



## 302 Marketing: Winning the Prize

**Kimberly H. Berry**  
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**Stephen Hicks**  
*Vice President & General Counsel*  
AMICAS, Inc.

**Heidi Hoard**  
*Assistant General Counsel*  
Tennant Company

## Faculty Biographies

### Kimberly H. Berry

Kimberly Houghton Berry is interim general counsel for National Wildlife Federation (NWF) in Reston, Virginia. Her responsibilities include providing general legal advice to NWF and other related organizations and affiliates involving contracts, contests, copyrights, charitable solicitations, lobbying, election-related activities, federal tax treatment of nonprofit organizations, planned giving, fundraising, estate litigation, real estate, and records management.

Prior to joining NWF, Ms. Berry clerked in the law, business, and government affairs department at National Geographic Society in Washington, DC and specialized in family and property law as an associate in a small law firm in Maine.

Ms. Berry has taught street law and coached mock trial teams in high schools in Washington, DC and Maine, and focuses her time volunteering for children's charities, such as Kids R First.

Ms. Berry received her B.A., cum laude, from the State University of New York at Binghamton, her J.D. from the University of Maine School of Law, and her L.L.M. in Litigation and Dispute Resolution with highest honors from the George Washington University Law School.

### Cheryl A. Falvey

Cheryl A. Falvey is partner in the litigation section of Akin Gump Strauss Hauer & Feld LLP resident in the firm's Washington, DC office. Ms. Falvey's practice concentrates on product liability, toxic tort, and business tort cases, including claims of unfair competition and deceptive trade practices in the distribution and marketing of products sold in the United States. Ms. Falvey also serves as an adjunct professor of legal research and writing at the George Washington University Law School.

Ms. Falvey also counsels clients on federal and state regulatory requirements related to the distribution and marketing of their products. She advises clients on consumer product safety issues, particularly as to toys, children's products, and household electronics and appliances. She also counsels clients on avoiding liability in the marketing of their products on the internet, including compliance with CAN-SPAM and state online marketing laws, the Children's Online Privacy Protection Act (COPPA), and other state and federal privacy laws, and the statutory and common law rules regarding sweepstakes and online promotional and advertising activities as well as charitable raffles.

She is the author of several articles including "Disclosure of Security Breaches Required by New California Privacy Legislation," *Metropolitan Corporate Counsel*, and "Legal Compliance Issues Governing Online Sweepstakes," *Metropolitan Corporate Counsel*.

Ms. Falvey received her B.A. from Wellesley College. She received her J.D. from the Georgetown University Law Center, where she was an editor of the *American Criminal Law Review*.

### Stephen Hicks

Stephen Hicks serves as vice president, general counsel and corporate secretary for AMICAS, Inc. (formerly VitalWorks Inc.) in Boston. As the only in house attorney for AMICAS, he is responsible for all legal matters.

Prior to AMICAS, he was first deputy commissioner for the New York State Division of Housing, and previously served for four years on the executive staff of the New York State Attorney General's office. Mr. Hicks also worked for the law firm of McCullough, Goldberg and Staudt in New York.

He received his B.A. from LeMoyné College in Syracuse, New York and his law degree from Albany Law School of Union University.

### Heidi Hoard

Heidi Hoard is assistant general counsel and assistant secretary at the Tennant Company located in Minneapolis, Minnesota. Tennant is a world leader in designing, manufacturing, and marketing solutions that help create a cleaner, safer world. Ms. Hoard is responsible for all day to day legal work in the company including supervision of litigation, employment law, legal and ethical compliance, contracts, international law, and routine legal counseling.

Previously, Ms. Hoard was a partner at The General Counsel, Ltd., a law firm where she provided legal advice, and negotiated and wrote contracts for clients ranging from a \$600,000,000 privately held diversified business to a start up technology company. Ms. Hoard was also vice president, general counsel, and secretary at Musicland Stores, Inc., where she was responsible for all legal and ethical compliance issues including corporate governance. She has also been senior legal counsel at Medtronic, Inc. and a partner at Faegre & Benson.

Ms. Hoard is a member of various professional associations including ACC, the ABA, American Society of Corporate Secretaries, International Council of Shopping Centers, International Association of Defense Counsel, and the Minnesota and Hennepin County Bar Associations. She is also on the board of directors for ACC's Minnesota Chapter and for the Fund for the Legal Aid Society. In addition, she is on the board of visitors for the University of Minnesota Law School.

Ms. Hoard received her B.A. (Phi Beta Kappa) from Macalester College, a J.D. (cum laude) from University of Minnesota Law School, and a Mini MBA from St. Thomas University.



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October 17-19, Marriott  
Wardman Park Hotel



## **Contest Basics**

**Stephen Hicks**  
**Vice President & General Counsel**  
**AMICAS, Inc.**

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## Sales/Marketing Department –Promotional Idea

- Giveaway
- Trade Show; Online; In-Store



## Is it a 'Lottery'?

- Prize
- Chance
- Consideration

NYS Penal Law § 225.00



## Is there a 'Prize'?

- Free pinball game
- Coupon
- Preferential treatment



## What type of Prize?

- Live animals Cal. Penal Code § 599; N.Y. Agr. + Mkts. Law § 358-a
- Alcohol Maine Rev. Stat. Ann. Title 28-A § 709 (1) (A) 4 + (B)



## Is there 'Chance'?

- Participant has no control over outcome
- Skill or judgment play no part
- Winner selected by pure chance



## Will Skill determine the winner?

- Spelling bees
- Trivia contests
- Essay contests
- Athletic competition



## Is it Skill or Chance?

## Is it Skill or Chance?

### Skill

- Photography Contests
- Puzzle Contests
- Cooking contests
- Chess

### Chance

- Dice
- Guessing Games
- Dog Racing
- Predicting Athletic Contests

- Is Chance the **DOMINANT FACTOR** in determining the winner?



## Skill vs. Chance?

- Does the outcome depend in a **material degree** on chance?

Alaska Stat. § 11.66 280 (1)  
Haw. Rev. Stat. § 712-1220 (6)  
Mo. Ann. Stat. § 572.010 (3)

- Chance plays any part = Chance is present

Maine Rev. Stat. Ann title 17 § 330 (2)



## Can you eliminate Chance?

1. Questions cannot be too hard or too easy;
2. Ties must be broken on the basis of skill;
3. Judging criteria must be objective and clearly disclosed;
4. Judges must be qualified; and
5. All entrants must be competing on the equal playing field





## Is there ‘Consideration’?

### ● Must participant give economic value?

- Contract consideration                      Knox Industries Corp. v. State, 258 P.2d 910
- Valuable consideration                      Idaho Code § 18-4901

### ● Must the participant take action?

1996 N.Y. Op. Atty. Gen. 1

## How to eliminate Consideration?

### ● Alternate means of entry (AMOE)

- Toll free #
- Postcards

Glick v. MTV Networks, 796 F. Supp. 743 (S.D.N.Y. 1992)  
Albertson's, Inc. v. Hansen, 600 P. 2d 982 (Utah 1979)



## How to eliminate Consideration?

- No AMOE needed if “payment” precedes the contest
- Blind game



## Internet Promotions

- Does internet access = Consideration?
  - Reduce risk
- Other Online issues-
  - International
  - COPPA (FTC)



## Lottery?

- Prize + Chance + Consideration = Illegal Lottery
- Prize + Chance + No Consideration = Sweepstakes
- Raffle
  - Non-profits only
  - Follow state laws

Fla. Stat. § 849.0935



## Registration

Do you need to register?

- NY N.Y. Gen. Bus. Law §369-e (1)
- Florida Fla. Stat. §849.094 (3)
- Rhode Island R.I. Gen. Laws §11-50- 1
- Arizona (skill) A.R.S. § 13-3311
- “Void in New York, Florida and Rhode Island?”



## Do You Need to Obtain a Bond?

- New York N.Y. Gen. Bus. Law § 369-e (4)
- Florida Fla. Stat. §849.094 (4) (a)

Note: Filing after prize award



## SLD Drawing

- Is it a lottery?
  - Prize - ipod
  - Chance- random drawing
  - Consideration- blind/payment preceded



## Disclosures

**Kimberly H. Berry**  
**Interim General Counsel**  
**National Wildlife Federation**

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## Disclosures: State Requirements

- Most states require certain disclosures in giveaway rules.
- To avoid problems with such state laws, it's important to draft proper rules and comply with them.
  - Failure to comply could raise FTC issues and contract liability issues in certain states.

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## Giveaway Rules at a Glance

- Entry Instructions
- Sponsor's name and address
- Eligibility
- Judging
- Prizes
- Releases
- Limitations of Liability
- List of Winners



## Entry Instructions

- Entry instructions generally include:
  - A clear statement that no purchase is necessary, if applicable.
  - The entry period (i.e., start and end date).
  - An alternative means of entry.
  - A limitation on the number of entries per person.
  - A statement that entries become the property of sponsor.
  - Steps necessary to win the giveaway (i.e., number of questions that must be answered).



## Sponsor's Name and Address

- The name and address of the sponsor must be disclosed somewhere in the giveaway rules.
- This typically initially appears in the "How to Enter" section of the rules.



## Eligibility

- Eligibility rules generally include:
  - Age and residency requirements.
  - Exclusion of employees and immediate family.
  - "Void where prohibited" language.



## Judging

- Judging rules generally include:
  - The method of determining winners (i.e., random drawing).
  - The date winners will be selected.
  - A statement that judges decisions are final and binding.
  - Odds of winning (usually required in Arabic numerals).



## Prizes

- Prize rules generally include:
  - Number of winners selected and prizes granted.
  - Prize descriptions, including the approximate retail value of prizes.
  - Right to substitute with a prize of equal or greater value if offered prize not available.





## Releases

- Releases generally include:
  - Federal, state, and local taxes, fees and surcharges on prize packages.
  - Execution and return of an Affidavit of Eligibility/Release of Liability/Prize Acceptance.
  - Unclaimed prizes and noncompliance with official rules.
  - Entering the giveaway provides consent to use winner's name, likeness, and image for purposes of advertising.

