

## THE INS AND OUTS OF COURT ORDERED INJUNCTIONS

*BY ADV. A. AMOS FRIED*

Opening the morning paper, you are startled to find that a previous employee of yours has begun advertising his new commercial enterprise just down the block from yours, using an almost identical store design, a misleadingly similar name and worst of all – the finely crafted particular business model you painstakingly developed over years of experience.

Assuming you are not an individual prone towards violence or taking the law into your own hands, you ask yourself what kind of legal action can you pursue against such grievous and harmful wrongdoing. Certainly you could sue for damages and restitution for projected losses, but that may take years, while in the meantime your lawless rival is driving your business into the ground. You need to stop this malfeasance right away, before the real harm has been done. But how?

Immediate injunctive relief is what you are looking for – a court issued ordinance instructing the offending party to cease and desist from continuing his illegal activities. In Hebrew this is known as a *Tzav Mnia*, that is – a preventive or restraining order.

For example, in the above instance you would be seeking first and foremost a temporary directive preventing your devious ex-employee from carrying on the operation of his business on account of misappropriated trade secrets, deceptive misrepresentation, trademark infringement and so on. Due to the inherent urgency of the proceeding, in most cases such a motion is filed *ex-parte*, i.e, on the basis of your claim alone without the opposing party's side of the story. Only afterwards does the opposition get a chance to proffer arguments in their defense.

For the court to exercise its authority and provide you with such a forceful, extreme remedy, you will have to satisfy a litany of stringent, and oftentimes expensive, statutory conditions. Here in brief are the primary elements you will need to convince the judge of, should there be any hope at all for the court to consent to your motion:

**1. Valid Cause of Action.** The initial question addresses the heart of the matter: what right do you have to force your new competitor to halt the operation of his business? After all, it's a free country (so they tell us), and capitalism is nothing if not Darwinian survivalism. And yet, there are still rules to the game and when they are broken, the law is supposed to protect the injured party.

**2. Concrete Evidentiary Basis.** The presiding judge knows nothing about your claim except for what you show her. Is there convincing evidence to support your allegations? You don't have to prove your entire case at this point but you do have to present a solid demonstration of credible evidence that the respondent is acting unlawfully.

**3. Balance of Injuries.** Granted your new competitor will cause you losses, however what about the harm he will suffer as a result of an injunction forcing him to shut down, even temporarily? If your sustainable injury is compensable and vastly overshadowed by the irreparable damage expected to his enterprise, the court may find that a preventive order is not a proportional means of relief in this case.

**4. Good Faith and Clean hands.** A necessary precondition for this type of equitable remedy is the degree of honesty, disclosure and fairness the plaintiff demonstrates before the court. Is the motion being filed with due diligence, directly upon discovery of the misconduct, or did you take your time until finally getting around to bringing your action before the courts?

**5. Security Deposits and Bonds.** Finally, before the judge grants the injunction she will impose several safeguards aimed at protecting the interests of the defendant. These will include a substantial monetary deposit with the court, as well as signed guaranty bonds from both the applicant as well as financially sound third parties. At this stage in the case, the judge is essentially accepting your one-sided version as an accurate and complete depiction of the relevant facts and contentions. Accordingly, in the event that your claim does not prevail, the court is taking precautions that your litigant will be properly compensated for damages caused as a result of the imposed injunction.

Should you succeed in successfully accomplishing these necessary prerequisites, the court most likely will provide you with the requested order, albeit there always remains a measure of judicial discretion whether or not to grant the injunction prior to notifying the respondent and allowing him to present his arguments in opposition to the edict.

To be sure, when the motion is granted *ex-parte*, the judge is bound by law to hold a hearing in the presence of both parties within a maximum of 14 days, whereas during the interim the petitioner must file his substantive action, i.e. his central complaint describing what exactly he is seeking in the long run. It's not enough to ask for a temporary restraining order and just leave it in place indefinitely. Indeed, this is merely the beginning of the process to be followed by a full-scale trial wherein the rights, obligations and conduct of the disputing parties will be examined in-depth before the court renders its ultimate verdict.

All the same, in cases such as these experience shows that whoever succeeds in the first round of obtaining or denying a temporary preventive injunction, usually comes away victorious at the end of the day. Hence, the importance of this crucial legal tool cannot be overstated, yet like all powerful weapons it must be used sagaciously, with caution and expertise.

*The above article is intended for general informative purposes only. For specific technical or legal advice on the information provided and related topics, please contact the author.*

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