



Jul 01, 2002

Categories:
[Publications](#)

Sweepstakes, Contests and Lotteries: Unless You're a Church or State Government, You'd Better Know The Difference

Every week, millions of people in most of the fifty States visit officially sanctioned stations and "invest" hundreds of millions of dollars in the purchase of entries for Lotto, Super Lotto, Big Game, Mega Millions, Power Ball and other forms of legalized gambling through state-sponsored games of chance. Officially exempt church bazaars and bingo games raise tens of millions of dollars in much the same fashion . . . money is paid to purchase an opportunity to win more money by beating the odds in games of chance, while law and society blink at the apparent moral and legal inconsistency with otherwise generally accepted community standards.

Being gamblers by nature, Licensors and Licensees doubtless are among the "regulars" playing these games of chance. And being savvy business people, many Licensors and Licensees recognize that associating such games with their properties and products can heighten their consumer awareness and, hopefully, their popularity. It is not our objective to question the mathematical competence of the participants in these various games, but rather to assist in keeping their promoters out of state-sponsored lockups.

Operating A Lottery Can Be Hazardous To Your Health

This is not mere hyperbole: many legal restrictions in this area define criminal penalties for violations. Before the States discovered lotteries as a source of revenue, you had to be either a preacher or a hoodlum to operate one. Those Licensors and Licensees who don't fall into either category may nevertheless desire to increase the enthusiasm of the public for their properties and products by staging contests.

For instance, an entertainment studio might offer a trip to a movie set at a glamorous locale as the grand prize in a contest. The studio's marketing department might propose to award the trip to the lucky theatergoer whose movie ticket is drawn from among those of all others attending the promoted movie. Similarly, a toy manufacturer might want to offer a special collectors version of an action figure to the consumer whose proof of purchase for the related toy line is drawn from among other proofs of purchase. Sounds like great marketing, but in the worst case either program could lead to legal entanglements for company officials.

For purposes of the law, a "lottery" is any game of "chance" which offers a "prize" and requires "consideration" from the participant.

"Prize" is anything of value which is awarded to a winner in such a promotion.

"Chance" is present whenever determination of the winner involves an element of randomness. This may occur through a random selection from a number of entries, "instant win" scratch-off games, selection by the participant of a "winning number" from a plurality of such numbers, or anything else of this nature.

"Consideration" is legal terminology for the giving of anything of value, as by making a purchase, paying a fee, undertaking a significant effort or anything of similar nature.

Says Who?

As if life were not sufficiently complex for Licensors and Licensees, each of the fifty states, as well as the Federal Government, has its own laws and regulations governing these sorts of programs and promotions. Many are inconsistent with one another and some have unique filing and registration requirements. An article of this brevity cannot do much more than introduce general concepts, but what follows is intended to give rudimentary guidelines for staging a promotion without doing time.

**A "Contest" Is Not A "Sweepstakes" Is Not A
"Lottery" (We Hope)**

To reiterate, any promotion which involves the three elements of prize, chance and consideration can be an illegal lottery unless exempted by reason of religious, charitable, State sponsorship or by virtue of some other specific legal exemption.

However, an illegal lottery can be turned into a legal sweepstakes or contest by eliminating one of those three elements. Eliminating the “prize” is possible if playing the game itself is so rewarding and enjoyable that no separate inducement is necessary. However, in most cases, the prize is the only reason people will participate and eliminating it would defeat the purpose.

Sweepstakes

A legally permissible “sweepstakes” is a lottery from which “consideration” has been removed. That is, in a sweepstakes, a prize is awarded to a winner on the basis of chance without the requirement of an “entry fee” or the like. In many cases, however, consideration is the central objective of the promotion. For example, in order to induce sales of subscriptions, a purveyor of magazines may offer a prize to the winner of a random drawing from among all new subscribers. Without the sales of new subscriptions – that is, the consideration – there would be no point in staging the promotion at all.

In order to avoid running afoul of the various laws against lotteries, one option of the subscription promoter is to offer an “alternative method of entry” that does not require consideration. This is the reason many sweepstakes provide for mail-in submissions of entries on a “3 by 5 postcard”, or other such mechanism for no-cost participation. Unfortunately, the element of consideration has been broadly interpreted. Some states have decided that visiting a store to fill in a free entry form or putting a postage stamp onto a free mail-in entry is sufficient to create “consideration”. This may seem needlessly restrictive where the promoter gains no profit, but in some states, this is the law and must be dealt with.

Another complication is that once you have created an “alternative method of entry”, it is essential to ensure that this method complies with the “equal dignity” rule. That is, entrants in a sweepstakes

without consideration must be afforded the same chance to win the same prizes under similar if not identical circumstances as those who enter through a purchase. This rule poses challenges to many forms of sweepstakes: for example, if the “preferred” entries are made on-line and thus instantaneously, the “free mail-in entries” must be given a grace period after entry deadline in order to achieve “equal dignity”.

Similarly, for purposes of publicity, the sweepstakes promoter may desire to create one “separate but equal” prize pool for the preferred (i.e., purchasing) entrants and another for the “free” entrants. In this way, even though having to double its outlay for prizes, the promoter would take comfort in the certainty that it could publicize that a “grand prize winner” had actually made the purchase that is the objective of the promotion. Unfortunately, several states have determined that the “separate but equal” pools are actually two separate sweepstakes — and the one entered only by purchasers is thus an illegal lottery. The “equal dignity” rule poses problems unique to every type of sweepstakes, and its application must be carefully considered in each context.

“Contests”

Eliminating “chance” can convert a lottery into a “contest”, and thus is another strategy that can make you “legal”. The alternative to chance is “skill”. It can, therefore, be appropriate to require consideration from all entrants if the winner is determined solely on the basis of the quality of his or her entry or participation. In order to insulate the contest promoter from claims to the contrary, it is advisable to use an independent and verifiable judging entity to select the winner. Further since chance cannot be a factor in determining the winner, it would not be permissible to pose a question to entrants and then have a drawing from all those with the correct answer.

If, on the other hand, a winner is to be selected as the result of competition in a game of skill, all elements of chance must be eliminated from the game. Consequently, all entrants usually must compete against each other simultaneously. That is, it would not be

appropriate to operate the contest as a series of one-on-one (or other subset) elimination rounds because the quality of opposition can vary — hence, be determined by chance — among the subsets. Similarly “tiebreakers” based in any way upon chance can taint an otherwise legitimate “contest”.

Conclusion

Since the rules and requirements for sweepstakes and contests vary throughout the 50 states, one must carefully determine the geographic reach of a promotion and ensure compliance with the rules of all affected states. For example, sweepstakes and certain types of contests which extend into Florida, New York, Rhode Island or Arizona require filing with authorities in those States, while no such filings are currently required in most other states. National promotions must comply with the laws of all 50 states.

Great care must be exercised in defining and executing sweepstakes, contests and similar promotions. The alternative could be an unscheduled and involuntary vacation at taxpayer expense.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.