## Limitations of Liability

- Limitations of liability generally include:
  - Incorrect or inaccurate information (i.e., printing and typographical errors).
  - Lost, late or misdirected entries.
  - Reservation of right at sole discretion to cancel, terminate, modify or suspend the giveaway.



## List of Winners

- Names of winners must be available, preferably by mail.
- Note: Vermont residents can omit return postage.



## Additional On-Line Disclosures

- Internet Liability:
  - Fraud Clause: Limit liability if giveaway not carried out as planned due to computer virus, bugs, tampering, fraud, etc.
  - Faulty Transmission: Limit liability for error, interruption, delay, etc., in operation or transmission of online entry.
- Entrants must be authorized email account holder.
- Notification of address change.
- Include times and time zones.
- Limit to legal residents of the US, unless you want to be subjected to international rules!



## Disclosures: Federal Requirements

- The Deceptive Mail Prevention and Enforcement Act requires the following affirmative disclosures:
  - Statement that no purchase is necessary and purchase does not improve chances of winning.
  - Sponsor's name, principal place of business or other address where sponsor can be contacted.
  - Complete official rules and entry procedures.



## Disclosures: Placement

- Rules should be easy to find.
  - Note: If the official rules are not easy to locate, the giveaway runs the risk of being considered deceptive or unfair by the FTC.
- All advertisements at a minimum should provide a hyperlink or URL where the complete official rules can be found.
- Short form rules are good to include wherever the giveaway is mentioned, with a hyperlink or URL to the official, full-length rules.
- Links and all other info regarding the rules must be viewed on all Internet browsers.



## Resources

- Article:
  - Laura Handman & Denise Gough, Online Promotions: Sweepstakes and Contests, PLI (2000).
- Presentation:
  - Cheryl A. Falvey, You May Have Already Won: Avoiding Liability for Your Corporate Sweepstakes, Contests and Marketing Promotions (Akin Gump PowerPoint Presentation, Dec. 4, 2002).



## Privacy Law Issues

**Heidi M. Hoard**  
**Assistant General Counsel**  
**Tennant Company**



## Privacy Law Issues

- Capturing *any* personally identifiable data triggers privacy concerns.
- Personal information includes
  - First and last names
  - Home and e-mail addresses
  - Telephone numbers
  - Social security numbers
  - Persistent identifiers



## Federal Laws

- *CAN-SPAM Act of 2003.*
- *Children's On-line Privacy Protection Act (COPPA), 15 U.S. Code § 6501 et. seq. and FTC's Children's On-line Privacy Protection Rule, 16 C.F. R. § 312.*
- *Deceptive Mail Prevention and Enforcement Act (39 U.S. C. § 3001 et. seq.).*



## Sample State Laws

- *Destruction of Customer Records*, CA Civil Code §§1798.80 and 1798.84
- *Information-Sharing Disclosure, "Shine the Light,"* CA Civil Code §§1798.82-1798.84 et, seq.,
- *Online Privacy Protection Act of 2003*, Business and Professions Code §§22575-22579



## Common Law Issues

- All posted privacy rules must be followed in connection with sweepstakes or contest data collection.
- Failure to adhere to posted privacy policies might be construed as an “unfair and deceptive trade practice” as well as a breach of contract.



## Compliance Tips

- Reference privacy policy on entry forms, abbreviated methods of entry form, official rules, website for online entries.
- *“By participating in this Sweepstakes, you acknowledge and agree that XXXX.com may collect the personal information submitted by you, and use the information pursuant to its privacy policy available on line at [www.XXXX.com](http://www.XXXX.com) or by calling 1-800-XXX-XXXX.”*



## Compliance Tips

- Put this on your on-line registration page:
  - *“The information you provide will be handled according to XXXX’s privacy policy.”*



## Privacy Policies

- State:
  - Who owns the collected customer information
  - Whether or not the issuer will share data with third party vendors or promotional partners
  - How customers can opt out of use of information
  - Whether they collect information from children under 13 and if so, how they comply with COPPA.
  - Sample privacy policies that refer to sweepstakes include: [www.online-sweepstakes.com](http://www.online-sweepstakes.com) and [www.bestbuy.com](http://www.bestbuy.com).



## Direct Mail Issues

- Establish a Name Removal System that includes:
  - Toll free telephone number or address to which consumer can call or write to be removed from mailing list(s)
  - Statement that recipient can prohibit the promoter from sending any further mailings
  - Agreement to remove consumer from mailing lists within sixty calendar days after receipt of removal request.





## Other Compliance Tips

- Limit data you collect to only what you absolutely need.
- Securely discard data as soon as you don't need it—shredding or discarding in a secure manner.
- Store data--be it hard copy or electronic—securely.
- Don't share personally identifiable information.
- Don't use Social Security numbers.



## Avoiding COPPA

- Clearly limit entrants to those over 13 years old.
- Better yet, limit to those over 18 so no problem with minors being able to comply with rules.
- Require the use of a credit card for any purchases



## Meeting COPPA Rules

- Post Privacy Policy
- Get “Verifiable” Parental Consent
- Get it again if information practices change in a material way
- Let parents view collected personal information
- Allow parents to revoke consent and delete information collected

## COPPA Consent Exceptions

- Can collect e-mail address if to be used just to notify child that they have won the sweepstakes or contest.
- Can't make any other use of this address.
- Can't collect anything else that tracks back to the e-mail address such as child's interests or hobbies.



## **Compliance Considerations Under State and International Laws**

**Cheryl A. Falvey  
Partner**

**Akin Gump Strauss Hauer & Feld LLP**

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## **Compliance Matters**

- Sweepstakes Promotions Routinely Appear On The FTC's List Of Top Ten Consumer Complaints
  - Deceptive Advertising of Prizes
- Invariably Problems Arise -- Diligent Compliance Can Mitigate The Impact Of Those Problems
  - Class Action Litigation
  - Criminal Investigation

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## Implementation Matters

- Recent AG Activity Focuses On Implementation
  - How will contest run and do the rules actually capture that concept?
  - Can rules be changed once a contest has begun?
  - Is no purchase necessary option truly viable?
  - How is contest being advertised and in what media?



## State Law Nuances

- Significant State Law Difference Exist with respect to Particular Types on Contests and Promotions
  - “In-Store” Promotions
  - Trade Show Promotions
  - Time Share or “Attendance-Required” Promotional Give-Aways
  - Charitable Promotions



## Special Issues Presented in International Sweepstakes

- Nuances in Canadian Sweepstakes Law
  - Criminal Code Section 206 and Games of “Pure Chance”
  - Mixed Games of Skill and Chance
- Global Reach of Internet Sweepstakes
  - Illegal *per se* in Certain Countries
  - Legal Obligations of Conflicting International Law Makes Compliance Impossible

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## Practice Pointers to Ensure Compliance

- Require Timeline And Legal Review Prior To Launching Any Promotional Activity
  - Include all aspects of promotional and advertising activity
- Develop Standard Best Practices And Publicize Them Throughout Your Organization
- Document Your Efforts and Maintain Thorough Records

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**Opn. No. 96-F1**

NY CONST ART I § 9; PENAL LAW § 225.00.

A proposed real estate sales program called the "Good as Gold" promotion would violate the anti-gambling provisions of New York State law.

January 29, 1996

Hon. Alexander F. Treadwell Formal Opinion  
Secretary of State No. 96-F1  
162 Washington Avenue  
Albany, NY 12231-0001

Dear Secretary of State Treadwell:

Your counsel has inquired whether a proposed real estate sales program called the "Good as Gold" promotion would violate the anti-gambling provisions of New York State law. You indicate that the "Good as Gold" promotion would provide sellers of real estate with the opportunity to offer a special incentive to buyers, real estate brokers and their sales associates. The promotion under review would be offered to those sellers who choose to list their properties with Longley-Jones Associates, Inc., a real estate marketing firm. In addition to the usual commission that would be due Longley-Jones, participating sellers would each pay \$300 into a special fund created and administered by Longley-Jones. After fifty participating homes have been sold, Longley-Jones would host a "Gold Party" at which there would be a drawing from the names of the real estate brokers and sales associates who sold the properties. The winning real estate broker or sales associate would receive \$10,000 and the buyer who purchased the property through the winning agent would receive a trip to some pre-designated location.

Article I, § 9 of the New York State Constitution provides, in pertinent part: "no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling [except as otherwise provided herein], shall hereafter be authorized or allowed within this state." The exceptions include State-operated lotteries, parimutuel wagering on horse races, and certain specified games of chance conducted by religious, charitable or non-profit organizations in which the prize does not exceed \$250. Generally, "[t]hree elements cause an event to constitute an unlawful game of chance, or lottery, . . . consideration, chance, and a prize." *Harris v Economic Opportunity Commission of Nassau County*, 171 AD2d 223 (2d Dept 1991) (citing *People v Miller*, 271 NY 44 [1936]).

The constitutional provision directs that the Legislature pass "appropriate laws" to enforce the lottery prohibition. Although the term "lottery" is not defined in the Constitution, the term is defined in Penal Law § 225.00 as follows:

"Lottery" means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value provided, however, that in no event shall the provisions of this subdivision be construed to include a raffle as such term is defined in subdivision three-b of section one hundred eighty-six of the general municipal law.

The promotional scheme contemplated here does not fall within the exceptions set forth in Article I, § 9 of the Constitution. Thus, we must determine whether the elements of a prohibited lottery are present under the fact pattern you have presented.

