

Sweepstakes OK if you remove 1 of 3 elements

Get legal help to cover your own contests

The variety of inquiries that comes in to the hotline, day by day, offers a wonderful plethora of subjects, and I always enjoy taking your calls and finding out what is going on in your world.

I've told you before that frequently the calls fall into certain categories. And one of the categories I am called about regularly by advertising staffers is the subject of sweepstakes and similar contests.

The law that governs these matters begins with the premise that an **illegal** sweepstakes requires three elements: Chance plus a prize plus **payment of consideration**. When you take away any one of those three elements (and usually, the payment of consideration is the element that is removed), the sweepstakes is **legal**. These are the issues you need to consider both when you are sponsoring your own sweepstakes, or when you are running publicity for someone else's sweepstakes.

Conducting your own sweepstakes is a much more complex issue, and you should probably obtain legal help if you plan to do this.

There are many issues to be considered as you put this project together. First, you need to look carefully at the official rules you create for this contest. Do you set out properly how the winner will be chosen and when? Have you included odds for winning? Have you identified the sponsor? Did you include language about who is prohibited from entering and specifically stating "No purchase necessary to enter" and "Void where prohibited by law" in your rules?

If you are using social media (for example, Facebook or Pinterest) to conduct your sweepstakes, have you

checked its Promotional or Marketing Guidelines instructions to ensure you are complying with them? Is the prize you are awarding sufficiently large enough that you will be required to issue a 1099 MISC to the IRS? If you are giving a gift card as a prize, have you included with your rules the restrictions that come with the gift card? Also be aware that there are state restrictions regarding the use of liquor and tobacco in sweepstakes.



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Have you limited entrants to a proper age? Are the odds of winning the same for all? Have you considered if you have a proper privacy policy in place for those entering your sweepstakes, limiting the collection and use of private information and providing a way for

persons to remove that information from your database, if you are going to retain that information?

Most importantly, in order to ensure that this is a **legal** sweepstakes, have you provided a means of entering the sweepstakes without charge?

You may think, after reading this, that I make it sound so complicated that no one will ever conduct a sweepstakes anymore. That's not true, but I just want to be sure that you carefully prepare for this and are certain that there isn't a basis for someone to complain to the state

authorities that you have misled them in this effort to increase sales.

Of course, it is more likely that you will find yourself running advertising for someone else who is conducting a sweepstakes. In that case, the rules are fairly simple. First, Missouri passed a law in the 1980s permitting bingo and similar games of chance conducted by charitable organizations. Running publicity for those groups is permissible.

Similarly, a few years ago, a federal court case in Missouri ruled that if a sweepstakes was a one-time marketing effort for a business, which did not conduct that regularly, then it would be permitted. So advertising a one-time sweepstakes is fine (and, of course, if the entity provides a means of entering without cost, then it is a totally legal give-away and there are no concerns about advertising it).

And, of course, the reason we are talking about concerns over advertising a sweepstakes is that when you mail out your newspapers, the federal "Deceptive Mail Prevention and Enforcement Act" comes into play, which might put your mail permit in jeopardy if you were advertising an illegal sweepstakes.

In short, while a give-away can increase business, it needs to be handled carefully.

I'm always happy to take your calls in relation to these ads, and any other advertising issue that concerns you.

Missouri passed a law ... permitting bingo ... conducted by charitable organizations.

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