Don’t Be a Turkey: Ensure Your Social Media Sweepstakes is Legal

Sweepstakes are an increasingly popular marketing tool for companies looking for ways to engage consumers. In November, for example, a company may give you a chance to win a free turkey when you tweet what you’re thankful for or upload a picture of your Thanksgiving Day spread. Since sweepstakes are games of chance or random drawings, they raise a variety of legal compliance and risk management concerns. Compliance can be especially tricky when conducting sweepstakes online or through social media (e.g., user-generated content, tweets, Facebook applications, blogging and viral marketing). Here are some best practices for sweepstakes involving aggregate prizes under $500:

- **Ensure network compliance** – Check the social media network’s rules on sweepstakes, and structure your contest to identify and comply with any network-specific rules.
- **Establish rules** – Identify and disclose all material terms in all promotional materials (including “no purchase necessary” and “will not improve chance of winning”).
- **Post rules** – Include a link to the contest rules on the entry page and, whenever feasible, require entrants to check boxes (provided on a hyperlink) to confirm they accept the rules and privacy policy. When conducting sweepstakes entirely through social media, require entrants to tag the company’s official page on the social network, and include a shortened link to the rules in each entry post.
- **Verify age** – Generally limit participation to persons 18 or older – or allow ages 13 to 17 but impose an age gate, parental consent mechanism or other acceptable mechanisms for verifying age. Sites or companies that appeal to children or sell regulated products often must take more stringent measures.
- **Offer free entry option to void consideration** – Many sweepstakes allow entry involving purchase or other consideration such as:

- Automatic entry upon making a purchase
- Entry in exchange for a public social media activity (e.g., liking, pinning, posting product photo, etc.)
- Entry in exchange for an activity requiring significant time or providing significant value.

In all of these cases, you need to offer an alternative “free” entry method that doesn’t require consideration. Always clearly and conspicuously disclose the free option in all promotional materials, and treat free entries the same as other entries (e.g., same deadline and limit on number of entries).

- **FTC compliance** – If the sweepstakes requires the entrant to take an action the FTC considers a public endorsement, require entrants to disclose the tie between the endorsement and sweepstakes. Include the word “Entry” or “Sweeps” within each promotion hashtag, as a standalone hashtag identifying the sweepstakes, or through another conspicuous method of disclosure.
- **Notify winners** – Send an email or social media private message to winners, establishing terms for acceptance of prize (e.g., accept rules, agree to pay taxes on the prize’s value, grant license to use name, release and hold company harmless). Require a reply with “I accept,” and save record of acceptance.
- **Advertising permission** – If you plan to use any user-generated content submitted as part of a sweepstakes entry for advertising purposes beyond the sweepstakes itself, get the user’s written consent through a more formal agreement.

Contact Lori Beam with questions at 816.265.4142 or lorib@sb-kc.com. *This article is general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.