It is clear that each of the elements of a lottery are present where the buyer of the "Good as Gold" home earns the chance to win a trip by buying one of the promotion homes. The element of consideration is present because the buyer became eligible to win the vacation prize by purchasing one of the promotion homes. The purchase of goods or entertainment is perhaps the most common means by which the player pays consideration for the chance to win a prize in an unlawful lottery. See, e.g., *People v Miller*, 271 NY 44 (1936) (purchase of movie ticket); *The Carl Company v Lennon*, 86 Misc 255 (Sup Ct, Niagara Special Term 1914) (small banks); *Hull v Ruggles*, 56 NY 424 (1874) (purchase of package of candy). (The receipt of something of value in addition to the chance to win the prize does not remove the consideration element of the lottery. See, discussion, *infra*, footnote 1.) Furthermore, the buyer who wins the trip is selected by chance as a result of a drawing from among the brokers who sold the "Good as Gold" promotion homes. The vacation constitutes a prize, satisfying the third element of an unlawful lottery. Therefore, the scheme constitutes a lottery prohibited by the Penal Law and the New York State Constitution.

You have asked if the promotion would be prohibited if the buyer's prize was deleted from the program and only the chosen broker or sales associate would win a prize. Obviously, under those circumstances, the elements of chance and a prize remain. However, it is less clear that the element of consideration is present because the broker has not purchased anything in order to become eligible to win the cash prize. Instead, the broker or sales agent performs compensated services.

Under the lottery statute, consideration is present if the "players pay or agree to pay something of value." Here, the broker has not paid any money in exchange for the chance to win a prize. However, the broker has provided services which qualify him or her to win a prize. Although we have found no cases which address whether services may constitute consideration for an unlawful lottery, for the following reasons we conclude that the furnishing of brokerage services constitutes payment of something of value and, therefore, fulfills the consideration element of a prohibited lottery.

First, under principles of contract law, valuable consideration is defined broadly as "some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Holt v Feigenbaum*, 52 NY2d 291, 299 (1981) (citations omitted). Clearly, brokerage services fall within that definition. Brokerage services are sold and have ascertainable value in the marketplace.

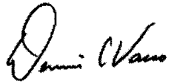
The phrase "something of value" as used in subdivision (a) of Penal Law § 225.00, the consideration requirement, is used in subdivision (c) of the statute to describe the prize awarded to the winning player. In the latter context, it is clear that "something of value" is not limited to money but can be any other kind of prize. *People v Psallis*, 12 NYS2d 796, 798 (NYC Magistrate's Court, 1939); see, *Hull v Ruggles*, 56 NY 424 (1874) (silverware); *Harris v Economic Opportunity Commission*, *supra* (new automobile).

Significantly, the "Good as Gold" promotion is intended to provide an incentive to brokers and sales associates to work, with special diligence, to find eligible buyers. Thus, under the concept of the promotion, these brokerage services are provided, at least in part, as a means of entering the "Good as Gold" lottery. While the broker earns a commission by providing services which result in the sale of the "Good as Gold" promotion home, in addition, he or she receives a chance to win prize money. Thus, at least to some extent, the brokerage services supplied constitute consideration for eligibility for the

"Good as Gold" lottery.<sup>1</sup>

We conclude that the "Good as Gold" promotional scheme is an unlawful lottery prohibited by Penal Law § 225.00 and Article I, § 9 of the New York State Constitution.

Very truly yours,



DENNIS C. VACCO  
Attorney General

<sup>1</sup> In any event, there is authority for the proposition that consideration is present when the player purchases goods or entertainment at the regular price and receives, in addition to the thing purchased, the chance to win a prize. See, *People v Miller*, 271 NY 44 (1936); *People ex rel. Ellison v Lavin*, 179 NY 164 (1904). For example, in *People v Miller*, supra, the Court found the element of consideration present in a case where the player paid the regular price to see a movie and, with that purchase, received the chance to win a prize. Similarly, consideration was found to be present in a case where the player purchased cigars at their regular prices and also received the chance to win a prize. *People ex rel. Ellison v Lavin*, supra. Thus, receipt of something of value, in this case a commission for brokerage or sales services, does not remove the consideration element of the lottery.

**Press Releases**

Office of New York State Attorney General Eliot Spitzer

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- Maintain a bond for each sweepstakes promotion sufficient to pay for the total cost of all prizes offered;
- Specify the minimum number of prize-winning objects that will be included in the promotion, the chances of winning each prize, and the minimum value of each prize;
- Ensure that staff at all participating retail establishments are familiar with ongoing sweepstakes promotions and are capable of directing consumers to non-purchase methods of entry;
- Make entry forms readily available at its retail locations, regardless of whether the consumer has made a purchase; and
- Conspicuously post a statement at each retail location setting forth the minimum number and value of the prizes available, the geographic area of the promotion, and the contest's rules and regulations.

████ also agreed to pay \$38,000 in civil penalties and costs.

The case was handled by Assistant Attorney General Doris K. Morin under the supervision of Gary S. Brown, Assistant Attorney General in Charge of the Westchester Regional Office.

Consumers can obtain information regarding sweepstakes tips on the Attorney General's web site at [www.oag.state.ny.us](http://www.oag.state.ny.us). To file a complaint about a sweepstakes, individuals are directed to call the consumer help line at (800) 771-7755.

**Press Releases**

Office of New York State Attorney General Eliot Spitzer

<p><a href="#">Home</a></p> <p><a href="#">Press Releases</a></p> <p><a href="#">Tour the AG's Office</a></p> <p><a href="#">Contact the AG's Office</a></p> <p><a href="#">Links to Other Sites</a></p> <p><a href="#">Search</a></p> <p><a href="#">Index</a></p> <p><a href="#">Privacy Policy</a> <small>Updated 1-24-03</small></p> <p><a href="#">Disclaimer</a></p>	<p>Department of Law 120 Broadway New York, NY 10271</p> <p>For More Information: (518) 473-5525</p> <p><b>██████████ TO AMEND SWEEPSTAKES PROMOTIONS</b> Spitzer Obtains Agreement To Ensure Non-Purchasing Consumers Can Easily Enter Contest</p> <p>Attorney General Eliot Spitzer said today that his office and a major ██████████ chain have reached a settlement that makes it easier for consumers who do not purchase a product to enter the company's sweepstakes.</p> <p>██████████ Corporation - which operates over 400 stores in New York - settled allegations that its sweepstakes violated consumer protection laws by failing to provide an in-store method of entering the sweepstakes for customers who did not make a purchase. Under state law, consumers must be given an opportunity to enter and win a sweepstakes even if they do not purchase a product.</p> <p>██████████ based in ██████████ - conducted a recent sweepstakes offering a "Trip of a Lifetime" to Oahu, Hawaii as the grand prize. Consumers who visited a ██████████ store, purchased digital camera prints, and used their ██████████ Card were automatically entered in the sweepstakes. However, ██████████ did not make entry forms available at its stores for any other consumers. The only method of entering the sweepstakes made available to people who did not purchase digital camera prints with a ██████████ Card was on-line, through the company's website at ██████████.com.</p> <p>"Companies that conduct in-store sweepstakes must, according to state law, provide a level playing field for those customers who do not make purchases," Spitzer said.</p> <p>Pursuant to the settlement, ██████████ will in the future:</p> <ul style="list-style-type: none"> <li>• Make entry forms readily available at participating ██████████ retail locations, regardless of whether the consumer has made a purchase;</li> <li>• Conspicuously post contest rules and regulations at participating ██████████ retail stores;</li> <li>• Ensure that staff at participating retail locations are familiar with ongoing sweepstakes promotions and are capable of directing consumers to non-purchase methods of entry; and</li> <li>• Set forth with equal prominence an alternate non-purchase method of entry</li> </ul>	<p>Department of Law The State Capitol Albany, NY 12224</p> <p>For Immediate Release July 8, 2004</p>
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in any advertisement that promotes a sweepstakes which affords automatic entry to a consumer who makes an in-store purchase.

also agreed to pay \$77,000 in civil penalties and costs.

The settlement with follows a May 2004 settlement with Stores, which also agreed to settle allegations that it failed to provide sweepstakes entry procedures for customers who did not purchase items from its stores.

The case was handled by Assistant Attorney General Doris K. Morin under the supervision of Gary S. Brown, Assistant Attorney General in Charge of the Westchester Regional Office.

Consumers can obtain information regarding sweepstakes tips on the Attorney General's web site at [www.oag.state.ny.us](http://www.oag.state.ny.us). To file a complaint about a sweepstakes, individuals are directed to call the consumer help line at (800) 771-7755.

**Press Releases**

Office of New York State Attorney General Eliot Spitzer

<p><a href="#">Home</a></p> <p><a href="#">Press Releases</a></p> <p><a href="#">Tour the AG's Office</a></p> <p><a href="#">Contact the AG's Office</a></p> <p><a href="#">Links to Other Sites</a></p> <p><a href="#">Search</a></p> <p><a href="#">Index</a></p> <p><a href="#">Privacy Policy</a> <small>Updated 1-24-03</small></p> <p><a href="#">Disclaimer</a></p>	<p>Department of Law 120 Broadway New York, NY 10271</p> <p>For More Information: (212) 416-8060</p> <p><b>MANUFACTURER TO AMEND SWEEPSTAKES ADS</b></p> <p>Settles Investigation into "Survivor All-Stars - Push Through the Pain Game"</p> <p>Attorney General Eliot Spitzer today announced a settlement with the manufacturer of that will require the company to stop running advertisements which make it appear that a consumer must purchase the product in order to enter the company's sweepstakes.</p> <p>a-based ("") settled allegations that its advertisements violated consumer protection laws by making it appear that a purchase of was necessary to enter the "Survivor All-Stars - Push Through the Pain Game." Under state law, consumers must be given an opportunity to enter and win a sweepstakes even if they do not purchase a product.</p> <p>conducted a recent sweepstakes offering a trip to the season finale of the television program "Survivor" as the grand prize. Newspaper and magazine advertisements promoting the sweepstakes contained large, bold print directing the reader to "Buy" as the first in a series of steps leading to a chance to win the grand prize. By contrast, the words "No Purchase Necessary" appeared in fine print at the bottom of the advertisements.</p> <p>Similarly, the voice-over in advertisements broadcast on the CBS television network stated: "For your chance to win just buy any product." In addition, a large colorful visual display prompted viewers to buy a product to enter the sweepstakes. However, the voice-over failed to state that no purchase is necessary, and the printed words "No Purchase Necessary" appeared only briefly in the advertisements, in small type at the bottom of the screen.</p> <p>Although it was possible for consumers to enter the sweepstakes without making a purchase, by logging on to the CBS web site, approximately 84% of the people who ultimately entered the sweepstakes had purchased a product.</p> <p>Pursuant to the settlement,</p> <ul style="list-style-type: none"> <li>• shall not make any express or implied representation in its advertisements that a consumer must purchase a product in order to enter a sweepstakes;</li> <li>• shall not make any express or implied representation in its advertisements</li> </ul>	<p>Department of Law The State Capitol Albany, NY 12224</p> <p>For Immediate Release September 10, 2004</p>
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that a consumer will have a greater chance of winning a sweepstakes if they purchase a product;

- shall clearly and conspicuously disclose in its advertisements that no purchase is necessary to enter a sweepstakes;
- in any advertisement which refers to the purchase of a product as a means of entering a sweepstakes, shall clearly and conspicuously and with equal prominence to the language that refers to the product purchase, disclose the availability of alternate methods of entry that do not require a purchase.

