycott of the Israeli based SodaStream Company's products.

This letter is a warning that the PSFC should under no circumstances implement, publicly or privately, any boycott or similar effort against the Israeli government or the nation's manufacturers, companies, products or services. We wish to put the PSFC on notice that the BDS movement's efforts are unlawful racial discrimination on the basis of national origin and/or race, creed and religion under the International Convention on the Elimination of All Forms of Racial Discrimination ("Anti-Racism Convention") and numerous U.S. state and federal statutes.

¹ See, e.g., *Wultz v. Islamic Rep. of Iran*, 864 F. Supp. 2d 24 (D.D.C. 2012); *Kaplan v. Central Bank of Islamic Rep. of Iran*, ___ F. Supp. 2d ___, 2014 WL 3610784 (D.D.C. 2014); and *Wyatt v. Syrian Arab Rep.*, 908 F. Supp. 2d 216 (D.D.C. 2012); *Ungar v. Arafat*, 634 F.3d 46 (1st Cir. 2011).

These include the following:

-- N.Y. Exec. Law, Article 15 § 296(13) makes it an unlawful discriminatory practice for any person to boycott or blacklist, or to refuse to buy from, sell to or trade with, or otherwise discriminate against any person, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

Id.

-- New York City Admin. Code §8-107(18) makes it an unlawful discriminatory practice for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, partnership status, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

Id.

As such, a boycott is unlawful racial discrimination under 42 U.S.C. § 2000e-2(a), which makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Id. Moreover, boycotts are unlawful racial discrimination under:

- a. 42 USC § 2000e-3(b);
- b. N.Y. Exec. Law, Article 15 § 296(1)(a);
- c. New York City Admin. Code §8-107(1)(a);
- d. N.Y. Exec. Law, Article 15 § 296(1)(d);
- e. New York City Admin. Code §8-107(1)(d);
- f. N.Y. Exec. Law, Article 15 § 296(2)(a); and
- g. New York City Admin. Code §8-107(4).

Participants in the BDS movement act with the clear purpose and actual effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of the human rights and/or fundamental freedoms in the political, economic, social, cultural fields of those persons and organizations whom they seek to boycott, divest from and sanction.

A boycott is not protected by the freedom-of-speech language of the First Amendment to the U.S. Constitution because a boycott is not speech, it is action. Further, calls for and instruction in implementing unlawful actions are not protected speech (see *Holder v. Humanitarian Law Project*, 561 U.S. ___, 130 S. Ct. 2705 (2010)).

Please be further advised that the Washington State Supreme Court just reinstated a lawsuit against the Olympia Food Co-Op in Olympia, Washington which was brought by opponents on an anti-Israel boycott policy the Food Co-Op sought to impose. (*Davis v. Cox*, Washington Supreme Court, en banc, No. 90233–0, May 28, 2015).

In light of the above, we urge the PSFC to take no steps to engage in, support or implement any boycott against Israeli agencies, manufacturers, companies, organizations, nor service providers or any other Israeli or Jewish entities. Implementing BDS policies could result in severe criminal and civil liability for the PSFC and its officers.

Please provide prompt written confirmation that that you have read and acknowledge the above.

Please also take careful note that in the event of your failure to comply with the above, Shurat HaDin will take all steps permitted by law to ensure that PSFC not engaged in instituting, promoting or inciting boycotts of the State of Israel, Israeli manufacturers, companies or their products or services including without limitation filing legal action without further notice.

Respectfully yours,



Nitsana Darshan-Leitner, Esq.
Shurat HaDin-Israel Law Center, President



Robert J. Tolchin, Esq.
United States Counsel to
Shurat HaDin-Israel Law Center