

Online Contract Formation Turns on Design and Context: Lessons from Recent Circuit Court Decisions

New Media and Technology Law Blog on July 23, 2026

Two recent federal appellate decisions and a related decision from a Pennsylvania district court highlight a recurring question in online contracting: when does a website user have sufficient notice of hyperlinked terms to be bound?

???In [Tejon v. Zeus Networks, LLC](#), 174 F.4th 1322 (11th Cir. 2026), a divided Eleventh Circuit panel held that a consumer was not bound by an arbitration agreement because the website's Terms of Service hyperlink was not sufficiently conspicuous.

???In [Dahdah v. Rocket Mortgage, LLC](#), 166 F.4th 556 (6th Cir. 2026), by contrast, the Sixth Circuit held that a consumer was bound by an arbitration provision presented through a hybrid offer agreement.

???In [Hoover v. Cleo AI, Inc.](#), No. 23-01067 (M.D. Pa. May 29, 2026), the district court split the difference, reaching different results based on the plaintiff-users interacting with different screens and presentations. Here, the court found that certain plaintiffs assented to the terms and arbitration clause under updated terms with retroactive scope presented in a clickwrap-style screen, but another, who only transacted under an earlier screen without certain notice elements, did not assent.

The cases reached varying results, but they are not necessarily in tension because the interfaces differed in presentation and because the courts were applying state law principles in different settings. *Tejon* and *Dahdah* illustrate how placement, wording, repetition, and the surrounding transaction can affect that inquiry. *Hoover* separately contrasts one onboarding screen with certain notice deficiencies with later clickwrap screens that displayed the terms more clearly and conspicuously. Together, they reinforce a familiar lesson: courts look beyond the mere existence of a hyperlink. The enforceability of online terms often turns on the [totality of the user experience](#), including placement, color, font size, wording of the notice, [the context of the transaction](#) and even [considerations for the mobile screen](#).

As background, when assessing enforceability, courts frequently place online agreements along a spectrum. At one end are clickwrap agreements, where users affirmatively click a checkbox or button indicating assent to terms. These are often enforced because the user expressly manifests assent after being reasonably presented with conspicuous notice that completing a transaction and clicking “I Agree” will bind that user to the terms. At the other end are browsewrap agreements, where terms are available through a hyperlink located on a website (sometimes not proximate to where the user completes the transaction) and the user is deemed to accept them by mere use of the site, even though the user may lack conspicuous notice. Courts have generally noted that these are more difficult to enforce, with enforceability ordinarily depending on whether the user had actual notice or sufficiently conspicuous inquiry notice under the governing state law.

Between those poles are hybrid or sign-in wrap agreements. The user is not typically required to click an “I agree” button. Rather, a website states, in reasonably conspicuous language, that clicking a “Purchase” or “Finalize Transaction” button, creating an account or otherwise continuing will constitute agreement to the hyperlinked terms. These are case-specific inquiries because assent depends on whether the website reasonably communicated the specified action would bind the user to the terms.

Note: These cases principally address online contract formation, that is, whether the interface gave reasonably conspicuous notice of the terms and whether the user then took an action identified as assent. Formation is only the first step; parties might also dispute scope, delegation, modification, unconscionability or other applicable issues.

The Tejon Decision

In *Tejon*, a privacy case involving claims against an online platform under the Video Privacy Protection Act (VPPA), Zeus Networks, LLC (“Zeus”) sought to compel arbitration based on a clause in its Terms of Service. The plaintiff subscribed to Zeus’s video platform using an iOS device. On the subscription page, titled “Choose your plan,” Zeus presented two large red buttons for annual and monthly subscription options. Beneath those buttons appeared smaller gray text containing a hyperlink to the “Terms of Service” (which the court noted “was among the smallest and least visible text on the page”). The subscription page provided a link to a separate page with the platform terms and did not require an acknowledgment checkbox.