██████████, which had ended the advertising campaign prior to entering into the settlement with the Attorney General, also agreed to pay \$52,000 in civil penalties and costs.

The settlement with ██████████ is the third in a recent series of sweepstakes-related enforcement actions brought by the Attorney General's office. ██████████ Corporation and ██████████ Stores settled allegations that they failed to provide sweepstakes entry procedures for customers who did not purchase items from their stores.

The case was handled by Assistant Attorney General Doris K. Morin under the supervision of Gary S. Brown, Assistant Attorney General in Charge of the Westchester Regional Office.

Consumers can obtain information regarding sweepstakes tips on the Attorney General's web site at [www.oag.state.ny.us](http://www.oag.state.ny.us). To file a complaint about a sweepstakes, individuals are directed to call the consumer help line at (800) 771-7755.



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## How to Comply With The Children's Online Privacy Protection Rule

[Kidz Privacy website](#)

The Children's Online Privacy Protection Act, effective April 21, 2000, applies to the online collection of personal information from children under 13. The new rules spell out what a Web site operator must include in a privacy policy, when and how to seek verifiable consent from a parent and what responsibilities an operator has to protect children's privacy and safety online.

The Federal Trade Commission staff prepared this guide to help you comply with the new requirements for protecting children's privacy online and understand the FTC's enforcement authority.

### Who Must Comply

If you operate a commercial Web site or an online service directed to children under 13 that collects personal information from children or if you operate a general audience Web site and have *actual knowledge* that you are collecting personal information from children, you must comply with the Children's Online Privacy Protection Act.

- To determine whether a Web site is directed to children, the FTC considers several factors, including the subject matter; visual or audio content; the age of models on the site; language; whether advertising on the Web site is directed to children; information regarding the age of the actual or intended audience; and whether a site uses animated characters or other child-oriented features.
- To determine whether an entity is an "operator" with respect to information collected at a site, the FTC will consider who owns and controls the information; who pays for the collection and maintenance of the information; what the pre-existing contractual relationships are in connection with the information; and what role the Web site plays in collecting or maintaining the information.

### Personal Information

The Children's Online Privacy Protection Act and Rule apply to individually identifiable information about a child that is collected online, such as full name, home address, email address, telephone number or any other information that would allow someone to identify or contact the child. The Act and Rule also cover other types of information -- for example, hobbies, interests and information collected through cookies or other types of tracking mechanisms -- when they are tied to individually identifiable information.

### Basic Provisions

Privacy Notice

Placement

An operator must post a link to a notice of its information practices on the home page of its Web site or online service *and* at each area where it collects personal information from children. An operator of a general audience site with a separate children's area must post a link to its notice on the home page of the children's area.

The link to the privacy notice must be clear and prominent. Operators may want to use a larger font size or a different color type on a contrasting background to make it stand out. A link in small print at the bottom of the page -- or a link that is indistinguishable from other links on your site -- is not considered clear and prominent.

#### Content

The notice must be clearly written and understandable; it should not include any unrelated or confusing materials. It must state the following information:

- The name and contact information (address, telephone number and email address) of all operators collecting or maintaining children's personal information through the Web site or online service. If more than one operator is collecting information at the site, the site may select and provide contact information for only one operator who will respond to all inquiries from parents about the site's privacy policies. Still, the names of *all* the operators must be listed in the notice.
- The kinds of personal information collected from children (for example, name, address, email address, hobbies, etc.) and how the information is collected -- directly from the child or passively, say, through cookies.
- How the operator uses the personal information. For example, is it for marketing back to the child? Notifying contest winners? Allowing the child to make the information publicly available through a chat room?
- Whether the operator discloses information collected from children to third parties. If so, the operator also must disclose the kinds of businesses in which the third parties are engaged; the general purposes for which the information is used; and whether the third parties have agreed to maintain the confidentiality and security of the information.
- That the parent has the option to agree to the collection and use of the child's information without consenting to the disclosure of the information to third parties.
- That the operator may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation.
- That the parent can review the child's personal information, ask to have it deleted and refuse to allow any further collection or use of the child's information. The notice also must state the procedures for the parent to follow.

#### Direct Notice to Parents

##### Content

The notice to parents must contain the same information included on the notice on the Web site. In addition, an operator must notify a parent that it wishes to collect personal information from the child; that the parent's consent is required for the collection, use and disclosure of the information; and how the parent can provide consent. The notice to parents must be written clearly and understandably, and must not contain any unrelated or confusing information. An operator may use

any one of a number of methods to notify a parent, including sending an email message to the parent or a notice by postal mail.

#### Verifiable Parental Consent

Before collecting, using or disclosing personal information from a child, an operator must obtain verifiable parental consent from the child's parent. This means an operator must make reasonable efforts (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child receives notice of the operator's information practices and consents to those practices.

Until April 2002, the FTC will use a *sliding scale* approach to parental consent in which the required method of consent will vary based on how the operator uses the child's personal information. That is, if the operator uses the information for *internal* purposes, a less rigorous method of consent is required. If the operator *discloses the information to others*, the situation presents greater dangers to children, and a more reliable method of consent is required. The sliding scale approach will sunset in April 2002 subject to a Commission review planned for October 2001.

#### Internal Uses

Operators may use *email* to get parental consent for all internal uses of personal information, such as marketing back to a child based on his or her preferences or communicating promotional updates about site content, as long as they take additional steps to increase the likelihood that the parent has, in fact, provided the consent. For example, operators might seek confirmation from a parent in a delayed confirmatory email, or confirm the parent's consent by letter or phone call.

#### Public Disclosures

When operators want to disclose a child's personal information to third parties or make it publicly available (for example, through a chat room or message board), the *sliding scale* requires them to use a more reliable method of consent, including:

- getting a signed form from the parent via postal mail or facsimile;
- accepting and verifying a credit card number in connection with a transaction;
- taking calls from parents, through a toll-free telephone number staffed by trained personnel;
- email accompanied by digital signature;

But in the case of a monitored chat room, if all individually identifiable information is stripped from postings before it is made public -- and the information is deleted from the operator's records -- an operator does not have to get prior parental consent.

#### Disclosures to Third Parties

An operator must give a parent the option to agree to the collection and use of the child's personal information without agreeing to the disclosure of the information to third parties. However, when a parent agrees to the collection and use of their child's personal information, the operator may release that information to others who uses it solely to provide support for the internal operations of the website or service, including technical support and order fulfillment.

#### Exceptions

The regulations include several exceptions that allow operators to collect a child's email address without getting the parent's consent in advance. These exceptions cover many popular online activities for kids, including *contests*, *online newsletters*, *homework help* and *electronic postcards*.

Prior parental consent is not required when:

- an operator collects a child's or parent's email address to provide notice and seek consent;
- an operator collects an email address to respond to a *one-time* request from a child and then deletes it;
- an operator collects an email address to respond *more than once* to a *specific* request – say, for a subscription to a newsletter. In this case, the operator must notify the parent that it is communicating regularly with the child and give the parent the opportunity to stop the communication before sending or delivering a second communication to a child;
- an operator collects a child's name or online contact information to protect the safety of a child who is participating on the site. In this case, the operator must notify the parent and give him or her the opportunity to prevent further use of the information;
- an operator collects a child's name or online contact information to protect the security or liability of the site or to respond to law enforcement, if necessary, and does not use it for any other purpose.

#### October 2001/April 2002

In October 2001, the Commission will seek public comment to determine whether technology has progressed and whether secure electronic methods for obtaining verifiable parental consent are widely available and affordable. Subject to the Commission's review, the sliding scale will expire in April 2002. Until then, operators are encouraged to use the more reliable methods of consent for all uses of children's personal information.

#### New Notice for Consent

An operator is required to send a *new notice and request for consent to parents* if there are material changes in the collection, use or disclosure practices to which the parent had previously agreed. Take the case of the operator who got parental consent for a child to participate in contests that require the child to submit limited personal information, but who now wants to offer the child chat rooms. Or, consider the case of the operator who wants to disclose the child's information to third parties who are in materially different lines of business from those covered by the original consent – for example, marketers of diet pills rather than marketers of stuffed animals. In these cases, the Rule requires new notice and consent.

#### Access Verification

At a parent's request, operators must disclose the general kinds of personal information they collect online from children (for example, name, address, telephone number, email address, hobbies), as well as the specific information collected from children who visit their sites. Operators must use reasonable procedures to ensure they are dealing with the child's parent before they provide access to the child's specific information.

They can use a variety of methods to verify the parent's identity, including:

- obtaining a signed form from the parent via postal mail or facsimile;

- accepting and verifying a credit card number;
- taking calls from parents on a toll-free telephone number staffed by trained personnel;
- email accompanied by digital signature;
- email accompanied by a PIN or password obtained through one of the verification methods above.

