

insights

Sweepstakes nightmares: Your prize provider drops out

A staffer at our law firm is not feeling amused by a certain amusement park. She recently won a sweepstakes for a fully-paid trip for four to this park. But now two weeks out from the trip, she and her family have no plane tickets, no room key and a growing animosity for the company.

The amusement park is providing the prize, but it's an L.A. broadcast company that sponsored the sweepstakes. And it's that company that will be in the lurch if this woman's trip falls through and she takes her grievances to Twitter.

This PR nightmare could unfold for any corporation that launches a sweepstakes. And the fallout could be serious: Companies beware the wrath of a consumer with social media savvy and a serious axe to grind.

The bright side for business marketers? The nightmare can be averted with a little advanced planning. Namely, a good written agreement between the sweepstakes sponsor and the prize provider.

While most of our clients are sweepstakes sponsors, we do represent prize providers. Prize providers typically don't want to be cosponsors of the promotion. They also want to avoid being subject to any liability if the promotion runs into trouble.

Sweepstakes sponsors have their own concerns. They depend on prize providers to supply prizes that are precisely as described in the official rules. Sponsors also want to sidestep any risk associated with the prize or the use of the prize by the winners. (If a lucky sweepstakes winner contracts food poisoning from his lifetime supply of hotdogs, the sponsor wants the prize provider to be on the hook for the hospital bill.)

For these reasons, it's usually in the best interest of both the sponsor and the prize provider to enter into a written agreement that sets forth the details of the arrangement.

There is no one-size-fits-all agreement that can be rolled out for every sweepstakes. However, here's several items that sweepstakes and contest sponsors should consider adding to any prize provider contract.

8 contract elements that could save your sweepstakes

Prize description

This description should duplicate the prize description contained in the promotion's official rules. But add specific details about who will deliver the prize, when it will be delivered, and any other restrictions. For example, if travel for an amusement park promotion won't apply if the winners live within 250 miles of the park, get that down in writing.

Approximate retail value

Figure out the approximate retail value of the prize and include it in the rules. And remember to spell out that winners are responsible for paying taxes on their prizes when Uncle Same comes knocking. **Legal releases** Litigation looms for any online sweepstakes that goes bad, so make sure your agreement includes the proper mutual indemnity provisions and release of liability clauses. Sponsors and prize providers typically split up the liability. Sponsors step up and take responsibility for making certain that the sweepstakes is legal and complies with all federal and state laws. Prize providers typically assume responsibility for delivering the prize and honoring the warranty for the product.

Copyright clearance

Secure a license for the use of any trademarks, copyrights, and other intellectual property connected to the promotion. If your online sweepstakes is giving away a [Hunger Games](#) archery set plastered with Katniss' likeness, make sure you've got the official OK from Lions Gate Entertainment.

Timeline

Include a clear schedule and time table for delivering the prize. We advise against a "30 minutes or less or it's free" claim.

Tax warnings

Remind prize winners that it's up to them to comply with state and federal tax laws. Many consumers [subscribe to the incorrect belief](#) that they owe no taxes if the prize is less than \$600. Sweepstakes sponsors have an obligation, too: If the prize worth more than \$600, then they must send the winner an IRS form 1099-Misc. at the end of the



year. **Contingency plan**

Don't forget to spell out exactly what happens if the promotion is cancelled, if the winner refuses to accept the prize, or if the entries have become compromised in some respect. **Exit strategy**

For all the promotion and buzz you create for an online sweepstakes, the last thing you want to see is your prize provider go kaput or file for bankruptcy. But if the worst happens, detail which party will be responsible when the winners come calling.

Avoid the vitriol from a sweepstakes winner who starts bashing your company on Facebook, Twitter, or the highly populated message boards of online sweepstakes clearinghouses like [Sweeties Sweeps](#). Tuck these provisions into the fine print of your prize provider agreement and save yourself from some serious headaches if your sweepstakes goes south.

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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