

Clicking “I Agree” on the Internet for Changing an Existing Agreement

Clicking quickly the Internet key “I Agree” without reading first the terms and conditions accompanying this approval, might sometimes cause us trouble or even result in an essential change of an existing agreement, without our noticing it. Wouldn't it be worthwhile to stop for a moment and read the contract first?

Many people compare our contractual behavior on the Internet to the declaration of the People of Israel when receiving the Torah – “*Done and Heard*”, meaning, there is consent, but the conditions will be learned later on.

In contrast to the dramatic event in the Sinai Desert, the attitude of “I Agree” and I will learn about the terms and conditions accompanying my consent later on, might have dramatic consequences in respect to contracts existing between two persons.

Some time ago, on March 24, 2014, a temporary injunction order was issued in Delaware, United States, in a claim an employer filed against a senior employee for enforcement of limitations of freedom of occupation and prohibition of solicitation, after leaving the place of work. (Case No. 9398 – VCN – Newell Rubbermaid Inc. v. Sandy Storm).

The limitations of freedom of occupation and prohibition of solicitation determined in the labor agreements are commonplace and have certain logics. In recent years, the Courts in Israel found it appropriate to determine various balances, which, on the one hand, would protect the interests and the property of the employer – regular customers, commercial secrets, supplier agreements, while, on the other hand, protecting the employee against enforced unemployment for an unreasonable period of time and in too extensive areas, both in geographic and interdisciplinary respect.

In the described case, the innovation lies in the fact that in the original employment contract with the employee, no conditions were imposed on the employee limiting the freedom of occupation and prohibiting solicitation after termination of the employment relations.

So, what brought about the contract, which changed the original employment conditions, imposing on the employee new limitations, which were not included in the original employment contract?

Quite simple! The employee, being an excellent worker, benefited every year from bonuses in the form of shares/options, which she would be able to realize subject to certain terms and conditions unrelated to the limitations of freedom of occupation and prohibition of solicitation.

As customary with the company, for receiving the bonus for a certain year, the employee had to go to the Internet site of the employer, to register for the bonus approved to her and to go through a process built into the site, so that the bonus, viz. the shares, would be registered in her name.



As regards our case, it is emphasized that on the first page for receiving the bonus, a note appeared saying that, as precondition for continuing the process, the employee should refer to the terms and conditions of the bonus and read them.

Under this note there appeared a link to a PDF-file specifying the terms and conditions for receiving the bonus (hereinafter: “the Terms and Conditions”).

Further below there appeared in bold letters: “For obtaining the bonus, please read and accept the terms and conditions in the document appearing above”. The note said that the bonus would be given to the employee upon clicking the key “I Agree” appearing at the bottom of the document. True enough, there was a key “I Agree”.

The employee pressed the key “I Agree” without reading the terms and conditions for obtaining the bonus.

After leaving her place of work of her own free will, she took up work for the direct competitor of her former employer, dealing with the same subject, for the same principal customer she had been in contact with at her former place of work.

To the astonishment of the employee, she found out that in the framework of the process for obtaining the bonus for her performance during that particular year, the terms and conditions contained in the document referred to by the link, substantially changed the conditions of her employment in that the document contained terms and conditions (for which she expressed her approval “I Agree”), limiting the freedom of occupation and prohibiting solicitation, these being harsh and far-reaching conditions.

The United States Court ruled by an interim decision that the mode of contact described above should be seen as the contacting party’s (the employee’s) consent to all the terms and conditions specified in the PDF-document, which she failed to read.

The employee’s pleading that she could not have expected that the original conditions of her employment would be changed in such a manner and that conditions would be added not directly related to the bonus granted, was of no avail.

Furthermore, it should be noted that the bonus granted is not final and that the realization thereof would be conditional on commercial conditions and the duration of the employee’s employment with the company. Ironically, according to the conditions and the nature of the bonus, the employer had the power to refuse it at his discretion. The employees had known this fact.

So, we have here a successful practice for changing the original contract conditions by pressing the key “I Agree”.

“Not nice!” you say. Apparently, on the page for obtaining the bonus, a warning for the employee should have appeared, saying that there was a change in the original conditions of employment. This was not done. But the judge noted that this is not the proper way of “transparency and openness” towards the employee. He ruled, however, that the employee’s electronic consent had binding validity.



As a marginal note, it shall be said that, in the end, the employer obtained a temporary injunction order against the employee on a fairly limited scale. She was not allowed to work with her regular customer, but she was not prohibited from working in the domain or with other customers. The employer was instructed to deposit a guarantee to cover compensation of her damages, should his claim be rejected.

To my mind, the same result might have been obtained, i.e. a temporary injunction order on such a limited scale, even without limitation of the freedom of occupation in the original employment contract, and even without the “practice” described above.

What bothers me is the fact that the Court found it appropriate to validate such a dramatic change in the terms and conditions of an existing contract, in the manner described above.

So, here is a warning to all of us not to press a key “I Agree” with too much enthusiasm, in the hope to obtain something and without knowing and properly understanding the terms and conditions accompanying our approval.

At last, we should ask if God, too, examines the judgment and deliberates if he could act to enforce on us, even in a limited manner, our approval “*Done and Heard*”? Apparently, this is a question to be clarified by some other discipline and therefore, we will leave it at that.

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