

Navigating Legal Issues Involving Sales Contests & Sweepstakes

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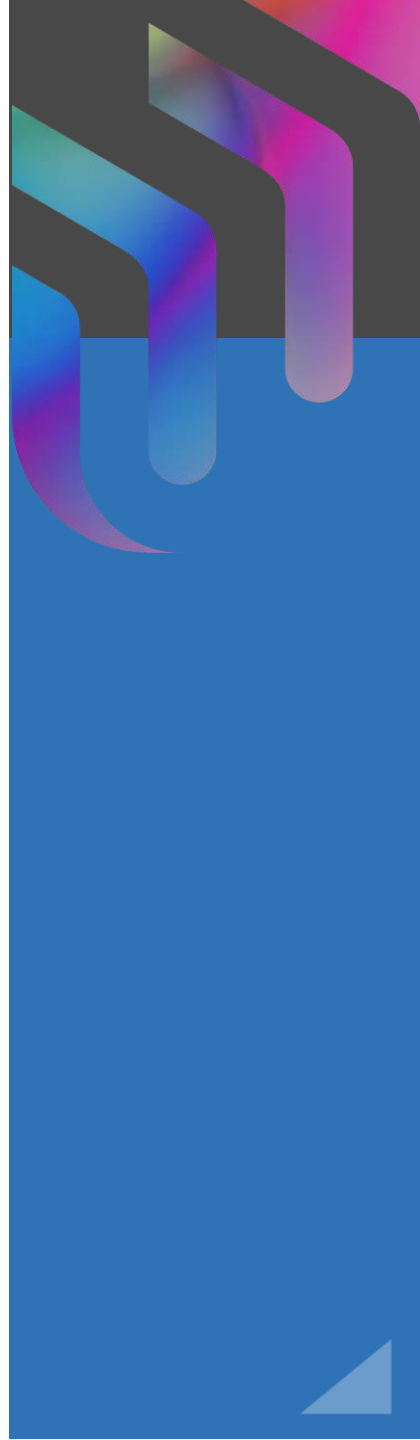
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Providing Media Law Support for MAB Members

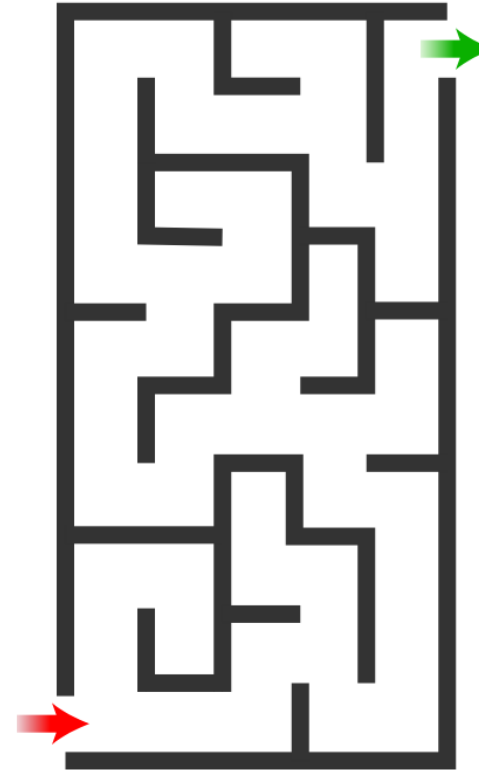
- Defamation, Privacy and Related Claims
- Prepublication and Prebroadcast Review
- Newsgathering and Access Issues
- Freedom of Information Act
- Reporter's Privilege
- Prior Restraint
- Subpoena Defense
- Intellectual Property
- Artificial Intelligence
- Augmented/Virtual Reality & New Digital Media



- **Established in 1931.**
- **230+ attorneys.**
- **Nine offices across MI.**

Overview of Sweepstakes & Contests

- **Purpose**: To drive traffic, viewer/listener engagement, enhance brand visibility, etc.
- Several potential regulators, including:
 - FTC;
 - FCC;
 - Congress;
 - Postal Service;
 - Attorney General;
 - State Gambling Commissions;
 - State Laws; and
 - Others.
- **Sweepstakes** = Chance
- **Contests** = Skill or Effort



Consumer sales promotions are subject to a “regulatory maze”

Not A Lottery

- Federal and state laws **prohibit lotteries** (except state-run lotteries). Therefore, your contest or promotion must be carefully structured to avoid being classified as a lottery.
- This is not a matter of simply titling the promotion a “sweepstakes” as opposed to a “lottery.” It is extremely important to ensure you do not meet all three **elements of an illegal lottery**.

ELEMENTS OF A LOTTERY

(1) An award of a **prize**;

(2) Results determined **by chance**; and

(3) **Consideration** (which can be monetary or non-monetary).

