An Introduction To Sweepstakes And Contests Law

Steven C. Bennett

Whatever else your client wants from its marketing, a jackpot of problems isn’t one of them.

Sweepstakes and Prize Contests in various forms have been used as a means to promote commerce for hundreds, if not thousands, of years. These promotions have not lost their appeal, even in an economy saturated with media and advertising. Indeed, the development of a culture of gambling, with gaming resorts increasingly popular as vacation destinations, and many states and Native American tribes offering casinos, horse-racing, lotteries, and other forms of gambling, has encouraged increased development of sweepstakes and contests. The availability of online systems for advertising and conducting promotions, moreover, has further heightened interest in these promotional schemes.

The drive to take advantage of promotion fever, however, is not without risk. When a business runs either a sweepstakes or contest, the business must structure the promotion to avoid characterization as a lottery under federal and state law. In general, lotteries, other than those sponsored by governments, are illegal. Moreover, sweepstakes and contests are governed by a variety of federal and state laws, requiring registration, prohibiting specific practices, and defining the limits of permissible promotions. These laws have changed frequently over the past few years. These laws, moreover, are often so broadly
drafted that they could be applied to almost every type of promotion (customer appreciation giveaways, trade show drawings, employee sales incentive contests, and raffles, among others). Official interpretations of these broad statutes and rules, such as the opinions of state attorneys general, vary widely, even with respect to the most common forms of regulations.

As a result of this patchwork of law, entry into a poorly considered sweepstakes or contest (jointly called here “promotions”) can be a trap for the unwary promoter. (Outsourcing responsibility for the promotion to a marketing firm or other service provider, moreover, may not solve the problem. The sponsor of the promotion may be subject to regulation and enforcement actions even if the promotion is administered by another entity.) Failure to follow pertinent statutes and regulations regarding promotions can lead to government inquiries, civil enforcement actions, and even criminal penalties. The adverse publicity associated with a mishandled promotion, moreover, may defeat the entire purpose of the effort.

This article seeks to provide a basic introduction to sweepstakes and contests law, which should permit a prospective promoter to ask the right questions before beginning such a promotion. Although it is hoped that this article will provide a good grounding in the most essential elements of promotions regulation, it is important to recognize that there is no “one-size-fits-all” form of promotion. The purposes and circumstances of promoters vary; rules appropriate for one promotion may not work well for another. Thus, review of any proposed promotional scheme by a competent, experienced professional is essential.

THE BASIC LAW: WHAT IS AN ILLEGAL LOTTERY? • A promotion may be characterized as a lottery if it has all three of the following elements:
• Chance;
• A prize; and
• Consideration.

Generally, “sweepstakes” (random drawings for a prize) are not classified as lotteries, because they lack consideration (i.e., something of value that the entrant must provide to participate in the sweepstakes). True “contests” (tests of skill), moreover, do not qualify as lotteries, because chance is replaced by ability and effort.

Even though a sweepstakes or contest may avoid characterization as an illegal lottery, promotions are nevertheless heavily regulated by state and federal laws. Depending on how a promotion is structured (and what unique issues that structure may raise), determination of the lawfulness of a promotion could require review of the law in each state where a business seeks to undertake the promotion.

SWEEPSTAKES ISSUES • Sweepstakes are regulated by both state and federal law. Sweepstakes (typically random drawings for prizes) possess two of the three characteristics of a lottery: chance and a prize. Therefore, to avoid classification as a lottery, a sweepstakes promotion must not involve consideration. Arguably, characterization as an illegal lottery might also be avoided by eliminating the element of a prize. “Amusement” gambling, such as the playing of pinball, is not generally considered gambling, in that the only “prize” awarded is more playing time. Yet, even this premise may be challenged. See United States v. Sixteen Electronic Gambling Devices, 603 F. Supp. 32 (D. Haw. 1984) (meters to record credits, plus knockout switches to reset count for next player, indicated use of machine in gambling). In practical terms, this no-prize avenue may not be worth pursuing, since few participants
would pursue entry into a promotion with no real prize.

