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Changes to California Sweepstakes Law Heralds Increased Scrutiny For Marketers

On September 30, 2008, Governor Arnold Schwarzenegger signed into law the California Omnibus Sweepstakes Bill (SB 1400), which amends Section 17539.15 of the California Business and Professions Code by adding new rules and disclosure requirements for sweepstakes. The law will go into effect January 1, 2009, writes Natasha Shabani, Rutter Hobbs & Davidoff Incorporated.

While California was one of the first states to pass a sweepstakes law in 1998, it has not substantially updated its law since then, while other states, including Texas, Colorado and Oregon, have enacted sweepstakes laws with more stringent consumer protection provisions. The passage of SB 1400 brings California's sweepstakes law more in line with other state sweepstakes laws, as well as federal direct mail laws. The enactment of this law also suggests that increased scrutiny of sweepstakes in California may be felt by promotional marketers in the near future.

The aim of the new requirements appears to be the prevention of deceptive advertising relative to the promotion of sweepstakes in California. The amendments impose the following new requirements and prohibitions:

- 1.) Sweepstakes entry solicitation materials, or materials selling information regarding the sweepstakes, must include a clear and conspicuous statement indicating that no purchase or payment of any kind is necessary to enter or win the sweepstakes. This statement must be set forth in a separate paragraph in the official rules, and must be printed in all capital letters in contrasting typeface not smaller than the largest typeface used in the text of the rules. If the official rules are not included in the sweepstakes materials, the no-purchase-necessary statement must be included on the entry device (i.e., online entry form, return mailer). □
- 2.) Charging a fee as a condition to obtaining information about a prize or sweepstakes is prohibited.
- 3.) Falsely representing that a person has been "specially selected" in connection with a sweepstakes is prohibited.

Falsely representing that the person receiving the offer has received any special treatment or personal attention from the sweepstakes sponsor is prohibited.

Falsely representing that a person is being notified a second or final time of the opportunity to receive or compete for a prize is prohibited.

Representing that a prize notice is urgent, or otherwise conveying an impression of urgency, is prohibited unless there is a limited time period in which the recipient must take some action to claim, or

be eligible to receive, a prize, and the date by which that action is required is clearly and conspicuously disclosed in the body of the solicitation materials.

The official rules must disclose information about the date(s) the final winner(s) will be determined.

Marketers who advertise multi-state or national sweepstakes presumably should already be in line with these requirements due to compliance with other state laws, but now sponsors of local or state-wide sweepstakes must comply as well. Moreover, besides the particular requirements discussed above, California's focus on sweepstakes issues as addressed by these amendments also indicates that scrutiny and enforcement of sweepstakes in general may be on the rise. Thus, any marketer who advertises sweepstakes to California residents should be aware of these amendments, as well as long-established federal and state prohibitions against lotteries and other legal issues. Enlisting the assistance of counsel proficient in this area will ensure that your promotion or sweepstakes will not run afoul of any applicable laws.