Element 1: Award of a Prize

- Anything of value offered to the contestant, for example:
 - Cash prizes;
 - Physical goods;
 - Discounts/coupons;
 - Free products/services;
 - Experiential prizes;
 - Memberships;
 - Exclusive access.

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Element 2: Determined by **Chance**

- Selection based on chance rather than skill (e.g., being the eighth caller).
- Potential gray area: Does skill or chance play a greater role in determining the outcome?

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Element 3: Consideration

- **Monetary Consideration:** Pay to play (donation, purchase).
- **Non-Monetary Consideration:** Questionnaire, travel, disclosing information, etc. “Substantial effort or time.” (See *FCC v ABC*).
- Issues of **Negating Consideration** and **Post Consideration**

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FTC as a Regulatory Body

- The FTC is the main federal agency overseeing sales promotions and advertising. Its key responsibilities are:
 - Prescribing rules under the Federal Trade Commission Act;
 - Investigating suspected violations; and
 - Bringing lawsuits against companies engaged in illegal activities.

Key Themes:

- No false or misleading statements.
- Clear and conspicuous disclosures.
- Substantiating claims made in promotions.

Phone/Text Promotions

Telemarketing Sales Rule (TSR):

- Applies to contests or sweepstakes communicated via telemarketing calls.
- Required Disclosures:
 - No purchase or payment required to win or participate.
 - A purchase or payment does not increase odds of winning.
 - The odds of winning a prize.

Telephone Consumer Protection Act (TCPA):

- Relevant to mobile sweepstakes or contests where participants enter a contest via text message.
- Include “opt in” language with opportunity to opt out at anytime.



FCC Contest Rule

Broadcast - Contests

The statutory provision regarding contests is set forth at Section 508 of the Communications Act of 1934, as amended (the "Act") (47 U.S.C. § 509). Section 508(a) of the Act (47 U.S.C. § 509(a)) provides that it is unlawful for any person, with intent to deceive the listening or viewing public:

1. To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.
2. By means of persuasion, bribery, intimidation, or otherwise to induce or cause any contestant in a purportedly bona fide contests of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contests, whereby the outcome thereof will be in whole or in part prearranged or predetermined.
3. To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.
4. To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1), (2), or (3) above.
5. To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), (3), or (4) above, if one or more of such persons do any act to effect the object of such conspiracy.

State Regulations

- Each state has its own laws relative to contests and sweepstakes. **Generally, most states require that every contest and sweepstakes be governed by rules.**
- Anticipating risk can help you avoid tort/contract/IP liability on top of the regulatory minefield.
- **“Hold your Wee for a Wii”** Radio Contest on KDND in Sacramento.

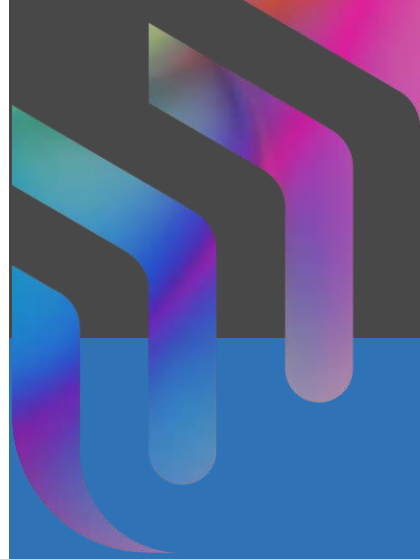
Woman dies after water-drinking contest

A woman who competed in a radio station's contest to see how much water she could drink without going to the bathroom died of water intoxication, the coroner's office said Saturday.



Selecting and Structuring Promotions

- Is my promotion a **sweepstakes** or a **contest**?
 - Skill game vs. chance game
 - Skill games:
 - Set clear and objective judging criteria;
 - Inform entrants of the criteria before they participate;
 - Ensure judges are qualified to apply the criteria and evaluate all entries consistently;
 - Resolve any ties between contestants based on skill;
 - Be aware that some states have stricter rules for distinguishing between skill-based and chance-based promotions.
- Am I asking my audience for **user-generated content**?
 - Did I include necessary disclosures regarding use of third-party content?
 - Require a signed release?