The Consideration Question

State legislatures and courts apply varying rules to determine what is consideration. Valuable consideration generally requires parting with cash or something of marketable value. This is the majority view and the modern view among states. A minority of states, however, apply the view that any benefit to the promoter is consideration.

Effort To Participate

The existence of consideration thus may turn on the amount of effort required to participate in the sweepstakes (and the amount of the potential benefit to the promoter). Consideration is generally not present when the entrant’s efforts are minimal and the promoter’s benefits are restrained. Thus, completing a mail-in entry form, listening to the radio, watching television, completing a simple survey, calling a toll-free number, or going into a store to enter (with no purchase necessary)—these are typically not considered steps that involve consideration.

Does the Entrant Give Something Of Value?

Consideration generally exists if the entrant must give something of value to enter the sweepstakes. The most easily identified or typical form of consideration is a requirement of a purchase or payment to enter the sweepstakes. However, consideration may also be found to exist when an entrant must exert substantial effort or time to participate in the promotion. For example, requiring an entrant to fill out a lengthy marketing questionnaire might constitute substantial effort. Some states may find consideration to exist if the sponsor of the sweepstakes receives a benefit through the entrant’s efforts, such as a valuable competitive advantage or other economic opportunity.

Is There a “Free” Alternative?

In many cases, there is a way to avoid having a sweepstakes classified as an illegal lottery even when consideration is arguably present: Make an alternative “free” method of entry available. For example, the promoter could permit entrants to send their names on postcards without having to purchase any product or service. Yet another alternative approach is the offering of the promotion only to existing/prior customers. The promotion, in that instance, would not require new consideration for entry, and thus arguably would not contain the consideration element that could make the promotion a lottery.

Must Not Be Unduly Burdensome

The “free” entry form must not be unduly burdensome. In *Seattle Times Co. v. Tielck*, 495 P.2d 1366 (Wash. 1972), the court noted that, even though participants were not required to make a purchase, they were required to spend hours in following a football forecasting contest. The court held that the requirement of consideration was met, because participants were required to do something that they would not otherwise do, and because there was an arguable benefit to the promoter.

“Equal Dignity”

Moreover, an “equal dignity” requirement applies. There can be no discrimination in treatment of sweepstakes entrants. Those who give some consideration to enter, either by making a payment or by exerting significant effort, may not be treated differently, or more favorably, than those who do not provide consideration. The odds of winning must be substantially similar for both. If the two groups are treated differently, the differential could create pressure for entrants to give consideration, and thus might transform the sweepstakes into an illegal lottery. Trivial differences (such as the requirement of mail-in postage for free entries, versus in-store entries) in most instances will not violate the “equal


dignity” rule. In *Glick v. MTV Networks*, 796 F. Supp. 743 (S.D.N.Y. 1992), the court found that consider-

ation was not present, even though participants were required to pay a $2.00 charge to use a “900” num-

ber. The court held that the use of the paid telephone system was merely a convenience to the partici-

pants, who could have pursued a cost-free entry system made available by the promoter.

**Other Concerns About Sweepstakes**

In addition to the basic lottery question, gov-

ernment regulators have expressed a host of other concerns about sweepstakes. Sweepstakes, in many instances, are targeted at vulnerable consumers, especially the elderly and poorly educated. Some promotions can create a false impression that a consumer has won something or that the consumer is close to winning. Others may give the false impression that a purchase improves the chances of winning the sweepstakes.

To combat these kinds of concerns, some states permit sweepstakes but require registration of the promotion with one or more government agencies. Some states have laws or regulations that restrict sweepstakes in highly regulated industries. For example, California regulations prohibit alcoholic beverage licenses from conducting promotional contests in which cash prizes are given to consumers. Promotions involving tobacco, weapons, motor fuel, time-shares and financial services (to name only a few) may also be subject to special rules. Additionally, New York and Florida, for example, require registration if the retail value of the prize given away exceeds $5,000 and the sweepstakes is run in connection with sale or advertisement of consumer products or services. In Rhode Island, registration is required if the retail value of the prize exceeds $500 and the sweepstakes is run by a retail establishment to promote its business. Some states may also require a bond from the promoter. If the promoter wishes to avoid these kinds of requirements, the rules of the promotion must specif-

ically prohibit residents of the registration-requiring states from participating in the sweepstakes.

