

insights

Does the Deceptive Mail Prevention and Enforcement Act apply to your sweepstakes?

Sometimes even the slightest change in a sweepstakes can make a huge difference. Recently, a client who has sponsored numerous online sweepstakes decided to expand its marketing outreach by using direct postal mail. What the client didn't know was that promoting the sweepstakes via the [U.S. Postal Service](#) triggered application of the Deceptive Mail Prevention and Enforcement Act (DMPEA) which contains a sizeable list of items that must be included in the sweepstakes.

DMPEA, which has been around since 2000, was designed to protect consumers and in particular senior citizens from false or misleading advertising that causes entrants to buy products that they don't want or need. It also bars companies from mailing advertisements that make consumers believe they may have already won a prize. Despite the fact that the law is more than a decade old, there are sweepstakes creators who don't know what the Act requires because they seldom work with direct mail promotions.

DMPEA applies to any sweepstakes or contest that uses the U.S. Postal Service to advertise or implement the promotion. The Act prevents the misleading use of prizes that are designed to look like checks or government documents. It also prohibits the use of any advertising language that claims the promotion has been approved by a government agency or endorsed by any official government entity. The Act also allows recipients to have their names removed from receiving similar sweepstakes mailings from the sponsor in the future.

Other DMPEA requirements:

1. The statement "No Purchase Necessary" must be clearly and conspicuously displayed in the rules and on all promotional materials relating to the sweepstakes.
2. Sweepstakes materials must state that a purchase will not increase an entrant's chance of winning.
3. The sponsor must prominently disclose its name, address, and contact information in the rules and on all advertisements.
4. Sponsors must provide a customer with a complete set of Official Rules for the promotion.
5. Sponsors must disclose the number and approximate retail value of all prizes to be awarded.
6. The approximate odds of winning a prize must be disclosed and if the odds are based on the number of entrants, the sponsor must provide an estimate of the anticipated number of entries that will be received.
7. If a cash prize is to be delivered in installments, a detailed description of the payment process must be disclosed.

In addition, the Act specifically prohibits statements that suggest making a purchase will affect future sweepstakes opportunities. It also bars sponsors from making statements that a previous purchase or payment is a needed to participate in the sweepstakes.

Contests

DMPEA also applies to contests and requires the following disclosures be made by the contest's sponsors:

- The number of rounds or levels of the contest and the cost of entering each level.
- The estimated number or percentage of winners who have won previous games.
- The method used for judging the contest and the judges' qualifications.

- The date prizes will be awarded the value of each prize.

Penalties

The Act does not pre-empt any state law remedies, but it provides penalties for failing to comply with its requirements. Two of the most significant penalties are the monetary fines:

1. Up to \$2 million dollars per project (the penalty increases in proportion to the number of days of the violation).
2. An additional penalty of \$1 million dollars if a cease-and-desist order is violated.

If your sweepstakes or contest uses direct mail, be aware of DMPEA and make sure you avoid penalties by complying with the Act's requirements.

This post was written by retired Thompson Coburn partner Dale Joerling. If you have any questions about the topics discussed in this post, please contact Thompson Coburn partner [Hap Burke](#).

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