Operators who follow one of these procedures acting in good faith to a request for parental access are protected from liability under federal and state law for inadvertent disclosures of a child's information to someone who purports to be a parent.

#### Revoking & Deleting

At any time, a parent may revoke his/her consent, refuse to allow an operator to further use or collect their child's personal information, and direct the operator to delete the information. In turn, the operator may terminate any service provided to the child, but only if the information at issue is reasonably necessary for the child's participation in that activity. For example, an operator may require children to provide their email addresses to participate in a chat room so the operator can contact a youngster if he is misbehaving in the chat room. If, after giving consent, a parent asks the operator to delete the child's information, the operator may refuse to allow the child to participate in the chat room in the future. If other activities on the Web site do not require the child's email address, the operator must allow the child access to those activities.

#### Timing

The Rule covers all personal information collected after April 21, 2000, regardless of any prior relationship an operator has had with a child. For example, if an operator collects the name and email address of a child before April 21, 2000, but plans to seek information about the child's street address after that date, the later collection would trigger the Rule's requirements. In addition, come April 21, 2000, if an operator continues to offer activities that involve the ongoing collection of information from children – like a chat room – or begins to offer such activities for the first time, notice and consent are required for all participating children regardless of whether the children had already registered at the site.

#### Safe Harbors

Industry groups or others can create self-regulatory programs to govern participants' compliance with the Children's Online Privacy Protection Rule [PDF]. These guidelines must include independent monitoring and disciplinary procedures and must be submitted to the Commission for approval. The Commission will publish the guidelines and seek public comment in considering whether to approve the guidelines. An operator's compliance with Commission-approved self-regulatory guidelines will generally serve as a "safe harbor" in any enforcement action for violations of the Rule.

#### Enforcement

The Commission may bring enforcement actions and impose civil penalties for violations of the Rule in the same manner as for other Rules under the FTC Act. The Commission also retains authority under Section 5 of the FTC Act to examine information practices for deception and unfairness, including those in use before the Rule's effective date. In interpreting Section 5 of the FTC Act, the Commission has determined that a representation, omission or practice is *deceptive* if it is likely to:

- mislead consumers; and
- affect consumers' behavior or decisions about the product or service.

Specifically, it is a deceptive practice under Section 5 to represent that a Web site is collecting personal identifying information from a child for one reason (say, to earn points to redeem a premium) when the information will be used for another reason that a parent would find material -- and when the Web site does not disclose the other reason clearly or prominently.

In addition, an act or practice is *unfair* if the injury it causes, or is likely to cause, is:

- substantial;
- not outweighed by other benefits; and
- not reasonably avoidable.

For example, it is likely to be an unfair practice in violation of Section 5 to collect personal identifying information from a child, such as email address, home address or phone number, and disclose that information to a third party without giving parents adequate notice and a chance to control the collection and use of the information.

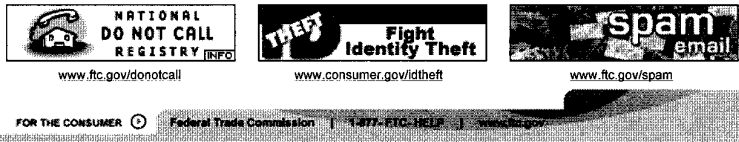
**For More Information**

If you have questions about the [Children's Online Privacy Protection Rule \[PDF\]](#), visit the FTC online at [www.ftc.gov/kidzprivacy](http://www.ftc.gov/kidzprivacy). You also may call the FTC's Consumer Response Center toll-free at 1-877-FTC-HELP (382-4357), or write Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**Your Opportunity to Comment**

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

November 1999



**COMPANY GIVEAWAY**  
*SHORT FORM RULES*

**NO PURCHASE OR INTERNET ACCESS NECESSARY. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING.** This Giveaway is open only to residents of the U.S. (excluding Puerto Rico), who are 18 years of age or older. The Giveaway begins on **[DATE BEGINS]** and ends on **[DATE ENDS]**. Entries must be received between Midnight, Pacific Standard Time ("PST"), **[DATE BEGINS]** and 11:59 p.m. PST, **[DATE ENDS]**, 2001. To enter register at <http://www.company.com> or mail a 3x5 piece of paper with participant's name, home address and telephone number to "Company Giveaway, 100 Main Street, Anytown, WA 99999." Complete official giveaway rules may be obtained on <http://www.company.com> or by mailing a request to "Company Giveaway, 100 Main Street, Anytown, WA 99999." Odds of winning depend on total number of eligible entries received. **VOID IN PUERTO RICO AND WHERE PROHIBITED BY LAW.**

**COMPANY GIVEAWAY**  
OFFICIAL RULES

**1. HOW TO ENTER: NO PURCHASE OR INTERNET ACCESS NECESSARY. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING.** The Company Giveaway (“Giveaway”) begins [TIME BEGINS] Pacific Standard Time (PST) [DATE BEGINS] and ends [TIME ENDS] PST [DATE ENDS] (“entry period.”) There are two ways to enter: online, or by mail. No other method of entry will be accepted. Online Method: To enter online during the entry period, go to [URL TO ENTRY FORM](#). Follow the directions to complete the online entry form, answer the questions and click submit. Entrants must complete all data requested on the online entry form. Online entries must be completed and received by Company by **DATE RECEIVED DEADLINE**. Limit one entry per person. Incomplete entries are void.

If you do not wish to enter online, you may enter the Giveaway by printing your name, address, city, state and zip code, age, day & evening telephone number and email address (if you have one), and the words, “Company” Giveaway on a 3”x5” card, and mail it to: “Company” Giveaway, 100 Main Street, Anytown, WA, 99999. Mail-in entries must be received by **DATE RECEIVED DEADLINE**. Limit one entry per person. All entries become the property of Company and will not be acknowledged or returned.

Company assumes no responsibility for lost, late, misdirected, illegible or mutilated entries or for any computer, online, telephone, cable, network, electronic or Internet hardware or software malfunctions, failures, connections, availability, garbled or jumbled transmissions, service provider, Internet, web site, or other accessibility or availability issues, traffic congestion, or unauthorized human intervention, or any technical malfunctions that may occur. Entrants shall be the authorized account holder of the e-mail address submitted at the time of entry. “Authorized account holder” is defined as the natural person who is assigned to an e-mail address by an Internet access provider, online service provider, or other organization (e.g., business, educational institution, etc.) that is responsible for assigning e-mail addresses for the domain name associated with the submitted e-mail address.

**2. ELIGIBILITY:** This Giveaway is open only to legal residents of the U.S. (excluding Puerto Rico) who are 18 years of age or older as of the date the Giveaway begins. Employees of Company, their subsidiaries, affiliates, prize suppliers, and advertising and promotional agencies of Company, and their immediate families (spouse, parents, children, siblings and their spouses) and individuals living in the same household as such employees are ineligible. This Giveaway is governed by the laws of the United States and is subject to all applicable federal, state, and local laws and regulations. Void in Puerto Rico and where prohibited.

**3. JUDGING:** Winners will be selected by random drawing on or about [DATE OF DRAWING], 2001 from among all eligible entries received. All prize drawings will be conducted at Company’s offices, located at 100 Main Street, Anytown, WA. By participating, entrants agree to be bound by the Official Rules and the decisions of the judges, which shall be final and binding in all respects. Odds of winning depend on the

total number of eligible entries received. All prizes will be awarded. Limit one prize per person, family or household. Winners will be notified via email, U.S. mail, telephone, and/or by overnight courier.

**4. PRIZES:** There will be ten (10) winners selected and ten (10) prizes granted. Each winner will receive one prize package that includes one (1) Company hat and one (1) Company t-shirt (approximate retail value \$30.00). The prize cannot be exchanged for cash, and cannot be used in conjunction with any other promotion. Company reserves the right to substitute a prize of equal or greater value in the event the offered prize is unavailable. No substitution or transfer of prize permitted except as provided herein.

**5. GENERAL CONDITIONS:** All federal, state, and local taxes, fees and surcharges on prize packages are the sole responsibility of the prize winners. Prize winners may be required to execute and return an Affidavit of Eligibility/Release of Liability/Prize Acceptance Form within seven (7) days following notification. Return of any prize and/or prize notification as undeliverable or failure of any entrant to comply with any Official Rules will result in disqualification and selection of an alternate winner.

Winners grant Company the right to use and publish their legal name and state of residence online and in print, or any other media, in connection with the Giveaway. Except winners who are residents of the State of Tennessee, acceptance of a prize constitutes permission for Company and their advertising and promotional agencies to use winners’ names and likenesses for editorials, advertising and promotional purposes without payment of additional compensation unless prohibited by law. By entering, participants release and hold harmless Company, their respective parents, subsidiaries, affiliates, directors, officers, employees, attorneys, agents and representatives from any and all liability for any injuries, loss, claim, action, demand or damage of any kind arising from or in connection with the Giveaway or any prize won, any misuse or malfunction of any prize awarded, participation in any Giveaway related activity, or participation in the Giveaway.

As a condition of participating in this Giveaway, participant agrees that any and all disputes which cannot be resolved between and the parties, and causes of action arising out of or connected with this Giveaway shall be resolved individually, without resort to any form of class action, exclusively, before a court of competent jurisdiction located in [City, State], which court shall apply the laws of the state of [State] without regard for rules of conflicts of law. In any such dispute, participant shall, under no circumstances, be entitled to claim punitive, incidental, or consequential damages, or any other damages, including attorneys’ fees, other than participant’s actual out-of-pocket expenses (if any) associated with participating in the Giveaway, and participant hereby waives all rights to have damages multiplied or increased.

