

# HALOCHOSCOPE



Congregation Shaare Tefilla, Pittsburgh, PA

B'Ezras Hashem, we will be presenting a "halacha newsheet" on a weekly basis. It will take the form of a real-life question- a Sheilo, and a Teshuva, giving a short background of the pertinent sources in the "Poskim". Questions are welcome, and can be addressed to the Rav. Hopefully, this will generate discussion and encourage a heightened awareness of Halacha.

The question: A radio announcer is paid a "residual" royalty of \$10 for every time that a commercial is played using his voice-recording. According to union regulations, he may not waive or forfeit this fee. He has no control over when the commercial is played. Does he have a problem with the residuals coming from the commercials aired on Shabbos?

What could the problems be?

- (A) Is there an issue of "Mar'is Ayin" - the appearance of a violation of Shabbos?
- (B) Is there an issue of "Amira L'Akum" - having a gentile do something forbidden to Jews on behalf of a Jew? If there is a Jewish agent, does this change?
- (C) Is the money earned in this fashion "S'char Shabbos"-proceeds of the Shabbos?

(A) Mar'is Ayin

The appearance of impropriety is a Rabbinic ordinance against doing something which involves no Issur - outright prohibition, but is nonetheless misleading to the uninformed onlooker.

There are 2 types of Mar'is Ayin - "Chashad" and "Shemo Yilmedu"

(a) "Chashad" is where the onlooker will perceive the act as forbidden and suspect the doer of violating an Issur. One should never arouse the suspicion of being a sinner.

(b) "Shemo Yilmedu" is where the less-educated onlooker will compare this permissible act to another act which looks the same, but is really forbidden. This confusion will lead him to permit something forbidden. [See Chulin 41b. And Rashi's commentary to "Leshem Olah" and the other Meforshim. See also Igros MoShe Orach Chaim Vol. 4, No. 82]

In our case, the question would be: If a Jewish listener recognizes this announcer's voice, is there an appearance of

Chillul Shabbos (assuming a "Melocho" is being done)?  
If the commercial is obviously a pre-recorded message, then the rule of "Meida Yedi'a" comes into effect. This rule excludes from Mar'is Ayin all cases where it should be clear to a thinking, knowledgeable person that it is not what it appears to be. There will therefore be neither Chashad nor a risk of Shemo Yilmedu in this instance. [See Chulin as above, Shulchan Aruch Orach Chaim 243.]

(B) Amira L'Akum

This is another Rabbinic ordinance forbidding a Jew to ask a gentile to do a Melocho - work that is impossible for the Jew to perform on Shabbos. The reason given for this prohibition is "Sh'lichus" - agency - meaning that the performance by a gentile is attributed to the Jew, although MideOraisa - Scripturally, this is impossible. It is also linked (by "asmachta" to the verse in Parshas Mishpotim (23,12) "Veyinofeish ben amosecho venageif" to that your maid's son and the geir-toshav rest.  
The details of this ordinance are many and complex and beyond the scope of this newsheet. We will excerpt one reason to permit this particular case. "Ada'ata D'nafshel" - when the gentile is not asked to perform the task on Shabbos, but does so on his own initiative, and only to serve his own interests. In such cases, even though the Jew's interests will be served as well, the Jew is not in violation of Amira L'Akum, and need not tell the gentile to desist. (It should be noted that if the gentile would be employed by the Jew on a salaried basis, his working for his salary on Shabbos does not count as his own personal interests.)

In our case, where the advertising agency, the company advertising, or the station running the commercial are all acting purely in their own interests, there is no problem of Amira LeAkum. [See Gemoro Avoda Zora, end of first Perek.]

If, however, there is a Jew involved in the violation of Shabbos, this raises the issue of "Difnei Terei" - the problem of assisting another person in an offense of the Halacha. This is a problem even if the second Jew is acting in his own interest. In our case, unless one has grounds for suspicion that a second Jew will be involved, one need not take any steps to avoid this. [See Avoda Zora Ibb. Gemoro, Tosafos, and Rosh, end of first Perek.]

(C) Sh'char Shabbos

It is forbidden to use the proceeds of a transaction done on Shabbos or a charge for time on Shabbos. [See Baba Metzlia 58a.] For example, if a person is paid to do a permissible job on Shabbos, such as a watchman, or if a person charges rent for use of a room on Shabbos. This is understood to be a Rabbinic ordinance linked to the verse in Yeshaya - "Mimtzo chafotzecha" implying a prohibition against doing your business on Shabbos. [See Beis Yosef and Levush Orach Chaim 306.]

If a person includes the pay for Shabbos in the pay for a

week or year, not specifying at any time that it is being paid on a daily basis, it is permitted. This is called "BeHavlo'oh". [See Baba Metzlia 58a.]

Taking this further, if one gives a gentile money to do business with, not specifying that he do any business on Shabbos, one may benefit from the proceeds even if the gentile earned the money on Shabbos. [Rambam Hilchos Shabbos 6, 18.] [See note below]

Similarly, if one gave goods to a gentile to sell, and he sold some on Shabbos, one may use the proceeds. [See Beis Yosef Orach Chaim 245.]

It may, however, be necessary for the merchandise to be anonymous and unrecognizable as belonging to a Jew. [See Magid Mishna, there, and Beis Yosef.]

In our case, where the voice-recording is, at most, a piece of merchandise given to a gentile to market, not specifically on Shabbos, the proceeds should be allowed.

As far as the recognizable signs of a Jewish owner, i.e., the distinctive voice, the problem is again an instance of Mar'is Ayin. There could be a suspicion that the gentile tradesman is acting as a "shliach" - an agent of the Jew working for him on Shabbos. This is not relevant in our case, as mentioned, because it is common knowledge that the commercial is being aired at the convenience and in the interests of the gentile.

Comments are welcome and will be appreciated.

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NOTE:

Accordingly, putting money into an interest-bearing bank account is allowed, and one need not deduct the Shabbos interest unless it is calculated daily or paid for 3 months as 90 days. [See Shulchan Aruch Orach Chaim 306. Mogen Avrohom 7.] In such a case, one would have to deduct one-seventh of the interest and, if one cannot give it back, one should give it to tzedoko anonymously, thereby gaining no benefit from it. There is an opinion that, since banks pay even daily interest from a given time e.g. from 2:30 pm to 2:30 pm the next day, and some of this time is not Shabbos, this is permitted under the rule of Havlo'oh. [See Igros Moshe Orach Chaim Vol. 4, No. 59.] Also, investing in a non-Jewish company which may or may not use the funds for Shabbos business, is permitted.

Schedule for the week of January 23 to January 29

Shabbos	5:05pm
Ma'ariv Motzoei Shabbos	6:13pm
Shachris Sunday	8:00am
Shachris Mon-Fri	7:00am
Mincha Mon-Fri	5:20pm
Mincha Erev Shabbos	5:25pm

Shiurim

Gemoro Makos	Sunday	7:15am
Halacha topic: Mutav Sheyihyu Shogegin		
	Monday	9:00pm
Hilchos Shabbos	Shabbos	8:15am

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