

Keeping Online Contests on the Right Side of the Law

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Internet contests are increasingly popular tools used by companies for marketing purposes. Consider this hypothetical contest as an example:

"The Rutter Hobbs & Davidoff Website Refer-A-Friend Promotion: For every friend you refer to our website who signs up for our monthly legal e-newsletter, you will be automatically entered to win an iPod@!"

Online promotions such as this one are fraught with potential illegalities if the requisite precautions are not taken to ensure that the contest is structured properly.

Lotteries

The first and foremost concern is to ensure that a contest does not constitute an illegal lottery. Lotteries, which may only be run by the 50 states, are defined as promotions that contain the elements of prize, chance, and consideration. Sponsors must eliminate at least one of these elements to avoid operating an illegal lottery.

Since consumers would likely be uninterested in a contest that did not offer a prize, this element is typically difficult to eliminate.

Consideration is something of value to the contest sponsor that is provided by the consumer as a prerequisite to participating in the contest. Consideration may be monetary or non-monetary, such as requiring the entrant to fill out a lengthy registration form. Sponsors may eliminate consideration by providing an "alternate method of entry," or AMOE.

Internet contests, accessible worldwide, must also comply with the laws of each country in which someone could access the promotion. The laws of contests vary widely from country to country. International compliance would entail hiring local counsel in every country to provide an analysis of the proposed contest, a prohibitively expensive and time-consuming endeavor. Thus, U.S. sponsors of online contests are better off limiting participation to U.S. residents only.

In our example, an AMOE would allow consumers to enter the drawing without referring their friends to the Rutter Hobbs website by instead mailing in a postcard or calling a toll-free number. The AMOE must not be seen as disadvantageous or burdensome with respect to the regular entry method.

A sponsor may eliminate the element of chance by awarding a prize to every entrant or by conducting a contest of skill, where winners are selected on the basis of some sort of ability, knowledge, creativity, judgment or expertise.

State Laws

Sponsors must also comply with state laws in each state in which the promotion is conducted, bearing in mind that Internet

contests are accessible everywhere and therefore must comply with the laws of all 50 states.

Several rules have general applicability across the 50 states and should be included in virtually all contests' "Official Rules." These include entry instructions, the sponsor's name and address, eligibility and geographical limitations, odds of winning, prize descriptions and their approximate retail value, contest duration and entry deadlines, how and when winners will be selected, limitation on the sponsor's liability, and a disclaimer for lost, late, or damaged entries.

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Trademarks. Contest sponsors must be careful in advertising prizes by their brand names without consent from the trademark owners. For instance, Rutter Hobbs & Davidoff could not name its contest, "The Rutter Hobbs & Davidoff iPod Giveaway." This would infringe upon Apple's trademark, and suggest a false association between Rutter Hobbs & Davidoff and Apple. Contest sponsors may, however, identify prizes by name so long as the trademarked brand is used in a factual manner rather than in

furtherance of promoting the contest.

Privacy Concerns. The collection of personal information over the Internet implicates privacy laws. A hyperlink to the sponsor's privacy policy should appear on the online entry form and on any page where personally identifiable information is collected. Internet privacy concerns are on the rise and regulatory scrutiny of practices such as "viral marketing," where contest entrants must provide the names and email addresses of others in order to become eligible to enter (like in our example), may soon occur. Contest sponsors must also comply with COPPA, the Children's Online Privacy Protection Act, a federal statute which addresses the collection of online personal information from children under the age of 13. Unless the contest is geared specifically toward children, most online promotions limit eligibility to those 13 or over.


Other Internet Concerns. Online promotions should always include a clause disclaiming liability for fraud, viruses or other events that compromise the integrity of the contest. Contest rules should limit entries to a particular number, such as one per day, per entrant. The duration of the contest and especially the deadline for entries should be stated not only in terms of dates, but also a precise time in a specific time zone - e.g., 1pm EST. Contest sponsors should ensure that the how-to-play instructions are clear and that any special technical requirements are set forth in the official rules.

Conclusion. Steering clear of illegal lotteries, complying with the myriad of state (and possibly international) requirements, and respecting third party intellectual property and privacy laws are only a sampling of the issues facing online contest sponsors. Sponsors of online contests should obtain proper legal counsel to ensure that they keep their promotions on the right side of the law.

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