

GENTZ UND PARTNER | Märkisches Ufer 34 | 10179 Berlin

Foodies  
Mr. Alon Gonen  
P.O. Box 307  
43100 Raanana  
By email: [gonenalon@gmail.com](mailto:gonenalon@gmail.com)

**Jens von Wedel**  
Rechtsanwalt  
Fachanwalt für Arbeitsrecht

**Markus Frank**  
Rechtsanwalt  
Fachanwalt für Steuerrecht  
Fachanwalt für Handels- und  
Gesellschaftsrecht

**Annette Frank**  
Rechtsanwältin und Notarin  
Fachanwältin für Familienrecht

**Tobias Bulling**  
Rechtsanwalt  
Fachanwalt für gewerblichen  
Rechtsschutz  
Fachanwalt für Steuerrecht

**Susanne Schaeff**  
Rechtsanwältin  
Fachanwältin für Arbeitsrecht

**Juliane Schütt, M.A.**  
Rechtsanwältin

**Peter Ley**  
Rechtsanwalt und Notar  
Fachanwalt für Arbeitsrecht  
Fachanwalt für Miet- und  
Wohnungseigentumsrecht

**Rico Obenauf**  
Rechtsanwalt

**Thorsten Koppelman**  
Rechtsanwalt

**Dr. Eberhard M. Richter**  
Rechtsanwalt

**Kerstin Menz**  
Steuerberaterin  
Diplom-Kauffrau

**Saskia Wiesner**  
Rechtsanwältin

**Juliane Köstling**  
Rechtsanwältin  
Fachanwältin für Erbrecht  
und zertifizierte  
Testamentsvollstreckerin (DVEV)

**Inken Haß**  
Rechtsanwältin  
Fachanwältin für Familienrecht  
Mediatorin (DAA)

**30.11.2017**

**001042-17/JS/JS**

**Europas Weindorf Holding GmbH ./ Alon Gonen**

Dear Mr. Gonen,

We hereby declare that we represent the legal interests of Europa Weindorf Holding GmbH, Martinstraße 1, 12167 Berlin. We ensure proper authorization by attorneys.

You are aware of our client. It deals in wine and specialises in exclusive imports from Israel.

In February 2017, our client signed an exclusive supply contract with the Israeli wineries Tura, Montefiori and Har Bracha. There were complications during the first delivery. The parties are currently debating the consequences of these difficulties.

On 24 November 2017 you published an article under the heading "This week in the wine industry 105: the submarine affair of the wine industry and three wineries that could lose 700,000 €", which deals with this conflict

[\(https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/\)](https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/)

Our client has asked us to inform you of the following:

**1.**

Our client has not granted you any rights to use a photograph of her managing director. Our client is the owner of the exclusive rights to use the photo of Mrs. Nicole Hemerka, which you have included in your website. The inclusion of the photograph was not necessary for a report on the conflict between the parties. It is not clear what significance it might have for a factual discussion of the conflict from the point of view of the addressed audience to know what the manager of one of the parties looks like. Nor is it a portrait from the field of contemporary history. We must therefore request from you to remove the photograph of our client's managing director from your website immediately and permanently.

**2.**

Our client is the owner of the union trademark "HEERMAKA" (UM-registered trademark no. 016331886). Our client is also the owner of the exclusive rights to the logo



You use our client's trademark and logo in your article without its consent. We request from you to refrain from doing so and to remove our client's brand and logo from your article. By the way: the contractual partner of the Tura, Montfiori and Har Brache wineries is our client, not its corporate identity.

**3.**

Your article contains a number of false allegations.

We quote from your article:

*"The first shipment arrived at the port of Hamburg on 29 April this year and contained 1,800 bottles of the three wineries..."*

Correct is that the delivery included 2,100 bottles.

We quote from your article:

*"for this reason, the delivery would be stopped and now, subject to the weather, would be in port..."*

Correct is that the wine has never been exposed to the weather. The wine was stored at the depository Contex Packing GmbH, Roßweg 20, 20457 Hamburg.