**Disclosure Rules**

Some states have passed specific laws or regu-

lations that identify information that must be dis-

closed to potential entrants. Generally, such dis-

closures must explain the rules (method of entry, eligibility, and method of determining a winner), the odds of winning, the beginning and ending dates of the contest, and where a winners list may be obtained. The identity of the sponsor often must also be disclosed.

**Drafting Sweepstakes Rules**

Drafting clear rules for sweepstakes promotions can guard against potential problems. The rules (when accepted by the entrant by registration for the promotion) are essentially a contract between the promoter and the participants. The rules lay out the terms and conditions under which the promotion will be conducted. The rules may help shield the promoter from liability. In addition, the rules should be designed to demonstrate compliance with all applicable regulatory requirements.

**Basic Elements**

To a large extent, state regulation of gambling and promotions is highly individual. Thus, in preparing rules, attention to the rules in all jurisdictions where the promotion will be available is essential. Given prevailing legislation and rules in a majority of states, however, sweepstakes rules should generally contain at least the following elements:

- A statement that no purchase is necessary to enter or win;
- Details of entry procedures;
- Any limits on the number of times a person can enter (for example, one entry per person or household);
- The closing date of the sweepstakes and any other relevant deadlines;
• Winner selection and notification procedures; and
• A list of prizes offered and their approximate retail value, plus any conditions on use of the prize. (Many travel prizes, for example, limit the dates when travel may occur. These kinds of limits should be disclosed.)

The above-mentioned rules, as noted, are probably the barest minimum possible. Sweepstakes rules in most instances also should contain the following elements:

• Approximate numeric odds of winning each prize, or a statement that the odds of winning depend on the number of entries received;
• Description of the method of selecting winner(s) (for example, random drawing);
• Identification of the geographic scope of the sweepstakes (for purposes of determining what law may apply to the promotion) and a list of jurisdictions where the sweepstakes is void (for added certainty, many rules state that the promotion is “void where prohibited by law”);
• Eligibility requirements (for example, 18 years and older, licensed drivers, and so on); and
• Identification of the date when winners will be selected and notified and a statement of how they will be notified (by email, by first class mail, or other method).

Sweepstakes rules also may contain some or all of the following elements:

• A statement that winners will or may be required to execute an affidavit of eligibility and publicity release. (Some states, such as Tennessee, may prohibit a promoter from requiring that entrants sign a publicity release as a condition for receipt of a prize);
• Identification of the sponsor;
• A statement that prizes are not transferable, and that no substitutions are permitted, except at the discretion of the sponsor;
• A statement that the winner is responsible for taxes (and other costs not listed, such as when the prize involves travel); and
• A statement that a winners list will be made available, and a description of the means by which the list can be obtained.

Applicable Federal Laws

In addition to state rules on sweepstakes promotions, there are several potentially applicable bodies of national law. Among the most significant is the Deceptive Mail Prevention and Enforcement Act, 39 U.S.C. §3001, which took effect in 2000. The Act applies to sweepstakes made available or promoted through direct mail. Among other things, the law creates a private right of action, such that consumers may seek damages (including by class action) for breach of the Act. The law requires mailed sweepstakes entry materials to display the following information (clearly and conspicuously):

• A statement in the mailing, in the rules, and on the order or entry form that no purchase is necessary to enter;
• A statement in the mailing, in the rules, and on the order or entry form that a purchase will not improve the recipient’s chances of winning;
• All terms and conditions of the sweepstakes promotion, including the rules and entry procedures;
• Identification of the sponsor or mailer of the sweepstakes promotion and the principal place of business or other contact address of the sponsor or mailer; and
• Rules that state the estimated odds of winning each prize, the quantity, estimated retail value, and nature of each prize, and the schedule of any payments to be made over time.

The Deceptive Mail Act also prohibits various promotional schemes:

• Claims that someone is a winner unless they have actually won a prize;
• Requirements that an entrant buy something to enter the promotion or to receive future sweepstakes mailings;
• The mailing of void checks that do not clearly state that they are non-negotiable and have no cash value; and
• Seals, names, or terms that imply an affiliation with or endorsement by the federal government.

