



# Promoting your Business: Legal Compliance for Sweepstakes and Contests

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# Legal Landscape for Promotions

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- Federal Laws
- State Laws
- Platform Guidelines
- FCC Guidelines
- FTC Guidelines

# Where Do I Start?

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- Step One: The Federal and State Lottery Laws
- Lottery Elements:
  - Consideration
  - Chance
  - Prize
- Avoid the lottery laws by removing one of these elements

# What is Consideration?

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- Monetary Purchase or Payment
  - In-pack game pieces
  - Event admission
  - Text messages (data charges)
  - Donation of goods
  - *Postage is not consideration*

# Inherent Consideration

**TAKE A BITE. TAKE A PIC.**

SNAP A SELFIE TAKING A BITE OUT OF YOUR FAVORITE BREAKFAST ITEM AND **YOU COULD WIN:**

- YOUR PHOTO FEATURED ON: DISCOVERY'S SHARK AFTER DARK AND DUNKIN' DONUTS TIMES SQUARE BILLBOARD
- SHARK WEEK PRIZE PACK
- \$100 DUNKIN' DONUTS GIFT CARD

POST #DDSHARKWEEK

POST #DDSHARKWEEK

**DUNKIN' DONUTS BITE GALLERY**  
LATEST #DDSHARKWEEK PICS FROM AROUND THE WEB

# What About Non-Monetary Consideration?

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- Store Visit/Travel to a Location (some states)
- Essay contests (matter of degree)
- Attendance at sales presentations (some states)
- Watching a 30-minute television show is not consideration
  - *Federal Communications Commission v. American Broadcasting Company*, 74 S.Ct. 593, 347 U.S. 284 (1954)

# Degree of Effort

The 567 Mile Scroll

Seriously. Can you actually scroll for 567 miles?

The Dudes drove hundreds of miles. Now they're challenging you. The all-new Volkswagen Golf TDI® can drive up to 567 hwy miles on a single tank of fuel. But can you scroll that far?

START

Don't have time to play?  
→ [Enter anyway](#)

# Oh No! My Promotion Requires Consideration!

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- Add an Alternative Free Method of Entry (AMOE)
  - 3 x 5 Mail-In Card
  - Internet Entry
- Remove chance
  - **But watch out** → several states ban consideration even where chance is not a factor.
  - Arizona has limits on the types of skill contests where you can charge an entry fee. Prizes are limited to replays of the game, merchandise prizes or, in the case of athletic events, distribution of winnings to the players only.



# Alternative Methods of Entry

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- AMOE entries must be treated with "Equal Dignity"
  - Common pool for all entries
  - No separate mailing address for purchase vs non-purchase entries
  - Equal entry period
- AMOE must be advertised and disclosed to consumers
  - A&P's "Frozen Food Month Sweepstakes" → failure to adequately disclose and advertise AMOE resulted in a \$102,000 fine from the New York Attorney General

# Chance is More than a Random Drawing

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- Random Drawing
- First 50 People to Respond
- Bingo
- Number of Beans in a Jar
- Public Judging (sometimes)
- Everyone may win, but the value of the prize varies



# What Qualified as Skill?

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- Athletic Ability
- Speed/Endurance
- Knowledge and Strategy based games (trivia/chess)
- Creative Skills (cooking, photography, essay writing)