We quote from your article:

*"The German company HEERMEKA was asked to hand over the official correspondence and documents of the German customs authorities to the wineries. However, the company refused to do so..."*

Correct is that our client has commissioned Cabynda to handle the entire logistics from the port of Haifa to the Berlin warehouse. Cabynda has integrated the logistics company Transway, which in turn has commissioned the Fair Trade Agency to handle the correspondence between customs and wineries. All documents have been sent to Israel from Fair Trade Agency in multiple copies.

We quote from your article:

*"The wineries decided to bring the wine back to Israel."*

Correct is that our client sent the wine back to Israel at its own expense.

We quote from your article:

*„... The HEERMEKA company sent a registered letter stating the amount of losses and expenses incurred by the company (...)."*

Correct is that in the context of a meeting with the three wineries in Israel, which served to resolve the conflict, our client presented a list of the costs incurred by as a result of the inadequately filled out Vi1 forms. Our client hasn't sent any registered mail.

We quote from your article:

*„The sum demanded by the German company amounts to "700,000 €"."*

Correct is that our client has not yet made any demands on the three wineries. Our client has not sent any registered mail either. So far, our client has only broken down the transport costs for the transport of the wine to and from Hamburg as well as the costs for customs, storage, marketing and travel expenses. Our client also announced that due to the defective delivery of the wine it was unable to establish a business with a customer who wanted to buy the wine of the three wineries together with German wine.

You write under the heading "The response of the HERRMEKA distributor in response to questions I sent to him", our client said:

*"But the problem cannot now be swept away with the answer that this has always passed before, especially in view of the fact that German customs now accuses us of a criminal offence".*

Correct is that our client has never said that German customs would accuse our client of a criminal offence. Therefore the quote you put under the photo of our client's managing director, "German customs accuses us of a criminal offence", is also wrong.

The false allegations are likely to damage the good reputation of our client. We must ask you to remove the false allegations listed above from your article.

We suggest that instead of your summary you publish our client's response to your questions in the original, so that your readers can get an accurate picture of our client's comments.

#### **4.**

Due to the aforementioned infringements of the law, our client can claim injunctions according to § 97 German Copyright Act, §§ 823 ,1004 German Civil Code, § 22 German Art Copyright Act, Art. 1 in conjunction with Article 2 German Constitution because of the use of the picture, §§ 14,15 trademark law because of the use of trademark and logo as well as §§ 1004, 823 German Civil Code in connection with the general right of personality or the right to establish and operate a business because of false allegations.

We would like to point out that, in accordance with settled case-law, the infringements committed by you constitute a risk of repetition, which can only be eliminated by issuing a cease-and-desist declaration with sufficient criminal penalties.

Before taking legal action, our client would like to give you the opportunity to settle the matter out of court. We therefore urge you to sign a cease-and-desist declaration and send it by no later than

**Wednesday 6 December 2017, until 5:00 p.m. (arrival time),**

to Gentz und Partner Rechtsanwälte mbB, whereby the dispatch by Fax or Email is deemed to be in compliance with the deadline if we receive the original document promptly. A proposal for a cease-and-desist declaration is attached. Should you allow the deadline to expire unused, we will recommend our clients to seek legal assistance immediately.

With kind regards



Juliane Schütt, M.A.  
attorney

Unterlassungserklärung/ Cease and Desist Undertaking

<p>Alon Gonen, POBox 307, 43100 Raanana Israel</p> <p>verpflichtet sich gegenüber</p> <p>Europas Weindorf Holding GmbH, Martinstraße 1, 12167 Berlin Germany</p> <p>wie folgt:</p> <p>1. Alon Gonen verpflichtet sich es zu unterlassen, auf der Internetseite <a href="https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/">https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/</a></p> <p>(i) das Foto</p>	<p>Alon Gonen, POBox 307, 43100 Raanana Israel</p> <p>undertakes towards</p> <p>Europas Weindorf Holding GmbH, Martinstraße 1, 12167 Berlin Germany</p> <p>as follows:</p> <p>1. Alon Gonen undertakes to refrain from using and/ or disseminate and/ or making public available on website <a href="https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/">https://www.foodis.co.il/%d7%94%d7%a9%d7%91%d7%95%d7%a2-%d7%91%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%9f-105-%d7%a4%d7%a8%d7%a9%d7%aa-%d7%94%d7%a6%d7%95%d7%9c%d7%9c%d7%95%d7%aa-%d7%a9%d7%9c-%d7%a2%d7%a0%d7%a3-%d7%94%d7%99%d7%99/</a></p> <p>(i) the photograph</p>
--	---