The Federal Trade Commission ("FTC") also protects against deceptive trade practices. A practice is deceptive if it is likely to mislead consumers and affect consumer behavior or decisions about the product or service. Under FTC regulations, the official rules of sweepstakes must generally include such basic information as the name and address of the sponsor, the duration of the sweepstakes, the prizes given away, the retail value of the prize(s) offered and the odds of winning. The rules must also disclose eligibility requirements, conditions for entrance into the promotion, and any limitations on the manner and form of distribution of prizes. See generally FTC, Facts For Consumers, www.ftc.gov/bcp/edu/pubs/consumer/telemarketing/tel17.shtm.

Florida currently requires publication of complete official rules in all advertising. The Florida legislature, however, is considering an amendment to the statute, to relax that requirement.

**CONTEST ISSUES** • Contests generally do not qualify as lotteries because they lack the element of chance; that is, the prize is awarded based on the skill of the entrant. For example, a contest may involve writing an essay on a particular topic, answering trivia questions, solving puzzles or competing in a sport. Because chance is not key to winning, contest sponsors may require entrants to provide consideration to enter, although some states limit the types of consideration that may be requested.

**Predominant Element: Skill**

To qualify as a contest, chance cannot enter into the determination of the winner of the prize. The game must be a game of skill. Most games of skill, however, also have an element of chance.

Golf, for example, is clearly a game of skill. Yet, there are elements of chance (such as the extreme unlikelihood of shooting a hole-in-one, no matter what the player’s skill level).

---

**Contests generally do not qualify as lotteries because they lack the element of chance; that is, the prize is awarded based on the skill of the entrant.**

---

**Indicia Of Skill-Based Contests**

As a result of the blending between skill and chance, most states apply a “predominance” test. When the contest gives entrants a real opportunity to exercise skill, the event is not determined by chance. Various indicia of skill-based contests have been proposed, including:

• The fact that a skillful player will win more often than an unskillful player;
• That skill can be developed through experience, training, or learning;
• That effort in the contest has a meaningful effect on the outcome; and

---

**Advertising**

A word about advertising is appropriate. It may not be possible, in many print ads (and almost certainly in most radio and television ads) to provide complete details concerning a sweepstakes promotion. Advertising should, however, provide at least these minimum disclosures:

• No purchase necessary;
• Void where prohibited by law (or in specific jurisdictions);
• Start and end dates; and
• Eligibility restrictions apply.

Advertising should clearly indicate where and how to obtain a complete set of rules for the promotion.
• That the community generally considers the contest to be one of skill.
See, e.g., In re Allen, 377 P.2d 280 (Cal. 1962); State v. Randall, 256 P. 393 (Or. 1927). Guessing games are generally not considered contests of skill, because the element of chance principally determines the outcome of the game. In addition, a contest cannot require that entrants perform nearly impossible tasks, such as counting the number of jelly beans in a jar, because chance predominates over skill in such a contest. Finally, the questions or puzzles cannot be susceptible to several different possible answers, only one of which is the “correct” answer. Again, in such a contest, there is no skill in guessing the correct answer.

**Chance Predominance Continuum**

In practical terms, there is a chance predominance continuum. At one end imagine games of pure skill, such as chess. On the other end are games of pure chance, such as roulette. At the midpoint, skill and chance are near equal in determining the outcome of a game. On the predominance test, games like golf, billiards, and poker may be characterized as both games of skill and games of chance. (Some states identify specific games as gambling games, despite the skill/chance continuum analysis. Some states identify card games; others identify any games using dice or balls.) Contests in these areas must be very carefully considered. Many online and computer games present a similar blending of skill and chance, which should produce similar circumspection in a prospective contest promoter.

**Standards For Judging The Contest**

To make a contest truly a game of skill, moreover, the official rules must disclose the standards used to judge entries. The standards must be clear enough for entrants to understand what will be required to win the contest. The contest must actually be judged by these standards, by a judge qualified to make the determination. Judging standards for contests can be based on such things as creativity and originality. The standards may specify, for example, that entries will be judged 60 percent on creativity and 40 percent on originality. Generally, the clearer the standards for judging the contest, the clearer it will appear that the contest is a game of skill, not chance.