**CAUTION: ANY ATTEMPT BY A CONTESTANT OR ANY OTHER INDIVIDUAL TO DELIBERATELY DAMAGE ANY WEB SITE OR UNDERMINE THE LEGITIMATE OPERATION OF THE GIVEAWAY IS A VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, COMPANY RESERVES THE RIGHT TO SEEK DAMAGES FROM ANY SUCH CONTESTANT TO THE FULLEST EXTENT PERMITTED BY LAW.**

6. LIMITATIONS OF LIABILITY: Company is not responsible for any incorrect or inaccurate information, whether caused by web site users or by any of the equipment or programming associated with or utilized in the Giveaway or by any technical or human error which may occur in the processing of submissions in the Giveaway, including but not limited to any misprints or typographical errors. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, entries. Company is not responsible for any problems or technical malfunction of any telephone network or lines, computer on-line-systems, servers or providers, computer equipment, software, failure of e-mail or players on account of technical problems or traffic congestion on the Internet or at any web site or combination thereof, including injury or damage to participants or to any other person's computer related to or resulting from participating or downloading materials in this Giveaway. If, for any reason, the Giveaway is not capable of completion as planned, including by reason of infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures or any other causes beyond the control of Company which corrupt or affect the administration, security, fairness, integrity or proper conduct of this Giveaway, Company reserves the right at their sole discretion to cancel, terminate, modify or suspend the Giveaway.

IN NO EVENT WILL COMPANY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, AND RELATED COMPANIES, ITS ADVERTISING AND PROMOTIONAL AGENCIES, OR ITS DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS, AGENTS, AND REPRESENTATIVES, BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES OR LOSSES OF ANY KIND, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF PARTICIPANT'S ACCESS TO AND USE OF THE INTERNET SITE <http://www.company.com/> OR THE DOWNLOADING FROM AND/OR PRINTING OF MATERIAL FROM SAID SITE. WITHOUT LIMITING THE FOREGOING, EVERYTHING ON THIS SITE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. CHECK YOUR LOCAL LAWS FOR ANY RESTRICTIONS OR LIMITATIONS REGARDING THESE LIMITATIONS OR EXCLUSIONS.

7. LIST OF WINNERS: For a list of winners, after **ENTER DATE AFTER CONTEST COMPLETED**, mail a separate, self-addressed stamped envelope to: Company Survey Giveaway Winners, 100 Main Street, Anytown, WA 99999. Vermont residents may omit return postage.

8. NOTICE TO INDIVIDUALS: REMOVAL FROM MAILING LIST: Any individual (or other duly authorized person) may elect to exclude the name and address of that individual from all lists used by Company to mail skill contests or sweepstakes. To elect to have an individual's name excluded from all such lists, submit a removal request in

writing to "Company Giveaway, 100 Main Street, Anytown, WA 99999." This notification system may be used to prohibit mailing of all skill contests or sweepstakes by Company to such individual.

**PRIZE ACCEPTANCE/AFFIDAVIT OF ELIGIBILITY  
AND RELEASE FORM**

I, \_\_\_\_\_, being duly sworn, so hereby state and agree as follows:

1. I am a legal resident of the United States and, as of [date], I was 18 years of age or older. I understand that I was selected as the prize winner in the Company Sweepstakes (the "Sweepstakes"). I hereby accept the prize package consisting of vouchers from Travel Agency good for two (2) roundtrip coach air transportation tickets between [city] and [city] on Company Airlines, 6 days/5 nights accommodations (1 standard room, double occupancy) at the Company Resort in [city], and ground transportation in [city]. I understand that Travel Agency, Company Airlines and Company Resort are responsible for actually providing the winning prize package services. I understand that all airfare will originate in [city] and that significant blackout periods apply. I understand that the approximate value of my prize package is [total value of prize].

2. I understand and agree that I will be solely responsible for all federal, state, local and other taxes and all fees, charges and personal expenses relating to the prize package (including, meals, gratuities, insurance and other unspecified costs).

3. I understand and agree that the travel portion of the prize package must take place during the following dates: [begin date] – [end date], 2001 or the prize will be forfeited. Travel arrangements will be arranged by Travel Agency.

4. At the time of my participation in the Sweepstakes and continuing to the date hereof, I am not, and was not an employee of, or an immediate family member (spouse, parent, child, sibling or sibling's spouse) of, or living in the same household as an employee of Company (the "Sponsor") or their subsidiaries, affiliates, prize suppliers, advertising or promotional agencies.

5. I agree that acceptance of the prize package constitutes permission for the Sponsor to use my name, address, voice, photograph, likeness, prize information, entry materials and/or statements about the Sweepstakes for editorial, advertising and publicity purposes without further compensation to the extent permitted by applicable law. This provision does not apply to residents of the State of Tennessee.

6. I hereby release, discharge, indemnify, and forego any and all claims, causes of action, suits or demands of any nature whatsoever, known, or unknown, including without limitation personal injury, damages, or other claims, loss, or damage, which I, my heirs, executors, assigns or representatives may have now, or may have in the future against the Sponsor, or its respective employees, agents, officers, directors, shareholders, parent companies, affiliates, subsidiaries, advertising or promotional agencies, successors and assigns, in any way arising out of or in connection with the Sweepstakes (including, without limitation, the acceptance and use of the prize package that I am now being awarded) or use of my name, address, voice, photograph, likeness, prize information, entry materials and/or statements about the Sweepstakes to the extent permitted hereby.

I have read the foregoing prior to its execution and fully understand that by signing this release, I am waiving for myself, my heirs, executors, assigns and representatives any and all claims, causes of action, suits or demands of any nature whatsoever, known or unknown, including without limitation personal injury, damages, or other claims, loss, or damages, that could possibly be asserted against the Sponsor, or its respective employees, agents, officers, directors, shareholders, parent companies, affiliates, subsidiaries, advertising or promotional agencies, successors and assigns arising in any way in connection with the prize package that I am now being awarded. I understand and agree that the foregoing release shall be governed by the laws of the State of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone

Signed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**RELEASE FORM  
(TRAVEL COMPANION)**

**Privacy Law Issues in Sweepstakes and Contests**  
By Heidi M. Hoard  
Assistant General Counsel, Tennant Company

I, \_\_\_\_\_, being duly sworn, so hereby state and agree as follows:

1. I will be travelling with \_\_\_\_\_ (the "Prize Winner") to [city] as part of the prize package being awarded to him/her in the Company Sweepstakes (the "Sweepstakes").

2. I agree that my participation in the travel prize being awarded to the Prize Winner constitutes permission for Company (the "Sponsor") and its designees to use my name, photograph and/or likeness for editorial, advertising and publicity purposes without further compensation to the extent permitted by applicable law. This provision does not apply to residents of the State of Tennessee.

3. I hereby release, discharge, indemnify, and forego any and all claims, causes of action, suits or demands of any nature whatsoever, known, or unknown, including without limitation personal injury, damages, or other claims, loss, or damages, which I, my heirs, executors, assigns or representatives may have now, or may have in the future against the Sponsor, or any of its respective employees, agents, officers, directors, shareholders, parent companies, affiliates, subsidiaries, advertising or promotional agencies, successors and assigns, in any way arising out of or in connection with the Sweepstakes or my participation in the travel prize being awarded to the Prize Winner.

I have read the foregoing prior to its execution and fully understand that by signing this release, I am waiving for myself, my heirs, executors, assigns and representatives any and all claims, causes of action, suits or demands of any nature whatsoever, known or unknown, including without limitation personal injury, damages, or other claims, loss, or damages, that could possibly be asserted against the Sponsor, or its respective employees, agents, officers, directors, shareholders, parent companies, affiliates, subsidiaries, advertising or promotional agencies, successors and assigns arising in any way in connection with the Sweepstakes or my participation in the travel prize being awarded to the Prize Winner. I understand and agree that the foregoing release shall be governed by the laws of the State of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address City State Zip Phone

Signed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**How does entry into sweepstakes or contests trigger privacy law concerns?**

- Capturing *any* personally identifiable information on a sweepstakes or contest entry form triggers privacy concerns.
- Personal information includes such items as first and last names, home and e-mail addresses, telephone numbers, social security numbers and persistent identifiers that are tied to individually identifiable information.

**What privacy laws do I need to consider when planning sweepstakes or contests?**

Potentially applicable federal laws

- *CAN-SPAM Act of 2003*. If you send out sweepstakes notices through e-mail, you may be subject to the Controlling the Assault of Non-solicited Pornography and Marketing Act, which requires (i) unsolicited commercial e-mails be labeled as marketing materials; (ii) clear opt-out instructions with an opt-out mechanism that remains in effect for at least 30 days and is honored within 10 days of receipt of request; (iii) listing sender's physical address; and (iv) no use of deceptive subject lines and false headers. This Act supercedes various state laws governing unsolicited commercial e-mail, including more restrictive state laws such as a California's Anti-Spam law. It may be enforced by FTC, State AG's and ISP's. No private enforcement. Provides for both civil damages, treble damages and criminal penalties including jail time.
- *Children's On-line Privacy Protection Act (COPPA)*, 15 U.S. Code § 6501 et. seq. and *FTC's Children's On-line Privacy Protection Rule*, 16 C.F. R. § 312. If your on-line sweepstakes allows children under 13 to enter, you will need to comply with the requirements of this Act which include providing parental notification of your privacy policies and obtaining verifiable consent from parent before collecting personal information. More details follow below.
- *Deceptive Mail Prevention and Enforcement Act* (39 U.S. C. § 3001 et. seq.). If you send sweepstakes solicitations through the mail, you not only have to comply with the U.S. Post Office rules regarding sweepstakes or contests but create a "Name Removal System" that allows individuals to have their names removed from your mailing list and prohibits you from renting or selling their names. Sweepstakes' mailings must include address or toll free number that person (or person's legal guardian) can call to have name removed from mailing list. Removal requests must be honored within 60 days. Penalties for failing to remove a name are significant and include civil penalties of up to \$10,000 per violation, and private rights of action to recover the greater of actual damages or \$500.

