



## **Navigating Sweepstakes Law**

By Ian V. O'Neill

Companies have long used sweepstakes as a marketing tool to generate good publicity and drive consumers to their product. Today, with the rise of the “millennial” consumer, sweepstakes have found new life as a tool to engage a generation constantly plugged into social media and attracted by brands driven to do good.

However, with greater audience exposure comes increased responsibility and more complex rules and regulations. Combined with a larger scale than seen in previous years and the use of charitable promotions, sweepstake sponsors must know the reach of their campaign and the legal nuance that comes with it.

Online sweepstakes and promotions range from low-level consumer engagement (e.g., “like” us on Facebook for a chance to win or Twitter trivia contests or favorite photo contests) to complex, multi-channel campaigns, mixing social media with pre-existing affinities that merge entrant’s lives and values with a brand’s marketing message. For example, Omaze.com, an obvious leader in the area, combines sweepstakes with cause marketing to offer a never-ending array of unique celebrity prizes, rewards and experiences to raise awareness, recognition and donations for worthwhile charities and causes.

Building on the ability to use social media to take a message global, sweepstakes offer a way to engage an ever-widening audience. Combine that with a worthwhile cause or a beloved celebrity, and the loyalty of each party's followers can result in global awareness and reach within a matter of minutes rather than days.

If not handled properly, the goals and requirements of one part of the campaign can conflict with the legal requirements imposed by the other parts. But with careful structuring and diligent adherence to the rules, it is possible to avoid the most common mistakes.



## Mistake No. 1: Transforming into an Illegal Lottery

Cause marketing campaigns aim to raise awareness, affinity and, typically, donations. Regardless of the desire to raise donations for a good cause, companies must take care to structure the sweepstakes to avoid falling into the lottery category. Generally, in order to avoid creating a lottery, a sponsor must eliminate one of the following elements:

1. Offering a prize
2. Requiring consideration to receive the prize
3. Distributing the prize by chance

Because a sweepstakes awards a **prize** to a winner selected by chance, sponsors must eliminate the element of mandatory **consideration** to prevent lottery status. Accordingly, marketers must always offer real, credible and free methods of entry that are as easy to find and use as any donation.

Sponsors must also comply with certain U.S. state requirements for registration and the posting of bonds, depending on the value of the prize. States that have such requirements include Florida, New York and Rhode Island.

Sponsors must also comply with the laws of each applicable country, which can vary widely.

In countries such as Belgium and Malta, sweepstakes are strictly prohibited by law, or in some countries like Canada, are allowed only when the winner that is chosen by chance is also required to demonstrate a skill, such as correctly answering a math question. Other countries, such as Australia, permit international sweepstakes in certain territories, but rules against advertising limit international sweepstakes from certain other territories, such as the Australian Capital Territory.

Some countries, such as Brazil and Italy, require in-country drawings, physical presence and financial security requirements. Still other countries require that sweepstakes be conducted in the local language, which can require an unexpected expenditure of resources.

## Mistake No. 2: Missing Details



All sweepstakes must have a set of “official rules.” Official rules should contain the obligatory **“NO PURCHASE NECESSARY”** language, as well as a very clear and conspicuous description of the alternative method of free participation. Such details as identity of the sponsor, eligibility, period of entry, prize value, odds of winning, manner of selecting the winner(s) and how to obtain a list of winners must also be included. Companies may have to meet additional requirements depending on the jurisdiction in which they offer the sweepstakes. Additionally, because sweepstakes involve the collection of personal information, the entry mechanisms must include a compliant, clearly disclosed privacy policy and terms of use or service for the online location used to promote and enter the sweepstakes.

## **Mistake No. 3:** **Missing the Cause Marketing Laws**

Using a sweepstakes to promote a cause can engage entrants all over the globe. However, cause marketing carries with it a complicated array of sweepstakes laws. Providing cause-marketing services typically qualifies the sponsor as a certain type of service provider—either a professional fundraiser, fundraising advisor, professional solicitor or commercial co-venturer. Each type of service provider has different legal requirements, including state registrations, bonding requirements and reporting obligations as well. In addition, each charity must register or otherwise receive authorization to solicit donations in each applicable state. The so-called “Charleston Principles” provide exemptions for registration for charities raising donations in certain states. However, only a limited number of states have adopted these Principles and a growing number of states reject them. Before engaging in cause marketing, a brand should ask its legal counsel what regulations might affect the structure, implementation and marketing of its promotions.



## **Mistake No. 4:** **Forgetting to Clear Trade Promotions**

Sweepstakes and contests that are open to the trade or within an organization may not be subject to state registration and bonding requirements, but they still must be lawful. In addition, social media may bring them into the public eye, especially when something goes wrong.

## **Mistake No. 5:** **Privacy Issues**

When promoting internationally, brands must make themselves aware of privacy law issues that could arise from the collection of personal information around the world. For example, it is illegal to collect personal information from European residents unless the sponsor is registered with the EU/US Privacy Shield or a European entity is acting as the data controller and the U.S.-based sponsor has entered into a compliant Data Processing Agreement with such entity



to act as the data processor. Certain countries have additional requirements as well. For example, companies must store the personal information of Italian residents on a server physically located within Italy.

## **Mistake No. 6:** **Missing Advertising Laws**

Trading “likes” or “tweets” for sweepstakes entries creates a material connection between the promotion sponsor and the consumer. The onus falls on the brand, and to some extent its agencies, to ensure that consumers’ testimonials disclose a connection that exists. Furthermore, using email addresses collected from entrants raises various issues. In the EU and Canada, companies must use specific opt-in language. In the U.S., email addresses must be CAN-SPAM Act compliant, disclosures and consents must be compliant and the rules should include easy, and mandatory, steps to ensure that entrants disclose their material connections to the sponsor when entering a sweepstakes.



## **Mistake No. 7:** **Missing IP Rights**

Social sweepstakes and cause marketing offer limitless potential for brands and charities to work together to create and collect content. When running a photo or video contest, for example, regardless of the platform, the brand should remember to obtain releases prior to posting not only from the photographer/videographer, but also from every individual in the photograph or video. Failing to do so may expose the brand to claims of violation of rights of privacy or publicity, copyright infringement or other legal causes of action. Finally, brands must address upfront the question of co-branded. Using a charity’s brand may trigger commercial co-venture laws if not done correctly.



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