

Void where prohibited

How to comply with the law when creating a sweepstakes or contest

Marketing promotions such as sweepstakes and contests can be a great way for businesses to create buzz and increase brand awareness. Businesses must be careful when putting these promotions together, however, as giveaways are subject to many overlapping federal and state laws, the latter of which are unique in each state.

“Failure to comply with laws and regulations applicable to promotions can lead to civil and criminal penalties,” says Julia Richie Sammin, an attorney at Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Sammin about the legal aspects of business promotions and how an attorney can help with the process.

What legal concerns should businesses be aware of when sponsoring a promotion?

The law distinguishes between lotteries, sweepstakes and contests. Lotteries combine three elements: a prize, chance — i.e., the winner is selected randomly — and consideration from the entrant. They are illegal in all 50 states unless run by the government or, in some circumstances, by a charitable organization.

Sweepstakes and contests are legal, provided the sponsor complies with the legal requirements. Sweepstakes involve chance and a prize, with no consideration required.

Contests eliminate the element of chance and award a prize on the basis of skill, as in a photo contest or essay contest, and often require consideration from the entrant. ‘Consideration’ in this context does not just mean the payment of money; giving value or undertaking a significant effort, such as making a purchase or sitting through a lengthy sales presentation, can also constitute consideration.

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There are different rules and regulations that apply to sweepstakes and contests, so businesses must clearly define their giveaways in order to follow the correct regulations.

How should a business go about creating the rules for a promotion?

Perhaps the most important element of implementing a promotion is drafting the official rules, which will contain all the relevant information about the promotion, such as how to enter, prize description, how a winner is chosen, etc. Federal and state laws dictate what must be included in the official rules and even mandate certain specific disclosures.

Businesses should therefore be very careful in drafting the rules so that they comply with applicable laws while clearly stating all of the terms and conditions of the promotion. For example, describing the prize as a ‘one-year supply’ of a product could be open to interpretation, potentially leading the winner to think that the prize is much larger than the sponsor intended.

What are some other considerations that should be taken into account?

Once a winner has been chosen, he or she should sign an affidavit of eligibility and a liability and publicity release. These are important for several reasons. The winner

will certify that he or she meets all of the eligibility requirements. The liability release protects the sponsor from claims by the winner. If the prize is a ski trip, for example, a liability release would prohibit the winner from suing the sponsor if the winner is injured while skiing. A publicity release grants the business the right to use the winner’s name and likeness for promotional and advertising purposes.

What issues can online, mobile and social media promotions present?

Social media promotions, such as, ‘Like us on Facebook for a chance to enter,’ must comply with the social media platform’s guidelines for promotions. Businesses should also consider their privacy policies and how they will handle personal information collected from entrants. If the promotion is directed at children, then businesses must be particularly careful, as additional laws and regulations will apply.

How can an attorney help with the process?

An attorney can help businesses every step of the way. At the outset, an attorney can draft the official rules, privacy policies, and contracts with third parties such as prize suppliers, as well as prepare filings for states that require registration. An attorney also can prepare the affidavit of eligibility and the publicity and liability release. ●