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THE DOS AND DON'TS OF SWEEPSTAKES PROMOTIONS

Many companies seek to generate interest in their products through the use of sweepstakes promotions. If your company is one of these companies it is important to know what regulations apply and the specific dos and don'ts associated with sweepstakes.

On the state level, sweepstakes are primarily regulated by the states' attorneys general. On the federal level, it's the Federal Trade Commission ("FTC"). Both state and federal laws start with the basic proposition while sweepstakes are legal, lotteries are not. A lottery generally includes three elements of (1) a prize (2) that is awarded on the basis of chance (3) to someone who was required to pay consideration. To avoid you sweepstakes being considered an illegal lottery, one of the three elements must be removed. Consideration is the most common element that is removed.

So what is consideration? Consideration is a legal term meaning something of value given or done in exchange for something of value given or done by another. There are generally two types of consideration in sweepstakes promotions: monetary and non-monetary. Monetary is the payment of money, such as the purchase of a product or a service or the direct payment of an entry fee. Non-monetary consideration is an entrant's expenditure of considerable time or effort. Under some state statutes consideration is defined broadly to include actions that result in a commercial benefit to a sweepstakes sponsor.

The other basic analysis involved with sweepstakes is whether the sponsor is required to register or obtain a bond before running a sweepstakes. For example, if the total value of prizes offered in a sweepstakes exceeds \$5,000, a sponsor will be required to register and post bonds in Florida and New York. And in Rhode Island, any retail establishment that offers a sweepstakes in which the value of all prizes exceeds \$500 also may have to register with the state.

Additionally, all sweepstakes require "official rules." The official rules are the contract that is agreed to between you and your sweepstakes entrants upon their entry. Therefore, it is very important that the rules be drafted with care and in compliance with the law--especially if you expect to promote the game heavily and/or get many entries.

Now that you understand the basics of sweepstakes promotions here are the dos and don'ts.

DO

- Disclosure that no purchase is necessary and that a purchase will not improve a person's chances of winning.
- Disclose terms and conditions of the promotion, including the name of the sponsor, information about the prizes offered, the approximate retail value of each prize and the estimated odds of winning each prize.
- Provide recipients with a free mechanism through which the recipients can request the removal of their names from the sponsor's mailing list for future sweepstakes and contests and comply with the requests promptly.
- Consider the laws of each state into which you plan to mail materials.
- State the start and end dates of the sweeps and when the entries must be received by to be eligible.
- Describe the prizes and their approximate retail value. State if prizes can be substituted for cash. Explain how and when winners will be chosen, how they will be notified, and how they may claim their prize. State if unclaimed prizes will be awarded. For chance sweeps, explain if there is to be a second-chance drawing, how that drawing will be conducted, and who is eligible to participate.
- Disclose any restrictions on eligibility or on receiving a prize.
- The procedures for entering a sweepstakes or contest.
- A description of each prize, including its approximate retail value and odds of winning.

DO NOT

- Represent that a person's chances of winning will be improved by purchasing a product.
- Claim that a person is a winner, finalist, has been specially selected or is otherwise among a limited group of persons with an enhanced likelihood of winning, unless that is true.
- Imply that a solicitation is urgent or time-sensitive, unless that is true.

Lastly, have your sweepstakes reviewed by competent legal counsel to ensure all rules and regulations have been followed.