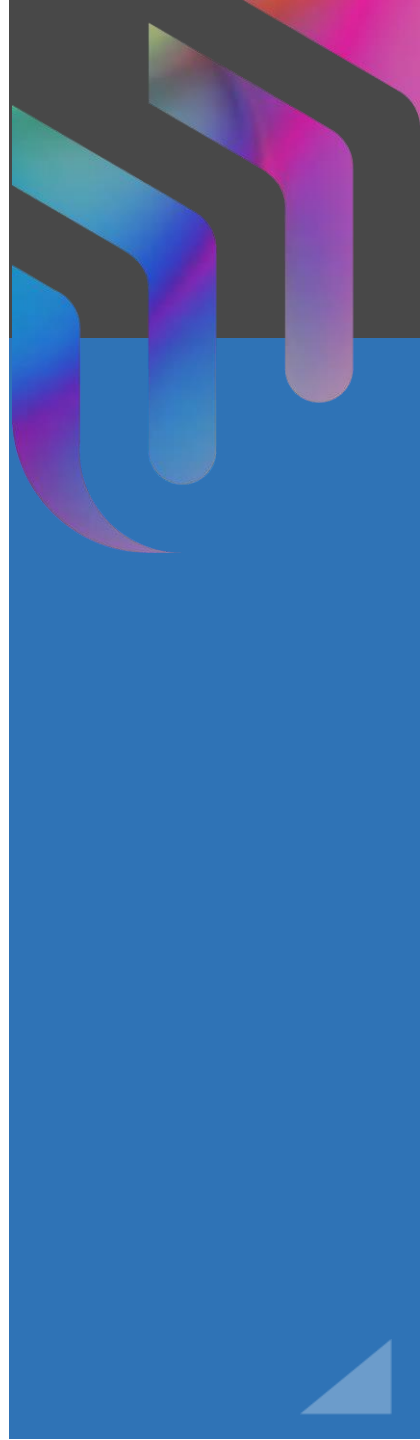
Drafting Rules

- **Basic items to include, at a minimum:**

- Eligibility criteria (e.g., age) and exclusions (e.g., family of sponsor employees)
- Clear instructions for all entry methods, including submission details for contests
- Start and end dates, including times and time zone if needed
- Full description of prizes, quantity, and approximate retail value
- How and when the winner list can be obtained
- Sponsor's corporate name and physical address
- Criteria for selecting winners
- Tie-breaking method, or equal prize value if required by state law

- **Additional Protective Provisions:**

- No purchase necessary
- Alternate form of entry
- Right to cancel or modify
- Release
- Limitation of liability
- Right to substitute
- Forum selection clause
- Errors clause
- Time zone that controls entry deadline
- Privacy policy
- Geographic limitations
- Social media disclaimers
- Trademark/copyright

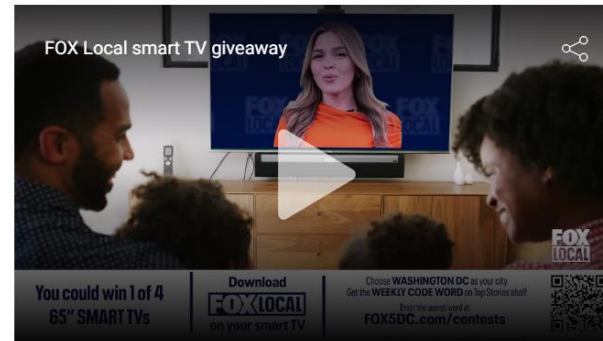


Best Practices

- Clear and Comprehensive Rules
- Compliance with Federal/State Laws and Regulations
- Transparency and Communication
- Watch for Emerging Issues
 - Using AI in Promotions
 - Social Media Promotions
 - International Promotions

Win a smart TV from FOX 5 DC!

Published June 13, 2024 5:21pm EDT | News | FOX 5 DC | ↗



FOX Local smart TV giveaway

You have a chance to win a 65" smart TV! Visit fox5dc.com/contest for more info and contest rules.

WASHINGTON - FOX 5 DC is offering up a chance to win a 65" smart TV! Here's how to enter.

1. Download FOX Local from your streaming device.
2. Choose WASHINGTON D.C. as your city.
3. Look for the weekly CODE WORD in the top stories just below the live stream.
4. Enter the code at fox5dc.com/contests for your chance to win.

An advertisement for Zoro.com. The top part features the Zoro.com logo and the text 'Keep cars, trucks, and vans running their best, all season long.' with a 'Shop Now' button. Below this is a grid of four circular images showing various car accessories: a battery, a red tool, a black storage box, and a car battery.

A graphic for FOX LOCAL. It features the FOX LOCAL logo in large white letters over a background image of the Washington Monument and a bridge. Below the logo, it says 'FOX 5 DC now streaming on FOX LOCAL'.

FOX 5 Freebie Friday Giveaway - Rules

Who Can Enter

1. Entrants must be legal residents of Washington, D.C., Virginia, West Virginia, or Maryland who are 18 years of age or older and have lawful access to the method(s) of entry set forth in these rules.
2. Employees of Fox Television Stations, LLC, owner of television station WTTG, and any announced sponsor (collectively, "Sponsor"), their affiliated companies, advertising and promotion agencies, and the immediate family and household members of each are ineligible.

