

Commerce on Shabbos and Yom Tov

Maintaining a Website

By:

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As

the Yom Tov season draws closer, many business owners are faced with Halachic

considerations they may not need to deal with throughout the year.

Businesses

which are typically closed over the weekend can face new questions when an

extended Yom Tov season, which includes Shabbos, Yom Tov and Chol Hamo'ed,

approaches.

Websites on Shabbos

Q. I run an online

retail business in which I sell products primarily through my own website. I

have always kept the website open throughout *Shabbos*

and *Yom Tov* and receive orders during these times.

Recently someone told me of a prominent *frum*

retailer that shuts down their website for *Shabbos*

and *Yom Tov*.

Is one actually required to do so?

A. The answer, in a nutshell, is that according to the majority of poskim, selling merchandise on *shabbos* through a web store does not constitute *chillul Shabbos* in any way and is thus permitted. The same would go for selling an item, or placing a bid to purchase one, through an auction listing such as with eBay, even when the auction is scheduled to end on *Shabbos*. However, according to some poskim, most notably Harav Yisroel Belsky[1], such sales are a violation of *mekach umemkar b'Shabbos* - a *gezaira* that *Chazal* enacted against buying and selling on *Shabbos* out of fear that it would lead one to write on *Shabbos*.

Vending

Machines

This *machlokes* is essentially related to a

famous *machlokes* which took

place in the early 1900's regarding vending machine sales on *Shabbos*.

The *Givas Halevona*[2] and

others prohibited keeping a vending machine operable on *Shabbos* even when all

the purchases would be made by non-Jews, based on the shita of R' Akiva

Eiger. R' Akiva Eiger[3] rules

that it would be *assur* for one

to make a *maaseh kinyan*, an act

of acquisition, on *erev Shabbos*

with the stipulation that the actual acquisition go into effect on *Shabbos*.

Seemingly, in R' Akiva Eiger's

view, merely being a party to a sale that takes place on Shabbos, even when all

the arrangements are done prior to *Shabbos*,
is included in the *issur* of *mekach umemkar*.

However, the *Maharshag*[4] and

others permitted this practice, based on the following two reasons:

Firstly, they disagreed with R' Akiva Eiger's *chiddush* altogether. They pointed to the *mishnah* in *Shabbos* which permits one to set up an irrigation system before *Shabbos* in order to water a field on *Shabbos*. This demonstrates that there is no *issur* to pre-arrange before *Shabbos* for a *melacha* to take place on *Shabbos*. Indeed many *Achronim* argue on R' Akiva Eiger, based on this *mishnah*[5].

Furthermore, they argued, R' Akiva Eiger prohibited a sale on *Shabbos* when it was specifically arranged for the sale to take place on *Shabbos*. In the case of vending machines however, the Jew arranges the item to be ready for sale at any time and it is rather the non-Jew who directs for the sale to go into effect on *Shabbos*. Such an arrangement would possibly be permitted even according to R' Akiva Eiger.

Today's Minhag - Vending Machines

The general custom

today seems to be to rely on the *Maharshag's*
ruling and allow vending machines to operate on *Shabbos*.[6]

Web stores

Getting back to the

issue of web stores, most contemporary *poskim*

maintain that we can draw a parallel from the vending machines to permit their

use on *Shabbos*. Furthermore,

they argue, even the *poskim* who

prohibited vending machines would permit web stores because in the case of the

latter the buyer does not actually take ownership of the item until it is physically delivered to him. Hence what is taking place on *shabbos* is not an actual sale, but rather

just a contract to buy/sell the item in the future, with the buyer pre-paying for the item. This is evident if we consider a scenario where the seller's entire warehouse burns down before he had a chance to ship out the item; would

he then tell the buyer "sorry your item is lost, thank you for your business"?!

Rather, he would be expected to refund the buyer his money because the sale

actually never went through[7].

Now, even though it is *assur* to personally enter into a contract on *Shabbos* and *Yom*

Tov, that is not because it is included in the *gezairas mekach umemkar*[8] but

rather because of a separate *issur* of *mimtzo chefzecha* (a general *issur* of "taking care of business"), which would not be subject to R' Akiva Eiger's *chiddush* of pre-arranging before *Shabbos*. Harav Belsky, on the other hand, feels that even though the item does not change ownership on *Shabbos*, such a transaction is still included in the *gezaira* of *mekach umemcar b'Shabbos*. Furthermore, he argues, even the poskim who permitted vending machines would prohibit a web store because, in the case of the former, once the seller places the items in the vending machine he is totally removed from the facilitation of its sale and thus he is not considered associated with its eventual sale on *Shabbos*. With a web store however, the seller is still an active participant in the sale until he ships out the item and is therefore considered the facilitator of its sale on *Shabbos* even though he did not actually do any action on *Shabbos* itself. According to Harav Belsky, the only permitted form of selling merchandise through a web store on *Shabbos* is by placing a notice on the website stating that all sales taking place on *Shabbos* or *Yom Tov* are not final until after *Shabbos* or *Yom Tov*, meaning that both the buyer and the seller have the right to back out up until then.

In Summary

So, in summary, you definitely have who to rely on in keeping your web site open on *Shabbos*; nevertheless, you may wish to act stringently and follow the opinion of Harav Belsky.

[1] (שו"ת שלחן הלוי פרק ד' שאלה ב')

[2] (הובא במנחת יצחק ח"ג סל"ד)

שו"ת קמא סי' קנ"ט [3]

ח"ב סי' קי"ז [4]

שואל ומשיב (מה"ד ו' סי' ז') שו"ת תורת חסד (סי' יג') והחזו"א (דמאי סי' ל' או יב) [5]

ועיין [6]

בשש"כ פכ"ט סכ"ח

[7] This is in fact E-bay's official policy.

[8] וכן מוכח מהב"י (סי' ש"ו) שהביא קושיית הר"ן על הא דאיתא דמותר לפסוק צדקה לעניים בשבת משום דהוי חפצי שמים (ואינו בכלל האיסור ממצוא חפצין). והק' הר"ן דממתני' בביצה דאין מעריכין ואין מקדישין משמע שהתחייבות גרידא נכלל בגזירת מקו"מ (שלא הותר במקום מצוה). והב"י הביא הכל בו שתי' זו"ל "דדוקא הקדש מזבח או בדק הבית דיוצא מרשותו לרשות גבוה אבל עכשיו שנודרין להקדשות או שמן למאור מותר לפי שאין מייחדין שום דבר שיוצא מרשותן ואינו דומה למקח וממכר" עכ"ל (וכן משמע מתשו' מהר"ם שיק) סי' קל"א, עיי"ש.