

Rabbi Yosef Greenwald, Rav of Khal Dexter Park, Dayan at Bais HaVaad

Case: Someone makes an order from his local grocery store, with tissues being one of the items he orders. Tissues run the gamut from more expensive extra soft to discount sandpaper hard. In this case, the customer simply asked for tissues, without specifying what quality or price-range he desired.

Question: The supermarket sends him the most expensive tissues and charges him the premium price. The customer says he never intended to pay so much, and thus would like to invalidate the sale. Does he have a valid claim?

Answer: When one makes an online or phone order from a store, it's clear that he is trusting the store to some extent to decide what to send. If one orders a certain product, the store obviously has some leeway to choose what to use to fill the order.

That being said, if he asked for tissues and they sent some type of super-fancy, extraordinary tissues that are only used in the most high-class places in the world and are extremely expensive, that is clearly not what the customer had in mind and would be a *mekach ta'os*. But if they sent anything that qualifies as standard tissues – be they name brand or generic – it would seem that they have the discretion to decide to send that type and make that decision as they see fit.

The general rule is that the accepted context is what will define what the agreement is. When one orders something, there are some products that clearly are not within the context of what he ordered, some products clearly do fall under the general context, and some things may be in a gray area where a judgment call would need to be made.

If the customer was very specific in his order and, for example, explicitly asked for cheaper, generic tissues, the store would not be allowed to send name brand tissues, and if they do so it would qualify as a *mekach ta'os* as he is clearly showing his intent.

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