(ii)  
die Marke „HEERMAKA“ und das Logo



**HEERMAKA**  
WEIN- & GENUSSDEPOT

(iii)  
die Behauptungen  
- „Die erste Sendung traf am 29. April dieses Jahres im Hafen von Hamburg ein und enthielt 1.800 Flaschen der drei Weingüter...“

- aus diesem Grund werde die Sendung aufgehalten und befände sich nun, dem Wetter ausgesetzt, im Hafen...“

- Das deutsche Unternehmen HEERMEKA wurde gebeten, den Weingütern die offiziellen Korrespondenzen und Unterlagen des deutschen Zolls zu übergeben .. Das Unternehmen weigerte sich jedoch, dies zu tun...“

- „Die Weingüter beschlossen, den Wein nach Israel zurückzuholen (...).“

- woraufhin von der Firma HEERMEKA

(ii)  
the trademark "HEERMAKA" an the logo



**HEERMAKA**  
WEIN- & GENUSSDEPOT

(iii)  
the allegations  
- "The first shipment arrived at the port of Hamburg on 29 April this year and contained 1,800 bottles of the three wineries..."

- for this reason, the delivery would be stopped and now, subject to the weather, would be in port

- "The German company HEERMEKA was asked to hand over the official correspondence and documents of the German customs authorities to the wineries. However, the company refused to do so..."

- "The wineries decided to bring the wine back to Israel."

- „... The HEERMEKA company sent a

<p><i>Einschreiben geschickt wurden, das den Umfang der dem Unternehmen entstandenen Verluste und Ausgaben aufführte (...)</i></p> <p>- „Die Summe, die das deutsche Unternehmen verlangt, beläuft sich auf 700.000 €“.</p> <p>- „Das Problem kann jetzt aber nicht mit der Antwort weggewischt werden, dass das zuvor immer durchgegangen sei, vor allem angesichts dessen, dass uns der deutsche Zoll nun eines Kriminaldelikts bezichtigt“</p> <p>zu benutzen und/ oder zu verbreiten und/ oder öffentlich zugänglich zu machen.</p> <p>2. Alon Gonen verpflichtet sich gegenüber Europas Weindorf Holding GmbH bei jedem schuldhaften Verstoß gegen die Regelung der Ziffer 1 eine Vertragsstrafe an Europas Weindorf Holding GmbH zu zahlen, deren Höhe von Europas Weindorf Holding GmbH nach billigem Ermessen zu bestimmen ist, wobei im Streitfall die Ermessensausübung dem Grunde und der Höhe nach durch das Landgericht Berlin überprüft werden kann.</p> <p>3. Gerichtsstand für sämtliche Auseinander-setzungen aus oder im Zusammenhang mit dieser Erklärung ist das LG Berlin, Deutschland. Es gilt das</p>	<p><i>registered letter stating the amount of losses and expenses incurred by the company (...).</i></p> <p><i>„The sum demanded by the German company amounts to "700,000 €".</i></p> <p><i>- But the problem cannot now be swept away with the answer that this has always passed before, especially in view of the fact that German customs now accuses us of a criminal offence".</i></p> <p>2. Alon Gonen obligates itself vis-à-vis Europas Weindorf Holding GmbH to pay a contractual penalty to Europas Weindorf Holding GmbH for any culpable breach of the provisions of clause 1, the amount of which is to be determined by Europas Weindorf Holding GmbH at its reasonable discretion, whereby, in the event of a dispute, the exercise of discretion can be scrutinized by the Berlin Regional Court in terms of merits and amount.</p> <p>3. Venue for any disputes out of, or in connection with, this Undertaking is Berlin Regional Court, Germany. The laws of the Federal Republic of Germany</p>
--	---



Recht der Bundesrepublik Deutschland.	apply.
4. Soweit zwischen der deutschen und der nebenstehenden                    englischen Sprachfassung Widersprüche bestehen, ist die deutsche Fassung entscheidend.	4. Insofar as the German and the English version of this Undertaking contradict, the German version prevails.
Raanana, .....	Raanana, .....
.....	.....
Alon Gonen	Alon Gonen