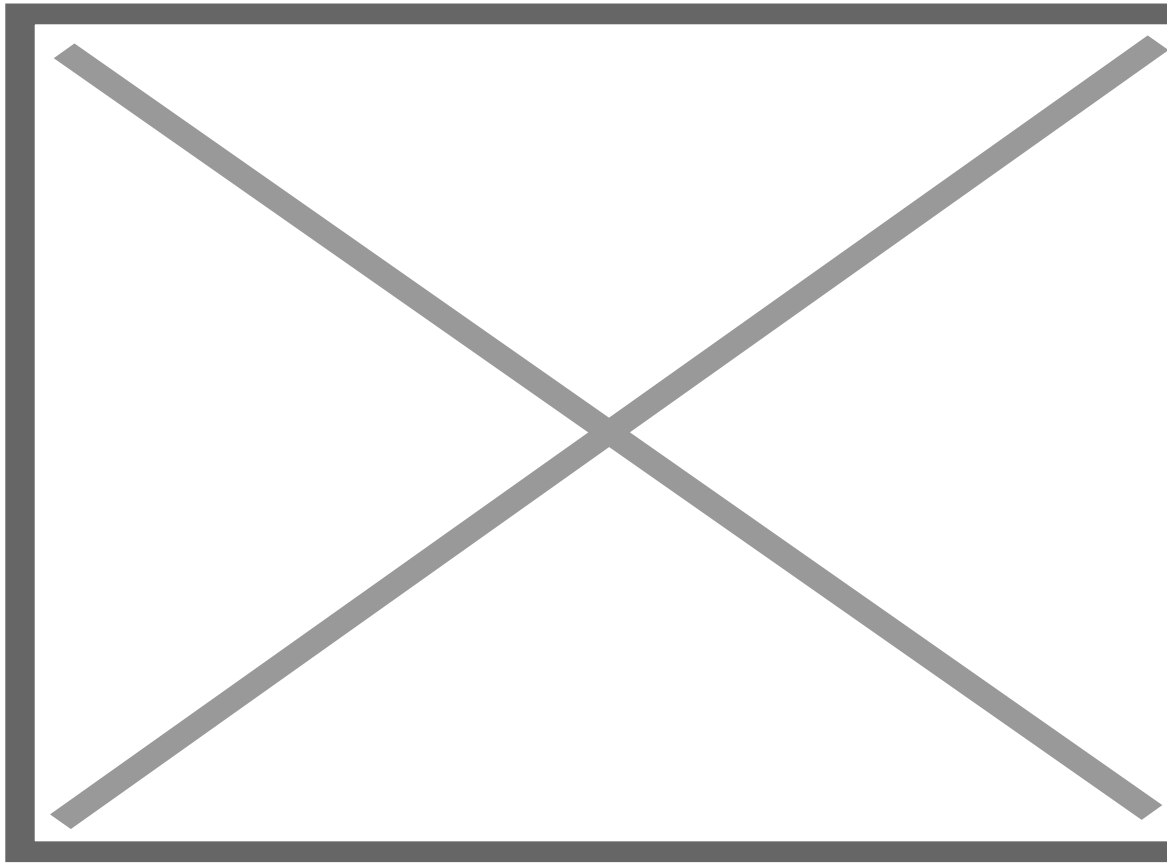


Image of relevant transaction screen, from the court's opinion.

A Florida district court [denied](#) Zeus's motion to compel, finding the presentation did not put the user on inquiry notice of an arbitration provision contained in the terms accessible through the hyperlink. The Eleventh Circuit [affirmed](#). The appeals court focused on whether the hyperlink to the terms was conspicuous enough to put a reasonably prudent internet user on inquiry notice. The court concluded it was not, emphasizing several visual features: the hyperlink appeared below large, attention-grabbing red action buttons; it was in small gray text; and it was surrounded by other "clutter" about age restrictions and auto-renewal. Although the page stated that, "[b]y subscribing," the user agreed to the Terms of Service and Privacy Policy, the majority concluded that the overall design and wording did not reasonably communicate that clicking either red subscription button would bind the user to the hyperlinked terms.

