

Canadian ruling on West Bank wine labels leaves door open for 'clarifying information'

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May 17, 2022

Both sides in a long-running case are tasting positive notes after a federal agency ruling on how wines from West Bank settlements should be labeled.

In a statement on May 13, the Canadian Food Inspection Agency (CFIA) said two wines made in Jewish settlements on the West Bank, both labeled as "Product of Israel" without "clarifying information," are considered "false" under consumer protection statutes.

The parties say much hinges on the words "clarifying information" and its possible inclusion in future labeling.

Those advocating for Israel welcomed the decision, saying it means the wineries at the centre of the case may keep the "Product of Israel" label on their bottles so long as they add information indicating that the contents are produced in an area of the West Bank administered by Israel.

Those on the other side of the debate also welcomed the statement from the CFIA, saying it means that "Product of Israel" labels violate consumer protection laws. But, cautioned one, matters are far from settled.

The ruling's references to "clarifying information" could leave the door open for labels to keep the "Made in Israel" designation in addition to other identifiers about their origin, says a lawyer for one of the wineries at the centre of the dispute.

"We are pleased that the (CFIA) has permitted our client to keep the 'Product of Israel' label on its wines along with clarifying information, rather than following the utterly misguided European decision to ban the 'Israel' label altogether," said David Elmaleh, a Toronto-based lawyer for the Psagot winery, located in an Israeli settlement north of Jerusalem.

Elmaleh told The CJN that he and the winery's international legal team "are examining this decision closely and look forward to incorporating additional context to ensure that Israeli businesses operating in the West Bank continue to proudly and prominently display their 'Product of Israel' labels."

He said the CFIA ruling "appears to leave open the possibility" that Psagot products can be labeled, for example, as "Product of Israel: Made in the Indigenous Jewish homeland in the Israeli-administered West Bank" or "Product of Israel: Made in the Shomron on land administered by the State of Israel.'

“Psagot winery will have no trouble adding this context to its labels,” Elmaleh said.

Dimitri Lascaris, a lawyer representing the complainant in the case, wrote that he and his client were pleased with the CFIA decision that Product of Israel labels on wines made in Israel’s “illegal West Bank settlements violate Canadian consumer protection law.”

However, the decision’s wording “leaves considerable room for more chicanery,” Lascaris warned on his website on May 14.

He noted that the CFIA did not declare explicitly what label it would consider to be appropriate. Rather, it simply stated that the wines were not produced within Israel’s internationally recognized boundaries, and that there is nothing on the labels to inform a consumer that they were made in the West Bank.

“As a result of this unfortunate formulation, we can easily imagine that the producers of West Bank settlement products will now employ labels on which the phrase, ‘Product of Israel’ is prominently displayed, but which is accompanied by the phrase (in small print) ‘Territory administered by Israel,’” Lascaris wrote.

Going forward, he said these products must disclose explicitly that they were produced in an Israeli settlement that is situated on “Occupied Palestinian Territory.” The phrase “territory administered by Israel” would be “grossly inadequate,” Lascaris said.

He said this legal odyssey could continue based on the ruling’s wording or whether Psagot seeks a judicial review of it.

The wines at the centre of the case were from the Psagot and Shiloh wineries, both kosher and both manufactured in post-1967 Jewish settlements.

The CFIA stressed that its ruling relates only to these two labels and that it is not its role “to suggest accurate labels or to approve labels.”

The statement is the latest chapter in a drawn-out saga that began in 2017, when Jewish pro-Palestinian activist David Kattenburg of Winnipeg complained to Ontario’s Liquor Control Board (LCBO) that products from the two wineries originated in “unlawful” Jewish settlements on the West Bank and were mislabeled as “Product of Israel.”

Hearing nothing from the LCBO, he took the case to the CFIA, which sided with him and ordered the liquor board to remove the wines from shelves.

But when Jewish advocacy groups erupted in protest and a member of Parliament got involved, the agency abruptly reversed course and said the wines could be sold under the Canada-Israel Free Trade Agreement, which it had not previously considered. The CFIA said it regretted its earlier decision to pull the wines.

Kattenburg appealed to the CFIA's Complaints and Appeals Office, which upheld the reversal.

He then sought a judicial review at the Federal Court, which reversed course in 2019, ruling that "Product of Israel" labels on wines made in settlements in the West Bank and Golan Heights were "false, misleading and deceptive" because territories conquered by Israel in 1967 are not recognized in international law, including by Canada, as part of Israel proper.

The Federal Court also ruled that identifying settlement wines "incorrectly" as produced in Israel inhibits consumers from expressing their "political views through their purchasing choices, thereby limiting their Charter-protected right to freedom of expression."

