

Amazon Businesses on Chol Hamoed

Rabbi Yosef Kushner

Question: In the previous session, we discussed some rules of commerce for retail businesses on Chol Hamoed and when it is permitted to sell based on the rules of *davar ha'avud*. Do the same rules apply to running an Amazon business online? The store is always open, and the owner often does very little in handling online orders. How should such a business be run on Chol Hamoed?

Answer: If the business is run in an automated fashion, such as where the products are under FBA (Fulfillment By Amazon), most poskim hold that it is permitted to operate it on Shabbos, as he does not engage in any commerce himself, and no *maaseh kinyan* (formal act of acquisition) is performed. Rather, it is equivalent to a large vending machine, which many poskim of the previous generation permitted. The same way that the person's air conditioning is running automatically and his lights are on, his website may operate according to the strict halacha. If so, operating the website on Chol Hamoed should not be any more halachically problematic than operating it on Shabbos.

However, a more complex question is whether a person running a warehouse that needs to ship online orders may do so on Chol Hamoed, as this does involve forbidden *melacha*, such as printing labels (which violates *kesiva*, writing). Might it be permitted as *davar ha'avud* since if the owner waits until after Yom Tov to ship the orders, it will ruin his Amazon business reputation?

The Shulchan Aruch (O.C. 539) states that one may take fish that he found washed up ashore to use on Chol Hamoed and then salt and preserve some of them due to *davar ha'avud*. However, one may not take thousands of fish into one's house and then claim that it is permitted to salt and preserve them due to *davar ha'avud*, since one placed himself in that situation in the first place by bringing the extra fish to his home.

Now, this situation involves a *ma'aseh* of taking the fish to one's home. But would the same rule prohibiting bringing the fish home apply if one took no action until the situation of *davar ha'avud* arose, such as the case of the Amazon business? In that case, one may have listed the items months before, and is not engaging in any attempt to sell them before Chol Hamoed. If so, perhaps one can make the argument that one is not required to take down one's account during Chol Hamoed.

Rav Shlomo Miller feels that according to the strict halacha, an Amazon business owner cannot be required to take down his website for Chol Hamoed due to the concerns of shipping mentioned above, as there is no source for such an assertion.

One possible proof to such a position is the halacha that it is permitted to begin watering trees before Chol Hamoed and then continue to water them on Chol Hamoed, as this is considered a *davar ha'avud* (since otherwise the trees will die). Although one knew when he began the process that it would necessarily need to be continued on Chol Hamoed, so long as he began before, it is permitted to continue. So too, in our case it should be permitted

to engage in actions prior to Chol Hamoed that will ultimately create a situation of davar ha'avud, as at that point he did not engage in any action.

Question: How much in advance of Yom Tov would one have to start to utilize the principle of davar ha'avud?

Answer: In the case of the Shulchan Aruch of watering trees, it is a two-week process. Thus, even if one began a week before, it is permitted to continue to water the trees on Chol Hamoed. In our case as well, it would be permitted to list new items as long as one can reasonably claim that there is benefit to the listing prior to Yom Tov. Thus, if there is sufficient time to generate sales before Yom Tov, then it would be permitted, while if the listing is created the day before, it would be forbidden.