Sample state laws

- Various state laws govern the destruction of personal consumer information and provide details regarding how long and how secure you need to keep personally identifiable information obtained in sweepstakes and contest entries.
- California has the most extensive state privacy laws. Potentially applicable laws include the following:
  - *Destruction of Customer Records*, CA Civil Code §§1798.80 and 1798.84, requiring businesses to shred, erase, or otherwise modify personal information in records under their control.
  - *Information-Sharing Disclosure, "Shine the Light,"* CA Civil Code §§1798.82-1798.84 et, seq., which allows consumers to learn how their personal information is shared by companies for marketing purposes and encourages businesses to let their customers opt-out of such information sharing. In response to a customer request, a business must provide either (1) a list of the categories of personal information disclosed to other companies for their marketing purposes during the preceding calendar year, with the names and addresses of those companies, or (2) a privacy statement giving the customer a cost-free opportunity to opt-out of such information sharing.
  - *Online Privacy Protection Act of 2003*, Business and Professions Code §§22575-22579, requires operators of commercial web sites or online services that collect personal information on California residents through a web site to conspicuously post a privacy policy on the site and to comply with its policy. The privacy policy must, among other things, identify the categories of personally identifiable information collected about site visitors and the categories of third parties with whom the operator may share the information.

Other legal issues

- All posted privacy rules must be followed in connection with sweepstakes or contest data collection.
- Failure to adhere to posted privacy policies might be construed as an "unfair and deceptive trade practice" as well as a breach of contract.

**What should I do to comply with privacy laws?**

- Always reference sponsor or promoter's privacy policy on entry forms, abbreviated methods of entry form, official rules, website for online entries.
- A typical on-line privacy statement for sweepstakes entry is:
  - "By participating in this Sweepstakes, you acknowledge and agree that XXXX.com may collect the personal information submitted by you, and use the information pursuant to its privacy policy available on line at [www.XXXX.com](http://www.XXXX.com) or by calling 1-800-XXX-XXXX."

- A typical on-line registration page should contain a statement such as:
  - "The information you provide will be handled according to XXXX's privacy policy."
- Most privacy policies will state:
  - Who owns the collected customer information
  - Whether or not the issuer will share data with third party vendors or promotional partners
  - How customers can opt out of use of information
  - Whether they collect information from children under 13 and if so, how they comply with COPPA.
  - Sample privacy policies that refer to sweepstakes include: [www.online-sweepstakes.com](http://www.online-sweepstakes.com) and [www.bestbuy.com](http://www.bestbuy.com).
- If the sweepstakes or contest entries were sought using direct mail, you need to establish a Name Removal System that includes:
  - Toll free telephone number or address to which consumer can call or write to be removed from mailing list(s)
  - Statement that recipient can prohibit the promoter from sending any further mailings
  - Agreement to remove consumer from mailing lists within sixty calendar days after receipt of removal request.
- Other practical tips include:
  - Limiting the data you collect to only what you absolutely need.
  - Securely discarding data as soon as you don't need it—shredding or discarding in a secure manner.
  - Storing data--be it hard copy or electronic—securely.
  - Not sharing personally identifiable information with other parties
  - Not using Social Security numbers as account numbers or identifiers.

**How do I avoid my sweepstakes or contest being governed by COPPA?**

- Clearly limit entrants to those over 13 years old.
- Better yet, limit to those over 18 so no problem with minors being able to comply with rules.
- Require the use of a credit card for any purchases.

**How do I comply with COPPA if the sweepstakes or contest is open to children under 13?**

- Post a privacy policy on the homepage of the website and link to the privacy policy on every page where personal information is collected.
- Provide notice about the site's information collection practices to parents.
- Obtain verifiable parental consent before collecting personal information from children. According to the FTC rules, this means you must:
  - Make reasonable efforts to obtain verifiable parental consent in light of available technology.
  - Use "most reliable" methods of prior verifiable parental consent if children's information will be disclosed to third parties or made publicly available through chat rooms or other interactive activities.
  - It is regarded as an acceptable method of obtaining verifiable consent if you:

- Obtain a signed consent form from parent returned by mail or facsimile.
- Provide a toll free number which parents can call to give their consent to trained personnel.
- Require a parent to use a credit card in connection with a transaction.
- Exchange a digital certificate that uses public key technology.
- Provision of e-mail message with a PIN or password obtained by one of the aforementioned methods.
- Give parents a choice as to whether child's personal information will be disclosed to third parties.
- Provide parents access to their child's personal information and the opportunity to withdraw the child's personal information and opt-out of future collection of use of the information.
- Not condition a child's participation in a game, contest or other activity on the child disclosing more personal information than is reasonably necessary to participate in an activity.
- Maintain the confidentiality, security and integrity of personal information collected on children.
- Entry form should request contact information for parent.
- On entry submission, website should automatically send to parents
  - Instructions for providing consent, or
  - E-mail notification to parent informing that the child has entered a giveaway and stating why sponsor needs and how they will use personally identifiable information

#### What are the exceptions under COPPA to the requirement to obtain verifiable parental consent?

- §312.5(c)(3) provides that operator can collect "online contact information from a child to be used to respond directly more than once to a specific request from a child [as long as] such information is not used for any other purpose."
- FTC has stated that under this exception, an operator could collect a child's e-mail address in order to provide the child with "a contest entry and subsequent award."
- This exception requires that operator do certain things such as provide parents with notice and an "opportunity to request that the operator make no further use of the information."
- To use this exception, sponsor must:
  - Not ask for any personal information from a child other than the child's online contact information on the entry form. Doing anything more—even asking about non-personal information such as hobbies—requires parental verifiable consent.
  - Send the child's parents an opt-out notice.
    - Notice must inform parents that the operator has collected the child's e-mail address in order to process a sweepstakes entry and child may be contacted later should he be selected as the winner.
    - If parents choose to opt-out, must ensure there is easy way for parent to contact the website, such as by e-mail or toll free number.

- Parent must be told that if they fail to respond to opt-out notice, the sponsor may use the child's e-mail address to contact the child in the event the child wins.
- Must delete all references to the child if the parent opts-out.
- Ensure that child's online contact information is not used for any purpose beyond the child's request.
  - In sweepstakes context, means can't use for any other purpose than notifying child if they win.
  - Can't place the e-mail address on database or contact child for any other reason.

#### Can you give me examples of enforcement actions under COPPA?

- UMG Recordings, Inc. paid the FTC \$400,000 to settle a claim that they failed to obtain parental consent prior to collection information from children such as name, birth date, home and e-mail addresses, phone number, gender and preferences in music, sports and apparel. Although they had sent notice to the parents, it was sent after they collected the information and thus was deemed insufficient.
- Bonzi Software paid \$75,000 in civil penalties for not obtaining prior parental consent, failing to post a clear and complete privacy notice, and not providing a reasonable means for parents to review the personal information collected from their children. They had collected names and addresses in connection with providing free downloadable software with an interactive animated character.

#### Resources

- Articles:
  - Laura Handman & Denise Gough, [Online Promotions: Sweepstakes and Contests](#), PLI (2000).
  - John P. Feldman and Gonzalo E. Mon, [Running a COPPA-Compliant Sweepstakes](#), Collier Shannon Scott.
  - Arent Fox, Kinter Plotkin & Kahn, PLLC, [Direct Mail Sweepstakes Alert](#), [www.library.lj.findlaw.com](http://www.library.lj.findlaw.com).
- Presentations:
  - Frank Caesar, [Marketing in an Opt-Out World--Privacy Policies](#) (ACCA October 22, 2002)
  - Cheryl A. Falvey, [You May Have Already Won: Avoiding Liability for Your Corporate Sweepstakes, Contests and Marketing Promotions](#) (Akin Gump, PowerPoint Presentation, December 4, 2002).
  - Cheryl A. Falvey & Karol A. Kepchar, [Privacy and Security: Navigating the Evolving Federal and State Regulations on Privacy: A Primer for In-House Counsel](#) (Akin Gump, PowerPoint Presentation, April 30, 2003).
- Invaluable Assistance
  - Peggy Shields Callow, Legal Assistant, Best Buy, Inc.
- Websites
  - [www.ftc.gov/privacy/privacyinitiatives/children.html](http://www.ftc.gov/privacy/privacyinitiatives/children.html)
  - [www.privacy.ca.gov/lawenforcement/laws.html](http://www.privacy.ca.gov/lawenforcement/laws.html)
  - [www.online-sweepstakes.com/privacy](http://www.online-sweepstakes.com/privacy)
  - [www.bestbuy.com](http://www.bestbuy.com)

# INTERNET ALERT



FEBRUARY 2001

## LEGAL COMPLIANCE ISSUES GOVERNING ONLINE SWEEPSTAKES

Sweepstakes contests have long been popular marketing tools that can generate interest in your business and help build customer databases. Internet-based sweepstakes (i.e., sweepstakes that are promoted through a Web site and allow entry through a Web site) are increasingly common because they provide the added benefit of attracting traffic to your Web site, where entrants typically will receive additional information and can make online purchases. Perhaps the greatest benefit of Internet-based sweepstakes is that they allow the sponsor to reach a worldwide audience at a fraction of the cost of mailing paper sweepstakes materials or promoting the sweepstakes solely through the broadcast media and with far more immediacy.

Significant legal regulations govern sweepstakes promotions, and the consequences of violating these regulations could result in criminal liability. Internet-based sweepstakes present additional concerns that may not arise in a traditional sweepstakes. For example, the global reach of the Internet means that, unless limited to U.S. residents, a sweepstakes must comply with the laws of every state and every foreign country where the sweepstakes will be valid. Although some of the legal limits on sweepstakes are consistent from jurisdiction to jurisdiction, many requirements and prohibitions vary based on locale. Thus, what may be a perfectly legal sweepstakes in one state may get the

sponsor in trouble elsewhere. The lack of uniformity in the laws of foreign nations can make it an enormous task to operate a legal international sweepstakes, which unfortunately impairs the ability to take full advantage of the Internet's global reach.

This *Alert* discusses some of the legal problems commonly encountered when sponsoring an Internet-based sweepstakes. A thorough evaluation of the proposed contest and the official rules will help you run a sweepstakes that generates publicity rather than legal liability.