**Tie-breakers**

In addition, the contest rules should specify what happens in the event of a tie. If ties are broken by random drawing in what is otherwise a game of skill, the contest will be considered a game of chance. If consideration is also present, then the contest may be considered an illegal lottery. This result can be avoided by awarding the prize to both the tying entrants. The tie can also be broken by stating that the judge’s determination of the more heavily weighted criteria (for example, creativity, if the criteria are weighted 60-40) will win.

**Consideration Generally Permissible**

Because contests lack the element of chance, it is generally permissible to require consideration from contestants. Merely requiring an entrant to do something, such as writing an essay, may be sufficient effort for a finding of consideration. In addition, consideration may appear in the form of requiring the entrant to make a purchase or pay an entry fee. Some states however, do not permit any form of purchase or entry fee for contests. In these states, consideration may only appear in the form of effort. In virtually all jurisdictions, moreover, the value of the prize cannot depend on the fees collected from the entrants. Collection of such a “pot” for payment almost certainly violates state gambling laws.

Some states permit contest sponsors to require a purchase, or charge an entry fee, so long as the contest is registered. These states may be excluded from contests. Arizona, for example, permits a sponsor to require the purchase of a product (but
not charge a fee). The sponsor, however, must register the contest and may not add any increment to the price of the product purchased. In some states, the fee paid to participate must be less than the prize to be awarded.

Disclosure

Many states also have specific disclosure requirements for contests. Generally, contest rules must clearly disclose any money or other consideration that must be given to win the prize. Other disclosure of information, similar to the disclosure requirements for sweepstakes, may also apply. Skill contests also are covered by the Deceptive Mail Prevention and Enforcement Act. The law requires sponsors to disclose in a clear and conspicuous way:

- The terms, rules, and conditions of the contest;
- How many rounds of the contest an entrant must survive to win the grand prize;
- The time frame for the winner to be determined;
- The name of the contest’s sponsor; and
- An address at which an entrant can reach the sponsor to request that the entrant’s name be removed from the mailing list for the contest.

**Online promotions present a host of special problems. Start with the simple fact that some potential entrants may not be able to participate in the promotion due to their lack of access to a computer system.**

Rules For Contests

Rules for prize contests should be similar to sweepstakes rules and terms (outlined earlier). A clear description of the game rules is key. The criteria for winning the contest should be clearly stated, and (when possible) the determination of winning status should be made by an independent and well-qualified judging corps.

ONLINE ISSUES • Online promotions present a host of special problems. Start with the simple fact that some potential entrants may not be able to participate in the promotion due to their lack of access to a computer system. From an extreme view, this fact might convert a sweepstakes into a lottery, in that potential participants must expend some arguably special effort to participate in the promotion. The simple solution to this potential problem is to permit some offline method of entry into the promotion.

Another very basic fact is the ubiquitous nature of the Internet. In theory, virtually anyone, virtually anywhere on the planet, can gain access to a website advertising a promotion. Thus, in theory, a promotion offered world-wide might have to comply with the regulations of every jurisdiction on earth. (Just as with the individual states in the United States, laws governing promotions vary greatly among the countries of the world.) In practice, however, virtually all promotions (offered on the Internet or otherwise) specify the jurisdictions in which the promotion is valid, and include at least a disclaimer against offering the promotion in other jurisdictions, and a blanket statement of “void where prohibited by law.”

Questions Raised By The Technology

More practical questions arise due to the special technology involved in an online promotion. Online promotions may present a number of technological questions:

- To whom will entries be attributed (because more than one person may have access to a given e-mail address)? The typical solution is to provide that, in the event of a dispute about the identity of any winner, based on an e-mail address, the winning entry will be declared made by the authorized account holder of the e-mail address submitted at the time of entry;
• How will the promoter handle automated/multiple entries? Typically, such entries are prohibited;
• How will the promoter handle bugs, viruses, and interruptions in service? Typically, the promoter provides in the rules that the promotion may be discontinued if there is evidence of hacking, security breaches, or other tampering. Many promotions generally reserve the right to cancel, suspend, or modify the promotion, if necessary, due to any technical problems.
These types of questions should be considered in advance, because mid-contest revisions to promotional rules may be considered unfair or deceptive practices.