The Dahdah Decision

The Sixth Circuit reached the opposite result in *Dahdah*, a case under the Telephone Consumer Protection Act (TCPA) over marketing calls. There, the plaintiff visited LowerMyBills.com, a website offering mortgage information and lender referrals. He encountered a transaction flow with multiple screens where he entered personal information and clicked buttons labeled “Calculate” (on the fourth screen) and “Calculate your FREE results” (on the fifth screen). Immediately below the buttons, language stated that clicking would constitute consent to the site’s Terms of Use, which were hyperlinked and contained an arbitration provision. After Rocket Mortgage later contacted him, the plaintiff brought claims under the TCPA. Rocket Mortgage moved to compel arbitration.

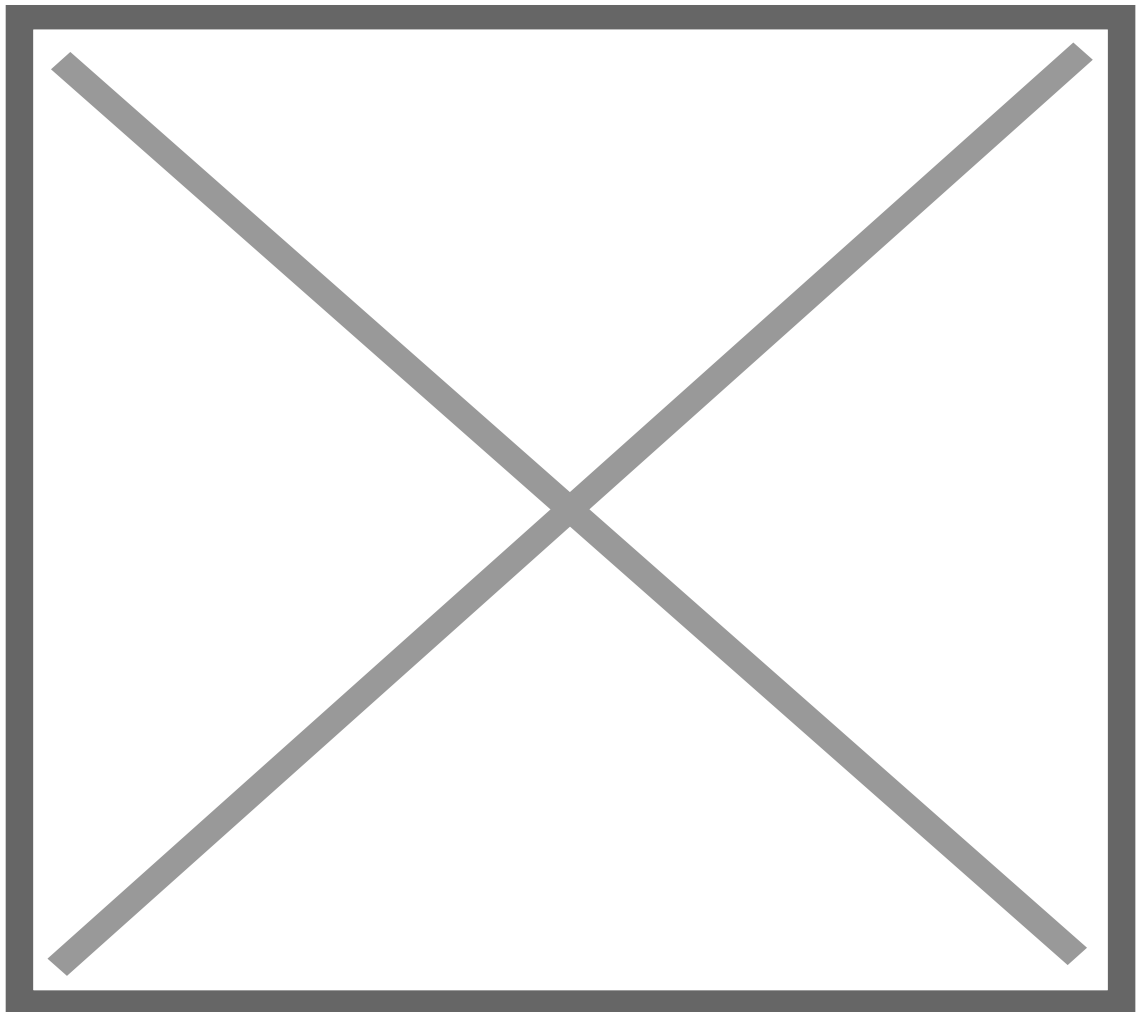


Image of Fourth Contracting Screen, from the court’s opinion.