The government appealed, and a year ago, the Federal Court of Appeal sent the case back to the CFIA, saying the agency was not bound by the lower court's finding and may arrive at any outcome, provided it was reasonable.

In its most recent statement, the CFIA said its redetermination is not focused on whether a country of origin needs to be included on the labels in question. Rather, the agency must determine whether "Product of Israel" on the label of the two wines in question is "false, misleading or deceptive, or likely to create an erroneous impression related to its origin, given the totality of the information provided on the label."

The CFIA said it was told by Global Affairs that Canada's policy is that "there is no recognized country where the two wines in question were produced, although these wines were produced in an area administered by the State of Israel."

The CFIA also found that the Charter of Rights had no application in its decision. "With respect to freedom of conscience, consumer choice in selecting a wine remains unrestricted by the government, allowing consumers to continue to act in line with their conscience," the agency stated.

In its ruling last May, the Federal Court of Appeal asked the parties to provide written submissions to the CFIA. According to Lascaris, Kattenburg's filing included land deeds issued by Israeli authorities showing that the Psagot winery was situated "entirely on land stolen from its Palestinian owners."

The submission to the CFIA by Psagot was similarly blunt.

Psagot wines "are produced by Israelis under the auspices of an Israeli company in an Israeli community subject to Israeli law in Israeli territory. Put simply, Psagot Winery proudly produces wines that are products of Israel," its brief stated.

The two wines at the centre of the dispute were available at the time of Kattenburg's complaint. A year ago, the LCBO said the last wines from Shiloh were sold in October 2016 and February 2017 for wines from Psagot. At the time, the board also provided The CJN with

a list of 56 wines and liqueurs it sells that are “sourced from Israel,” without specifying whether some are in post-1967 territories.

In late 2019, Europe’s highest court ruled in a case involving Psagot that foodstuffs originating “in territories occupied by the State of Israel must bear the indication of their territory of origin.”

While the CFIA’s decision “is not perfectly reasoned, the result puts Canada in line with almost all the nations of the world, which allow the ‘Product of Israel’ label for such goods,” said legal scholar Prof. Eugene Kontorovich, who was engaged by the U.S.-based Lawfare Project, which acted as co-counsel in the Canadian court cases, to submit an expert opinion on behalf of Psagot.

In a statement on May 16, Canadians for Justice and Peace in the Middle East, which supports the international boycott campaign against Israel, hailed the CFIA ruling, saying it “deals a huge blow to those seeking to normalize Israel’s illegal settlement enterprise through trade.”

Press release: CJPME welcomes CFIA ruling that “Product of Israel” labels on illegal settlement goods are “false” and violate Canadian consumer protection law. Settlement wine with unlawful labels should be removed from shelves, and all trade with settlements should be banned. pic.twitter.com/Ocd62c3i6x

— Canadians for Justice and Peace in the Middle East (@CJPME) May 16, 2022

The Montreal-based group said it “insists” that future labels must identify their products’ origin in “illegal settlements, rather than use generic labels such as ‘West Bank’ or ‘Israeli-controlled territory.’”

The CFIA said that later this year, it intends to engage in a consultation process in which input will be sought from stakeholders “on policy relating to what might be acceptable origin declarations in this and similar circumstances.”

Said Elmaleh: “Our client will continue to unapologetically advocate—and if necessary, litigate—to protect and advance the truth.”

The Centre for Israel and Jewish Affairs (CIJA) pointed out that the CFIA decision did not say that “Product of Israel” labels violate Canadian consumer protection law, or that a country-of-origin label was even necessary for the wines in question.

“Such labelling is purely voluntary,” and wines could be labelled as “Product of Israel” provided the producer added more context, Richard Marceau, CIJA’s vice-president, external affairs and general counsel, told The CJN.

🚩 Wine Labeling: Anti-Israel activists' attempt to use Canadian legal system to advance anti-Israel objectives fails <https://t.co/1eEet7il3P> pic.twitter.com/lflHlhGK0W

— CIJA (@CIJAinfo) May 18, 2022

As for the status of the locations in question, Marceau said the food agency's ruling was "clear: This is not a matter to be determined by the CFIA."

The agency's statement that there is no recognized country where the two wines in question were produced reflects "longstanding" Canadian policy on the issue. The territories are "disputed, and that dispute can only be resolved through direct negotiations between the parties to the conflict, a position CIJA has long held," Marceau stated.

"The complainant's attempt to use Canada's legal system to dictate a position on the status of the territories outside (Israel's founding) 1948 lines has failed."