# Skill Contests and Judging Issues

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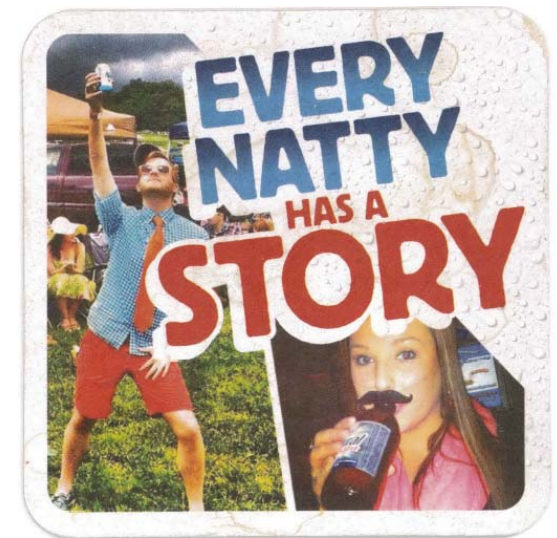
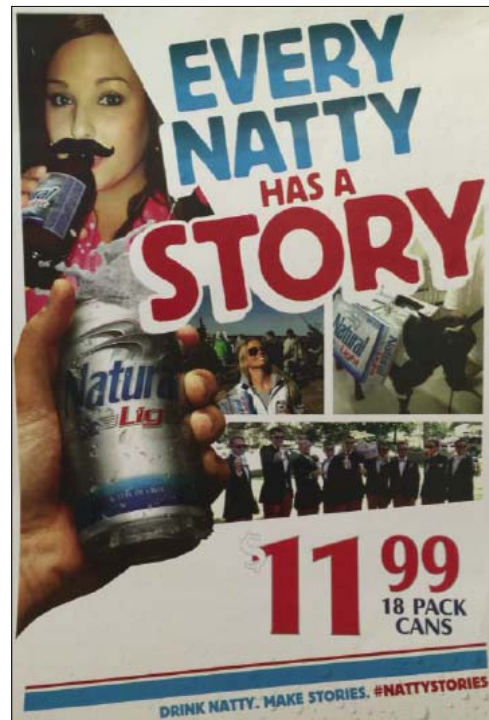
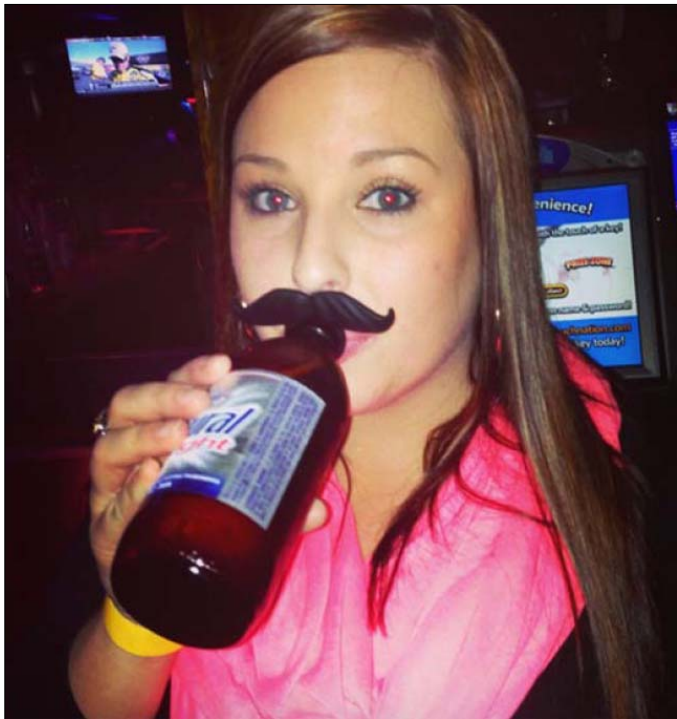
- Objective Judging Standards Must Be Disclosed
  - Judges must be qualified to apply standards
  - Ties must be broken by skill, not chance (no coin flipping!)
- Public Voting
  - Public must be able to apply criteria
  - Limited impact of public judging
    - Phased judging (Sponsor selects finalists, public selects winner)
    - Limit number of votes per person
    - Prohibition on incentives in exchange for votes

# Special Issues with User Generated Content

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- Handling of 3rd Party Rights
  - Prohibition on all non-original content vs. prohibition on infringing content
- Strong Content Guidelines
  - Prohibit content that is inconsistent with the brand
- Obtain license to use entry content
- Transparency is key!

# User Generated Content – Know Your Limits



# What is a Prize?

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- Anything of tangible value given to the winner
- "Bragging rights" are not prizes



# Prize Specific Issues

- Travel Prize – What is included/excluded?
  - Coach class airfare
  - Ground transportation
  - Double occupancy hotel room
  - Meals and incidentals
  - Black-out dates
  - Guests
- Celebrity Meet & Greet
  - What happens if celebrity can't attend?
  - Do you have a back up plan?





# Prize Specific Issues

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- Events
  - Ticket license restrictions
  - What happens if winner can't attend?
  - Need to allow enough time for winner selection/travel arrangements
- Vehicles
  - Limits on upgrades
  - Insurance/drivers license requirement
  - Deadline for claiming prize after delivery

# State Registration Issues

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- Sweepstakes (Games of Chance)
  - Registration and bonding required in New York & Florida if total prize value is greater than \$5,000
  - Registration (no bonding) required in Rhode Island if sweepstakes is run at retail (including online retail) and total prizes are greater than \$500
  - Plan ahead (45-60 days) or void these states
- Contests (Skill Events)
  - Registration required in Arizona if contest requires an entry fee
  - **But watch out** → contest must also meet amusement gambling definition to comply with Arizona law


# Platform and Industry Issues and Special Rules

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- Social Media
- Text Based Promotions
- Direct Mail
- Alcohol/Tobacco and Dairy

# Facebook Guidelines

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- “Like-Gating” is prohibited 
- “Don’t forget to Like our Brand” is permitted
- Promotions may be administered on brand timeline, but cannot require user to post to personal timeline
- “Post a photo on your page with #hashtag to enter” is prohibited
- No bonus entries for posting links, but you can grant bonus entries for "closing the loop"

## Facebook Guidelines Continued

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- Rules for a Facebook promotion must include:
  - A complete release of Facebook by each entrant or participant
  - Acknowledgment that the promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook
  - Disclosure that the participant is providing information to the Sponsor and not to Facebook



## Twitter Guidelines

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- Discourage the creation of multiple accounts
- Discourage posting the same tweet repeatedly
- Ask users to include an @reply to the Sponsor so Sponsor can see all the entries
- Hashtags need to be relevant to the promotion and comply with FTC Endorsement Guidelines
  - Use #Entry, #Contest, or #Sweepstakes
- Notification of winners by direct message is permissible

# Advertising the Promotion

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- Advertising should include all material terms
  - Eligibility (age and residency requirements)
  - Start/End Dates
  - Prize Details
  - Sponsor Identity
  - Entry Process and AMOE, if applicable
  - Location of official rules

## We Selected A Winner. So We're Finished, Right?

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- Notification and verification of winner
  - Age and residency verification
- Affidavits & Releases (including guest releases for travel prizes)
- Copyright Assignment for User Generated Content winning entry
- IRS 1099 Issuance (prizes over \$600)
- Retention of entries and disclosure of winner list



# Questions?

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# THANK YOU

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