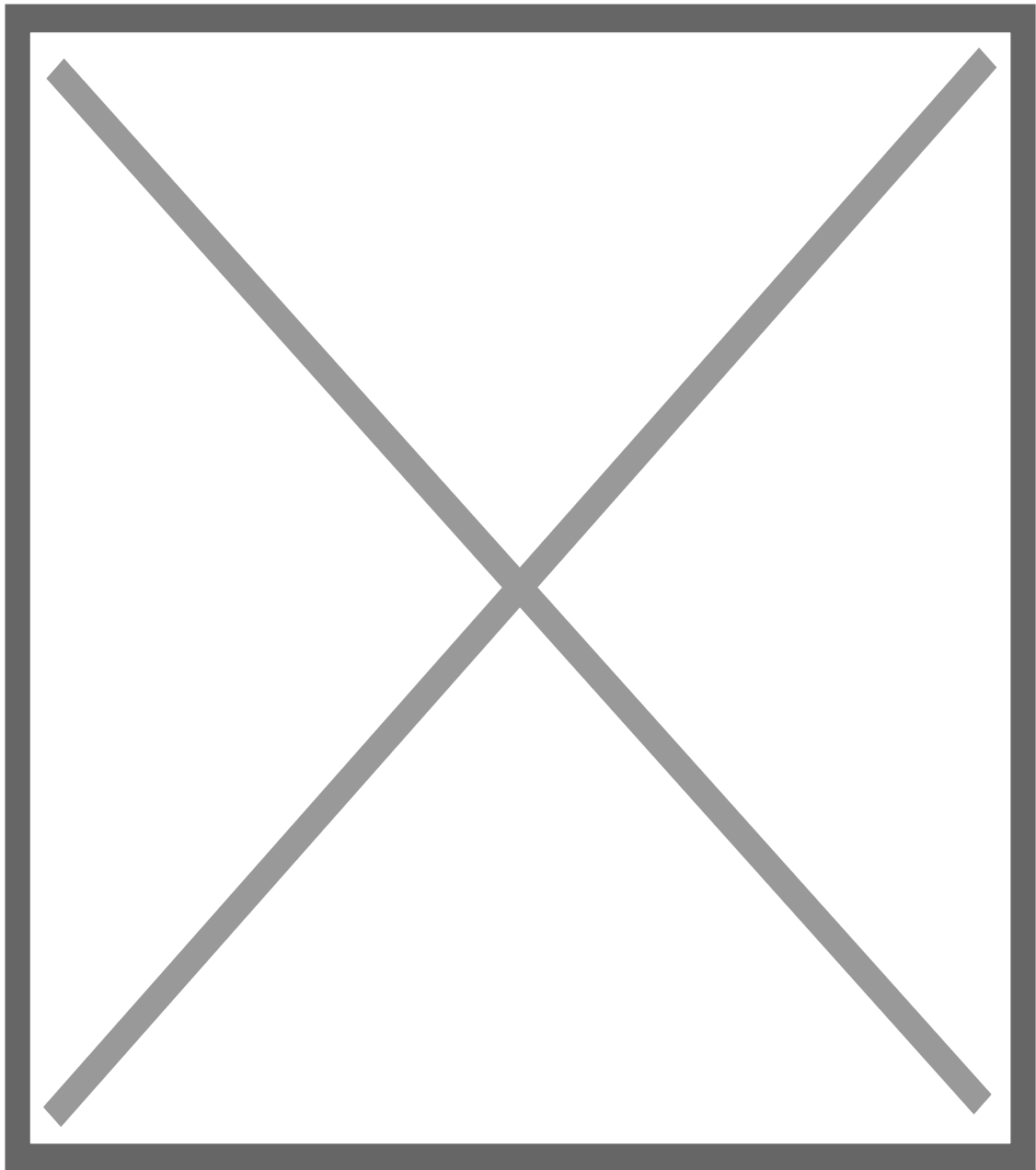


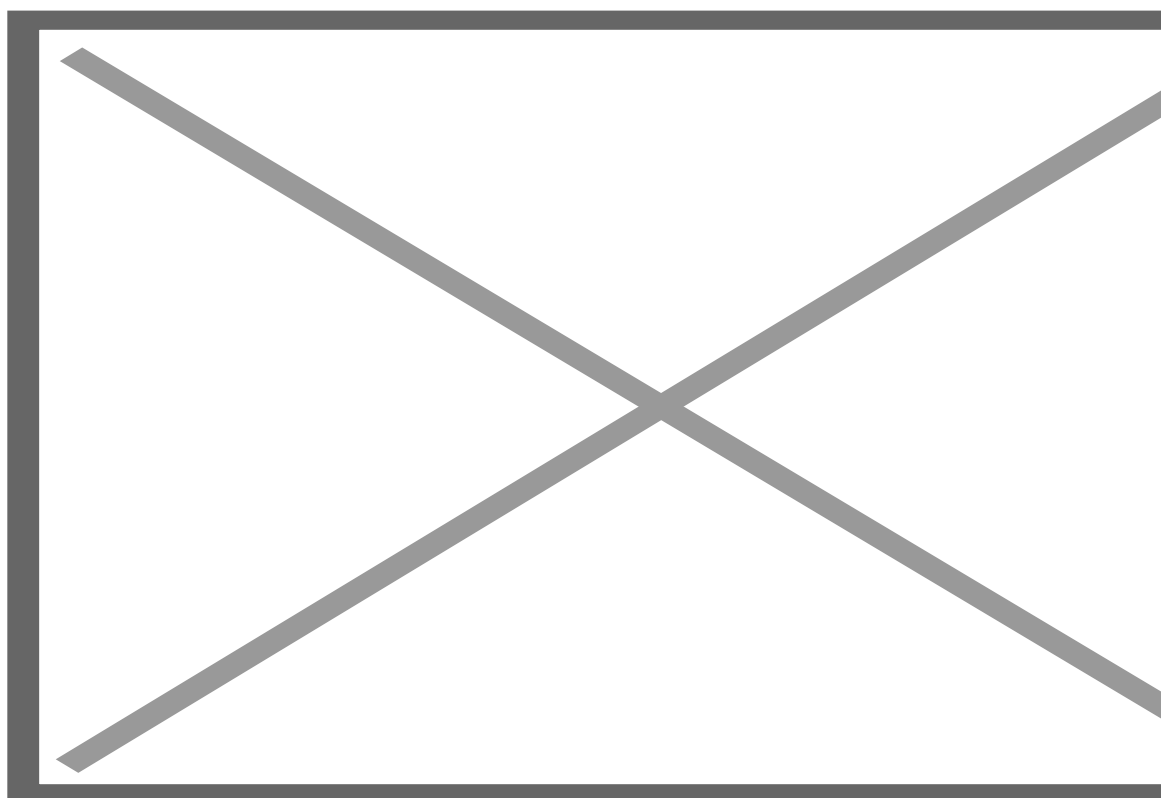
Image of the Fifth Contracting Screen, from the court's opinion.

