Generate Sales – Not Litigation – With Loyalty Programs

Done right, loyalty programs are a great way to incentivize repeat customers and attract new ones. Here are some legal tips for operating loyalty programs that generate sales, not litigation: Always keep in mind you are entering into a legal contract with each customer who participates. Depending on your company's size, that means loyalty program contracts with thousands, possibly millions, of customers. That sounds a little scary, but through proper set-up, marketing and administration, you can minimize the risk of customer complaints and claims – including class action lawsuits – for breach of contract, fraud and unfair competition, and other grounds. Since advertising is the way you offer terms and conditions to your customers, the No. 1 tip for generating sales and not litigation is to: Make sure all advertising promoting your loyalty program conforms to its stated terms and conditions. For example, don't advertise prizes that are not available, and don't misstate points needed to earn rewards. Other important tips:

- Establish clear program terms and conditions and follow them in implementing the program.
- Reserve the right to alter the terms and conditions, including the right to make changes retroactively to benefits already accrued under the program.
- Check state-specific laws for states in which you operate the loyalty program so you can either (a) establish program terms and conditions that avoid their application or (b) implement systems for legal compliance. Examples of such state laws include: **– Trading stamp (coupon) laws** – Some states' coupon laws requiring issuers to give certain disclosures or requiring cash redemption values may apply to loyalty programs that offer discounts off the purchase of goods or services. **– Payment Instruments and Stored Value** – Loyalty programs that allow customers to accumulate value that can be spent with third-party merchants, in certain circumstances, could be subject to laws governing money transmission, issuance of payment instruments, money laundering, etc. **– Unclaimed property laws** – Some states expressly exclude accumulated loyalty program credits and points from their unclaimed property laws, but other are ambiguous and may be interpreted as requiring reporting and the turnover of funds to the state if not claimed within a specified period of time. **– Gift certificate laws** – Some state consumer protection laws restricting expiration dates or fees on gift certificates and requiring certain disclosures may apply to points, credits and other aspects of loyalty programs.
- Disclose all data you collect through the loyalty program, how the data is used and with whom it is shared.

In short, don't unintentionally breed disloyalty through your loyalty program. Following these tips will ensure you're always treating your customers with respect. Lori Beam is an attorney at Seigfreid Bingham where she chairs the firm's Advertising, Marketing and Promotions practice group. Contact her at lbeam@sb-kc.com or 816-421-4460. * 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.