Privacy Issues
Another key issue, to be considered well in advance of the promotion, concerns the privacy of personal information collected from participants in the promotion. The gathering of information from entrants (for use in future marketing efforts) is often a key element of a promotion. But the mishandling of such information can result in serious claims from regulators and consumers. At a minimum, a promoter should:
• Ensure that a privacy policy exists, which covers the promotion and is appropriately disclosed to participants. (The details involved in constructing a privacy policy are beyond the scope of this article. Such policies, however, generally include consumer notice, choice, security, access, and enforcement provisions. For initial references on this subject, see generally Steven C. Bennett & Suzanne L. Telsey, Do You Need A Data Privacy Policy? 2:18 iMarketing News, May 8, 2000 at 42; see also Steven C. Bennett, Do You

Need A Chief Privacy Officer? 53 Pract. Law. 1, 17 (Feb.2007).) Typically, a notice of the existence of the privacy policy is posted, along with the rules and any advertising for the promotion. The notice may provide a link to the policy. In some instances, promoters require participants to click on an “I agree” icon (indicating acceptance of the privacy policy) before proceeding with entrance into the promotion;
• Ensure that the steps outlined in the privacy policy are feasible, and that there is a means of follow-up to ensure compliance. Privacy policies that exist “in name only” may be worse than nothing;
• Ensure that, wherever possible, technologic solutions are adopted to enhance the privacy and security of personal information obtained from participants.

The Child Online Privacy Protection Act (“COPPA”)
One specific and very important sub-issue in the privacy sphere concerns the gathering of personal information from children. The Child Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§6501 et seq.; see also 16 C.F.R. pt. 312 (implementing rules), applies to websites directed to children younger than 13 years of age, and those website sponsors that have “actual knowledge” that children younger than 13 are submitting information to the website sponsor. In determining whether a site is directed at children, the FTC considers several factors, including:
• The subject matter;
• Visual or audio content;
• The age of models on the site;
• Language;
• Whether advertising on the website is directed to children;
• Information regarding the age of the actual or intended audience; and
• Whether a site uses animated characters or other child-oriented features.

COPPA generally requires that the promoter post its privacy policy, identifying practices regarding personal information, on or close to the location where children’s information may be solicited. The Act further requires parental notice and consent whenever a child’s personal information is collected. COPPA also requires that the promoter provide access for the child’s parents to review any collected information, and a means to delete the information. If the promotion is not intended for children, then special care should be exercised to disclaim targeting children, and a system of age-screening may be implemented to ensure that children do not participate in the promotion.

Finally, if email is used as part of the marketing for a promotion, the promoter may need to comply with the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §7701 et seq. (“CAN-SPAM” Act). The Act regulates the sending of commercial messages, defined as those that have as their primary purpose advertising or promotion of a commercial product or service. If the CAN-SPAM Act applies to a promotional email, then the promoter must be sure that:

• Messages include clear and conspicuous notice that the messages are for advertisement or solicitation purposes;
• Messages do not contain any false or misleading header or subject line information;
• The sender of the message is accurately identified; and
• The message includes a valid physical postal address for the sender.

Information obtained from recipients may be subject to use restrictions. The CAN-SPAM Act, moreover, requires that there be a functioning email address or other Internet-based mechanism that permits the recipient of the message to request removal from the sender’s list, to avoid receiving further commercial messages from the sender. The recipient’s right to opt out must be stated in a clear and conspicuous notice. The opt-out mechanism must be available for a minimum period (30 days) and must function within a maximum period (10 days).