A Michigan district court [declined](#) to compel arbitration (and allowed plaintiff to file an amended complaint), finding the plaintiff's clicks did not form an enforceable contract due to, among other things, the small font, the muted text and other "distracting elements." Applying California law, the Sixth Circuit reversed and [held](#) that the website provided reasonably conspicuous notice and the plaintiff's clicks objectively manifested assent (at least on the plaintiff's first and third visits to the site, given the second visit contained a different format). The court distilled several recurring factors for hybrid online agreements: whether competing visual elements draw attention away from the terms; whether the notice appears close to the action button; whether font size, color, or formatting draws attention to the hyperlink; and whether the transaction is one in which a user would reasonably expect contractual terms.

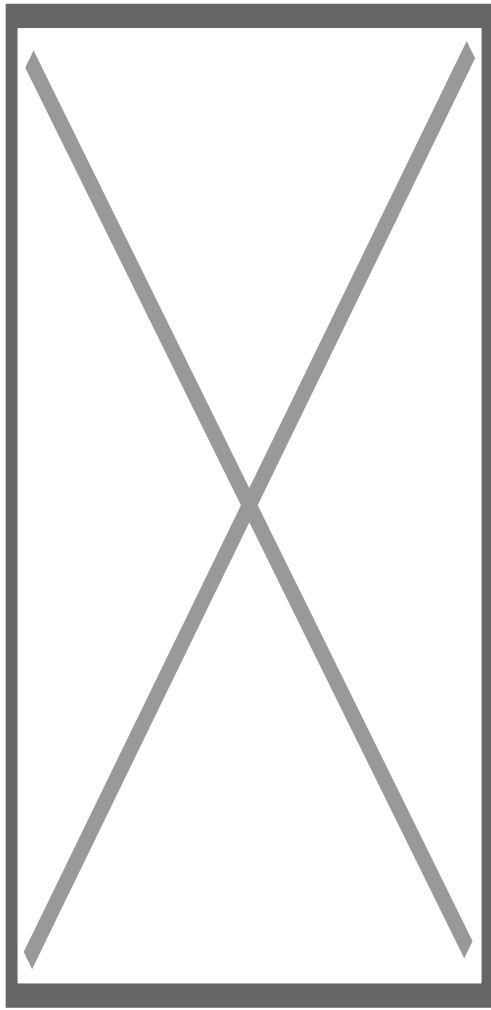
Those factors favored enforcement in *Dahdah*. Specifically, the court found the fourth screen to be comparatively simple and uncluttered. Although the fifth screen contained substantially more text, the court treated it as a second, "belt-and-suspenders" notice for the fourth screen's proposal and evaluated the two pages together. It described conspicuousness as a "close" question and acknowledged the small font on the relevant screens as a legitimate concern, but found the combined presentation adequate in light of several features, including the proximity of the notice below the action buttons, the Terms of Use hyperlink appearing in contrasting blue text, dynamic scrolling, and the transaction's anticipated continuing relationship ("rather than a one-off transaction").

