

Lawsuit Backgrounder: Ben & Jerry's Israel Sues Unilever over Boycott of Israel

Lawsuit exposes illegality of Unilever's boycott of Israel

Unilever's demand that AQP boycott parts of Israel was illegal; its non-renewal of AQP's contract when AQP refused to break the law is also illegal

American Quality Products (AQP) and its owner, Avi Zinger, have been licensed to make and sell Ben & Jerry's ice cream throughout Israel for more than 34 years. They are suing Ben & Jerry's and its parent company, Unilever USA, over their decision to terminate the longstanding relationship over AQP's refusal to participate in their illegal boycott. The decision constitutes breach of contract and wrongful termination under U.S. law, which governs Unilever U.S. and Ben & Jerry's.

In the months leading up to Unilever USA + Ben & Jerry's announcement that they would be terminating their decades-old business relationship with Zinger, the companies pressed AQP to stop selling its products in what Unilever calls the "Occupied Territories."

What Unilever + Ben & Jerry's demanded of AQP – boycott the "Territories" while continuing to sell in other parts of Israel – violates these Israeli laws:

- Israel's non-discrimination law, which prohibits discrimination in the furnishing of a product or public service on the basis of race, religion, nationality, place of origin, gender, sexual orientation, age and **residence** (among other grounds) and
- Israel's anti-boycott law which prohibits any person from knowingly calling for a boycott against Israel or an area under its control.

The following U.S. laws also prohibit anti-Israel boycotts:

- The U.S. Export Control Reform Act which prohibits companies from refusing to do business for boycott-related reasons;
- The U.S. Tax Code's reporting requirements for activities related to boycotts;
- The U.S.-Israel Trade and Commercial Enhancement Act; and
- Numerous state anti-discrimination policies and anti-boycott laws.

Unilever's boycott demand also violates the consent decree issued by the Israeli Government Competition Authority (ICA) as a condition of approval of the Unilever-Ben & Jerry's merger and numerous terms of the license agreement between AQP, Ben & Jerry's, and Unilever. These include provisions that define AQP's territory to include the areas Israel gained in 1967, require AQP to maximize sales in those areas, and prohibit the violation of "all applicable national or local laws and regulations."

When AQP refused to break the law, Unilever announced it would not renew AQP's license. That constitutes breach of contract and wrongful termination under U.S. law, which governs Unilever U.S.

The lawsuit requests the U.S. federal court declare Unilever's termination illegal and enable Zinger to continue manufacturing and distributing Ben & Jerry products throughout all of Israel.

Corporate BDS is disastrous for a company's bottom line and reputation

Unilever's stock plunged 20% in the six months after Ben & Jerry's decided to boycott Israel.

Unilever posted \$26 billion in losses in January. It recently announced it is cutting 1,500 managerial positions.

Nearly 10 U.S. states have announced they will divest from Unilever, withdrawing investments and holdings worth upwards of \$1 billion because the company's decision violates their anti-boycott laws.

In October, New Jersey withdrew \$182 million invested in Unilever stock, and New York State pulled \$111 million in investments out of Unilever.

Numerous Members of Congress have called on the SEC to investigate.

Attorneys general from 12 states wrote to Unilever expressing deep concern over the fact that the company has allowed its subsidiary's decision to stand, noting Israel is only democratic nation in the region and has long been a force for peace and stability.

Ben & Jerry's boycott is not a settlement boycott

When Unilever made its announcement, it stated it would no longer distribute Ben & Jerry's products in the "Occupied Palestinian Territory," attempting to position this as a settlement boycott. And in July, Unilever stated: "[a]lthough Ben & Jerry's will no longer be sold in the Occupied Palestinian Territory, we will stay in Israel through a different arrangement."

There is no lawful mechanism, however, by which Unilever can do this. Israeli laws prohibit discrimination based on residence, and boycotts of any part of Israel. No Israeli licensee can lawfully accommodate Unilever's demand to halt distribution of Ben & Jerry's in the territories.

Indeed, soon after Unilever released its statement in July, Ben & Jerry's Board quickly rejected it, implying that the Board supports a boycott of all of Israel.

Ben & Jerry's boycott shines a spotlight on the hypocrisy of the BDS movement. BDS actually hurts those it's "meant" to help

Innocent people, including Palestinians and Israeli Arabs, will lose well-paying jobs.

