



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

### Contests and Sweepstakes

#### General Guidelines

When considering running a contest or sweepstakes, the first rule is to avoid running an illegal lottery. You may have noticed that most sweepstake promotion rules state that no purchase is necessary. There is a reason that this is stated affirmatively and often. Requiring a participant to purchase something to participate in the sweepstakes is illegal in the United States. Sweepstakes are subject to scrutiny by the Federal Trade Commission, the Federal Communication Commission and the United States Post Office. Each state also may have laws that govern these types of promotions. The laws from state to state may vary. Therefore, when running a national promotion, it is wise to check with the Attorney General's office in each state to see if your promotion is subject to any specific requirements, such as posting a bond for the prize or making certain disclosures.

This guide is intended to set forth the basic premises of contest/sweepstake law. It can be used as a guide to getting you started in assisting your client in running a legal promotion. The first rule, of course, is not to run an illegal lottery. A lottery consists of three elements: (1) chance; (2) prize; and (3) consideration. If you omit one of the three elements, you do not have a lottery.

Example: Company A wants to promote its product by giving away a trip to Hawaii. The rules state as follows: "For each box of Product A that you buy, you will be entered into a random drawing for an all expenses paid trip to Hawaii." In the rules, as currently written, the three elements are present. There is chance since winners are randomly selected. There is a prize. There is also consideration since the participant receives a chance to win only if a purchase is made. To make this sweepstakes legal, one of these elements must be eliminated.

The most common way to make a sweepstakes legal is to eliminate consideration. Most contests, such as the ones sponsored by soft drink companies, eliminate consideration by stating specifically in the rules that no purchase is required. In addition to not requiring a purchase, a purchase should also not improve the participants chance of winning.

Skill contests may also be held. Winners are selected based on a particular skill, talent, or knowledge, instead of chance. By eliminating the chance element, you can legally require a purchase or a payment to participate in a skill contest. These contests may be subject to challenge if the "skill" is actually a sham. Skill contests must be carefully crafted. You must be clear up-front that your contest winner will be selected based on a certain skill, rather than at random. The rules must be definite as to how the winner will be selected. There is a thin line between a skill contest and an illegal lottery since consideration is present. Guessing is generally not a skill. Therefore, games based on guessing the outcome of sporting events are not skill contests.

Well drafted rules can keep you out of trouble. The bigger the sweepstakes, the more complicated the rules are. However, both big and small sweepstake rules generally contain the same elements, typically because they are either federal or state law requirements. Of course, you will have to differentiate a skill contest from a random sweepstakes. The typical rules will include the following:

1. A start and end date for the promotion.
2. The number and a description of the prizes to be awarded, as well as the approximate retail value of each prize.
3. How and when the winners will be chosen and the manner in which they will be notified, as well as how and when winners may claim prizes.
4. Whether unclaimed prizes will be awarded (i.e. whether there will be a second chance drawing and if so, how it will be conducted).
5. The odds of winning the contest. (If you do not know how many entries will be received, you can state, "The odds of winning depend upon the number of entries received.")
6. An address for entrants to receive a list of prize winners or post a winners' list on your website.
7. The statement, "Void where prohibited."
8. The name of the contest sponsor.
9. A statement restricting sponsor-related winners.
10. At least three states, Florida, New York, and Rhode Island, require pre-contest registration if the value of the prizes awarded in a game of chance exceeds a certain amount.
11. Limit to U. S. residents only, unless it is determined that contest will be legal outside of U. S.
12. Restrictions can be made to limit participation. (If you are giving away a car, the rules can limit participation to those 18 or older. If the contest does not meet certain requirements of a state, you can exclude persons from that state.)

By including these elements in your initial draft of the rules, you will be well on your way to assisting your client in running a legal promotion. There are other pitfalls to be aware of. There are, for instance, laws that focus on promotion of types of products (e. g. food and drugs, gasoline, alcohol). Also, the manner in which you conduct your promotion will be subject to other laws and regulations. If you are conducting it by phone, you should be aware of the FTC's Telemarketing Sales Rule (16 C.F.R. Part 310) and the FTC's 900 Number Rule (16 CFR Part 308). If the promotion is done by direct mail, you need to look at the Deceptive Mail Prevention and Enforcement Act.

Many contests are now being run over the Internet. There are some concerns here. One of the first questions to arise in this area was whether paying for Internet service was considered consideration. Lawmakers have not addressed this question. There is little conclusive case law on the subject. Again, the best bet is to check with the Attorney General's office of the state to determine whether they have addressed the issue.

The FTC's website contains a wealth of information on advertising in general and also has information of contests and sweepstakes. For more information, go to [www.ftc.gov](http://www.ftc.gov).

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