

# UNSEALED KOSHER FOOD DELIVERY

*by Rabbi Doniel Neustadt*

**Question:** If one orders take-out food from a restaurant or a pizza shop, and the delivery person is not Jewish (or a Jew who does not keep kosher[1] ), must the food be wrapped and sealed to insure, for kashrus reasons, that it was not tampered with?

**Discussion:** The answer depends on the exact circumstances. The chief concern when sending non-sealed food with a non-Jew is that there is a remote chance that the non-Jew will take the kosher food for himself, replace it with similar looking non-kosher food and deliver that food to the unsuspecting recipient. Admittedly, this is improbable — but it is definitely possible and, in fact, is on record[2]. Thus Chazal required food delivered by a non-Jew to be packaged with a tamper-proof seal[3].

But we are only concerned about this possibility when there would be a motive — personal benefit or monetary gain — for the non-Jew to do so. If, for instance, the order was expensive steak which the delivery person may want but can't afford, it is possible that he would be overcome by his desire for the steak, eat it and replace it with a cheaper cut of non-kosher meat. He has now "benefited and gained" by eating a superior-tasting steak for the cheap price of an inferior cut of meat and no one is the wiser. The halachah demands, therefore, that the restaurant seal the order with a tamper-proof seal before handing it over to be delivered.

If the delivery person would have no benefit or gain from the kosher food, however, there is no such requirement. We are not concerned that he or she will purposefully and spitefully exchange kosher food for non-kosher food just to cause the Jew to sin[4].

It follows, therefore, that if the take-out order is merely an ordinary pizza pie or a bucket of french fries — "standard" items available anywhere and everywhere — the delivery person would have no motive to switch the kosher items with non-kosher ones[5] and we are not concerned that he would do so[6].

**Question:** What if the restaurant failed to properly seal an order of food that was delivered by a non-Jew (or a Jew who does not keep kosher) — may the food be eaten?

**Discussion:** It depends. If the recipient has no idea of how the food should look, e.g., never before did he order this particular food and he does not know what to expect, then the food may not be eaten, even b'diavad[7]. [Keep in mind, though, that this applies only when the order included a type of food which the delivery person may want for himself and will be able to replace with a cheaper,

non-kosher item, as mentioned above.]

If, however, the recipient has ordered this particular food many times before and can easily identify it as a product of that particular kosher restaurant (tevius ayin), then the food is permitted to be eaten without hesitation. Even l'chatchilah one may order food from a restaurant that does not properly seal its food, provided that he can clearly and positively recognize and identify that food as kosher[8].

**Question:** Is taping the package of food considered "tamper-proof," or must it be professionally sealed?

**Discussion:** Taping the package is sufficient if it is taped in such a way that if tampered with, some of the packaging would tear along with the tape. The package should be taped in at least two separate spots.

Alternatively, the restaurant can tape the package with tape that bears the company logo, and stick it on the package in such a way that would make it impossible to open the package without tearing the tape. Here, too, the package should be sealed in two spots[9].

**Question:** Does food left in a public place, e.g., a hospital refrigerator or a company dining room, also need to be wrapped with tamper-proof seals so that one can be certain that it was not exchanged for non-kosher food?

**Discussion:** No, it does not. The previously mentioned requirement to seal food applies only to food which is placed under the auspices of a non-Jew, either to deliver or for safekeeping. In such a case, we fear that the non-Jew will help himself to the food and later figure out how to replace what he ate. But when the food is off-limits and not supposed to be touched by the non-Jew at all, we are not concerned that he will steal the food and then decide later that he must return its equivalent[10].

It is permitted, therefore, to leave food in a closed or well-wrapped package which is clearly marked as private property, in a public refrigerator or pantry, even though it is not sealed in a manner which is tamper-proof.

**Question:** If a non-Jewish cleaning woman (or man) was left alone in a house (or a yeshiva, etc.) where an unsealed bottle of non-mevushal wine was in the pantry or refrigerator, may the wine be drunk?

**Discussion:** When leaving a non-Jewish[11] cleaning woman alone in a house, all non-mevushal wine should be sealed. If the bottle is unsealed, it should be put away under lock and key[12].

B'diavad, however, we do not prohibit drinking the wine from the unsealed bottle unless we have reason to believe that the cleaning woman either drank from the bottle directly, poured herself a drink from the bottle into a glass, touched the wine itself (not merely the bottle), or picked up the bottle, uncorked it and shook the wine. If we have no reason to believe that any of the above

occurred, we do not prohibit the wine[13].

If a sealed or unsealed bottle of wine was left in the refrigerator door, and the non-Jewish cleaning woman opened the door of the refrigerator but did not remove the bottle of wine from its place, the wine may be drunk[14].

All of the above halachos apply to non-mevushal grape juice as well.

**Note:** Contemporary poskim are divided as to whether or not the mevushal wines and grape juices on the market today are exempt from the halachos of stam yeinam or not; see The Weekly Halachah Discussion on Parashas Ki Sisa for a complete review.

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1. A Jew who does not eat kosher, even if he is a tinok shenishbah, is still considered as a non-Jew concerning these halachos; see Shach, Y.D. 118:4.
  2. See Chochmas Adam 70:1. See also Aruch ha-Shulchan, Y.D. 115:6.
  3. Avodah Zarah 39a, quoted in Y.D. 118:1.
  4. Y.D. 18:2 and 10 and Aruch ha-Shulchan 30.
  5. Obviously, if he simply wanted some "standard" food, he would purchase some himself.
  6. See Kaf ha-Chayim 118:114. See also Mishnah Berurah 515:68 and Sha'ar ha-Tziyun 88.
  7. Shulchan Aruch, Y.D. 118:7, rules that b'diavad, food delivered by a non-Jew who passed through a "public domain" on the way to his delivery stop may be eaten, since we assume that the delivery person will not dare switch the kosher food for non-kosher for fear of being caught in the act by passersby. Nowadays, however, when deliveries are usually made by car and the delivery person can do what he wants in the privacy of his vehicle, this ruling no longer applies; based on Beis Shlomo 187 and Mabit 208, quoted by Chelkas Binyamin on Y.D. 118:7, Biurim, s.v. mutar.
  8. See Taz, Y.D. 118:8 and Aruch ha-Shulchan 12 and 37. See also Avnei Yashfei, vol. 2, pg. 123, quoting Harav Y.S. Elyashiv.
  9. Y.D. 118:3 and Kaf ha-Chayim 37.
  10. See Tuv Ta'am v'Da'as 3:2-17, quoted by Chelkas Binyamin 118:6.
  11. According to Igros Moshe (Y.D. 1:46, 2:132, 4:58-3, O.C. 5:37-8), a Jew who violates the Shabbos is considered like a non-Jew vis-à-vis these halachos.
  12. Rama, Y.D. 129:1 and Shach 2 and 4.
  13. Y.D. 125:9; Rama, Y.D. 128:4 and Shach 129:10.
  14. Y.D. 124:24.

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