

## Sweepstakes Promotions

Sweepstakes promotions are powerful and cost-effective marketing tools for increasing brand awareness, as well as promoting services and products. While the expansion of the Internet and Social Media have made national sweepstakes more accessible, a myriad of legal pitfalls exist, regardless of the size of the business or economic interest involved. Given the patchwork quilt of state gambling laws, as well as Federal Trade Commission and state advertising guidelines, retaining knowledgeable legal counsel to navigate and provide advice to ensure compliance with applicable laws is a necessity.

Lewis Roca Rothgerber Christie's Interactive Gaming Law Attorneys assist clients with the below issues on almost a daily basis so that they can focus their efforts where they should—running their business.

### **Sweepstakes Promotion Design and Structural Analysis**

State laws typically define illegal gambling using three elements: (1) the award of a prize; (2) determined on the basis of chance, including a future contingent event outside of the participant's control; and (3) where consideration is required to be paid. A lawful sweepstakes is conducted by removing the element of consideration. The most common sweepstakes model allows participants to pay for their entry, but also provides anyone who wishes to enter the sweepstakes for free the opportunity to do so via an Alternative Method of Entry ("AMOE"). However, an AMOE cannot be used merely as a ruse designed to offer gambling, and complicated nuances have developed in several states as a result of attempts to do so. This includes evaluating whether AMOE participants face real or perceived disparities compared to paid entries, how often such promotions can occur, and the nature of the products and services that can be promoted. Therefore, we analyze the design and structure of our client's proposed sweepstakes to avoid or mitigate potential liability.

### **State Bonding and Registration | Third Party Platforms**

Sweepstakes promotions are governed by the laws of each state where they are offered. While most states have common requirements, including disclosures, filing of winner's lists, and the substance of terms and conditions, there are other requirements unique to certain jurisdictions. For example, a few states have bonding and registration requirements when the prize value exceeds a certain amount. Also, those who conduct sweepstakes promotions on third party platforms, such as Facebook, must comply with the platform's policies and other requirements. As interactive gaming attorneys, we are intimately familiar with these state and third-party platform requirements.

### **Official Rules**

#### **Blog(s)**

Commercial Gaming

#### **Key Contacts**

Karl F. Rutledge  
**Partner, Chair -  
Commercial Gaming  
Group**

702.949.8317

Glenn J. Light  
**Partner**

702.949.8276

One often overlooked but extremely critical issue is that sweepstakes official rules are just like any other binding contract. However, rather than contracting with just a few other parties, or another sophisticated company, the client is contracting with a nearly unlimited amount of users. Therefore, drafting detailed, clear, and accurate rules is crucial, given that (i) a company could face potential liability from numerous sources, and (ii) under basic principles of contract law, ambiguous or unclear provision will be interpreted against the drafter (i.e., the company). Without clarity and precision, a sweepstakes operator will be exposed to serious liability from several sources, including civil lawsuits (class action or individual), as well as government actions by state attorney's general and the FTC, based on consumer protection issues (promoting fraudulent schemes or engaging in other forms of false or deceptive advertising on the Internet). Therefore, we assist our clients in drafting clear and precise official rules in order to limit these serious risks.

### **Related Services**

Commercial Gaming

Gaming

### **Related Industries**

Gaming & Hospitality

Consumer Products & Services