CONCLUSION • As with most commercial practices, it is possible for lawyers to over-think a sweepstakes or contest promotion, sucking the life out of the promotion by constructing rules and promotional materials that focus exclusively on potential problems. The better approach is to begin with a well-designed marketing and technical plan, aimed at answering the fundamental question: “What is the best, most effective means to conduct this promotion?” With that plan in mind, review some of the “tried and true” forms of promotions with a competent professional. Make sure that any recent developments in the law, any modifications of the established form, and any unusual aspects of the promotion are addressed. Then draft rules (or revise existing ones) and procedures for the promotion to address potential problem areas. When uncertainties remain, consider exclusions of jurisdictions (and potential entrants) that could be problematic.
PRACTICE CHECKLIST FOR
An Introduction To Sweepstakes And Contests Law

Sweepstakes and contests have always been extremely popular and effective marketing tools. But it takes very little for them to cross the line into illegal lotteries, so you need to employ a good combination of advance planning and research to keep your client on the safe side.

- No matter how a promotion is intended, it may be characterized as a lottery if it has chance, a prize, and consideration. All three elements have to be present for the promotion to be regarded as a lottery.

- “Sweepstakes” (random drawings for a prize) are not classified as lotteries because they lack consideration (something of value that the entrant must provide to participate in the sweepstakes):
  - The majority rule is that consideration generally requires parting with cash or something of marketable value. The minority view is that any benefit to the promoter is consideration;
  - A high degree of effort required to participate in the promotion can be regarded as consideration. There is generally no consideration when the entrant’s efforts are minimal;
  - A way to avoid having a sweepstakes classified as an illegal lottery is to make an alternative “free” method of entry available. If there are alternative methods of entering, there must be no discrimination in treatment of sweepstakes entrants.

- Some states permit sweepstakes but require registration of the promotion with one or more government agencies. Other states have laws or regulations that restrict sweepstakes in highly regulated industries. Tobacco, weapons, motor fuel, time shares, and financial services are among these.

- Some states also have specific laws or regulations that identify information that must be disclosed to potential entrants.

- Clear rules for a sweepstakes promotion can avert potential problems. The rules generally contain:
  - A statement that no purchase is necessary to enter or win;
  - Details of entry procedures;
  - Any limits on the number of times a person can enter (for example, one entry per person or household);
  - The closing date of the sweepstakes, and any other relevant deadlines;
  - Winner selection and notification procedures;
  - A list of prizes offered and their approximate retail value, plus any conditions on use of the prize;
  - Approximate numeric odds of winning each prize, or a statement that the odds of winning depend on the number of entries received;
  - A description of the method of selecting winner(s);
Identification of the geographic scope of the sweepstakes and a list of jurisdictions where the sweepstakes is void (for added certainty, many rules state that the promotion is “void where prohibited by law”); Eligibility requirements (for example, 18 years and older, licensed drivers, and so on); and Identification of the date when winners will be selected and notified and a statement of how they will be notified (by email, by first class mail, or other method).

- Federal laws applicable to sweepstakes include:
  - The Deceptive Mail Prevention and Enforcement Act, 39 U.S.C. §3001;

- Contests generally do not qualify as lotteries because (theoretically) they lack the element of chance—the prize is awarded based on the skill of the entrant:

  - Because many contests in reality blend skill with some element of chance, most states apply a “predominance” test. Indicia of skill-based contests include the fact that a skillful player will win more often than an unskillful player; that skill can be developed through experience, training, or learning; that effort in the contest has a meaningful effect on the outcome; and that the community generally considers the contest to be one of skill. Guessing games are generally not considered contests of skill, because the element of chance principally determines the outcome of the game.

- Official rules for a contest must disclose the standards used to judge entries.

- Contest rules should specify what happens in the event of a tie. Ties should not be broken by random drawing (chance).

- Because contests lack the element of chance, it is generally permissible to require consideration from contestants.

- Many states also have specific disclosure requirements for contests. The Deceptive Mail Prevention and Enforcement Act requires contest sponsors to disclose in a clear and conspicuous way:

  - The terms, rules, and conditions of the contest;
  - How many rounds of the contest an entrant must survive to win the grand prize;
  - The time frame for the winner to be determined;
  - The name of the contest’s sponsor; and
  - An address where an entrant can reach the sponsor to request that the entrant’s name be removed from the mailing list for the contest.

To purchase the online version of this article, go to www.ali-aba.org and click on “Periodicals.”