
Internet Sweepstakes and Contests

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As the number of consumer-oriented web sites continues to increase, Internet marketers have continued to develop strategies to attract new "eyeballs." Among the most popular and inexpensive techniques used by web sites for customer attraction is the sponsorship of sweepstakes and contests.

These promotions promise visitors a chance to win prizes in exchange for visiting a web site, registering for a service, or downloading a product. Sweepstakes and contests have been used by marketers to attract customers for decades. Most of us are familiar with such famous promotions as the Publishers Clearinghouse Sweepstakes and the business card fishbowls placed in the foyers of many stores and restaurants. The extension of these techniques to the Internet seems logical and inevitable. However, many contest promoters do not realize that sweepstakes and contests are heavily regulated activities in the United States and abroad, and that both civil and criminal penalties may arise if contests are not conducted in accordance with applicable laws.

Contests and sweepstakes in the United States are regulated at the federal level by the Federal Trade Commission, which has jurisdiction over both advertising and unfair trade practices. In addition, almost every state government has a legislative monopoly over the conduct of "lotteries," or

the sale of chances to win prizes. The unauthorized conduct of a lottery by any entity other than the state government or its promoter is generally illegal (with some exceptions for charitable organizations, such as schools, churches and the like).

In contrast to a lottery, a "sweepstakes" is a contest in which the participants are not required to pay anything for the chance to win. Sweepstakes are generally permitted in most states, provided that a number of rules are followed. In particular, there can be no requirement, direct or indirect, that participants pay any consideration for the chance to win. Thus, contests that condition the chance to win on subscribing for a service, purchasing a product or, in some states, visiting a physical store, are impermissible. For this reason, the practice known as providing an "alternative free means of entry" has become standard in the conduct of contests and sweepstakes. That is, the rules of every contest should state that "no purchase is required", and should permit persons to enter simply by submitting a postcard to a designated address. The odds of winning should be the same, whether the participant registered over the Internet or by sending in the card.

It is unclear whether an online sweepstakes, with entries limited to web site visitors, are permissible since the requirement that entrants must visit the web site in order to enter may be sufficient "consideration" to convert a lawful sweepstakes into an unlawful lottery. Better safe than sorry, and promoters of such sweepstakes should allow postcard submissions or other alternative free means of entry. In a similar vein, the Securities and Exchange Commission has ruled that unregistered stock giveaways and similar sweepstakes for web site visitors are illegal, as discussed in our earlier [Internet Alert of October 12](#).

The rules of sweepstakes must contain other provisions, including

statements about the contests promoters, the value of prizes and the odds of winning. In addition, depending on the value of the prizes, some states require the registration of the contest rules with a state office, where they will be made publicly available, and/or the posting of a bond in the amount of the prize value.

"Skill-based" contests differ from sweepstakes in that they require the participants to demonstrate some skill in order to be eligible to win. The selection of winners is based on a judgment of skill, rather than chance. Skill-based activities can include writing essays or book reviews, drawing illustrations and taking photographs. However, some courts have held that contests requiring only minimal skill or "skill" that amounts to no more than guessing a random number, such as estimating the number of jellybeans in a jar, will be treated as games of chance. Skill-based contests are permitted in most states.

Internet contest promoters must also be wary of foreign laws governing contests and sweepstakes, as consumers in virtually every country in the world may have access to their website. In many countries, the conduct of sweepstakes is prohibited or involves complex registration and approval requirements. To avoid the consequences of violating these laws, contest promoters should ensure that participation is restricted to residents of the United States and other countries in which local laws have been reviewed (both in the contest rules and by address filtering, if possible).

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