How To Enter

3. No purchase is necessary to enter or win. Only one entry per e-mail address per hour. The giveaway begins as soon as a giveaway is first announced during "Fox 5 Morning News," and all entries must be received by 11:59 p.m. local time on that same day.
4. One or more giveaways may be announced from time to time. The method of entry and the criteria for winning will be announced when entries are solicited.
5. Sponsor is not responsible for error, omission, interruption, deletion, defect, delay in operations or transmission, theft or destruction or unauthorized access to or alterations of entry materials, or technical, network, telephone equipment, electronic, computer, hardware, or software malfunctions of any kind, or inaccurate transmission of or failure to receive entry, winner(s) or other giveaway information by Sponsor or entrants for any reason whatsoever. Sponsor is also not responsible for any injury or damage to any entrant's or any other person's computer related to or resulting from playing or downloading any materials in the giveaway or for entries that are late, misdirected or incomplete. All entry materials may be maintained as part of WTTG's giveaway records. **CAUTION: ANY ATTEMPT BY AN ENTRANT TO DELIBERATELY DAMAGE ANY WEB SITE OR UNDERMINE THE LEGITIMATE OPERATIONS OF THE GIVEAWAY IS A VIOLATION OF THE CRIMINAL AND CIVIL LAWS, AND SHOULD SUCH AN ATTEMPT BE MADE, THE SPONSOR RESERVES THE RIGHT TO SEEK DAMAGES FROM ANY SUCH ENTRANT TO THE FULLEST EXTENT PERMITTED BY LAW. Sponsor reserves the right to cancel or modify the giveaway if it becomes technically or otherwise corrupted.**
6. Winner(s) will be selected in accordance with the criteria announced when entries are solicited. The giveaways will be judged by Station personnel, and the decision of the judges will be final as to all matters, including (i) the order in which entries were received and (ii) whether any answer required to be given is correct.

The Prize(s)


7. The number of winners to be selected and the applicable prize(s) and the value there of will be announced when entries are solicited.
8. The winner(s) will be notified by e-mail on or about the day they are selected. The winner(s) must respond to prize notification within 1 day, and the winner(s) will be required to complete, sign and return a Certification of Eligibility and Release and claim the prize in the manner and within the time period communicated by Sponsor or they will be disqualified. If a winner cannot be reached, does not respond to prize notification, or does not return the signed and completed Certification of Eligibility and Release and claim the prize within the designated time period, Sponsor will select an alternate winner by random drawing if, in Sponsor's reasonable discretion, time permits.
9. Prizes cannot be redeemed for cash or substituted for any other items by the winner(s). The winner(s) cannot assign or transfer prize. Sponsor reserves the right to substitute a prize of like or greater value, including cash, for any prize, for any reason.
10. The winner(s) is responsible for all local, county, state, and federal taxes on prizes based on the value of the prizes set forth in these rules.
11. Only one prize will be awarded per household. Individuals are eligible to win only one prize within any 90-day period, regardless of the number of giveaways entered.

Odds of Winning Miscellaneous

12. Odds of winning depend on the number of entries received.
13. Except where prohibited by law, entry constitutes permission to use winners' names, hometowns, likenesses, and photographs for broadcast, online posting, and/or any in any other media, including for advertising and publicity purposes, without additional compensation.
14. These giveaway rules are available at www.fox5dc.com/contests, and Monday through Friday during normal business hours at WTTG, 5151 Wisconsin Ave., N.W., Washington, D.C., 20016.
15. For a list of prize winners, send a separate, self-addressed, stamped envelope no later than one year following the end of the entry period, to: 5151 Wisconsin Ave., N.W., Washington, D.C., 20016, and specify which giveaway you are seeking information about.
16. This giveaway is subject to all applicable laws and regulations and is void where prohibited or restricted by law, including without limitation, in jurisdictions requiring registration, filing, trust account, or posting of a bond, or any other requirements or disclosures that are not expressly satisfied by these rules. Sponsor is not responsible for typographical or other errors in the printing, offering, or administration of the giveaway, or in the announcement of the prize. In the event of a dispute over who submitted a particular entry, Sponsor will determine the entrant's identity or select an alternate winner, in its sole discretion.
17. By entering, participants represent that they are eligible, and agree (a) to be bound by these rules and the decisions of the judges, (b) to release Sponsor, its parent, subsidiaries, affiliates, directors, officers, employees, and agents from any and all liability for any injuries, losses, or damages of any kind caused by any prize or resulting from acceptance, possession, use, or misuse of any prize, and (c) to Sponsor's Terms of Service and Privacy Policy located at www.fox5dc.com.
18. No giveaway administered under these rules is sponsored, endorsed, or administered by or associated with Facebook. Entry information is provided to Sponsor, not to Facebook. Entrants release Facebook from any and all liability for any injuries, losses, or damages of any kind related to any giveaway administered hereunder.

Media Law Updates



 Warner Norcross + Judd LLP March 11, 2024

Media Law Updates

Enter your contact information and click submit below to be added to our mailing list. If you have any questions, please contact us [here](#).

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Company	
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