



Contests and Prize Promotions

Consumer promotions fall into two categories: games of chance and contests of skill.

Chance promotions can take various forms, such as sweepstakes (where winners are determined by a random drawing), and “instant win” promotions where winning game pieces are randomly seeded in the overall run of pieces. Whatever the form, they share one common element: winners are determined solely by chance. Chance promotions are subject to a host of state regulatory requirements, including registration, disclosure (including odds of winning), and in some states, escrow requirements. If combined with any form of payment or other consideration (even purchase requirements) chance promotions can become illegal lotteries, which may result in state enforcement action and/or civil damages.

Contests, on the other hand, are judged on the basis of skill. Properly structured and implemented contests, therefore, generally are exempt from laws regulating chance promotions because the element of chance is absent.

Both contests and chance promotions are governed primarily by the laws of the contract, with the “official rules” serving as the parties’ agreement. Game and contest rules, therefore, should explicitly describe, among other things, methods of entry, limitations on number of entries (if applicable), method of determining winners, eligibility (*i.e.*, age, residence and the exclusion of employees and family members of the sponsor), commencement and expiration dates for accepting entries, limitation on the sponsor’s liability, disclaimer for of liability for lost, late and misdirected mail and for printing and typographical errors on game pieces.

Rules also should require winners to sign both an affidavit of eligibility, and a publicity release permitting the sponsor to advertise the winner’s name and likeness at the conclusion of the promotion. Also recommended are disqualification and termination provisions permitting the sponsor to disqualify individuals caught tampering with the entry process and to terminate or modify any promotion that is adversely affected by outside factors such as tampering, computer viruses, unauthorized intervention or technical failures of any kind.