

June 8, 2020

Question: Someone has been selling masks in his development for the last several weeks. He now discovers that his neighbor is beginning to sell masks as well, and he feels that this will impact negatively on his sales. Does he have the halachic right to prevent his neighbor from selling them due to the prohibition of *hasagas gevul* (unfair business competition)?

Answer: In order to answer this question, we first need to review a few key points about business competition according to the halacha. The Shulchan Aruch (C.M. 156:5) rules based on the Gemara in (Bava Basra 21b) that two individuals in the same city may compete with each other for the same business market. Therefore, it is permitted for one resident of the city to open a business even though the same business already exists in the city, as both have the right to run a business in their city.

However, a number of *poskim*, including the Rema, Chasam Sofer (both cited in the *Pischei Teshuva* there), and Rav Moshe Feinstein (*Igros Moshe*, C.M. 1:38) rule that the aforementioned rule applies only where there is enough business for both, and the existence of the second will not force the first to close completely despite the negative impact upon its revenue. But if there is insufficient business to support both, and the first will be forced to close, then the second one may not open, and the *Beis Din* must force it to close.

If the first business owner can earn some profit following the opening of the second business but not sufficient profit to earn a decent living, it is still considered to be causing the first to close. Thus, even in such a case, the second would not be allowed to remain open.

Selling masks, though, would inevitably be considered an extra dimension of the business, as no one was selling masks until recently in this part of the world, and one cannot earn a living from that alone. It would therefore likely not be a case where both cannot make a profit, but rather be treated

as a case where both are attempting to earn additional profit. Accordingly, it should be permitted for the neighbor to sell masks as well.

Question: Does it make a difference if the neighbor is selling masks at a lower price or selling a different type of mask?

Answer: It seems from the Shulchan Aruch that competition is always permitted if the second business sells a different product than the first, even if it will cause the first business to close. In addition, if the second business sells the same product for a significantly cheaper price, it is always permitted for it to remain open. However, if the second sells the same product for only slightly cheaper than the first, it is a *machlokes* whether the second may remain open if his business renders the first business non-viable. If the second business opens specifically in order to force the first to close, then all agree that it is forbidden in all circumstances to remain open, and it would be forced to close.