The Hoover Decision

A late May 2026 decision from a Pennsylvania district court brings home the lessons from the above circuit-level cases. In [Hoover v. Cleo AI, Inc.](#), plaintiffs brought various consumer protection claims against financial services app operator Cleo AI, Inc. (“Cleo”). Cleo moved to stay remaining plaintiffs’ claims pending arbitration. In the case, all three remaining plaintiffs (Cave, Lenox and Reifer) had encountered a 2019 screen that linked to the relevant terms but did not identify what action would manifest assent. The court therefore held that clicking “Continue” did not bind the plaintiffs to those terms because the presentation did not “indicate to the user what action would constitute assent to [the] terms and conditions.” Two of the plaintiffs, Lenox and Reifer, later encountered 2025 terms-update mobile screens that displayed Cleo’s then-current terms and expressly stated that clicking “I agree” accepted terms, including an arbitration provision and class-action waiver. The court stayed their claims pending arbitration based on the 2025 screen (“This language explicitly notifies users the users of the legal significance of clicking “I agree”) but allowed plaintiff Cave’s claims to proceed. Because the 2025 acceptances occurred after the litigation began, the court also addressed the arbitration and other provisions’ application to past disputes and rejected a challenge on the record before it. Subsequently, Cleo [appealed](#) the ruling concerning the denial of the motion to stay the action against Cave pending arbitration, giving the Third Circuit an opportunity to consider the district court’s ruling.



The 2019 Screen, from the district court's opinion. The 2025 Screen appears below.



Final Considerations

The comparison of *Tejon*, *Dahdah* and *Hoover* is instructive when evaluating online contract formation, although the cases involved different presentations and outcomes. For example, *Tejon* and *Dahdah* involved hyperlinked terms presented near action buttons, while *Hoover* contrasted an onboarding screen with later full-text clickwrap presentations. The difference was not simply that one link existed and another did not. Rather, the courts examined how notices appeared in context. In *Tejon*, the majority found the small gray hyperlink was visually overshadowed by prominent red buttons and did not indicate that clicking would constitute assent to the terms. In *Dahdah*, notice was directly tied to the act of clicking, positioned close to the button, and appeared in a transaction flow involving submission of personal information for a financial referral. And in *Hoover*, the court reached different results based on material differences between the 2019 and 2025 screens that more clearly communicated the company's terms.

These decisions also build on a broader trend in online contracting cases: some courts, including the Sixth Circuit in *Dahdah*, treat the commercial and transactional context as one relevant factor in the conspicuousness analysis. [We have previously written about similar cases](#) in which a user signing up for a recurring subscription, joining a membership program or seeking financial services may be more likely to expect contractual terms than a user completing a one-time guest checkout or casually browsing. That does not mean an insufficiently conspicuous design can be ignored merely because context suggests an ongoing relationship, but it does mean that some courts may evaluate conspicuousness through the lens of what the user reasonably expected, depending on governing state law.

For website or app operators, the practical takeaways have remained consistent, despite evolution in how courts evaluate electronic contracting:

???When feasible for a particular transaction or business setting, entities might consider using an affirmative clickwrap mechanism requiring the user to actively click a box to affirm assent, particularly where important provisions are involved.

???Place a clearly-worded call-to-action or assent statement immediately adjacent to and visible before the required action. Call-to-action text should expressly state that clicking constitutes agreement to the terms. Placement above the button is one common option; *Dahdah* indicates that directly below may work in some settings, while *Tejon* illustrates the risk of allowing a prominent action button to overshadow text beneath it.

???The hyperlinked terms should be clear, readable and visually distinct, whether through adequately sized font, contrasting colors, or uncluttered space to aid readability. All of the above-referenced court decisions noted this aspect.

???Test the presentation on mobile devices. Both appellate cases involved mobile or iOS use, and *Dahdah* relied partly on how dynamic scrolling kept the notice and button together.

???Preserve evidence of assent through timestamped, version-controlled screenshots noting the version of the terms, user-action logs, and tracking version change histories. To support arguments that users assented via the online contracting process, a business can use this evidence to prove what a user saw and did at a particular time. For example, in *Dahdah*, the court pointed to records kept outlining plaintiff's multiple visits and interactions with the LowerMyBills website.

Ultimately, for counsel, these cases reinforce a familiar point we've outlined in past posts: online contract formation turns on more than legal drafting. It also depends on interface design, user flow and transactional context. When it comes to enforcing online terms, the provisions matter, but so do the pixels.

[Related Professionals](#)

 **Wai L. Choy**

Partner