

Five things you should know before creating a contest

As most readers of this blog know, a contest is quite different than a sweepstakes. Sweepstakes are games of chance. The winners are selected at random and don't have to have any particular knowledge or skill - just good luck. On the other hand, contests are games of skill, in which the winners are determined based on some type of skill, knowledge or other attribute that they possess.



Designing a contest is also quite different because it does not require as much concern about violating anti-gambling laws. Virtually every state has a law that prohibits illegal gambling. These statutes define an illegal game as having three elements - a prize, chance, and consideration. If all three elements are present in a promotion, it is likely to be found illegal. Those of us who create rules for sweepstakes avoid illegal gambling by removing one of the elements, usually consideration (hence the "No Purchase Necessary clause"), which turns an illegal original promotion into a legitimate sweepstakes.

Because there is no (or very little) chance in a contest, it is unlikely the anti-gaming laws will apply.

While most people who create or sponsor sweepstakes and contests are aware of these differences, there are some additional distinctions that they may not know. Below are five additional things that you should know about contests.

1. Because contests do not have the element of chance, their rules do not have to eliminate consideration. In most instances, some type of consideration can be required in the promotion. Sponsors usually may charge a fee, require a purchase, require entrants to create something (essays, photos, videos, etc.) visit a store, or require an entrant to do virtually any other type of action or activity that would be consideration for a sweepstakes.
2. However, a few states prohibit sponsors from requiring individuals to pay a fee to enter a contest. Although some of these laws have not been vigorously enforced in recent years, the statutes may apply to the contests that requires some type of consideration to enter. Other states require that sponsors who charge a fee to enter a contest must register their games with the state. For example, Arizona's law pertaining to certain contests that require a payment to enter mandates that the sponsor register the contest and comply with several other requirements.
3. Sponsors of contests also need to provide very clear and understandable descriptions of the criteria that the judges will use to determine the winners. For example if the contest involves writing an essay, the criteria may include items such as "originality, accuracy, clarity, creativity, content, most in keeping with the theme," etc. For photo or video contests, the criteria may include additional items such as "composition, clarity, quality of picture or colors, overall impression." In addition, the rules must indicate how much value will be given to each of the criteria items and is usually expressed in percentages. For example: Originality 50%; Creativity 25%; Content 25% will be used in determining the winners.
4. Contest sponsors must also make certain that the decisions made by the judges strictly follow the terms set forth in the rules. It is equally important that the procedure used by the judges is well documented. Ideally, the sponsor should be able to tell any entrant what score they received from the judges, including their scores in each of the criteria items contained in the rules. Determining the criteria is a key aspect of the contest rules and it should be discussed with the judges during the planning stages of the contest.
5. Most contests do not need to have an "odds of winning" provision in their rules. Because the winners of the contest are chosen based on their skill, knowledge, aptitude or performance, it is virtually impossible to determine what chance the contestants may have to win a prize.



There are certainly other things that sponsors and creators of contests should know, most of which depends on the type and location of the promotion. If you are planning to sponsor or create a contest, it is important to be aware of these items and if in doubt, you should contact a lawyer who is experienced and knowledgeable about contest law.

This post was written by retired Thompson Coburn partner Dale Joerling. If you have any questions about the topics discussed in this post, please contact Thompson Coburn partner [Hap Burke](#).

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