

## **A Few Tips for Conducting Contests and Sweepstakes Promotions**

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Contests and sweepstakes are popular marketing tools in today's economy as businesses compete for market share and publicity. Unfortunately, many business owners fail to realize that a variety of federal and state laws regulate these activities, and violating these laws could lead to significant liability for the unsuspecting sponsor.

For example, the contest must be structured so as not to be deemed an illegal lottery under applicable law. Generally speaking, an illegal lottery has three elements: (i) a prize, (ii) the element of chance, and (iii) consideration (i.e., payment to participate). Because the first two elements are generally considered essential components for a promotional or marketing campaign, the contest must avoid satisfying the third prong of the test. Accordingly, contestants must be able to enter the sweepstakes for free and with minimal effort (i.e., the "no purchase necessary" rule). The Federal Trade Commission has issued guidelines analyzing the question of what "free" means, and any company planning a sweepstakes promotion should be familiar with those guidelines.

In addition, the contest must be governed by a clear set of rules provided by the sponsoring company to ensure compliance with federal and state consumer protection laws. From a legal perspective, the contest rules constitute the terms of an offer that results in a legally enforceable contract with participants. Official contest rules should include (this is not an exhaustive list; specific requirements may vary from state-to-state):

- (i) eligibility requirements;
- (ii) relevant dates and deadlines;
- (iii) disclosure concerning the odds of winning;
- (iv) description of the prizes being offered;
- (v) description of how and when the winners will be notified; and
- (vi) a standard "void where prohibited" disclaimer.

In short, sponsoring a contest or sweepstakes can be a useful business marketing tool, but traps for the unwary exist. Careful planning and structuring can significantly reduce the risk of liability and increase the chances of having a successful contest or sweepstakes promotion.