### The Lottery Problem

Unwary marketing executives often fall into the trap of sponsoring a sweepstakes contest that, from a legal standpoint, looks more like a private lottery. Private lotteries, which are illegal in every state, are generally defined as having the following three elements: (1) **something of value** is given away; (2) by **chance**; and (3) entrants must provide **consideration** for their entry.<sup>1</sup> Genuine games of skill, such as trivia or essay contests, remove the element of chance. Since sweepstakes necessarily require that something of value be given away by chance (i.e., random drawing), the only way to avoid running an illegal lottery is to eliminate the third element—consideration. This is accomplished by providing a free

<sup>1</sup> See Cal. Penal Code § 319 (West 2000); N.Y. Penal Law § 225.00(10) (2000); Tex. Penal Code Ann. § 47.01(7)(2000).

method of entry and not requiring any purchase for participation in the sweepstakes.<sup>2</sup>

Obviously, charging an entry fee to enter the sweepstakes would constitute consideration and would be unlawful. In many states, however, the consideration need not flow directly to the sponsor of the sweepstakes to be deemed a violation of the lottery laws. For example, accessing the Internet could be determined to be sufficient “consideration” to warrant concern and many sweepstakes provide an alternate mail-in method of entry. If the only way to enter a sweepstakes is through the Internet, limiting the sweepstakes only to entrants that have Internet access prior to the start of the sweepstakes is one way to ensure that no incentive is given to purchase Internet service. Even requiring entrants to expend excessive personal effort or endure unreasonable inconvenience has been held illegal.<sup>3</sup>

For these reasons, it is crucial that entrants have a free, easy method of entry, such as mailing standard index cards or calling a toll-free number. The modicum of effort and expense required by these methods of entry is generally permissible.<sup>4</sup> Of course, free entries must have the same chance of winning as entries submitted by persons who make purchases. Moreover, it is a violation of most state consumer protection laws to give potential entrants the impression that they will have a greater chance of winning if they make a purchase.

<sup>2</sup> See *Glick v. MTV Networks*, 796 F. Supp. 743, 747 (S.D.N.Y. 1992) (“the sweepstakes’ official rules did not require that participants risk something of value because alternative cost-free means of entry were reasonably available”).

<sup>3</sup> See *Carney, Ltd. v. Brzezinski*, 453 N.E.2d 746, 761 (Ill. App. 1983) (“in our judgment, the obstacles to obtaining a free entry blank are so formidable, the publisher’s offer of a free entry blank must be regarded as chimerical”).

<sup>4</sup> See *Albertson’s, Inc. v. Hansen*, 600 P.2d 982, 986 (Utah 1979) (“to find that the effort required to pick up or obtain a [free entry] alone is valuable consideration would invalidate any distribution-by-chance scheme ... where the participant is required to expend the slightest effort”).

Although most sweepstakes regulation occurs on the state level, federal law can also apply. For instance, the Deceptive Mail Prevention and Enforcement Act,<sup>5</sup> which was enacted in 1999, prohibits the mailing of sweepstakes materials unless certain disclosures are made. These include, among others, clear and conspicuous disclosures of the odds of winning, the official rules and the fact that no purchase is necessary to win. While this act is not applicable to purely “Internet” sweepstakes (i.e., contests that are not also distributed by the use of the mails), the disclosure standards set in this federal statute should be considered as a benchmark to which any Internet sweepstakes should seek to comply.

Likewise, the Children’s Online Privacy Protection Act applies to regulate the information collected by any sweepstakes targeted at children under the age of 13. The notice and consent provisions of this act should be consulted before sponsoring any sweepstakes targeted at children or the official rules should exclude participation by children.

### State Registration and Other Requirements

New York, Rhode Island and Florida require sponsors to register their sweepstakes and impose registration fees.<sup>6</sup> Florida and New York both require that the sponsor place in a trust account an amount of money sufficient to cover the prizes or obtain a surety bond equivalent to the total prize amount. Any Internet-based sweepstakes must comply with all state registration requirements or it must be void in those states where it is not in compliance.

States may also have conflicting requirements regarding the conduct of the sweepstakes. For example, state laws

<sup>5</sup> 39 U.S.C. §3001, *et seq.*

<sup>6</sup> See Fla. Stat. Ch. § 849.094 (2000); N.Y. Gen. Bus. Law § 369-e (2000); R.I. Gen. Laws § 11-50-1 (2000).

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vary on whether it is necessary to award all prizes at the conclusion of a contest and whether a winners list needs to be provided upon request. It is imperative that the official rules be reviewed by counsel to ensure compliance with all applicable state laws.

### Promoting Your Sweepstakes

As mentioned, when advertising or promoting your sweepstakes, any indication that a purchase would affect the chances of winning will be viewed as consideration, rendering the contest illegal. Advertisements must not be deceptive or misleading and must accurately describe how the sweepstakes will be run. Specific requirements vary from state to state, but most states require at a minimum the following information:

- No purchase necessary to enter or win
- Making a purchase will not affect your chances of winning
- Void where prohibited
- Void in any states where registration laws were not complied with (name states)

- A toll-free telephone number to request a copy of the official rules
- Odds of winning
- All taxes are the responsibility of the winner.

In the interest of full disclosure, it is also advisable to post official rules via Web site and, if print media will be used to promote the sweepstakes, it is also a good idea to print a full copy of the official rules there as well.

### Conclusion

As set forth above, a sweepstakes should be promoted and administered in a fair and straightforward manner, consistent with applicable laws and the official rules. Although the regulations and restrictions on sweepstakes promotions may seem daunting, by combining the traditional sweepstakes with the modern Internet you can design a cost-effective promotion that will achieve your marketing objectives.

### Reference List: Unique Compliance Considerations under State and International Laws

#### Choice of Law/Jurisdictional issues

*State (Washington) v. Reader's Digest Assoc., Inc.*, 501 P.2d 290, 302 (Wash. 1972) ("Although the Sweepstakes is mailed from New York, the effect of mailing the Sweepstakes to Washington residents constitutes a lottery within this state")

*CoolSavings.com, Inc v. IQ.commerce Corp.*, 53 F.Supp.2d 1000, 1002-1003 (N.D. Ill. 1999) (finding sufficient contacts to establish jurisdiction where defendant set up an interactive web site directed to residents of all states, which was accessed by the people in that state)

#### Prize

*State v. Bally Beach Club Pinball Machine*, 119 A.2d 876, 879 (Vt. 1956) ("a free game is a thing of value")

*Heartley v. State*, 157 S.W.2d 1, 3 (Tenn. 1941) ("anything affording the necessary lure to indulge the gambling instinct")

*Chamber of Commerce of Plattsburgh v. Kieck*, 257 N.W. 493 (1934) (award of preferential treatment can be a prize)

#### Consideration

*United States Postal Service v. Amada*, 200 F.3d 647 (9<sup>th</sup> Cir. 2000); *United States v. Tansley*, 986 F.2d 880, 886 (5<sup>th</sup> Cir. 1993)

*Polonsky v. City of South Lake Tahoe*, 121 Cal. App. 3d 464 (1981)

*Kroger Co. v. Cook*, 265 N.E.2d 780 (Ohio 1970)

*Boyd v. Piggly Wiggly Southern, Inc.*, 155 S.E.2d 630 (Ga. 1967), *superseded by statute on other grounds*, *Talley v. Mathis*, 441 S.E.2d 854 (Ga. Ct. App. 1994), *rev'd*, 453 S.E.2d 704 (Ga. 1995)

*Lucky Calendar Co. v. Cohen*, 117 A.2d 487 (N.J. 1955) (holding that requiring delivery of completed entry forms for a contest at store locations was consideration sufficient to render the contest an illegal lottery under New Jersey law)

*Compare Mississippi Gaming Commission v. Treasured Arts, Inc.*, 699 So.2d 936 (Miss. 1997) *with Midwestern Enterprises, Inc. v. Stenehjem*, 625 N.W.2d 234 (N.D. 2001)

#### Required Participation in a Seminar or Presentation

Ga. Code Ann. §16-12-20 (4)(B)(ii)(III) (2004) (no person to be eligible to receive as prize can be required to "be present or asked to participate in a seminar....")

#### Free Method of Entry Issues

*Glick v. MTV Networks*, 796 F. Supp. 743 (S.D.N.Y. 1992)

*Mid Atlantic Coca-Cola Bottling Co. v. Chen, Walsh & Tecler*, 460 A.2d 44 (Md. 1983) (in bottle cap promotion, court find no illegal lottery because free caps are available and have been distributed)

*Albertson's, Inc. v. Hansen*, 600 P.2d 982 (Utah 1979)

*Dream Arts, Inc. v. City of Chicago*, 637 F. Supp. 53 (N.D. Ill. 1986) (promotion found to be an illegal lottery where sponsor made it unreasonably difficult for players to use the FMOE)

*Black North Associates, Inc. v. Kelly*, 722 N.Y.S.2d 666 (N.Y. App. Div. 2001) (FMOE insufficient where one-entry-per-day limit was imposed in the FMOE, but not the paid method of entry)

#### Enforceability of Disclaimers

*Ermolaou v. Flipside, Inc.*, 2004 WL 503758 (S.D.N.Y. 2004)

#### International Issues

775 PLI/Comm 697, *Sweepstakes, Contests and Other Promotions On the Internet*

Michael D. Lipton & Kevin Weber, *Games of Skill and Chance in Canada*, found at [www.gaminglawmasters.com/jurisdictions/canada](http://www.gaminglawmasters.com/jurisdictions/canada)

#### Charitable Raffles

82 Op. Att'y Gen. Cal. 12 (1999) (charitable raffle involving purchased tickets for chance to win automobile found lottery even though free tickets were available through organizational representative)

Op. Fla. Att'y Gen. AGO 97-54 (1997) (charitable organization may not make the purchase of a raffle ticket or a donation to the charity a mandatory prerequisite to an individual entering the raffle or winning a prize)