- Zinger has been selling Ben & Jerry's in Israel for 34 years. He built his business from the ground up and employs a diverse workforce, including new immigrants and refugees fleeing violence from Sudan and Ethiopia, and people with disabilities. The 170 Muslim and Jewish AQP workers, as well as Palestinian suppliers and distributors, will lose their jobs when the contract expires.
- Zinger had suggested to Ben & Jerry's that a Palestinian distributor be found to handle all distribution in the Areas, which would have created a significant economic opportunity for Palestinians. When Ben & Jerry's learned, however, that the Palestinian distributor wanted to expand sales in the "Territories," they rejected the proposal.

AQP has funded and operated numerous social justice efforts, economic partnerships and summer [programs](#) for Palestinian and Israeli students. Unilever's actions have already harmed these important and successful endeavors. Its announcement that it would be severing its relationship with Ben & Jerry's Israel cast Zinger and AQP in a negative light, causing some of AQP's social mission partners, including MEET, to distance themselves from Ben & Jerry's Israel. By shutting down AQP, Unilever is also depriving the organizations with whom AQP partnered, of key financial, developmental and educational support.

Award-winning human rights activist Bassem Eid filed a lawsuit against Unilever on behalf of Palestinians, emphasizing that its boycott is "counterproductive to peace and creates only more hatred, enmity and polarization." The activist was born in eastern Jerusalem and lives in Jericho in the West Bank. Eid noted that boycotts have nothing to do with peace or helping Palestinians. "If they poured all of the money they are spending on boycotts into building factories and creating jobs in the West Bank and Gaza, it would go a long way to truly helping Palestinians," he said.

Make no mistake, BDS is about the persecution of Jews

Unilever continues to sell products to China, Russia, Pakistan, Saudi Arabia, Syria, Venezuela and Iran.

Ben & Jerry's is sold in China whose policies toward the Uyghurs have been called "genocide" by the U.S., and it has never insisted its products not be sold in any of the world's other disputed lands such as Tibet, Crimea, Western Sahara, Kashmir or South Sudan.

Ben & Jerry's is also sold in Texas and Georgia, despite abortion and voting rights laws that Ben and Jerry have sharply criticized, and in Brazil, the country responsible for the 2nd highest amount of tree loss, to which they also object. When an [Axios](#) interviewer pushed Ben and Jerry on the issue in October, the answer to why they sell in Texas and Georgia was, "I don't know."

Unilever continues to sell many of its products in the Territories, including Strauss ice cream, Ben & Jerry's direct competitor.

Despite BDS' "claims" of apartheid, today's Israeli Arab population of nearly 2 million citizens sit in the Knesset and on the Israeli Supreme Court, are part of the governing coalition, serve in the military, and participate in every facet of Israel's society and economy.

Arabs living in Israel are able to exercise political rights denied to citizens of almost all Arab states. Overall, Israel is the freest state in the entire region. It's the only place in the Middle East where tens of thousands of people can march for LGBTQ rights.

More than 100,000 Palestinians work in Israel, and roughly 30,000 work in the settlements.

BDS undermines the possibilities of peace for Israelis and Palestinians. Investments in Israeli and Palestinian cooperation help move the peace process forward. Improving the underlying economic challenges, as international companies are doing, helps pave the path to peace.

Unilever must reverse its decision

Unilever claims its hands are tied when it comes to Ben & Jerry's Israel boycott, citing the unique subsidiary arrangement they have and the independence of the Ben & Jerry's board.

However, Unilever maintains primary responsibility for financial and operational aspects of the Company.

- At the time of the merger, Unilever agreed that Ben & Jerry's newly-formed Board would retain the right to "oversee" the "historical social mission of the Company," defined as including: "a commitment to purchase 'fair trade' products, ... to open scoop shops in ... partnership with non-profit organizations, ... to use unbleached paper ... and ... to purchase, if commercially feasible, a portion of its ingredients from not-for-profit suppliers and suppliers from economically disadvantaged groups and to provide assistance to such suppliers."
- Unilever maintained primary responsibility for financial and operational aspects of the Company, and ultimately made the decision to boycott the Areas.

Ben & Jerry's announcement and Unilever's acquiescence is illegal. Unilever can reverse the decision on its own.